



public works & roads

Department:
Public Works and Roads
North West Provincial Government
REPUBLIC OF SOUTH AFRICA

ModiriMolema Road
Old Parliament Complex
Mmabatho, 2735
Private Bag X 2080, Mmabatho, 2735

SUPPLY CHAIN MANAGEMENT

Tel.: +27 (18) 388 4481
Email: @nwpg.gov.za

BID NO: PWR 65/23

**BID DESCRIPTION: ESTABLISHMENT OF A LIST OF
APPROVED DATABASE OF PRIVATE ATTORNEYS AND
CONVEYANCERS FOR THE DEPARTMENT OF PUBLIC
WORKS AND ROADS FOR A PERIOD OF THREE (3) YEARS**

The Department of Public Works and Roads
Private Bag x 2080
Mmabatho
2735

NAME OF BIDDER

.....

.....

TEL FAX.....





public works & roads

Department:
Public Works and Roads
North West Provincial Government
REPUBLIC OF SOUTH AFRICA

ModiriMolema Road
Old Parliament Complex
Mmabatho, 2735
Private Bag X 2080, Mmabatho, 2735

Tel.: +27 (18) 388 4481

SUPPLY CHAIN MANAGEMENT

INVITATION TO BID

BID NO PWR 65/23: Establishment of a list of approved database of private Attorneys and Conveyancers for the Department of Public Works and Roads (North West) for a period of three (3) years.

The conditions contained in the General Conditions of Contract (GCC) and the attached bid forms, as well as any other conditions accompanying this invitation, are applicable.

1. Kindly receive attached the following documents:

- 1.1. SBD 1 - Invitation to bid form
- 1.2. SBD 4 - Declaration of interest
- 1.3. General Conditions of Contract (GCC)

2. All the documents accompanying this invitation must be completed

3. Duly completed and signed original bid documents should be sealed in an envelope marked:

Bid No : PWR 65/23

Bid Description : Establishment of a list of approved database of private Attorneys and Conveyancers for the Department of Public Works and Roads (North West) for a period of three (3) years.

Closing Date : 12th October 2023

Closing Time : 11h00am

No telegraphic or facsimile bids will be considered.

To obtain Bid Document, Prospective Consultants are encouraged to visit the DPWR Offices and pay a non – refundable fee of R100.00 or download the Document at www.etenders.gov.za

Bid Documents downloaded from E Portal website are free

Contact Person : Ms. NE Kgang Tel (018) 388 4143/1190

There will be a Compulsory briefing meeting on 02nd October 2023 at Embassy Hall in Mahikeng at 10H00

4. BID REQUIREMENTS

- 4.1 Late Bid will not be considered. Please note that the bids are late if they are received at the address given in the bid document after the bid closing date and time.



- 4.2 All bidding Vendors must be registered on CSD (Central Supplier Database)
- 4.3 All bidding Vendors must have a valid bank account.
- 4.4 No Tippex or pencil to be used on the bid document.
- 4.5 All the Relevant Forms attached to this bid documents must be completed and signed in ink where applicable by a duly authorized official.
- 4.6 Bid document must be filled with black ball pen

5. COMPULSORY DOCUMENTATION TO BE ATTACHED

- 5.1 Original completed and signed applicable Bid Documents
- 5.2 Company Registration Certificate Certified copies.
- 5.3 Original certified ID copies of Company Directors.
- 5.4 Tax clearance certificate / Tax compliance certificate and Pin.
- 5.5 CSD Report (Central Suppliers Database)
- 5.6 Letter of Good Standing from the Bank or Bank rating certificate with original stamp (attach valid bank letter)

7. EVALUATION CRITERIA AND PROCESSES TO BE USED

- 7.1 The evaluation process will entail the following phases
 - Phase 1 – Evaluation on legal Requirements
 - Phase 2 – Evaluation on Technical Requirements


.....
MR M. J. MOIPOLAI
DIRECTOR - SUPPLY CHAIN MANAGEMENT

18/09/2023
.....
DATE





public works & roads

Department:
Public Works and Roads
North West Provincial Government
REPUBLIC OF SOUTH AFRICA

INVITATION TO BID (OPEN TENDER)

BID NO: PWR 65/23: ESTABLISHMENT OF A LIST OF APPROVED DATABASE OF PRIVATE ATTORNEYS AND CONVEYANCERS FOR THE DEPARTMENT OF PUBLIC WORKS AND ROADS (NORTH WEST) FOR A PERIOD OF THREE (3) YEARS.

BID NUMBER: PWR 65/23

CLOSING DATE: **12/10/ 2023**

CLOSING TIME: 11:00

BRIEFING SESSION: **02/10/2023**

DESCRIPTION: **BID NO: PWR 65/23: ESTABLISHMENT OF A LIST OF APPROVED DATABASE OF PRIVATE ATTORNEYS AND CONVEYANCERS FOR THE DEPARTMENT OF PUBLIC WORKS AND ROADS (NORTH WEST) FOR A PERIOD OF THREE (3) YEARS.**

BID SUBMISSION REQUIREMENTS: HARD COPY IN A SEALED ENVELOPE

BID DOCUMENTS MUST BE DEPOSITED IN THE BID BOX SITUATED AT:

THE DEPARTMENT OF PUBLIC WORKS AND ROADS, NGAKA MODIRI MOLEMA ROAD, OLD PARLIAMENT COMPLEX, MMABATHO – GATE HOUSE

TABLE OF CONTENTS

PART A	A1: INVITATION TO BID, A1.1. CONDITIONS OF BIDDING, A1.2.TAX STATUS (SARS PIN), A2: TERMS OF REFERENCE
PART B	B1: DECLARATION OF INTEREST
PART C	C1: UNDERTAKING BY BIDDER IN RESPECT OF TENDER C2: GENERAL CONDITIONS OF CONTRACT

CONDITIONS FOR COMPLETING BID DOCUMENTS

Document	Comments	Compliance	Submitted ? (Yes / No)
SBD 1 (Invitation to bid)	Make sure it is completed & signed	Compulsory	
SBD 2 (Tax Status)	TAX STATUS – TCS PIN/CSD Report with valid tax status	Other returnable	
Authority of Signatory	Make sure is submitted, completed, and signed by authorized personnel	Compulsory	
Key Personnel	Make sure is submitted, completed, and signed for each individual personnel	Compulsory	
SBD 4 (Declaration of interest)	Make sure it is completed & signed	Compulsory	
Copy of National Treasury Central Supplier Database (CSD) registration report not older than one (1) calendar month before the tender closing date.	Proof of CSD registration	Compulsory	
Original Certified copies Company Registration Certificate NB: Certification stamp must be original and no more than 6 months old as at date of closing of tender	1. certificate of registration, 2. change of name certificate (if applicable) 3. register of directors, and most current registered business address (Company Registration: CM1 and CK1, Change of Name Certificate:CM9, Latest Registered address: CM22, Most current register of directors CM29 and CK2)	Compulsory	
Company Profile	Include the structure of the company	Part of Functionality	
Certified copies of Share Certificates	For all current shareholders if applicable	Other returnable	
Certified copies of identity documents	For all current shareholders / members	Other returnable	

IF ANY OF THE ABOVE-MENTIONED CONDITIONS IS NOT MET AND/OR ANY OF THE REQUESTED DOCUMENTS ARE NOT SUBMITTED AS PRESCRIBED, THE BID EVALUATION COMMITTEE WILL DISQUALIFY THE BID

1. Bid Documents must be completed with ink (Blue or black) and not typed. No tippex is allowed. All changes must be scratched out and a signature appended next to each change.
2. All certified documents must be within the current six (6) months. Copies of previously certified documents will not be accepted.
3. Bid documents must be secured together preferably bound or contained in a lever arch file. The North West Department of Public Works and Roads shall not be liable for any loss of documents as a result of not being properly secured upon submission.
4. This procedure allows for the pre-qualification of tenderers as per the eligibility criteria established in the tender data. Being pre-qualified for and being registered to the panel does not automatically guarantee that any service provider on the panel will be awarded any work by NWDPWR during the term of this contract. Service Providers on the panel will be selected in line with the approved Departmental sourcing strategy and the approved Supply Chain Management Policy.
5. At bidding stage, there will be no financial offer.
Upon establishment database Service providers will be invited to bid for respective projects and when required and will be remunerated according to the agreed negotiated amounts, in line with Guideline Professional Fees issued in terms of specific gazetted rates as per the respective council.
6. The bidders shall be assessed according to the selection criteria, set out in the table below and bidders scoring less than 60% shall be considered as non-responsive. Should the bidder be interested in more than one discipline, it should clearly be indicated on the tender document.
7. The bidder should select which services will provide from the following disciplines:

Services	Tick
1. Contracts	
2. Labour	
3. Conveyancing	
4. Administrative	
5. Criminal	
6. Civil Litigation	

PART A

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	PWR 65/23	CLOSING DATE:	12 October 2023	CLOSING TIME:	11:00
DESCRIPTION	Establishment of a list of approved database of private Attorneys and Conveyancers for the Department of Public Works and Roads (North West) for a period of three (3) years.				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Modiri Molema Road					
Old Parliament Complex					
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					
		TCS PIN:		OR	CSD No:
PREFERENCE PONTS WILL BE AWARDED IN LINE WITH THE DEPARTMENTAL SPECIFIC GOALS					
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 PART B:3 BELOW]	
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE (ALL INCLUSIVE)	N/A	
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:			TECHNICAL INFORMATION MAY BE DIRECTED TO:		
DEPARTMENT/ PUBLIC ENTITY	Public Works & Roads		CONTACT PERSON	Ms. N.E Kgang	
CONTACT PERSON	Mrs. J. Hart		TELEPHONE NUMBER	018 388 1190/4143	
TELEPHONE NUMBER	018 388 4481		FACSIMILE NUMBER		
FACSIMILE NUMBER			E-MAIL ADDRESS	nekgang@nwpg.gov.za	
E-MAIL ADDRESS					

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), ONLINE OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT
1.3.	BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES).
1.4.	WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION.
1.5.	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.
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 VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4	BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
2.5	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
2.6	WHERE NO TCS 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 SERVICES OF THE STATE.
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS	
3.1.	IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.2.	DOES THE BIDDER HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.3.	DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.4.	DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
<p>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</p>	

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER

DATE

CAPACITY UNDER WHICH THIS BID IS SIGNED
(Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)

DATE

A.1.1. CONDITIONS OF BIDDING

1 Proprietary Information

- 1.1 The NWDPWR considers this tender and all related information, either written or verbal, which is provided to the respondent, to be proprietary to NWDPWR. It shall be kept confidential by the respondent and its officers, employees, agents, and representatives. The respondent shall not disclose, publish, or advertise this specification or related information to any third party without the prior written consent of NWDPWR.

2 Enquiries

- 2.1 All communication and attempts to solicit information of any kind relative to this tender should be in writing and channeled to: Email address: NKgang@nwpg.gov.za
- 2.2 Please note that the last date for request for information pertaining to this tender will be on the: **06th October 2023.**
- 2.3 Bidders may not contact any other NWDPWR employee besides contact person mentioned on Paragraph 2.1 above on any matter pertaining to the bid from the time when bid is advertised to the time the bid is concluded. Any effort by a bidder to influence bid evaluation, bid comparisons or bid award decisions in any manner, may result in rejection of the bid concerned.
- 2.4 All the documentation submitted in response to this tender must be in **English**.
- 2.5 The Bidder should check the numbers of the pages to satisfy themselves that none are missing or duplicated. No liability will be accepted by NWDPWR regarding anything arising from the fact that pages are missing or duplicated.

3 Validity Period

- 3.1 Not Applicable

4 Submission of Tenders

Tenders should be submitted in a sealed envelope endorsed, (TENDER REF NUMBER: PWR 65/23). **The sealed envelope must be** placed in the tender box at North West Department of Public Works and Roads, Ngaka Modiri Molema Road, Old Parliament Complex, Mmabatho (Gate House)

- 4.1 By no later than **11h00 on 12th October 2023**
- 4.2 The closing date, company name and the return address must also be endorsed on the envelope. If a courier service company is being used for delivery of the bid document, the bid description must be endorsed on the delivery note/courier packaging to ensure that documents are delivered into the BID BOX.
- 4.3 No bid received by telegram, telex, email, facsimile, or similar medium will be considered. Where a tender document is not in the tender box at the time of the bid closing, such a bid document will be regarded as a late bid. Late bids will not be considered.
- 4.4 The bidder is responsible for all the cost that they shall incur related to the preparation and submission of the bid document.
- 4.5 Kindly note that NWDPWR is entitled to amend any bid conditions, specifications, or extend the

closing date of bids before the closing date. All bidders, to whom the bid documents have been issued, will be advised in writing of such amendments in good time.

- 4.6 NB: All reference to NWDPWR on this bid document includes its subsidiaries who are affected by the deliverable of this bid document
- 4.7 The General Condition of contract are part of this tender document and will be incorporated as an annexure and those will be bidding to the bidder whether they are returned and submitted with the bid response or not and will remain bidding to the bidder whether initialed or not.
- 4.8 None of this bid conditions are to be changed by the bidder unless agreed in writing and approved by NWDPWR.

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

Tax Compliance Requirements

- 1) Bidders must ensure compliance with their tax obligations.
- 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.
- 3) Application for tax compliance status (TCS) pin may be made via e-filing through the SARS website www.sars.gov.za.
- 4) Bidders may also submit a printed TCS together with the bid.
- 5) In bids where consortia / joint ventures / sub-contractors are involved, each party must submit a separate TCS / Pin / CSD number.
- 6) Where no TCS pin is available bidder must submit their CSD number or CSD report with compliant tax status. Bidders to ensure that they are pre-registered on central supplier database (CSD) before submitting the bid.
- 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.

PART A2: TERMS OF REFERENCE

PWR BID NO: PWR 65/23: ESTABLISHMENT OF A LIST OF APPROVED DATABASE OF PRIVATE ATTORNEYS AND CONVEYANCERS FOR THE DEPARTMENT OF PUBLIC WORKS AND ROADS (NORTH WEST) FOR A PERIOD OF THREE (3) YEARS.

1. REQUEST FOR PROPOSALS

The Department of Public Works and Roads in the North West Province is one of the Departments tasked with the responsibility of service delivery as well as the creation of a conducive environment for economic growth and development. These tasks are clearly outlined in Schedule 4 and 5 of the Constitution of the Republic of South Africa. The Department of Public Works and Roads in the province manages a budget vote in excess of billions of rands and therefore requires innovative management action to cover and minimize its exposure to the ever increasing litigation risk.

- 1.1.** The Department is currently sitting with a huge contingent liability of around R500m which, over the years has attracted negative outcomes from both the Auditor General and the Audit Cluster. Audit action plans are implemented within a specific period to address the challenges that led to the negative audit opinions, specifically in addressing the issue of closing of files and the speed at which litigation matters are finalised.
- 1.2.** Contract, legal opinion and litigation management are key responsibilities of the Directorate. Legal Personnel employed within the Directorate have the required legal qualifications but cannot appear in Court on behalf of the Department. This would have gone a long way in assisting the challenges of lack of capacity currently experienced by the Office of the State Attorney. The Department finds itself having to continuously source specialised expertise on opinions, contracts and litigation matters. The Office of the State Attorney continues to lose cases unjustifiably, resulting in the Department having to settle on matters that they should have won. There is also recorded delays on the transfer of properties which are currently handled by the State Attorney's Office. They continue to fail the Department in ensuring that they act in the best interests of the Department.
- 1.3.** The State Attorney's Act, No 56 of 1957 (as amended) makes provision for litigation matters to be referred to the Office of the State Attorney. The State Attorney has indicated lack of capacity on many instances even during meetings held with Departments.

2. OBJECTIVES AND SCOPE OF WORK (SOW)

The objective is to have a readily available panel of Private Attorneys and Conveyancers which can be invited to submit pricing proposals for the different classes of consultancy works on an ad-hoc basis, once pre-qualified into the panel.

SOW - To render a full range of legal services on an as and when basis, depending on the type of matter at hand:-

- Research the law and make sound legal opinion / advice on any questions of law;
- Represent the Department in respect of litigation by or against the State and to brief Counsel where the need arises;
- In criminal matters the Service Provider will be expected to conduct in-depth investigations, attend to necessary consultations, prepare all processes including Court appearances until the matter is finalised;
- In labour matters, the Service Provider will be expected to conduct in-depth investigations, prepare adequately and attend to all processes including set down in respect of disciplinary hearings, draw charge sheets and notices of suspension as well as Labour Court appearances until the matter is finalised;
- In immovable property, the Service Provider will be expected to transfer ownership of immovable property as well as the hypothecation of immovable property by means of mortgage bonds.

3. CONTRACTUAL REQUIREMENTS

4.1. Successful Bidders

The Successful Bidders will be required to sign a Framework Agreement to conclude appointment into the pre-qualified panel. Approved panel members will be invited to bid depending on the required disciplines. When the process of submission of price proposals by the Attorneys from the panel is concluded, a successful service provider shall be required to sign a project specific contract for each project to be executed.

4. FINANCIAL PLAN

No financial implication on this stage.

5. SELECTION METHOD

Being registered to the panel, does not automatically guarantee that any service provider on the panel will be awarded any work by NWDPWR during the term of this contract. ***Service providers on the panel will be selected in line with the approved Departmental sourcing strategy and the approved Supply Chain Management policy.***

6. PROPOSAL PREPARATION INSTRUCTIONS

In responding to the RFP, the Bidder accepts full responsibility to understand the RFP in its entirety, and in detail, including making any enquiries to the NWDPWR as necessary to gain such understanding. The NWDPWR reserves the right to disqualify any bidder who demonstrates less than such understanding. Further, the NWDPWR reserves the right to determine, at its sole discretion, whether the bidder has demonstrated such understanding.

7. 1ST STAGE: ADMINISTRATIVE COMPLIANCE

Bidder to comply with all the bid document administrative requirements and ensure documents are fully signed where required

Administrative requirement to note and adhere to by bidder on their submission

- a) Copy of valid Tax Compliance Status Pin. For Joint-Venture, submit copy of valid Tax Compliance Status Pin for each party.
- b) Copy of National Treasury Central Supplier Database (CSD) registration report not older than one (1) calendar month before the tender closing date.

8. 2ND STAGE: MANDATORY REQUIREMENTS

A bidder must fully complete, sign and submit all mandatory returnable documents listed below for compliance, failing which the bidder will be **disqualified** from further evaluation:

- a) Certified copy of the Fidelity Fund certificate;
- b) Letter of Good Standing from the Legal Practice Council of South Africa;
- c) Conveyancing practice Certificate;

Note: Failure to submit one or all of the mandatory required documents listed above, will result in disqualification from the bidding process.

Note: NWDPWR reserves the right to verify any document submitted by a bidder.

9. 3rd STAGE: FUNCTIONALITY

Bidders that score less than the 60 points thresholds will not be evaluated further, and their proposals shall be disqualified.

Minimum 60% threshold

	Functionality criteria- Tender Rating Matrix		A	B	C
			Bidder rating Score 1-5	Weighting	Bidder Score (%) (A x B/5)
COMPANY EXPERIENCE	Years of experience in relevant field of work	Fifteen (15) years or more, work in contracts, Labour, Conveyancing, administrative, criminal and civil litigation. As proof Bidders must submit a letter of appointment and corresponding reference letter.	5	50	
		Less than 15 years but more than 10 years, work in contracts, Labour, Conveyancing, administrative, criminal and civil litigation.. As proof Bidders must submit a letter of appointment and corresponding reference letter.	4		

		<p>Less than 10 years but more than 5 years, work in contracts, Labour, Conveyancing, administrative, Criminal and civil litigation.</p> <p>As proof Bidders must submit a letter of appointment and corresponding reference letter.</p>	3		
		<p>Less than 5 years but more than 3 years, work in contracts, Labour, Conveyancing, administrative, Criminal and civil litigation.</p> <p>As proof Bidders must submit a letter of appointment and corresponding reference letter.</p>	2		
		<p>Less than 3 years work in contracts, Labour, Conveyancing, administrative, Criminal and civil litigation.</p> <p>As proof Bidders must submit a letter of appointment and</p>	1		

		corresponding reference letter.			
2	Key Personnel Capacity to carry out the work	Experience of fifteen (15) or more years post qualification of key personnel. As proof attach comprehensive CV's and, certified copies of qualifications and registration with the Legal Practice council must be attached.	5	50	
K E Y P E R S O N E L		Experience ten (10) or more years post qualification of key personnel. As proof attach comprehensive CV's and Certified copies of qualifications and registration with the Legal Practice Council.	3		

		Experience five (5) or more years post qualification of key personnel. As proof attach Comprehensive CV's and Certified copies qualifications and registration with the Legal Practice Council.	1		
	Total Points			100	

10. POST SUCCESSFUL SELECTION OF PRE-APPROVED BIDDERS

- a) All bidders who achieved the minimum total point scored on functionality of 60 points.
- b) Bidders will be selected in line with the approved Departmental Sourcing Strategy and Supply Chain management policies.
- c) RFQs will be issued as per terms and conditions including scope of work requirement which will be in line with the NWD PWR SCM Policy and processes including any ruling treasury regulation applicable at the time issue. The process will also ensure compliance to any applicable regulation and including any changes that might occur during the duration of the appointed panel

PART B

**DECLARATION OF
INTEREST**

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

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.

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

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.

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

.....

1. BIDDERS' INFORMATION / CONTACT DETAILS (THIS BELOW SECTION MUST BE COMPLETED IN FULL AND SIGNED)

NAME OF YOUR COMPANY (IN BLOCK LETTERS)

SIGNATURE(S) OF THE BIDDER OR ASSIGNEE(S) **DATE**

NAME OF PERSON SIGNING (IN BLOCK LETTERS)

CAPACITY

ARE YOU DULY AUTHORISED TO SIGN THIS BID?

COMPANY REGISTRATION NUMBER_____

VAT REGISTRATION NUMBER _____

POSTAL ADDRESS (IN BLOCK LETTERS)

PHYSICAL ADDRESS (IN BLOCK LETTERS)

CONTACT PERSON

TELEPHONE NUMBER_____ **FAX NUMBER** _____

CELLPHONE NUMBER _____

E-MAIL _____

TYPES OF BUSINESS _____

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.

Js General Conditions of Contract (revised July 2010)