

BID SPECIFICATION

INVITATION FOR BIDS

RE-ADVERTISEMENT:

APPOINTMENT TO SOURCE AN OPERATOR THAT WILL INVEST, UPGRADE, OPERATE AND MANAGE THE ZITHABISENI HOLIDAY RESORT(15 YEARS)

BID NUMBER:	MTPA/20242025/COM/07
NAME OF THE BIDDER	
TOTAL BID AMOUNT	
CLOSING DATE:	11 APRIL 2025
CLOSING TIME:	11h00 AM
BID DOCUMENT DELIVERY ADDRESS:	SUPPLY CHAIN MANAGEMENT UNIT PROCUREMENT OFFICE HALLS' GATEWAY, MATAFFIN MTPA FINANCE BLOCK E MBOMBELA, 1200
BID VALIDITY PERIOD:	90 DAYS (COMMENCING FROM THE ADVERT CLOSING DATE)
TECHNICAL RELATED QUERIES	<u>Zandile.mkhatshwa@mtpa.co.za</u> 013 065 0859
SCM RELATED QUERIES	<u>Noxolo.Mgwenya@mtpa.co.za</u> 013 065 0873
DESCRIPTION OF THE BID	APPOINTMENT TO SOURCE AN OPERATOR THAT WILL INVEST, UPGRADE, OPERATE AND MANAGE THE ZITHABISENI HOLIDAY RESORT(15 YEARS)

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

Bidders shall submit proposal responses in accordance with the prescribed manner of submissions as specified above. Bids received after the time stipulated shall not be considered.

Bidders are not allowed to contact any other MTPA staff in the context of this BID other than the indicated officials under SBD 1 or as indicated above.

NB: No proposal shall be accepted by MTPA if submitted in any manner other than as prescribed above.

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	MTPA/20242025/COM/07	CLOSING DATE:	11 APRIL 2025	CLOSING TIME:	11:00am
DESCRIPTION	APPOINTMENT TO SOURCE AN OPERATOR THAT WILL INVEST, UPGRADE, OPERATE AND MANAGE THE ZITHABISENI HOLIDAY RESORT(15 YEARS)				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
SUPPLY CHAIN MANAGEMENT UNIT PROCUREMENT OFFICE HALLS' GATEWAY, MATAFFIN MTPA FINANCE BLOCK E MBOMBELA, 1200					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Noxolo Mgwenya		CONTACT PERSON	Zandile Mkhathshwa	
TELEPHONE NUMBER	013 065 0873		TELEPHONE NUMBER	013 065 0859	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	Noxolo.Mgwenya@mtpa.co.za		E-MAIL ADDRESS	Zandile.Mkhathshwa@mtpa.co.za	
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	TAX COMPLIANCE		OR	CENTRAL SUPPLIER	MAAA

STATUS	SYSTEM PIN:		DATABASE No:	
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?	☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? ☐ YES ☐ NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA? ☐ YES ☐ NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? ☐ YES ☐ NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? ☐ YES ☐ NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? ☐ YES ☐ 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, 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:

.....

CONTRACT FORM - RENDERING OF SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid .
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Proof of tax compliance status;
 - Pricing schedule(s);
 - Filled in task directive/proposal;
 - Preference claim form for Preferential Procurement in terms of the Preferential Procurement Regulations;
 - Bidder's Disclosure form;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES

1

2

DATE:

CONTRACT FORM - RENDERING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I..... in my capacity as..... accept your bid under reference number dated..... for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	TOTAL PREFERENCE POINTS CLAIMED	POINTS CLAIMED FOR EACH SPECIFIC GOAL

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT ON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1

2

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 interest 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 with any person who is employed by the procuring institution?

YES/NO

- 2.2.1 If so, furnish particulars:

.....
.....

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.

- 2.3 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 consortium¹ 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.
- 3.5 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.
- 3.6 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.

¹ 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.

- 3.7 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:

	POINTS
PRICE	
SPECIFIC GOALS	
Total points for Price and SPECIFIC GOALS	100

- 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:

80/20 or 90/10

$$Ps = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right) \quad \text{or} \quad Ps = 90 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING

3.2.1. POINTS AWARDED FOR PRICE

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

80/20 or 90/10

$$Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right) \quad \text{or} \quad Ps = 90 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(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 (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
HDI		6		
Youth		4		
Gender (Women)		5		
Disability		5		

In order for the points to be allocated to a bidder, the ownership status must at least be equals to or above 50 + 1% on any of the above specific go

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 neces

.....
SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME:

DATE:

ADDRESS:
.....
.....
.....

**APPOINTMENT TO SOURCE AN OPERATOR THAT WILL INVEST, UPGRADE, OPERATE AND
MANAGE THE ZITHABISENI HOLIDAY RESORT**



BACKGROUND

1. IMPORTANT GENERAL NOTES

- 1.1 The MTPA requests proposals for the commercial use of investing, upgrading, operating and managing the Zithabiseni Holiday Resort, the resort is situated in the Thembisile Hani Local Municipality, a Concession Opportunity. Zithabiseni Resort and Conference Centre's Coordinates are as follows-25.350297753930047, 29.055736207385692. The Resort is surrounded by the following villages: Matheyzensloop, Boekenhouthoek, Bundu and Machipe.
- 1.2 The MTPA issues this Request for Proposals (RFP) in accordance with the Concession Management Framework
- 1.3 This RFP overrides all other MTPA communications to bidders about this opportunity.
- 1.4 No **verbal** discussion with any staff or advisor of the MTPA can change, add to or clarify any of the terms and conditions contained in this RFP. Bidders should only rely on **written** changes, additions or clarifications from duly authorised staff of MTPA, circulated to each bidder. Email communications from MTPA to bidders will count as written communications.
- 1.5 Bidders are responsible for all costs related to their bid. The MTPA will not compensate bidders for any costs, regardless of the outcome of the bid.
- 1.6 The MTPA may change the timetable in paragraph 12. It may also make other changes to the RFP, add to it, or provide clarification, at any time. The MTPA may cancel the bid at any time without prior notice, and may disqualify any bidder as provided for in this RFP.
- 1.7 The MTPA will not be responsible for any costs or damages whatsoever if it makes any changes to the bid, cancels the bid, or disqualifies any bidder. The MTPA will not be responsible for any costs or

damages whatsoever if it exercises any other rights as described in this RFP or available to it under the laws of the Republic of South Africa.

1.8 The bid is governed by the laws of the Republic of South Africa and this RFP.

2. THE CONCESSION OPPORTUNITY

A concession opportunity exists in Mabusa Nature Reserve, the Zithabiseni Holiday Resort in Mpumalanga Province. The opportunity available is to invest, upgrade, operate and manage the Zithabiseni Holiday Resort.

2.1 DESCRIPTION OF THE FACILITY

This commercial opportunity is situated in the Thembisile Hani Local Municipality, it is Zithabiseni Resort and Conference Centre which is a company incorporated in terms of section 3(1) of the Companies Act of South Africa. The Resort (Zithabiseni Resort and Conference Centre) is nestled in the 10,333 ha Mabusa Nature Reserve, at the foot of the Loskop Dam Tourism Belt Development Cluster in the Nkangala District of the Mpumalanga Province (RSA). This flagship resort was founded and built around natural hot springs, and the property covers a land-area of approximately 102 hectares.

It is managed as a “Protected Environment” inside a Declared Nature Reserve, the property boasts a number of game species and also provides a perfect location for weddings, functions, conferences, sports and wellness, with a capacity of up to 460 guests.

Total number of 460

Operational = 56

None operational = 404

Type of chalets	Number of chalets	Number of guests to be accommodated
Suites (self-catering)	47	1 x 3 bedrooms = 5 sleeper 1 x 3 bedrooms = 6 sleeper 1 x 1 bedroom = 7 sleeper

		19 x 2 bedrooms = 4 sleeper 2 x 2 bedrooms = 3 sleeper 23 x 1 bedroom = 2 sleeper Total number of guests to be accommodated = 146
Standard (Bed and breakfast)	9	4 x 3 bedrooms = 6 sleeper 3 x 2 bedrooms = 4 sleeper 1 x 3 bedrooms = 6 sleeper 1 x 4 bedrooms = 8 sleeper Total number of guests to be accommodated = 50
Subtotal	56	
Occupied by staff	15	
To be renovated	389	

The Zithabiseni Resort offers a variety of accommodation options, from Executive Suites to Double Luxury and One Bedroom Luxury Chalets the total of these luxury chalets is 47 both on self-catering and bed & breakfast basis with 146 beds and 9 standard chalets with 50 beds, this excludes 15 chalets occupied by staff.

Only 56 chalets (catering for 196 guests) out of a total of 460 chalets however only 47 chalets have been renovated and are operational. This leaves 389 chalets to be upgraded and renovated to be able to cater for an additional 950 guests. After renovation, the facility has a potential to accommodate over 1000 guests if all chalets are operational.

The Resort is fully functional and the main facilities which are in daily use are as follows: 47 Luxury Chalets; 500 Seater Conference Hall; 2 x 50 Seater Conference Rooms; 1 x Executive Boardroom; 400 Seater Fully

Licensed Restaurant; Braai Lapa for 500 Guests; Swimming Pools; Picnic Area; Sports Bar with Pool; and Big Screen, Out door gym, Educational Trail, Phoko long trail, Quads and 4x4 trails.

The conferencing component currently attracts business primarily from the Government sector. The conference halls have full conference functionality including sound systems, overhead projectors, podiums and screens.

The resort is able to provide both self-catering and non self-catering, also suitable for festival events that can attract close to 9000 pax during the festive season.

3. SITE DUE DILIGENCE

A non-compulsory briefing session will be on MS Teams and will be held on the 13 March 2025 at 11:00 am. To request a link for the Briefing Session kindly send your request to Noxolo.Mgwenya@mtpa.co.za and Zanele@mtpa.com for further site due diligence, bidders may also book their own site visits through Ms Zandile Mkhathshwa on zandile.mkhathshwa@mtpa.co.za or Mr. Sulaiman Boroko on 076 266 4128 at Zithabiseni.

4. OTHER DUE DILIGENCE

Each bidder will be responsible for its own due diligence investigation of the investment opportunities, environmental compliance requirements, proposed contractual terms and anything else relating to this RFP. Neither the MTPA nor any of its staff makes any suggestions or guarantees, directly or indirectly, about anything affecting this RFP, except for those set out in 'Annexure 8: Draft concession agreement'.

5. LAND CLAIM

Mabusa Nature Reserve is under land claim and the reserve is under the Management Authority of the MTPA. The signing of the Settlement and Co-management Agreements; which were entered into and signed on the 27th of February 2010 between; (i) the Department of Rural Development and Land Reform; (ii) the Regional Land Claims Commission; (iii) the Mpumalanga Tourism and Parks Agency; (iv) the Somakhala Communal Property Association; and (v) the Mamatsedi-Magwari Trust.

The Somakhala Communal Property Association have received their title deeds for the portion of the claimed land. The title deed was issued on the 10th December 2015.

The Mamatsedi-Magwari Trust is still to receive their title deed for the portion of the land that they have claimed.

Noting the information above Mabusa Nature reserve is thus 70% claimed by CPA's and 30% remains state owned.

6. INFRASTRUCTURE:

6.1. ACCESS ROAD

The Zithabiseni resort is easily accessible. The tourists can access the resort using the roads, road R25 and road R573.

6.2 PARKING

In terms of parking, the operators should note that there is ample parking space, each chalet has got its own parking and the conference center has got parking space allocated. Executive management and staff accommodation is available.

6.3 ABLUTION FACILITIES

The Zithabeseneni resort is equipped with ablution facilities which caters for both overnight and day visits tourists.

There is also an ablution facility which caters for the for the public patrons who are coming to enjoy themselves by using the facilities such as swimming pool and the sports facilities (tennis court and other activities).

6.4 SEWERAGE

Sewerage system is in place drawn to a septic tank which has got a pump. The drainage goes to the internal sewer pump which is about 3 km from the resort. The sewer plant requires regular maintenance in order to keep it functioning effectively.

6.5 WASTE MANAGEMENT

The resort have a dedicated site where the waste material is stored and prepare for disposal. The operator will be responsible for removal and complete disposal of all refuse generated in the resort. The disposal area for waste is about 1,2 km from the resort. The ideal is to engage the Thembisile Hani Local municipality to assist with the waste management to comply with the by-laws of the local municipality.

6.6 WATER

The current infrastructure for water supply from the dam will remain unchanged. Water purification standard operating procedure is in place. The facility currently operate with 4 boreholes. Storage capacity of water is good enough to supply the entire facility. The future plan is to have a backup plan by increasing the water storage capacity. The operator would be encourage to engage the municipality in order to get water supply from the municipality which can be use as a backup plan.

6.7. MAINTENANCE

There are processes and procedures in place that needs to be followed for maintenance purposes. MTPA has recently approved the Standard Operational Plan which serve as a guidelines in conducting the infrastructure maintenance. An operator would be furnish with the SOP which can be use as a guideline for maintenance. However, the operator is allow to adopt his/her own maintenance plan and processes which must be submitted to and approved by the MTPA.

6.8. SAFETY AND SECURITY

The operator would be responsible for the safety and security in the resort.

This relates more to 'internal' safety requirements/recommendations but may include

- Housekeeping
- Swimming pool safety measures
- Use of alcohol
- Braai facilities
- Actions by clients in the case of an emergency

- Activities at night e.g. Travel to and from the gate
- Access control
- Monkeys and baboons

The operator must ensure that all legal insurance requirements are met specifically around public liability and assets.

7. BACKGROUND AND CURRENT TOURISM TRENDS

According to recent statistics from Statistics South Africa, tourism is on the rise as more than 4 million tourists visit South Africa in the first half of 2023. South Africa's tourism sector continues to exhibit strong recovery with the first half of 2023 recording more than 4 million tourist arrivals, according to the latest data from Statistics South Africa.

According to South Africa Tourism's Tourism Performance Report 2021, Mpumalanga was the province that recorded the second highest number of foreign arrivals in 2021, with a share of 19.9% of South Africa's foreign visitors (Figure 4). In 2021, Gauteng (35.5%) held the largest share of foreign arrivals, followed by Mpumalanga (19.9%) and Western Cape (11.4%). Mpumalanga's share increased between 2015 and 2021, although the number of foreign visitors in 2021 was only 30.6% of the pre-pandemic level of 2019. Mpumalanga's main inbound tourism markets are Africa and Europe. Figure 5 displays the shares of Mpumalanga's main tourism markets in 2015 and 2021. It is clear that the share of Africa increased between 2015 and 2021, whereas the shares of the other regions declined. The largest share of foreign arrivals to Mpumalanga originated in Mozambique (73.6%) followed by arrivals from Eswatini (7.8%).

South Africa's tourism sector is heading into the peak summer season in good stead. This is according to data released by Statistics South Africa today, 25 October 2022, showing a significant increase in both international and domestic tourism numbers. Year-to-date, South Africa has received a total of 3.3 million international arrivals. This signals a 165% increase compared to the same period in 2021, indicative of the sector's growth and recovery. "Our tourism numbers continue to show a steady upward trajectory. We're

excited to head into summer, which is our peak season, with such great performance and in high spirits as a sector. This is also a good indication that the work that our teams have been doing in the various markets has been effective and is paying off," says Mzilikazi Themba Khumalo, South African Tourism's Acting Chief Executive Officer. International arrivals into South Africa were over half a million, (555 832) in August 2022, a 199% increase when compared to August 2021. Month-to-month, there was a 10% growth in international arrivals, when compared to July 2022

In 2021, total foreign direct spend (TFDS) in Mpumalanga was approximately R2.8 billion or 13.4% of TFDS in South Africa and the third largest share. The 2021 TFDS in Mpumalanga was 37.8% of the pre-pandemic level. • In 2021, international tourists spent some 3.2 million bednights in Mpumalanga, which was equal to 11.7% of total bednights in South Africa and the fourth largest share. The bednights spent in Mpumalanga in 2021 were only 19.2% of 2019 levels.

During the first two quarters of 2023, total tourist foreign direct spend amounted to R48 billion. South Africa's appeal to travellers from around the world is undeniable.

The resort is mostly visited by domestic travellers in surrounding areas such as locals, Limpopo, Gauteng and North West. Zithabiseni Resort attracts leisure, day visits, adventure, and conferencing and even at times provide permanent residents for construction works. In 2016, Zithabiseni have recorded an arrival of 5,133 only bed nights from January to December 2016. In 2020 to 2021 the occupancy rate was negatively affected by the COVID 19 pandemic and it rated very low, the resort was also used as a quarantine site during this period. In 2022 to date, the resort has seen recovery in terms of tourists arrival and events were organized to boost and create awareness on the fully operational activities of the resort.

8. POSSIBLE COMMERCIAL OPPORTUNITIES

It is envisaged that the following can be considered as possible commercial opportunities:

- Additional accommodation
- 4x4 trail

- Guided Hiking trails (educational and adventure trails)
- Sports Facilities
- Ziplining
- Water slides
- Water waves
- Quad biking
- Horse riding
- Pond paddle riding
- Camping
- Tented Bush camps
- Mountain biking
- Wellness centre
- Golf course
- Development of backpacker (rustic) accommodation
- Development of student accommodation
- Development of a bush braai area
- Game and bird viewing
- Development of a cultural village
- Bush walks

9. INITIAL VALUE-FOR-MONEY TARGETS

High-level commercialisation objectives for MTPA include the following:

- Revenue Generation
- Job creation;
- Broad based Black Economic Empowerment;
- Infrastructure upgrades;
- Tourism promotion
- Loss minimization or savings from existing operations
- Optimal use of under-performing assets
- Further biodiversity protection and conservation

10. COMPULSORY QUALIFYING CRITERIA

10.1 REQUIRED QUALIFICATIONS TO CONCESSION OPPORTUNITY

In order to participate in the bidding process, bidders are required to meet the following qualification criteria:

10.1.1 Financial capacity

Given the fact that the project is of a high value and may entail risk to both the preferred bidder and MTPA it is important that interested parties demonstrate financial strength.

10.1.1.2 As the preferred bidder must demonstrate financial strength with reference to the asset value of its shareholders in proportion to their shareholding. The interested party must also demonstrate, to MTPA's satisfaction, that its shareholders are solvent. Audited financial statements, along with a letter confirming that the asset value exceeds the stipulated amount and that the shareholders are solvent, must be provided to illustrate any assertion made by an interested party in this regard.

10.1.2 Hospitality and Tourism experience

The projects require interested parties with substantial experience and expertise in hospitality and in other similar adventure activities. A minimum of 10 years' experience in operating such an activity will be required. This coupled with a minimum of 5 years' experience in the tourism industry will be required. Interested parties are therefore required to provide examples of similar or related projects conducted by them. The interested bidder must have either:

10.1.2.1 The bidder must also demonstrate exceptional knowledge and expertise pertaining to safety and emergency standards required to operate such kind of tourism operations.

10.1.2.2 A minimum of 5 years' experience in the tourism industry. This criterion may be met with reference to one of the Bidding Company's parent shareholders or partners, if the parent involved holds at least 20% of total company equity or interest.

10.1.3 BIDDERS ARE TO SUBMIT THE FOLLOWING DOCUMENTATION WITH THEIR PROPOSAL, A FAILURE TO SUBMIT WILL RESULT IN THE BID DOCUMENTATION NOT TO BE CONSIDERED:

- Fully completed tender document.
- Duly signed bid documents including all the attached SBD forms.
- Legal Joint Venture Agreement (in case of a JV)
- Identity documents of Owners / Directors / Members / Shareholders
- Contractor Registration for Incorporation or of Company Registration Document
- Shareholders' Agreements / Share Certificates / Memorandum of Association for Companies.
- A copy of valid Tax Clearance Certificate including the PIN issued by the South African Revenue Services

11. WHAT MUST BE INCLUDED IN THE BID AND HOW TO SUBMIT IT (COMPULSORY)

Bids and all related correspondence and documents must be in English.

11.1 Submissions must contain copies of:

- 11.1.1 The anticipated capital investment required in the project requires that interested bidders demonstrate financial strength.
 - 11.1.2 The asset value of the interested bidder must be at least R 20 000 000. It must demonstrate financial strength with reference to the asset value of its shareholders in proportion to their shareholding. The interested bidder must also demonstrate, to Mpumalanga Tourism and Parks Agency's satisfaction, that its shareholders are solvent. Audited financial statements, along with a letter confirming that the asset value exceeds the stipulated amount and that the shareholders are solvent, must be provided to support any assertions made. Interested bidders must demonstrate their ability to raise debt and equity and to provide security.
 - 11.1.3 Interested bidders must provide information on the ownership of the entities of which the interested bidders are comprised, together with organograms reflecting this.
 - 11.1.4 The Bidder information, in the format given in 'Annexure 1 – Information on Bidders'
 - 11.1.5 The financial information, in the format given in 'Annexure 2 - Financial information'
 - 11.1.6 a business and operational plan, in the format given in 'Annexure 3 - Business and operational plan'
 - 11.1.7 a development and environmental proposal, in the format given in 'Annexure 4 - Development and environmental proposal'
 - 11.1.8 a completed risk matrix, in the format given in 'Annexure 5 - Risk matrix'
 - 11.1.9 a tax clearance certificate, issued by the South African Revenue Service (SARS) within six months of the bid date, for each South African member of the bidder.
 - 11.1.10 the details of the bidder's fee offer, in the format in 'Annexure 6- Draft Concession Fee offer'
 - 11.1.11 a mark-up of the draft concession agreement, provided in 'Annexure 7 - Draft concession agreement', clearly indicating any amendments that the bidder proposes.
- 11.1. All information provided in the bid must be valid for 90 business days from the bid date.

11.2 Submitting a bid implies that the bidder knows and understands all the terms and conditions set out in this RFP and under the applicable laws of the Republic of South Africa, and that the bidder accepts these terms and conditions.

12 THE DATE AND PLACE FOR SUBMITTING BIDS

Bids must be submitted to Mpumalanga Tourism and Parks Agency, N4 National Road, Hall's Gateway Mbombela 1200 for the attention of the Senior Manager Supply Management, Office of the CFO, N4 National Road, Halls Gateway, Mafaffin Nelspruit, 1200. Closing Date will be on **11 April 2025 at 11:00 am**.

13. HOW THE BIDS WILL BE OPENED

13.1 The bids will be opened by MTPA' staff members.

14. INCOMPLETE BIDS

14.1 If a bid is not complete or something in it is not clear, the BEC may, but is not obliged to, ask bidders for more information. Bidders will receive such requests for more information in writing. No substantial changes to the bid will be asked for or allowed, except if there is a clear mistake in the bid.

14.2 A bid that is not complete or requires clarification may be disqualified without a request for further information. This is the MTPA' decision.

15. HOW THE BIDS WILL BE EVALUATED AND THE PREFERRED BIDDER CHOSEN

15.1 The three main elements of the bid

15.1.1 Bids will be evaluated on three main elements: functionality, specific goals and the concession fee offer.

15.2 The weighting of the elements

15.2.1 Functionality will be weighted at 70 % of the overall bid score.

15.2.2 Specific goals will be weighted at 20% of the overall bid score.

15.2.3 The concession fee offer will be weighted at 80% of the overall bid score.

15.2.4 The provisions of the Preferential Procurement Policy Framework Act, 2022 (PPPFA) apply

15.3 How functionality is evaluated

15.3.1 MTPA will evaluate functionality in terms of the elements set out in the functionality scorecard below.

15.3.2 Functionality scorecard

Evaluation Area	Evaluation Criteria	Points Per Criterion	Maximum Points achievable
Evaluation:1 Business Plan NB: Business plan must include a financial section and indicating capital investment requirements and appropriate resources to set up and sustain business.	Extent to which the business plan meets the objectives to manage a resort		10
	No business plan	0	
	Partial detailed plan	5	
	Fully detailed project plan with timeframes, implementation plan. Market segments/targets/marketing activities and clear deliverables	10	
Evaluation criteria 2: Company Profile, experience and/or expertise of tenderer	Current /past portfolio of similar business being successfully operated:		20
	No company profile	0	
	Between one to five years	10	
	Between five to ten years	15	
	More than ten years:	20	
Evaluation Criteria 3: Financial capability (Letter of Intent from the Funder or Expression of Interest from the Funder) Submit	Proof of available capital funding and/or access to finance to lease and operate the property as it relates to the business proposal.		20
	40mil and above	20	

proof of letter of intent from a funder	30 mil to 39 mil	15	
	25 mil to 29mil	10	
	20mil to 24 mil	5	
	10mil to 19mil	3	
	5mil to 9.99mil	2	
Evaluation criteria 4: Audited Financial Statement	Audited Financial Statement indicating:		20
	Asset value more than liabilities	20	
	Asset value less than liabilities	0	
Evaluation Criteria 5: Health and safety, Environmental, waste and Risk Management plans 20=(4 Plans-could be in one document or separated) 10= (3 plans or less)	Safety plan with Proof attached		20
	No Plan	0	
	Submission of Environmental Management plan, SHEQ, Risk Management plan equals (4 plans in one document or separated)	20	
	Submission of Environmental Management plan, SHEQ, Risk Management plan equals (3 plans in one document or separated)	10	

	No plans submitted	0	
Evaluation Criteria 6 Liability insurance	Liability insurance	10	10
	No Liability insurance	0	
TOTAL EVALUATION POINTS			100

The functionality of a bid is scored out of 100 points. A bidder must score 70% or more for functionality or the bid will be disqualified.

15.4 How the concession fee offer is evaluated?

Price: 80%

$$Ps = 80(1 + [(Pt - Pmax)/Pmax])$$

Where

Ps = Points scored for price of tender under consideration;

Pt = Price of tender under consideration; and

Pmax = Price of highest acceptable tender

15.5 Preference points (20) will be allocated utilizing the below specific goals;

SPECIFIC GOALS	POINTS ALLOCATED
Historical disadvantaged by unfair discrimination on the basis of race,	6
Gender (Women)	5
Disability	5
Youth	4

15.6 The preferred bidder

The bidder that receives the highest overall score will be appointed the preferred bidder. The bidder that receives the second highest overall score will be appointed the reserve bidder

16. FINALISING THE CONCESSION AGREEMENT

16.1 MTPA will negotiate the marked-up concession agreement submitted by the preferred bidder.

16.2 If MTPA and the preferred bidder fail to come to agreement on the concession agreement within six weeks, MTPA may withdraw the appointment as preferred bidder and begin negotiations with the reserve bidder.

17. ANNEXURE 1 – INFORMATION ON BIDDERS

Bidders must provide the following information labelled as “**Information on (Bidder Name)**”; the following must be specified:

17.1 The name, address, telephones and fax numbers of Bidder, and the trading name of the Bidder if different from the registered name.

17.2 Directors/Partners/Trustees and their responsibilities.

17.3 Registration address.

17.4 Registration number.

17.5 Certified copy of Memorandum and Articles of Association or Memorandum of Incorporation (or equivalent constitutive documents).

17.6 Certified copy of Signed Shareholders Agreement/Partnership or Joint Venture Agreement/Trust Deed.

17.7 Certified copy of shareholders' or partner register at the date of submission of the bid indicating each shareholder or partner's beneficial interest and in the event that there is more than 1 (one) class of shares, the percentages held by each;

17.8 An irrevocable confirmation, to the satisfaction of MTPA by the bidder that it has irrevocably waived any right it may have to seek and obtain a writ of injunction or prohibition or restraining order against MTPA to prevent or restrain the tender or any proceedings related to it. Such waiver shall be without prejudice to the right of a disqualified or losing bidder to question the lawfulness of their disqualification or the rejection of its bid by appropriate administrative or judicial processes not involving the issuance of a writ or injunction or prohibition or restraining order.

17.9 The Bidders must certify by providing an attestation from a Legal Representative, notarised by a Notary Public, that the company or incorporated joint venture or trust meets the operational and financial

criteria as contained in the RFP regarding the operational experience and financial prerequisites. They must also provide a summary statement of the operational and financial criteria and how they are met in the reasonable opinion of the bidder.

18. ANNEXURE 2 - FINANCIAL INFORMATION

Bidders must provide the following information.

18.1 The Financing Plan

Indicate how much capital will be needed, where it will come from (own capital, grants, loans) and the expected amount and terms (interest rate, repayment period, security) of any proposed loans. Specify whether the necessary financing has been secured, and provide appropriate proof.

18.2 A recent **Auditor's Report** confirming that all the members of the bidder are solvent and liquid

If a member of the bidder does not produce audited financial statements, it must produce a notarised statement of assets.

18.3 A simplified **Cash Flow** forecast (net of VAT) for the 5 year term of the concession agreement

	Start-up	Year 1	Year 2	Year 3	Year 4	Year 5*
	R'000	R'000	R'000	R'000	R'000	R'000
Cash inflows						
Owners' capital						
Loans received						
Grants received						
Cash from sales and other operating revenue						
Cash from other sources						
<i>Total cash inflow (A)</i>						
Cash outflows						
Project costs and start up expenses						

	Start-up	Year 1	Year 2	Year 3	Year 4	Year 5*
	R'000	R'000	R'000	R'000	R'000	R'000
Salaries, wages and staff costs						
All other operating costs and expenses						
Loan repayments						
Replacement of equipment and vehicles						
<i>Total cash outflow (B)</i>						
Net cash flow						
[A – B] before concession fees and tax						

* Adapt for the proposed term of the concession agreement

Suggested format for the cash flow forecast

19. ANNEXURE 3 - BUSINESS AND OPERATIONAL PLAN

Bidders should provide the following information, with back-up evidence wherever possible.

19.1 Rationale, background and capacity

19.1.1 The bidder's objectives

19.1.2 The bidder's track record on and knowledge of existing products or activities offered in the tourism industry, including the size of existing operations in terms of turnover

19.1.3 Detailed description of products or activities envisaged for and how these will be managed

19.1.4 Current operating standards, including an outline of any operations and procedures manuals

19.1.5 Proposed organisational and staffing structures, including:

19.1.5.1 management policies

19.1.5.2 measures to transfer knowledge and expertise

19.1.5.3 labour plan, including details of numbers of permanent and part-time staff that will be employed, staff recruitment policies, and employment policies

19.1.5.4 Memberships and registrations (list any awards, accolades or ratings)

19.1.5.5 Curriculum vitae of shareholders, directors, management and staff (including copies of qualifications and etc.)

19.2 Market analysis

19.2.1 The bidder's track record in and knowledge of the market, including existing relationships with tour operators and the travel trade (include references).

19.2.2 Target market (geographical, income, nature of activity, and so on)

19.2.3 Marketing channels

19.2.4 Product branding plans

19.2.5 Time taken to establish market

19.2.6 Growth in occupancy

19.2.7 Pricing range

19.2.8 Competitive analysis

20. ANNEXURE 4 - DEVELOPMENT AND ENVIRONMENTAL PROPOSAL

Bidders should provide the following information, with back-up evidence wherever possible.

20.1 Environmental impact assessment requirements

Bidders need to adhere to the Operational Environmental Management Plan of working within the reserve that there is limited or no impact on the environment.

20.2 Staff and safety

20.2.1 Give an estimate of the total number of staff, including number to be employed on site (including family members) and off site.

20.2.2 Describe proposed operating standards for facilities, including a detailed operations and procedures manual.

20.3 Bulk infrastructure

20.3.1 Electricity

There is electricity on the site. The site should operate via Solar System.

20.3.2 Water

The current infrastructure for water supply from the dam will remain unchanged. Water purification standard operating procedure is in place.

20.3.3 Roads and tracks

Vehicular access to the facility by road is available and in need of maintenance.

20.4 Waste management

20.4.1 Solid wastes

All solid waste generated on the premises must be disposed of in the bins that are provided within the area.

20.5 Fire management

20.5.1 The operator may not control natural fires occurring in the Mabusa Nature Reserve, except in the immediate surrounds of the facilities or to save human life or property.

20.6 Commitments

Acknowledge that the operator must comply at all times with the MTPA environmental guidelines, code of conduct and regulations that may change from time to time. The MTPA will supply these with time.

21. ANNEXURE 5 - RISK MATRIX

Type of risk	General description of risk	Project-specific risk	Mitigation measures	Allocation of risk (institution/ private party/ shared)
Financing	The required capital for capex and opex may not be able to raised; loans may not be able to be repaid; tax obligations may not have been fully taken into account or may change; fluctuating inflation, interest rates, and currencies may affect assumptions			
Supporting infrastructure	Supporting infrastructure may be inadequate to sustain the enterprise			
Planning, design and construction	Planning consents may not be acquired or granted; the design may not be fit for the purpose; construction may not be completed on time and in budget. Comply with section 21, (Water Act....)			
Utilities	Utilities may not be fully available or may cause delays			
Environment and heritage	Liability for losses caused by environmental or heritage damage or delays			
Maintenance	The costs of maintenance to			

Type of risk	General description of risk	Project-specific risk	Mitigation measures	Allocation of risk (institution/ private party/ shared)
	required standards may vary from projections or maintenance may not be carried out			
Operations	Any factors (other than force majeure) that may impact on operations			
Market, demand, volume	The demand for the product may be less than projected			
Political	Unforeseeable conduct by any government institution may adversely affect the project, or the government may expropriate private party assets			
Force majeure	Unexpected events beyond either party's control			

22. ANNEXURE 6: THE CONCESSION FEE OFFER

22.1 Important note to bidders

Bidders must present the concession fee offer in the form of a letter on the bidder's letterhead as follows, inserting the bidder's name and the percentage of gross revenue for the variable concession bid as indicated:

To: Mpumalanga Tourism and Parks Agency N4 National Road, Hall's Gateway Mbombela 1200

[Name of bidder] hereby commits to pay to MTPA the higher of:

- (a) the minimum concession fee and
- (b) the variable concession fee, expressed as a percentage of aggregate gross revenue as defined in the concession agreement for the relevant project year.

The minimum concession fee is R [sum payable monthly/quarterly], which will be adjusted annually by CPIX.

The variable concession fee bid by [name of bidder] is [percentage] % of gross revenue.

[Name of bidder] hereby warrants that the committed minimum concession fee and the variable concession fee shall be included in the concession agreement, if accepted by the MTPA

For indicative purposes only, our projection of fees payable to MTPA is:

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7*
Gross revenue (net of VAT)							
Percentage of gross revenue due as variable concession fee (same for each year)							
concession fee due							
Minimum concession fee or variable concession fee, whichever is greater							

* Adapt for the proposed term of the concession

The person signing below is a duly authorised representative of the bidder with full power and authority to submit this financial offer and commit the bidder to its terms.

Signed: _____

Name: _____

Title: _____

23. ANNEXURE 7 - DRAFT CONCESSION AGREEMENT

The draft concession Agreements are not attached hereto but will be made available to bidders.

24. ANNEXURE 8 - BID COVER SHEETS

Cover sheets which include the following information must be attached to each envelope:

Bid for the sourcing of an operator to invest, upgrade, operate and manage the Zithabiseni Holiday Resort through a concession agreement

ENVELOPE 1: PREQUALIFICATION REQUIREMENTS

Name of bidder:

Postal address:

Street address:

Telephone:

Cell phone:

Fax:

Contact person:

Email address:

Signature of bidder:

Date:

Capacity under which bid is signed:

Signature of this document means that the bidder accepts the terms and conditions of this bid. Failure by the bidder to sign this form may disqualify the bid.

Bid for the sourcing of an operator to invest, upgrade, operate and manage the Zithabiseni Holiday Resort through a concession agreement

ENVELOPE 2: FUNCTIONALITY

Name of bidder:

Postal address:

Street address:

Telephone:

Cell phone:

Fax:

Contact person:

Email address:

Signature of bidder:

Date:

Capacity under which bid is signed:

Signature of this document means that the bidder accepts the terms and conditions of this bid. Failure by the bidder to sign this form may disqualify the bid.

Bid for the sourcing of an operator to invest, upgrade, operate and manage the Zithabiseni Holiday Resort through a concession agreement

ENVELOPE 3: CONCESSION FEE OFFER AND MARKED-UP DRAFT CONCESSION AGREEMENT

Name of bidder:

Postal address:

Street address:

Telephone:

Cell phone:

Fax:

Contact person:

Email address:

Signature of bidder:

Date:

Capacity under which it is signed:

Signature of this document means that the bidder accepts the terms and conditions of this bid. Failure by the bidder to sign this form may disqualify the bid.

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
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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)