



SOUTH AFRICAN LOCAL
GOVERNMENT ASSOCIATION

SALGA

Inspiring service delivery

Request for proposals: Appointment of law firms/legal practitioners to form part of SALGA's panel of law firms/legal practitioners

BID NO. SALGA/03/2022

Closing date and time: 17 March 2023 at 11:00

Bid Validity Period: 120 days

TENDER BOX ADDRESS:

**Menlyn Corporate Park
c/o Garsfontein and Corobay Avenue
Waterkloof Glen**

TEL: (012) 369 8000

EMAIL: scm@salga.org.za

WEBSITE: www.salga.org.za

1. INTRODUCTION

The South African Local Government Association (SALGA) is a public entity established by the Organised Local Government Act (Act 52 of 1997) to assist in the comprehensive transformation of local government in South Africa. SALGA is managed within the framework of the Public Finance Management Act (Act 1 of 1999) and is listed as a schedule 3A public entity. Its main objectives are to:

- Represent, promote and protect the interests of local government;
- Transform local government to enable it to fulfil its developmental role;
- Enhance the role and status of its members as provincial representatives and consultative bodies of local government;
- Enhance the role and status of municipalities;
- Be recognised by national and provincial governments to be the representative and consultative body in respect of all matters concerning local government and to make representations to both provincial and national governments in respect of any matter concerning local government;
- Ensure the full participation of women in organised local government;
- Be the National Employers' Association representing all municipal members and, by agreement, associate members.

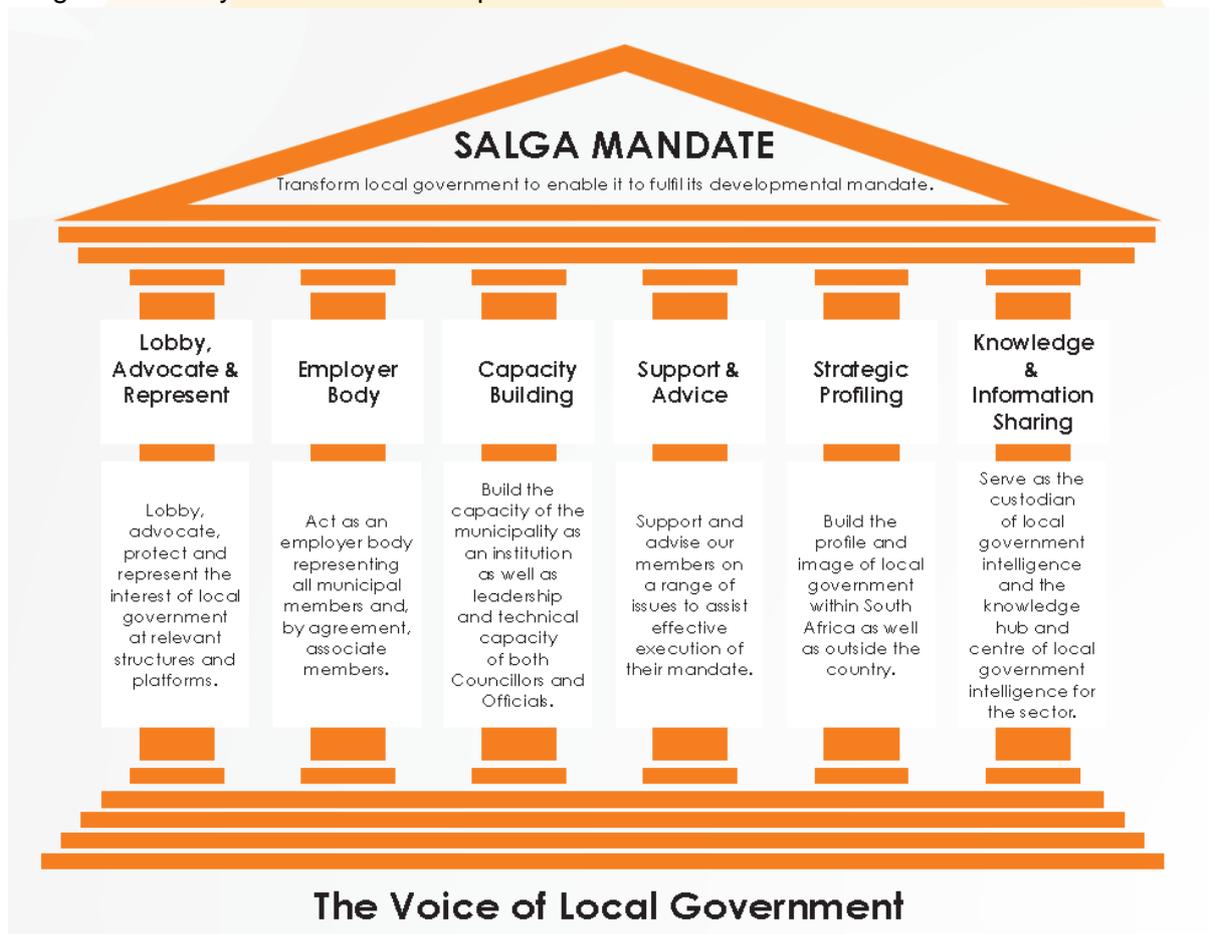
2. SALGA MANDATE

Developmental Local Government is an essential component of the machinery of government. In accordance with its constitutional mandate, SALGA is obliged to transform the local government sector to one that has the required capacity to make a meaningful contribution to poverty alleviation, economic development and all socio-economic opportunities that the state has geared itself to provide for its people. SALGA also serves as the representative voice of all 257 municipalities in the country. For the past 20 years, since its establishment, SALGA has endeavoured to bring focus to its mandate of supporting local government transformation in a complex environment, characterised by a highly diverse and diffuse membership-base of municipalities. In terms of its amended Constitution, SALGA is a unitary body that consists of a national association and nine provincial offices. Its mandate rests on six primary pillars:

- (1) **Representation, Advocacy and Lobbying** refers to representing the interests of members in legislatures and other policy making and oversight structures. It also refers to engaging with various stakeholders, public debates etc. in the interest of Local Government.
- (2) **Employer Body** refers to being an effective employer representative for members. Employer representation is carried out through collective bargaining (in terms of the Labour Relations Act) in various structures including but not limited to those established in the South African Local Government Bargaining Council.
- (3) **Capacity Building** refers to facilitating capacity building initiatives through among others; representing member interests in the Local Government Sector Education Authority (LGSETA). SALGA strives to facilitate a coherent, well-co-ordinated capacity building programme for municipal councillors and officials.

- (4) **Support and Advice** refers to the provision of tools and services that enable municipalities to understand and interpret trends, policies and legislation affecting Local Government and to implement the said policies and plans
- (5) **Strategic Profiling** of Local Government refers to enhancing the profile and image of local government as an important and credible agent for the delivery of services. Profiling focuses within South Africa, the African continent and the rest of the world.
- (6) **Knowledge and Information Sharing** refers to building and sharing a comprehensive hub of Local Government knowledge and intelligence that will enable informed delivery of other SALGA mandates. The knowledge hub is also a useful reference point for all who seek Local Government information.

Diagrammatically the mandate is depicted as follows:



3. PURPOSE OF THIS REQUEST

The purpose of this document is to call for proposals from Service Providers/Law Firm/Legal Practitioners (herein after interchangeably referred to as “service provider”/“bidder”) to form part of the SALGA panel of law firms/legal practitioners, whose key mandate will be to provide specialized legal services to the organisation.

4. MANDATORY REQUIREMENTS

Submission of:

- I. Valid Fidelity Fund Certificate.
- II. Certificate of Good standing (issued by the Legal Practice Council not older than 6 months from date of issue).

5. SCOPE OF WORK

SALGA intends to appoint suitable service providers/law firms/legal practitioners to assist with the following services:

The law firms/legal practitioners will be expected to render services to SALGA on a wide range of issues pertaining to, *inter alia* the following, including but not limited:

No	Area of Work	Scope of Work	Skills required
1	Labour and employment Law	<ul style="list-style-type: none"> • Handling and/or presiding over grievances and disciplinary enquiries/matters of all employees. • Conducting forensic investigations in the workplace and advising. • Provision of general labour related advice, legal opinions or related services. • Advice on changing employment law legislation and its potential impact (e.g. BCEA, LRA and Employment Equity Act etc.) as well as workplace discipline and counselling. • Representing the employer at arbitrations, mediations, the Labour Courts and other forums for labour disputes. <p>Collective Employment Law</p> <ul style="list-style-type: none"> • Advise on strikes, collective bargaining, restructuring, disputes over the interpretation and application of 	<ul style="list-style-type: none"> • Experience in labour and employment law litigation. • Understand the regulatory framework governing public service employment. • An understanding of labour law and employment law jurisprudence for purposes of providing legal opinions. • Knowledge of Bargaining Council and other dispute resolution forum.

		<p>collective agreements, litigation in all labour tribunals and courts.</p> <p>Employee Benefit Law</p> <ul style="list-style-type: none"> Advise on the law relating to retirement funding, pension funds and medical aid funding. 	
2	Corporate Governance	<ul style="list-style-type: none"> Advise on governance related issues. Advise on regulatory and compliance related issues. 	<ul style="list-style-type: none"> Understanding and Extensive knowledge in regulatory framework governing public entities.
3	Insurance Law	<ul style="list-style-type: none"> Provide legal opinions on insurance. 	<ul style="list-style-type: none"> Comprehensive understanding on insurance matters; Understanding of pension fund law legislation and administration of pension funds.
4	Commercial law	<ul style="list-style-type: none"> Advise on projects, transactions of a commercial law nature. Provide legal opinions of a corporate law nature. Drafting, review and advise on commercial agreements etc. 	<ul style="list-style-type: none"> Experience in working with transactions of a commercial law nature. Excellent research and drafting skills, for purposes of preparing legal opinions of a commercial law nature. Ability to work and delivery of specific outputs on time. Experience in providing advice in general commercial matters.
5	Intellectual Property Law	<ul style="list-style-type: none"> Provide legal opinions on intellectual property. 	<ul style="list-style-type: none"> Comprehensive understanding of intellectual property matters and relatable processes.
6	Property Law and Conveyancing	<ul style="list-style-type: none"> Provide legal opinions on property law and conveyancing. Ability to register property on behalf of entity. 	<ul style="list-style-type: none"> Comprehensive understanding of property law and conveyancing.

7	Collection Matters	<ul style="list-style-type: none"> • Provide legal opinions on collection matters. • Ability to institute and defend collection matters in various courts/forums on behalf of the entity and municipalities. 	<ul style="list-style-type: none"> • Experience & knowledge in collection matters.
8	Litigation matters	<ul style="list-style-type: none"> • Ability to institute and defend litigious matters in various courts/forums on behalf of the entity. • Ability to provide the entity with a legal opinion pertaining to litigious matters. 	<ul style="list-style-type: none"> • Extensive experience & knowledge in litigation in various courts/forums (i.e. Magistrate Court, High Court, Constitutional Court etc.)
9	Intergovernmental and regulatory matters	<ul style="list-style-type: none"> • Provide legal opinions on Intergovernmental and regulatory matters. • Interpretation of various applicable legislation. 	<ul style="list-style-type: none"> • Extensive knowledge in intergovernmental & regulatory matters.
10.	Administration Law	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> • POPIA / PAIA
11.	Cyber Law	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •
12.	Energy (Law); Environmental law	<ul style="list-style-type: none"> • i.e. Eskom matters 	<ul style="list-style-type: none"> •
13.	Public Law	<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •
		<ul style="list-style-type: none"> • 	<ul style="list-style-type: none"> •

6. PANEL UTILISATION GUIDELINE

- a. Only law firms/professionals/legal practitioners that reach the 75 points minimum threshold on functionality will be considered for inclusion on the panel.
- b. The allocation of work will (as far as possible or reasonable) be done strictly on rotational bases irrespective of the case/matter/project value. However, briefs/instructions/assignments may be allocated depending on the relevant circumstances of the matter *inter alia*, based on previous involvement in a matter, relevant experience, availability, business urgency, nature and complexity of the matter, proposed estimated cost of the instruction by the Law Firm or Legal Practitioner etc.
- c. The allocation/briefing/contracting of service providers for a specific work assignment will be facilitated by the Legal & Compliance Unit or External Legal Services in partnership with the Supply Chain Management (SCM).
- d. There is no guarantee that a service provider/law firm/legal practitioner on the panel will be briefed/contracted for any specific work assignments during the tenure of the contract – work will be allocated on a “as and when” required basis.
- e. Assignments will be structured as work packages that clearly define the scope, proposed timeframes, expected duration (hours), and expected deliverables amongst *inter alia*.
- f. Bidders shall be required to be competent and experienced in all aspects related to a specific area of specialization (e.g., General Legal Assistance, Administrative law and Civil litigation), unless the SALGA in its sole discretion deems it necessary to deviate from this requirement.
- g. Bidders will be notified of their appointment to the Panel, by means of an official Letter of Appointment issued by the SALGA's Supply Chain Management Department or Finance. No other communication in any form from any other official/member or employee of SALGA shall constitute a valid appointment to the Panel. However, appointment to the Panel will be conditional upon the successful bidders signing the relevant Contract with the SALGA – any failure or undue delay in securing a signed Contract between the successful Bidders and the SALGA will result in the withdrawal of the award for the defaulting successful bidder/s.
- h. SALGA may withdraw a bidder from the appointed panel due to poor performance or for any other reason acceptable in law, or a service provider may request to be removed, as may be more fully detailed in the service level agreement/contract to be concluded.

7. SOURCING PROCESS –

- a. SALGA will firstly identify a need.
- b. Thereafter, SALGA will issue a request for quotations/proposal to Law Firms/Legal Practitioners on the Panel based on *inter alia* the areas of specialisation required, the

complexity of the matter, capacity of the Law Firms/Legal Practitioners etc. (as may solely be amended by SALGA).

- c. The preferred Law Firm/Legal Practitioner will be appointed for a specific instruction based on the received quotation or as per SALGA's discretion and or requirements.
- d. SALGA reserves the right not to request for quotations and merely appoint a Law Firm / Legal Practitioner on the Panel based on proposals submitted in response to these terms of reference.
- e. In the event of circumstances arising that make it impossible to appoint the service provider (selected based on the received quotation), SALGA will have the full discretion to appoint another service provider listed on the panel.

8. ADDITIONAL REQUIREMENTS

- 8.1 Extensive knowledge with vast knowledge in Local Government sector;
- 8.2 Knowledge and application of Magistrate's and High Court civil procedure;
- 8.3 CCMA, Labour Court and Labour Appeal Court;
- 8.4 the South African Constitution;
- 8.5 An excellent knowledge of administrative, regulatory and public law;
- 8.6 Extensive knowledge of National Public Entities and its operations;
- 8.7 Demonstrate knowledge of general litigation and debt collection.

9. PROFESSIONAL FEES

9.1 Professional fees will be in accordance with SALGA's fee structure (as follows):

A. High Courts litigation

Unless specifically provided otherwise, the Law Firms/Legal Practitioners shall be entitled to base its fees on the tariff as set out in rule 70 of the High Court Uniform Rules of Court, as amended from time to time plus an additional surcharge of 45% on fees on a scale as between attorney and client. Attorneys appearing personally in the High Court shall not be entitled to charge the fees of an advocate (as appears in the below table).

B. Magistrates' Court Litigation

Unless specifically provided otherwise, the Firm/Legal Practitioners shall be entitled to base its fees on the tariff as set out in terms of the Magistrates Courts Rules of Court, R33, as amended from time to time, plus an additional surcharge of 45% on fees on a scale as between attorney and client. Advocates are to not appear in Magistrates Court.

C. Research and Opinions

R2 500.00 – R3 500.00 (depending on the complexity of the matter) per hour excluding vat

D. Conveyancing

All fees charged in accordance with the Law Society of South Africa tariff guidelines (at the time of award).

E. Labour Matters (i.e. Labour Court, CCMA)

Unless specifically provided otherwise, the Law Firm shall be entitled to base its fees on the tariff as set out in Rule 70 of the High Court Uniform Rules of Court, as amended from time to time plus an additional surcharge of 45% on fees on a scale as between attorney and client.

SALGA's Fee Structure for Advocates

	JUNIOR COUNSEL				SENIOR COUNSEL
	0-3 YEARS	3-5 YEARS	5-10 YEARS	+10 YEARS	
DAY FEE (TRIAL)	R16 500.00	R18 800.00	R22 000.00	R28 600.00	R33 000.00
HOURLY FEE (PREPARATION)	R1650.00	R2 200.00	R2 750.00	R3 300.00	R4 400.00
POSTPONEMENT	R1 650.00	R2 200.00	R2 750.00	R3 300.00	
ATTENDING TO MAKE A SETTLEMENT AN ORDER OF COURT	R1 650.00	R2 200.00	R2 750.00	R3 300.00	

10. PREFERRED SERVICE PROVIDER COMPETENCIES

SALGA wishes to engage the successful bidders with demonstrated appropriate skills/expertise in the following areas:

10.1. CONTENT OF PROPOSAL

(Information to be submitted by the bidders)

The proposal should include:

- 10.1.1. all relevant perceived strengths and weaknesses of the firm bidding for the service, e.g. similar previous experience, in-house skills, etc; providing information which will assist SALGA to assess its capabilities, competitive advantages, etc.;
- 10.1.2. the summary of the bidder's mission statement, the vision statement, values and long term strategies and objectives as comprehensively as possible;
- 10.1.3. a list of references of previous and current appointments relevant to the required services; examples of such services capabilities and experience and

more specifically the number and size of organisations where service rendered in specific sectors in government and areas of expertise.

10.1.4. an organogram or list of partners, managers, specialists (directors, senior associates etc), together with the *curriculum vitae* of the staff who will be available for the duration of the work; any staff changes regarding staff allocated to SALGA must be done in consultation with the Project Manager representing the organisation. The successful bidder should provide experienced specialists relevant to the required services.

10.1.5. How the bidder proposes to provide governance assistance to SALGA.

10.1.6. In so far as is possible, provide an overview of the methodology to be applied.

10.1.7. How the bidder will ensure that there is transfer of skills to the SALGA team.

10.2 APPOINTMENT, COMMENCEMENT AND DURATION

The appointed service provider is anticipated to commence the work upon appointment for a duration of 36 (thirty-six) months which may be renewed and extended by SALGA for further periods should SALGA deem it befitting.

10.3 DESCRIPTION AND EXTENT OF WORK (PROJECT MANAGEMENT)

10.3.1 Performing of assignments

Assignments are to be performed in accordance with the industry/profession standards as well as the terms of reference. All reports/submissions/assignments will be reviewed by the relevant Project Manager representing the organisation.

All working papers and reports and documents will become the property of SALGA.

The successful bidders shall work with the Directorate of SALGA on the planning of various phases of the service activities, and must be prepared to regularly report the progress to the relevant Project Manager.

10.3.2 Payments

SALGA undertakes to pay out within a reasonable time period all valid claims for work done to its satisfaction upon presentation of a substantiated claim. No payment will be made on outstanding information not submitted by the service provider.

The parties shall, upon appointment of the service provider, sign a service level agreement to govern their business relationship.

Acceptance of any bid does not mean that work on an uninterrupted basis is guaranteed for the duration of the contract.

10.3.3 Expenditure incurred by the bidder

The SALGA will not be held responsible for any costs incurred by the bidder in the preparation and submission of the bid.

11. INSTRUCTION TO BIDDERS

11.1 General Instructions

This document constitutes a Request for Proposal (RFP), which specifies SALGA's requirements for a service provider for the Appointment of law firms/legal practitioners to form part of SALGA's panel of law firms/legal practitioners, behalf of SALGA. The information contained herein provides a format to facilitate bidder's responses to this RFP. It is important that the format be followed closely to help maintain the decision-making timetable. Responses must be presented in the same order as the requirements appear, section by section, and numbered accordingly, with acknowledgement of all clauses. All pricing information should be fully disclosed with all charges clearly defined, i.e. a per unit fee based on activity. Please feel free to address any other potential services not specifically mentioned in this RFP that may be of benefit to the National Executive Committee (NEC) of SALGA which is the organisation's accounting authority.

11.2 Objectives

SALGA's objective in the call for proposals is to select a service provider to form part of the Panel of Attorneys for the South African Local Government Association.

11.3 Terms of Contract

The term of the contract shall be regulated by the Service Level Agreement (SLA) to be concluded with the winning bidders. It is anticipated that the term of the contract shall be for the duration of the assignment and shall expire upon fulfilment of the scope of work. The contract may be extended by mutual agreement. Thirty (30) days written notice must be given if either party wishes to terminate the agreement prior to the contract's expiry date.

11.4 Questions during Proposal Process

Any enquiries regarding this RFP should be directed to **Nokulunga Neti**, Senior Buyer: SCM at scm@salga.org.za located at the SALGA National Office – 012 369 8000. Questions will only be taken up to four days prior the closing date.

Bidders finding apparent discrepancies or omissions in the RFP should notify SCM Unit at scm@salga.org.za at once. Bidders may during the bidding period, be advised by Addenda, of any additions, clarifications, deletions or alterations to these specifications. All such changes should be covered by the bidder's proposal. Information used in the preparation of a proposal from other than this RFP and any written addenda (considered as the proposal documents) will not be considered as valid or official.

No further addenda will be issued by SALGA after 12:00 noon, four business days prior to RFP closing without providing an extension of time.

11.5 Submission of Proposal

Submit one hard copy of the proposal, in sealed envelope; **together with an electronic version in a labelled USB flash drive or memory stick** and clearly marked “**Request for proposals: Appointment of law firms/legal practitioners to form part of SALGA's panel of law firms/legal practitioners, Bid no: SALGA/03/2022**” to:

*South African Local Government Association (SALGA)
Menlyn Corporate Park
Block B; 175 Corobay Avenue
Corner Garsfontein & Corobay Avenue
Waterkloof Glen ext. 11
PRETORIA
0181*

Proposals will be received at the reception desk on the first floor, during regular business hours only, up to **11H00 on, Friday 17 March 2023**. Late submissions will not be accepted.

Bidders remain solely responsible for the method of conveyance of their proposal to the receiving point. Fax transmissions or any other electronic communications are not acceptable.

SALGA will not be responsible for any costs incurred by the bidders associated with the preparation of responses to the RFP.

Proposals received past the time stated above will not be considered and will be returned to the bidder unopened.

All proposals will remain in force and will be irrevocable for **hundred and twenty (120) days** after the proposal closing.

Proposals shall be stipulated sums without escalator clauses or other qualifications.

11.6 Contract Award

SALGA reserves the right to accept any proposal submitted or reject all proposals.

Any proposal submitted, that is not in complete compliance with the requirements of the proposal documents may be accepted or disqualified, at the option of SALGA.

11.7 Termination of Contract

SALGA reserves the right to terminate the agreement with 30 days written notice to the winning bidder subject to the following:

- 11.7.1 the winning bidder fails to perform in accordance with the specified service requirements as set out in the RFP.
- 11.7.2 the winning bidder otherwise violates the provisions of the RFP to a substantial degree.

11.8 Liability

SALGA will not be held liable for any actions of the winning bidder and/or its employees.

11.9 Important Dates

- 13 March 2023 - Last day for questions
- 17 March 2023 - Proposal submissions due 11H00

12. Conditions Of Bid (Failure to meet any of the requirements below may render your Bid Proposal Non-Responsive)

- 12.1 The requirement for content of the project proposal section below outlines the information that must be included in bid offers. **Failure to provide all or part of the information may result in your bid being excluded from the evaluation process.**
- 12.2 Only legal firms/legal practitioners established in accordance with the provisions of the Legal Practice Act No.28 of 2014, and Trust Advocates as set out in the Legal Practice Council Rules, rule 30.2,30.4 and rule 32.2, will be considered for this tender.
- 12.3 Law Firms/Legal Practitioners who do not score 75% or more on the technical evaluation will not be appointed to the panel.
- 12.4 A contract will be signed with the appointed Service Provider/s.
- 12.5 The Service Provider may be required to sign confidentiality and indemnity agreements with SALGA.
- 12.6 Failure to comply with any condition of this request for a proposal will invalidate respective tender proposal.
- 12.7 In the event that any conflict of interest is discovered during the assignment, SALGA reserves the right to summarily cancel the agreement and demand that all the information, documents and property of SALGA be returned forthwith.
- 12.8 SALGA reserves the right to request new or additional information regarding each bidder and any individual or other persons associated with its project proposal.
- 12.9 Bidders shall not make available or disclose details pertaining to their project proposal with anyone not specifically involved, unless authorized to do so by SALGA.

- 12.10 Bidders shall not issue any press release, social media or other public announcement pertaining to the details of their project without the prior written approval of SALGA.
- 12.11 Bidders are required to declare any conflict of interest they may have in the transaction for which the bid is submitted or any potential conflict of interest. SALGA reserves the right not to consider further any bid where such a conflict of interest exists or where such potential conflict of interest may arise.
- 12.12 The bid offers, and proposals should be valid and open for acceptance by SALGA for a period of 90 days from the date of submission.
- 12.13 Bidders are advised that submission of a project proposal gives rise to no contractual obligations on the part of SALGA.
- 12.14 Disputes that may arise between SALGA and a bidder must be settled by means of mutual consultation, mediation (with or without legal representation) or, when unsuccessful, in a South African court of law.
- 12.15 In addition to adherence to the specific terms and conditions of proposals, provided in this document, the bidder shall be bound by the provisions of the General Conditions of Contract attached hereto, an originally signed copy of which must be submitted together with all other bid documentation.
- 12.16 All returnable bid documents must be completed in full and submitted together with the bidder's proposal.
- 12.17 SALGA will not be liable for costs incurred during the site visits or any other cost related to the submission of the bid (if applicable).
- 12.18 Completion of the Standard Bidding Documents stated herein below is **mandatory**, failure to do so **may** render your bid offer invalid.
- 12.19 A valid original Tax Clearance Certificate issued by the South African Revenue Services, must be submitted, failing which the relevant bidder's bid shall not be considered.
- 12.20 All returnable bid documents must be completed in full and submitted together with the bidder's proposal.
- 12.21. Standard Bidding Forms**
- 12.22.1. Preference Points Claim form**
Form SBD 6.1 - Bidders must complete this document in full, special attention must be given to section 8 and 9. **DO NOT RETYPE THESE FORMS.** They must be completed on the original and signed, all in black ink.
- 12.22.2. Declaration of Interest**
Form SBD 4 - Bidders must complete this document in full. **DO NOT RETYPE THESE FORMS.** They must be completed on the original and signed, all in black ink.

13. EVALUATION

The following evaluation method will be used:

- After the closing date of the bid invitation, an appointed evaluation committee of SALGA officials and possibly other external parties will evaluate the proposals of the bidders.
- The committee will individually evaluate each of the bid proposals received against the appointed criteria as provided for in SALGA's procurement policy.

All proposals submitted will be evaluated on only one category:

- Functionality (technical content)

The committee will review the mandatory requirements listed under clause 4 of this document. Thereafter qualifying bidders will be assessed on functionality.

The assessment of functionality will be done in terms of the evaluation criteria and the minimum threshold value of 75 points. A bid will be disqualified if it fails to meet the minimum threshold value for functionality as per the bid invitation.

Thereafter, only the qualifying bids that met the minimum threshold for functionality will be considered to form part of the panel of legal firms/legal practitioners who will render specialised legal services to SALGA.

A recommendation for the awarding of the contract will be made at the meeting of the Bid Adjudication Committee to be confirmed, where applicable.

For the duration of the contract, requests will be evaluated in accordance with the Preferential Procurement Regulations, 2022, using the 80/20 split as may be amended by national treasury from time to time. The 80/20 preference points system applies for acquisition of goods or services for Rand value up to R50 million.

For functionality, the following criteria will be applicable and the maximum value of points breakdown for each criterion using these scale level descriptors:

SCALE LEVEL DESCRIPTIONS	RATING
No relevant response or information given to enable evaluation	0
Very poor response based on expected standard	1
Poor response based on expected standard	2
Average response based on expected standard	3
Good response based on expected standard	4
Excellent response based on expected standard	5

NO	CRITERIA FOR FUNCTIONALITY	POINTS ALLOCATED
1	<p>An excellent track record in the identified field, substantiated by signed references/letters from clients where services have been rendered (Letters must contain: name of client, term of engagement of the services rendered, quantum of the matter, type of service/s rendered and outcome of matter).</p> <p>0 = none; 1 = one letter; 2 = 2 letters; 3 = 3 letters; 4 = 4 letters; 5 = 5 letters</p>	40
2	<p>Demonstrated experience of not less than 10 (ten) years in the specified areas of law, substantiated by submitting CV's and qualifications of the individuals who will be providing the service.</p> <p>0 point= No submission of Project Team and Project Leader</p> <p>1 point = CV(s) and qualifications submitted do not illustrate relevant qualifications as per the requirements of this tender.</p> <p>2 points = CV(s) submitted for the project leader illustrate relevant qualifications as per the requirements of this tender. No project team CV(s) or qualifications attached</p> <p>3 points = Submission of Project Leader CV(s) detailing experience and qualifications. Submission of Project Team CV(s), but no qualifications attached.</p> <p>4 points = CV(s) and qualifications of the Project Leader, as well as that of the Project Team submitted.</p> <p>5 points = Submission of CV(s) and qualifications of the Project Leader & Project Team (That outlines the details of their roles and responsibilities in accordance with the scope of services).</p>	35
3	<p>Approach and Methodology of presentation: (in line with the terms of reference)</p> <p>0 points= no clear preliminary approach described</p> <p>1 point = preliminary approach is not suitable for the scope of work</p> <p>2 points = preliminary approach is lacking in detail.</p>	15

	<p>3 points = preliminary approach is generally described but lack specificity.</p> <p>4 points = preliminary approach is detailed and includes a justified description.</p> <p>5 points = preliminary approach is detailed and also considers the limitations/challenges, also outlining the details of the elements of solution development to close out.</p>	
4	Proof of latest paid municipal bill/statement of the leased premises or owned property	10
	Total for functionality	100

Bidders who score 75% and above will be considered to form part of a panel of Legal Attorneys for SALGA.

14. GENERAL CONDITIONS

The following should be noted by interested parties:

- Intellectual property and ownership of all materials and products developed in the execution of the contract will be vested in SALGA.
- Materials and products may not be made available to any unauthorized person or institution or sold for profit without prior written consent from SALGA.
- On completion or termination of the agreement, all materials and products must be handed over to SALGA.
- No information concerning the tender or award of the tender may be made available by the bidder to other parties without prior consultation and written approval from SALGA.
- SALGA may at its own discretion vary this instruction to include more scope / work or to exclude work/service areas. In the case of the latter, the bidder shall not be entitled to claim for any work not required and may engage SALGA on the pricing of the additional work/ service proposed.
- All copyright and intellectual property rights that may result as a consequence of the work to be performed shall reside with SALGA and the service provider shall be required to sign an agreement of confidentiality.
- SALGA may dictate the framework in which documents (policies, plans, report etc.) shall be submitted; however the service provider should be able to submit a proposal on the lay-out of his/her choice for consideration by SALGA.
- SALGA (general conditions of bid, contract and order) shall be applicable to this bid.
- The service provider shall be required to conclude and sign a Service Level Agreement (SLA) after the appointment.
- SALGA reserves the right not to award the bid to any bidder at its own discretion.
- Law Firms/Legal Practitioners shall deliver to SALGA, on completion of an assignment, all documents, devices, passwords or protective mechanisms of documents that were written and SALGA will have the right to amend these without obligation whatsoever to the firms of attorneys.

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE SOUTH AFRICAN LOCAL GOVERNMENT ASSOCIATION (SALGA)					
BID NUMBER:	SALGA/03/2022	CLOSING DATE:	17 MARCH 2023	CLOSING TIME:	11H00
DESCRIPTION	REQUEST FOR PROPOSALS: APPOINTMENT OF LAW FIRMS/LEGAL PRACTITIONERS TO FORM PART OF SALGA'S PANEL OF LAW FIRMS/LEGAL PRACTITIONERS				
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON		CONTACT PERSON			
TELEPHONE NUMBER		TELEPHONE NUMBER			
FACSIMILE NUMBER		FACSIMILE NUMBER			
E-MAIL ADDRESS		E-MAIL ADDRESS			
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
[AN UPDATED CSD REPORT MUST BE SUBMITTED IN ORDER TO QUALIFY FOR SPECIFIC GOALS AT PPPFA EVALUATION					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [[IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [[IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).

2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g., company resolution)

DATE:

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

I, _____ the _____ undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature	Date
.....
Position	Name of bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 To be completed by the organ of state

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the 90/10 preference point system.
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- c) Either the 90/10 or 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	10
2	9
3	7

4	6
5	4
6	3
7	2
8	1
Specific Goals	
SMME's	4
100% Black Women owned	3
100 % Youth	3
Total Points	20

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
SMME's	4	
100% Black Women owned	3	
100 % Youth	3	

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary.

.....	
SIGNATURE(S) OF TENDERER(S)	
SURNAME AND NAME:
DATE:
ADDRESS:



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

TO: ACCOUNTING OFFICERS OF DEPARTMENTS AND CONSTITUTIONAL INSTITUTIONS

ACCOUNTING AUTHORITIES OF PUBLIC ENTITIES

HEAD OFFICIALS OF PROVINCIAL TREASURIES

NATIONAL TREASURY SCM INSTRUCTION NO 4A OF 2016/2017 CENTRAL SUPPLIER DATABASE

1. PURPOSE

The purpose of this *SCM Treasury Instruction* is to prescribe the utilisation of the mandatory **Central Supplier Database (CSD)** to Accounting Officers and Accounting Authorities.

2. BACKGROUND

- 2.1 The National Treasury identified the registration of prospective service providers on each and every Organ of state's individual list of prospective suppliers as one of the processes that makes it difficult for service providers to do business with the State.
- 2.2 Cabinet approved steps to accelerate the modernisation of public procurement as per a Cabinet Resolution dated 10 December 2014. Amongst the ensuing modernisation initiatives, the National Treasury established the CSD on behalf of all Departments, Constitutional Institutions and Public Entities listed in Schedule 2 and 3 of the PFMA. The CSD's purpose is to avoid the multiple registrations by prospective suppliers with each individual Organ of State they intend doing business with.
- 2.3 In terms of Section 38 (1) (a) (iii) and 51 (1) (iii) of the PFMA, the Accounting Officer of a Department or Constitutional Institution and the Accounting Authority of a Public Entity listed in Schedule 2 and 3 to the PFMA must ensure that their respective Institutions have and maintain an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective.
- 2.4 National Treasury Circular No 3 of 2015/2016 informed Accounting Officers and Accounting Authorities of Departments, Constitutional Institutions and all Schedule 2 and 3 Public Entities of the transitional arrangements prior to the mandatory application of the CSD on 1 April 2016. Through this SCM Instruction, the date is extended to 1 July 2016.
- 2.5 The registration and verification of supplier information has not been uniform and standardised for all Organs of State, which complicated the process of doing business with the state. Therefore, the National Treasury established the CSD in

September 2015 to administer supplier registration and facilitate the verification of supplier information.

3. ESTABLISHMENT OF THE CENTRAL SUPPLIER DATABASE

- 3.1 In order to give effect to the mandatory requirements of this SCM Instruction, Accounting Officers and Accounting Authorities must ensure that:
- 3.1.1 The current supply chain management system and policies of their respective organs of state are aligned with the provisions of this SCM Instruction note;
- 3.1.2 Price quotations are invited and accepted from prospective suppliers listed on the CSD; and
- 3.1.3 Key information of prospective suppliers is verified on the CSD in line with PFMA and regulatory requirements. The following information must be verified:
- a) Business registration, including details of directorship and membership;
 - b) Bank account holder information¹;
 - c) In the service of the state status²;
 - d) Tax compliance status;
 - e) Identity number;
 - f) B-BBEE status level³;
 - g) Tender defaulting and restriction status; and
 - h) Any additional and supplementary verification information communicated by the National Treasury.
- 3.2 Accounting Officers and Accounting Authorities must not award any bid for price quotations to a bidder(s) not registered on the CSD, excluding transactions mentioned in paragraph 3.3.
- 3.3 Transactions concluded through petty cash, sundry payments and foreign suppliers with no local registered entity may be concluded even if the supplier is not registered on the CSD.
- 3.4 If it is not possible to obtain price quotations from the list of prospective suppliers listed on the CSD, organs of state must conduct a market analysis to identify possible supplier(s), record the process and submit the list of prospective suppliers obtained through market analysis to the Accounting Officer or Accounting Authority or an appropriately delegated Official for approval. The identified supplier(s) should be registered on the CSD before orders are finalised.
- 3.5 Organs of state must ensure that a supplier that has been contracted in respect of emergency procurement procedures of the organ of state and that is not registered on the CSD, is registered as soon as possible, but not later than 7 calendar days after the order was issued to the supplier.
- 3.6 With effect from 1 July 2016, organs of state may not extend any existing contracts that may be in existence for computerised systems that are used to record details of

¹ Bank account information is verified for ease of transacting and complaint financial management and not as a mandatory requirement for sourcing and procurement processes.

² "In the service of the state": Please note this check is currently done on state employees who have a PERSAL number, but will be also verified for municipalities, municipal entities and public entities from 1 October 2016

³ B-BBEE will only be verified from 1 October 2016

their prospective suppliers and may not institute any new computerised system for the management of their list of prospective suppliers without written approval from the National Treasury.

- 3.7 In line with paragraph 3.6 above, any computerised systems in Organs of State that are operational at the date that this Instruction takes effect, may be used up until the expiry of contracts related to such systems.
- 3.8 Organs of State must ensure that existing systems integrate with the CSD to ensure systematic verification of supplier records. In cases where system integration is not possible, Organs of State must verify supplier records through the online CSD search function and attach a copy of the verification report to the procurement transaction.
- 3.9 Organs of State must ensure that suppliers awarded business with the State, excluding instances mentioned in paragraph 3.3, are registered on the CSD prior to award letter/purchase order/signed contract being issued.

4. SUBMISSION OF COMPLIANCE DOCUMENTS BY PROSPECTIVE SUPPLIERS

- 4.1 Organs of State need to notify bidders when sourcing price quotations or bids (open tenders) that they are not required to submit hard copies of compliance information as this information can be accessed and verified on the CSD in accordance with provisions of paragraph 3.8.
- 4.2 Organs of State must indicate in their Request for Bids that prospective suppliers must be register on CSD prior to submitting bids (open tenders).
- 4.3 Proof of registration, certification or accreditation with any industry or board not provided by the CSD must be verified through the submission of physical documentation and verified through manual procedures.

5. PROSPECTIVE SUPPLIERS' REGISTRATION SUPPORT

Organs of State must provide CSD registration support to prospective suppliers who are unable to self-register or require assistance with registration.

6. TAX STATUS REQUIREMENTS FOR PRICE QUOTATIONS AND COMPETITIVE BIDS

Accounting Officers/Authority must verify the tax compliance status of bidders on the CSD for all price quotations and competitive bids.

7. ACCESS TO THE CSD AS A USER BY DESIGNATED OFFICIALS

- 7.1 The National Treasury will grant access to Organs of State and their respective designated Official(s) on the CSD to identify prospective suppliers for price quotations and/or verify supplier's key information.
- 7.2 Accounting Officers and Accounting Authorities must utilise Organ of State System Account Application Form attached as Annexure A to request access rights on the CSD.

7.3 For legibility and accuracy purposes, the form must be completed electronically. The form may be accessed under buyer's area on the OCPO website/supplier management/documents: <http://ocpo.treasury.gov.za>.

7.4 Completed forms must be forwarded to business.support@csd.gov.za.

8. TRAINING AND SUPPORT REQUIREMENTS

8.1 All Training and support requirements need to be forwarded to business.support@csd.gov.za

8.2 For telephonic support the OCPO call centre can be contacted on 012 406 9222.

8.3 The National Treasury will facilitate access to the system and provide training.

9. APPLICABILITY

This SCM Instruction applies to all Departments, Constitutional Institutions and Public Entities listed in Schedule 2 and 3 to the PFMA.

10. REPEAL OF NATIONAL TREASURY PRACTICE NOTE AND REFERENCE

10.1 This instruction repeals:

- a) National Treasury SCM Instruction 4 of 2016/2017;
- b) Paragraph 5 and 6 of National Treasury practice note no 8 of 2007/2008 on threshold values for the procurement of goods, works and services by means of petty cash, verbal/written price quotations or competitive bids dated 29 November 2007;

10.2 The list of prospective suppliers referred to in paragraph 3.2 and 3.3 of the National Treasury practice note no 8 of 2007/2008 must be regarded as the list of prospective suppliers established through the CSD.

11. DISSEMINATION OF INFORMATION CONTAINED IN THIS INSTRUCTION

11.1 Heads of Provincial Treasuries are requested to bring the contents of this SCM Instruction to the attention of Accounting Officers and Supply Chain Management Officials of their respective provincial departments;

11.2 Accounting Officers of National and Provincial Departments are requested to bring the contents of this SCM Instruction to the attention of Supply Chain Management Officials in their Departments and Accounting Authorities that report to the Executive Authority of their Department.

11.3 Accounting Authorities of Public Entities listed in Schedules 2 and 3 of the PFMA are requested to bring the contents of this SCM Instruction to the attention of the Supply Chain Management Officials of their Public Entities.

12 NOTIFICATION TO THE AUDITOR-GENERAL

The Auditor-General will be notified of the contents of this Instruction.

13 AUTHORITY FOR THIS INSTRUCTION AND EFFECTIVE DATE

This SCM Instruction is issued in terms of section 76(4) (c) of the PFMA takes effect from 1 July 2016. Institutions that have adopted the implementation of the CSD before 1 July 2016, may continue to utilise the CSD.

14 CONTACT INFORMATION

Enquiries related to this Instruction may be directed to:

Tumelo Ntlaba

Director: Central Supplier Database

Phone: 012 315 5509

Email: tumelo.ntlaba@treasury.gov.za or csd@treasury.gov.za



KENNETH BROWN
CHIEF PROCUREMENT OFFICER

DATE: 19/5/2016.

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 “Day” means calendar day.
 - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
 - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
 - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection.

5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
 - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which

may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.