



**YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF HEALTH AND WELLNESS:
WESTERN CAPE GOVERNMENT**

BID NUMBER: **WCGHSC 0389/2023**

CLOSING DATE: FRIDAY 29 SEPTEMBER 2023

CLOSING TIME: 11:00

WCGHSC 0389/2023: FOR PROVISION OF A SERVICE PROVIDER TO ADVERTISE VACANT POSTS IN THE PRINT MEDIA (RECRUITMENT ADVERTISING SERVICES) ON BEHALF OF THE DEPARTMENT OF HEALTH AND WELLNESS, WESTERN CAPE GOVERNMENT FOR A PERIOD OF THREE YEARS.

Each bid must be deposited in a **sealed envelope** with the **name and address of the Service Provider, the bid number and closing date**. These conditions also apply to a **bid sent by courier** that is delivered in a courier pouch and is either signed off by the responsible official or deposited in the bid box by the courier's representative. The envelope shall not contain documents related to any bid other than that indicated on the envelope.

Bid documents must be deposited in the **bid box marked DEPARTMENT OF HEALTH** situated in the foyer of the main entrance of the Western Cape Government Building 4 Dorp Street(**next to the Cape High Court**) at the junction of Dorp and Keerom Street, Cape Town. The bid box is generally open **06:00 – 21:00 a day, 7 days a week**.

Please ensure that bids are delivered **to the correct address before bid closing**. **Late bids** will not be accepted for consideration and, where possible, will be **returned unopened** to the Service Provider accompanied by an explanatory letter. **No Service Providers' names or prices will be read out** after closing time when the bid box is opened, and bids are removed by Sourcing officials.

All Service Providers must be registered on the Central Supplier Database (CSD) at the time of bid closing. **Service Providers already registered on the CSD** must have **confirmation of their registration** AND ensure that **their status is up to date** prior to bidding by contacting www.csd.gov.za.

Unregistered Service Providers or Service Providers with suspended registration will be deemed non-compliant and their bids will not be considered. Any prospective unregistered Service Provider must register as a supplier on the CSD prior to bidding.

Central Supplier Database self-registration only: www.csd.gov.za
Contact email: SCM.eProcurementDOH@westerncape.gov.za

Where a Service Provider's tax compliance status cannot be verified or if a Service Provider's tax status is non-compliant on the CSD, the Service Provider will be afforded 7 working days to confirm tax compliance for the bid to be considered.

The B-BBEE status **on form WCBD 6.1 in your bid document** will be used to evaluate the bid, **not your B-BBEE status on the SEB or CSD**. Please complete your claims for **both the 80/20 and 90/10 preference points systems** in the WCBD6.1, as well as the attached **form WCBD4**. All other mandatory documents held on the CSD will be accepted by the Department of Health and Wellness (WCGHW) for consideration of formal bids.

This bid is subject to the General Conditions of Contract (GCC) and, if applicable, any other Special Conditions of Contract.

The successful Service Provider will be required to complete and sign a written contract form (WCBD7.1)

Potential bidders may ask for clarification on the Terms of Reference or any of its Annexures up to 5 working days prior to bid closing. Any request for clarification must be submitted by email to Shamsonisa Davids (Shamsonisa.Davids@westerncape.gov.za)

Answers to any written queries referred to SCS in accordance with the above-mentioned paragraph will be responded to via email, which information will also be published on the E-tender portal at <https://www.etenders.gov.za/>.

 C Munnik

pp **HEAD OF DEPARTMENT**
DATE: 31/08/2023

PART A
INVITATION TO BID

ZERO-TOLERANCE TO FRAUD, THEFT AND CORRUPTION (ANTI-FRAUD, THEFT AND CORRUPTION)

THE WCG IS COMMITTED TO GOVERN ETHICALLY AND TO COMPLY FULLY WITH ANTI-FRAUD, THEFT AND CORRUPTION LAWS AND TO CONTINUOUSLY CONDUCT ITSELF WITH INTEGRITY AND WITH PROPER REGARD FOR ETHICAL PRACTICES.

THE WCG HAS A ZERO TOLERANCE APPROACH TO ACTS OF FRAUD, THEFT AND CORRUPTION BY ITS OFFICIALS AND ANY SERVICE PROVIDER CONDUCTING BUSINESS WITH THE WCG.

THE WCG EXPECTS ALL ITS OFFICIALS AND ANYONE ACTING ON ITS BEHALF TO COMPLY WITH THESE PRINCIPLES TO ACT IN THE BEST INTEREST OF THE WCG AND THE PUBLIC AT ALL TIMES.

THE WCG IS COMMITTED TO PROTECTING PUBLIC REVENUE, EXPENDITURE, ASSETS AND REPUTATION FROM ANY ATTEMPT BY ANY PERSON TO GAIN FINANCIAL OR OTHER BENEFIT IN AN UNLAWFUL, DISHONEST OR UNETHICAL MANNER.

INCIDENTS AND SUSPICIOUS ACTIVITIES WILL BE THOROUGHLY INVESTIGATED AND WHERE CRIMINAL ACTIVITY IS CONFIRMED, RESPONSIBLE PARTIES WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

| YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY) | | | | | |
|--|--|---------------|-------------------|---------------|-------|
| BID NUMBER: | WCGHSC 0389/2023 | CLOSING DATE: | 29 September 2023 | CLOSING TIME: | 11:00 |
| DESCRIPTION | WCGHSC 0389/2023: FOR PROVISION OF A SERVICE PROVIDER TO ADVERTISE VACANT POSTS IN THE PRINT MEDIA (RECRUITMENT ADVERTISING SERVICES) ON BEHALF OF THE DEPARTMENT OF HEALTH AND WELLNESS, WESTERN CAPE GOVERNMENT FOR A PERIOD OF THREE YEARS. | | | | |

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

Western Cape Government Building 4 Dorp Street Cape Town (next to the Cape High Court)

| BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO | | TECHNICAL ENQUIRIES MAY BE DIRECTED TO: | |
|---|--------------------------------------|--|----------------------|
| CONTACT PERSON | Ms Shamsonisa Davids | CONTACT PERSON | Ms Sanet – Uys Adams |
| TELEPHONE NUMBER | 021 483 6271 | TELEPHONE NUMBER | 021) 483 4340 |
| FACSIMILE NUMBER | N/A | FACSIMILE NUMBER | N/A |
| E-MAIL ADDRESS | Shamsonisa.Davids@westerncape.gov.za | E-MAIL ADDRESS | |

SUPPLIER INFORMATION

| | | | | | |
|--|----------------------------|--|-------------------------------------|--|------------------------------------|
| NAME OF BIDDER | | | | | |
| POSTAL ADDRESS | | | | | |
| STREET ADDRESS | | | | | |
| TELEPHONE NUMBER | CODE | | | NUMBER | |
| CELLPHONE NUMBER | | | | | |
| FACSIMILE NUMBER | CODE | | | NUMBER | |
| E-MAIL ADDRESS | | | | | |
| VAT REGISTRATION NUMBER | | | | | |
| SUPPLIER COMPLIANCE STATUS | TAX COMPLIANCE SYSTEM PIN: | | | AND | CENTRAL SUPPLIER DATABASE No: MAAA |
| B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE | [TICK APPLICABLE BOX] | | B-BBEE STATUS LEVEL SWORN AFFIDAVIT | | [TICK APPLICABLE BOX] |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| IF YES, WAS THE CERTIFICATE ISSUED BY A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL | [TICK APPLICABLE BOX] | | | | |
| <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | |

| | | | |
|--|--|--|--|
| ACREDITATION SYSTEM (SANAS) | | | |
| [A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT (FOR EMEs & QSEs) MUST BE SUBMITTED TOGETHER WITH A COMPLETED 6.1 IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE] | | | |
| ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/ SERVICES/ WORKS OFFERED? | <input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF] | ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED? | <input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW] |

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? 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. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
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.**
3. 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 SPECIAL CONDITIONS OF CONTRACT.
4. **THE SUCCESSFUL SERVICE PROVIDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (WCBD7).**

2. 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 VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
3. APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
4. BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE WITH TOGETHER WITH THE BID.
5. IN BIDS WHERE CONSORCIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE AND CSD NUMBER AS MENTIONED IN 2.3 ABOVE.
6. WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
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:

| TERMS OF REFERENCE | | Comments/Complies/ Does not comply/Yes/No |
|--------------------|---|---|
| NOTE | In the column provided for this purpose, please indicate next to each paragraph whether your offer complies with the bid specification by writing "Complies/Does not-comply/Noted" and/or provide comment or make reference to attached documentation, if any, as required. Additional documentation provided by you must clearly show the paragraph in the bid document to which it relates, please. Where applicable, please acknowledge you have read and understood conditions by writing "Yes" or "No" in the next column. | |
| | SECTION 1 - Background and scope of work | |
| 1.1 | The Department of Health and Wellness is responsible for the advertising of its vacant funded posts in the media and on digital internet platforms on behalf of the institutions under its control, which constitutes +/-490 health institutions. | |
| 1.2 | For this purpose, the Department must appoint a service-provider to render such a recruitment advertising service for a three-year period. The recruitment advertising agency will be responsible for: (i) media-buying and post-buy analysis, and (ii) the placement of advertisements (iii) most suitable media practices analysis which will include the following functions: ➤ Set up and production of material required for these advertisements - dedicated client service comprising of Desktop Publishing (DTP), art director and copy-writing services, ➤ Translations as and when required, ➤ Media strategic planning advice on placement of such ads, ➤ Proof-reading of all material, ➤ Dispatch of all artworks to booked publications, and ➤ Provision of tear sheets as proof of flighting for all bookings. | |
| 1.3 | Technical support physical and remote should be part of the resource and should be available when required. | |
| 1.4 | Please indicate your total resources, as well as which will be used exclusively for this account. The Department may, at its sole discretion, conduct site visits at the bidder's premises. | |
| | SECTION 2 - The bid process | |
| 2.1 | Closing date of bid Validity of bid Registration as interested party | 29 September 2023 @ 11:00AM 60 days from closing. Following the publication of the invitation to bid, the bidders requesting bid documents will be registered as interested parties |
| | SECTION 3 - Instructions for completing bid documents | |
| 3.1 | Please provide all compulsory documents required in the bid invitation in the full name of the bidder. | |
| 3.2 | Please include a letter from the bidding entity authorising the signatory of the WCBD1 bid form to submit this bid on behalf of the bidder. | |
| 3.3 | Please complete all the documents and forms provided in this bid document and furnish all the requested information. | |
| 3.4 | Please complete the bid response document by stating in the block opposite each subsection whether you will comply or will not comply with the specifications in that subsection. | |

| TERMS OF REFERENCE | | Comments/Complies/ Does not comply/Yes/No |
|--------------------|---|--|
| | SECTION 3 - Instructions for completing bid documents (continued) | |
| 3.5 | A response of "Noted" will be taken to mean "Comply". Please provide an explanatory note in a separate document with a clear reference to the corresponding paragraph number or beneath each point in the bid document. The numbering in the bid document may not be altered. | |
| 3.6 | It will be to your disadvantage if the document is not completed in this way and can lead to the exclusion of your offer if the trend persists throughout your document. | |
| 3.7 | If you are unable to comply with a particular requirement or specification, please provide a comment/explanation for not complying. | |
| 3.8 | You are permitted to submit testimonials to support your statements of competence and must confirm that these are true and accurate reflections of the service which you intend providing. | |
| 3.9 | If additional supporting documents are provided as part of this bid, please give it a document number that is clearly marked on each page of the document. | |
| 3.10 | Please provide an index/summary of all supporting documents with your bid response. | |
| 3.11 | The absence of evidence required to prove your compliance with the bid specifications will be taken to indicate that you lack the necessary knowledge or capacity to provide the service. | |
| 3.12 | Re-typing, pdf or other digital conversions and/or amendment of the original bid document are not allowed and will invalidate your bid response. | |
| 3.13 | Response fields that have been left blank intentionally or unintentionally, have been marked with a '✓', '✗', or other symbols will be considered non-responsive to the particular question. | |
| 3.14 | If you fail to comply with any of the aforementioned requirements, your bid will be considered non-responsive and therefore non-compliant. | |
| | SECTION 4 - Bid clarity | |
| 4.1 | <ul style="list-style-type: none"> (i) The Department reserves the right to request clarifying information from a bidder. (ii) Bidders or interested parties may contact the Department to request clarity or additional information to assist their compiling of a bid. The Department will respond via electronic mail, which will be provided to all the interested parties. No one interested party will be provided with any information before any other, so as to promote the principle of unbiased communication with the parties. | |
| 4.2 | <p>Potential bidders may ask for clarification on the Terms of Reference or any of its Annexures up to 5 working days prior to bid closing. Any request for clarification must be submitted by email to Shamsonisa Davids (Shamsonisa.Davids@westerncape.gov.za)</p> <p>Answers to any written queries referred to SCS in accordance with the above-mentioned paragraph will be responded to via email, which information will also be published on the E-tender portal at https://www.etenders.gov.za/.</p> | |
| | SECTION 5 - Bid awarding | |
| 5.1 | All bids duly lodged shall be taken into consideration and evaluated for compliance, based on the principles set forth in this document. | |
| 5.2 | Bids that are found compliant in terms of the mandatory, statutory and financial requirements will be evaluated on functionality. | |
| 5.3 | The Department is not obliged to accept the lowest, highest or any bid. | |

| TERMS OF REFERENCE | | | | Comments/Complies/ Does not comply/Yes/No |
|---|--|--------------------|-------------------------------------|--|
| SECTION 5 - Bid awarding (continued) | | | | |
| 5.4 | The Department reserves the right not to award one or more of the tasks listed in the pricing schedule. In such an event, the successful bidder must still fulfil all tasks except those that the Department has specifically advised in writing need not be performed by the successful bidder. | | | |
| 5.6 | The Department will establish a bid evaluation committee to adjudicate this bid using a pre-defined set of evaluation criteria. This committee will assess the offer using this document as the basis for the evaluation. Please refer to Evaluation Criteria. | | | |
| 5.7 | Total cost of ownership over 3 years period shall be used to establish a basis for price evaluation. | | | |
| SECTION 6 - Evaluation criteria | | | | |
| 6.1 | Bidders will be evaluated solely on information submitted in response to the bid invitation. | | | |
| 6.2 | The Department will establish a bid evaluation committee to adjudicate this bid using a pre-defined set of evaluation criteria. This committee will assess the offer using this document, as well as compliance with all standard conditions and special conditions of bid, as the basis for the evaluation. | | | |
| 6.3 | <p>The following process will be followed to evaluate the bids:</p> <ul style="list-style-type: none"> (i) Phase 1: Compliance with compulsory statutory and financial requirements, (ii) Phase 2: Compliance with functional requirements. An evaluation score sheet, consisting of evaluation criteria, weights and applicable scoring values will be used by the Department to evaluate written responses provided by bidders. A minimum qualifying threshold of 70% must be achieved to proceed to phase 3. The score sheet is reflected is below. (iii) Phase 3: Application of points for price and BEE status in accordance with the Preferential Procurement Policy Framework Act, 2000 and the Preferential Procurement Regulations, 2022, to determine the highest total points scored by a bidder | | | |
| No | Criteria | % Criterion weight | Guidelines for criteria application | Mark response with X in appropriate column. |
| 1 | How long has your company been in business? | 0 | <3 years | |
| | | 10 | 3 – 7 years | |
| | | 20 | 8+ years | |
| 2 | What is the average monthly cost of all recruitment advertising placed by your agency in the 2021/2022 and 2022/2023 calendar years? | 0 | <R4 million | |
| | | 10 | >R4 million | |
| | | 20 | >R7 million | |
| 3 | Do you currently handle or have you in the past handled Government/ Parastatal/ Public Sector recruitment advertising? | 0 | No | |
| | | 15 | Yes | |
| 4 | How many account management staff do you have in your Company who will be working on the DOHW Account? | 10 | 1 | |
| | | 15 | 2+ | |
| 5 | How many graphic designers do you have in your Company who will be dedicated to the DOHW? | 10 | 2 | |
| | | 20 | 3+ | |
| 6 | Do you offer an online advertising service? | 10 | Yes | |
| | | 0 | No | |

| TERMS OF REFERENCE | | | | Comments/Complies/ Does not comply/Yes/No |
|--------------------|---|---|---|--|
| No | Criteria | Proof required | Proof attached (tick where applicable) | |
| 6.4 | <p>SECTION 6 - Evaluation criteria (continued)</p> <p>Please complete the documentary proof summary sheet below as evidence of your ability to confirm your compliance with the evaluation criteria on the previous page.</p> | | | |
| 1 | How long has your company been in business? | Auditor's letter | Yes | No |
| 2 | What is the average monthly cost of all recruitment advertising placed by your agency in the 2021/22 and 2022/2023 calendar year? | Auditor's letter | Yes | No |
| 3 | Do you currently handle or have you in the past handled Government/ Parastatal/ Public Sector recruitment advertising? | At least three written references must accompany the | Yes | No |
| 4 | How many account management staff do you have in your company who will be working on the DOHW account? | Auditor's letter | Yes | No |
| 5 | How many Graphic Designers do you have in do you have in your company who will be dedicated to DOHW? | Auditor's letter | Yes | No |
| 6 | Do you offer an online advertising service? | Auditor's letter | Yes | No |
| 7 | <p>Technical support physical and remote should be part of the resource and should be available when required.</p> <p>Physical address of the office and names of people employed in the office must be submitted with the bidding documents.</p> | Address of Office and names of employees | Yes | No |
| 7.1 7.2 | <p>SECTION 7 - Compulsory statutory and financial requirements</p> <p>This section defines all the compulsory statutory and financial documents required as part of the bid. Bidders who do not submit all of the requested documents below or do not comply with all of the requirements below WILL be disqualified from further evaluation</p> <p>Form WCBD1 - Full particulars of the bidding entity</p> <p>Where applicable, any bid submitted by a consortium subcontractor, affiliates or joint venture of two or more firms or persons must be accompanied by a copy of the consortium formation document, subcontracting or affiliation agreement or joint venture agreement, as applicable, which sets forth the precise responsibilities of each of the parties thereto. Consortia, subcontractors, affiliation and joint venture members are advised that each member will be held jointly and severally liable for the performance of the consortium, subcontractor, affiliates or joint venture in terms of the contract contemplated herein. Where a bid is submitted by a consortium, subcontractor, affiliate or joint venture of two or more firms or person, please ensure that:</p> <ul style="list-style-type: none"> • The joint venture agreement, subcontracting or affiliate agreement or consortium formation document submitted as part of the bid makes it unambiguously clear that the arrangement between the member firms is either a joint venture, a consortium or sub-contractor (as the case may be); and • All standard bidding forms (i.e. WCBD 1, WCBD 4 and WCBD 6.1) are completed in respect of each member firm. • A trust, consortium, subcontractor, or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate for every separate tender. <p>Failure by a group of member firms to adhere to these requirements shall disqualify the bid submitted by such firms.</p> | | | |

| TERMS OF REFERENCE | | Comments/Complies/ Does not comply/Yes/No |
|--------------------|---|--|
| | <p>SECTION 7 - Compulsory statutory and financial requirements (continuation)</p> <p>No copies of a consortium formation document, subcontracting or affiliate agreement or joint venture agreement will be accepted after the closing date and time.</p> <p>The WCGHW reserves the right to request a preferred bidder that is a consortium or joint venture to provide the following prior to the making of the award: (a) a certified copy of such document or agreement duly certified by a Commissioner of Oaths (where the consortium, subcontractor or joint venture is based in South Africa); or (b) an authenticated copy of such document or agreement duly authenticated by a Notary Public (where the consortium, subcontractor or joint venture is based outside of South Africa).</p> <p>Failure by a preferred bidder to provide same within a period stipulated by the WCGHW shall disqualify the bid submitted by that preferred bidder.</p> <p>7.3 Form WCBD3.2 - Pricing schedule</p> <p>7.4 Form WCBD4 - Declaration of interest, bidders' past supply chain management practices and independent bid determination</p> <p>7.5 Form WCBD 6.1 - Preference Points Claim form in terms of the 80/20 Preference Points System of the Preferential Procurement Regulations, 2022</p> <p>Where the bidder intends to claim preferential procurement points for B-BBEE, each bid must contain a duly completed and signed WCBD 6.1 form (Preference Points Claim Form in terms of the Preferential Procurement Regulations 2022). In such case, all information and documentation requested in such form must be provided. No WCBD 6.1 form (including all information and documentation required in terms thereof) will be accepted after the closing date and time for the submission of bids. The WCBD 6.1 form (including all information and documentation required in terms thereof) must be included in the bid containing the bidder's Bid Proposal. In the event that a bidder does not submit a duly completed WCBD 6.1 form (including all information and documentation required in terms thereof), the bidder will not for this reason alone be disqualified from having its bid evaluated, but it will be assumed that the bidder does not intend to claim any preferential procurement points for B-BBEE.</p> <p>7.6 All documents requested in the bid document shall be provided in the sequence within which they appear.</p> <p>7.7 Should the bidding entity provide the services jointly or by making use of another entity, a certified copy of this agreement outlining the terms must be supplied. If this agreement is not already in place, the Department will require a clear statement of commitment signed by both parties.</p> <p>7.8 Where the bidder is a consortium or a joint venture, the respective names of the component entities comprising the bidder should be reflected under the name of the bidder as part of the compulsory particulars that MUST be furnished in terms of this bid invitation.</p> <p>7.9 Confirmation that the bidder has read and accepted the terms of the General Conditions of Contract and Special Conditions of Contract.</p> <p>SECTION 8 – Pricing and payment</p> <p>8.1 Bids at firm percentages for the duration of the contract may receive preference over bids of which percentages are not firm.</p> <p>8.2 Different percentage structures for various periods during the contract period, which are subject to fluctuation, will not be considered. Bidders wishing to make provision for cost variations during the contract period should bid fixed percentages for various periods, i.e. three tier /year 1, 2 and 3.</p> | |

| TERMS OF REFERENCE | | Comments/Complies/ Does not comply/Yes/No |
|--------------------|--|--|
| 8.3 | <p>SECTION 8 – Pricing and payment (continuation)</p> <p>No adjustments will be considered, however, before 3 months of the contract period have expired, and after that adjustments will be considered at the utmost three monthly.</p> | |
| 8.4 | <p>In the interest of security and expeditious payment, it is the policy of the Department to effect payments by electronic funds transfer (EFT) into a supplier's South African bank account as far as possible. If a successful bidder is not yet a regular participant in Departmental contracts and has not been registered already, the service-provider will be required to furnish the Department with its banking details for the systems in operation (Logis, BAS, Syspro) to be registered. Successful bidders must ensure, therefore, that their banking details are provided to institutions on request where necessary.</p> <p>On receipt of the invoice by the Department in accordance with the agreed procedure, the relevant officials will verify its correctness. If the invoice is correct, the amount due will be payable within 30 calendar days from date of receipt of invoice, subject to any penalty deductions by the Department. If the Department identifies any discrepancies, or if penalties are not reflected correctly or at all, the invoice will be returned to the supplier and the amount due will be payable within thirty calendar days from receipt of the corrected invoice.</p> <p>If a service-provider disputes a penalty amount, the Department will have the right to set-off the penalty amount against any amount/invoice payable to the supplier.</p> | |
| 9.1 | <p>SECTION 9 – Agency commission (“rebate”)</p> <p>The service-provider (agency) should ensure that all discounts in respect of all client-related third party costs, including, without limitation, costs incurred by the service-provider in the production process of generating media cost, shall revert and be passed on by the service-provider to the client. All discounts received by the Service Provider pertaining to the expenditure by the Department must be passed back to the Department, either off invoice at the time of invoicing or by way of credit note. Similarly, any added value received by the service provider, generated by the Department's expenditure should be allocated back to the Department.</p> | |
| 9.2 | <p>Cost management: In the event that the Service Provider contracts a third party for the performance of any services, it shall ensure that no mark-ups are added to any resource related charges to the Department. No third party costs will be levied to the Department.</p> | |
| 9.3 | <p>This is based on the understanding that the service-provider will charge the Department a commission-bearing or gross-rate.</p> | |
| 10.1 | <p>SECTION 10 - Negotiations</p> <p>The Department reserves the right to enter into negotiations with bidders (before the contract is concluded) and contractors (after the contract is concluded) regarding inter alia price revisions, increases and service delivery should it be deemed necessary.</p> | |
| 11.1 | <p>SECTION 11 - General</p> <p>Receipt of the invitation to bid does not confer any right on any party in respect of the services or in respect of, or against, the Department of Health and Wellness. The Western Cape Department of Health and Wellness reserves the right, in its sole discretion:</p> | |

| TERMS OF REFERENCE | | Comments/Complies/ Does not comply/Yes/No |
|--------------------|--|--|
| | <p>SECTION 11 – General (continuation)</p> <p>(i) To amend the bid process, closing date or any other date at its sole discretion,</p> <p>(ii) To cancel the bid or any part of the bid before the bid has been awarded,</p> <p>(iii) Not to accept the lowest or any other bid and to accept the bid which it deems shall be in the best interest of the Department,</p> <p>(iv) Not to award the bid to the highest points or lowest price,</p> <p>(v) to reject all responses submitted and to embark on a new bid process,</p> <p>(vi) To withdraw any services from the bid process,</p> <p>(vii) to terminate any party's participation in the bid process</p> <p>(viii) or to accept or reject any response to this invitation to bid on notice to the bidders without liability to any party;</p> <p>Accordingly, parties have no rights, expressed or implied, with respect to any of the services as a result of their participation in the bid process,</p> | |
| 12.1 | SECTION 12 – Estimated quantities and ordering restrictions | |
| 12.2 | <p>The Department shall not be restricted to minimum quantity orders.</p> <p>The quantities required for the purpose of this bid are not guaranteed and will be determined solely by the requirements of the Department.</p> | |
| 13.1 | <p>SECTION 13 - Confidentiality</p> <p>No material or information derived from the bid submission or the provision of the services under the contract may be used for any purposes other than those of the Department, except where authorized by the Department, in writing to do so.</p> | |
| 13.2 | <p>Copyright of all documents and electronic aids, software projects prepared or developed in terms of this appointment shall vest in the Department of Health and Wellness, Western Cape Government.</p> | |
| 13.3 | <p>The service-provider shall not, during the term of the agreement and thereafter, without the prior written consent of the Department, disclose any information relating to the Department and the service, to anyone other than persons connected to the Department and/or service provider and who are required or authorised to have access to such information.</p> | |
| 13.4 | <p>For purposes of this clause "Confidential Information" shall mean –</p> <p>(i) Any information disclosed, revealed or exchanged and which pertains to, but is not limited to, all intellectual property rights and all agreements (whether in writing or not) which exists at the time of revealing the content thereof to the service-provider, the content of all possible future agreements which may be entered into with any other party, all knowledge obtained through research and development, irrespective of whether the aforementioned information that is revealed is applicable to technical, operational or financial aspects of the Department, government in any other sphere, or any government institution or organ of state;</p> <p>(ii) Any information of whatever nature, which has been or may be obtained by the service-provider, whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, business or financial data or information, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, computer software, inventions or any ideas;</p> | |

| TERMS OF REFERENCE | | Comments/Complies/ Does not comply/Yes/No |
|--------------------|---|--|
| | SECTION 13 – Confidentiality (continuation) (iii) Analyses, concepts, compilations, studies and other material prepared by or in possession or control of the service-provider which contain or otherwise reflect or are generated from any such information as is specified in this definition; (iv) All information which a third party has in terms of any agreement made available to the Department and which has become known to the service-provider in the course of rendering the services; and (v) Any dispute between the parties resulting from this agreement. The service-provider shall – (i) Use the confidential information only for the purpose of rendering the services; (ii) Safeguard the confidential information as private; and (iii) ensure proper and secure storage of all confidential information. | |
| 13.5 | | |
| 13.6 | Any documents or records (including written instructions, notes or memoranda) relating to the services which shall be provided to the service-provider or which come into the service-provider's possession during the term of this contract, are considered the property of the Department and shall be surrendered to the Department on demand, and in the event of the expiry or termination of this agreement, the service-provider will not retain any copies thereof or extracts therefrom without obtaining the prior written permission of the Department. | |
| 13.7 | The service-provider- (i) acknowledges that it has carefully considered the provisions of the clause; (ii) agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Department and the Government of the Republic of South Africa and that if it should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness shall be on the service-provider; and (iii) acknowledges that it has entered into this agreement freely and voluntarily and that no circumstances exist and/or existed for it alleging, either now or at any future time, that it was at a disadvantage in agreeing to the provisions set out in this clause, or was not in an equal bargaining position with the Department in agreeing thereto. (iv) The rights and obligations afforded to the Department in terms of this clause shall apply mutatis mutandis to the service-provider's confidential information. | |
| | SECTION 14 – Ownership of information (i) All information pertaining to the project and Department is confidential and shall not be divulged to anyone except the officials of the Department authorised to receive such information. (ii) is the property of the Department. It shall be provided to the Department in the process of monthly reporting and at the request of the Department on an ad hoc basis. (iii) At the end of the contract all the information reverts to the Department both in hard copy and electronic format. The Service Level Agreement will further detail the rights to such information. | |

PRICING SCHEDULE (SERVICES)

BID WCGHSC 0389/2023: FOR PROVISION OF A SERVICE PROVIDER TO ADVERTISE VACANT POSTS IN THE PRINT MEDIA (RECRUITMENT ADVERTISING SERVICES) ON BEHALF OF THE DEPARTMENT OF HEALTH AND WELLNESS, WESTERN CAPE GOVERNMENT FOR A PERIOD OF THREE YEARS

NAME OF BIDDER :

BID NUMBER: **WCGHSC 0389/2023**

CLOSING TIME: **11:00 ON FRIDAY 29 SEPTEMBER 2023** OFFERS SHALL BE VALID FOR **60 DAYS** FROM THE CLOSING DATE OF BID

| ITEM | ESTIMATED QUANTITIES | DESCRIPTION OF SERVICE | BID PRICE | | | |
|------|----------------------|---|----------------------------------|----------------------|----------------------|----------------------|
| 1 | 800 Per Annum | PROVISION OF MEDIA RECRUITMENT ADVERTISING SERVICES: Management and booking of recruitment advertising required for all media houses. The recruitment advertising agency will be responsible for - <ul style="list-style-type: none"> (i) media-buying and post-buy analysis, and (ii) the placement of advertisements (iii) most suitable media practices analysis Please provide your estimated gross media billing for placement as a bid price inclusive of all taxes, expressed as a commission equivalent percentage. | Price as commission equivalent % | 1 st year | 2 nd year | 3 rd year |

IMPORTANT: THE QUESTIONNAIRE BELOW MUST BE COMPLETED IN FULL BY REPLYING TO EACH AND EVERY QUESTION.

A. Period required for commencement of contract after acceptance of bid
 B. Does the offer comply with specification? Please circle your option. **YES/NO**
 C. If not, indicate deviations on attached specification or separate sheet?
 D. Are you registered in terms of sections 23(1) or 23(3) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) **YES /NO**
 E. If so, state your VAT registration number
 F. Are the prices quoted for the service firm for the full contract period?

EXAMPLE LIST OF PUBLICATION TITLES

| | | | |
|----|--|----|--|
| 1 | Cape Times Career Times | 49 | People's Post Link |
| 2 | Cape Argus Workplace | 50 | People's Post Athlone |
| 3 | Weekend Argus Sat/Sun Workplace | 51 | People's Post Atlantic Sea-Board / City Edition |
| 4 | Daily Voice | 52 | People's Post Claremont/Rondebosch |
| 5 | Athlone News | 53 | People's Post Constantia/Wynberg |
| 6 | Atlantic Sun | 54 | People's Post False Bay |
| 7 | The Cape Towner | 55 | People's Post Grassy Park |
| 8 | Constantiaberg Bulletin | 56 | People's Post Lansdowne |
| 9 | False Bay Echo | 57 | People's Post Mitchell's Plain |
| 10 | Bolander | 58 | People's Post Retreat |
| 11 | Plainsman | 59 | People's Post Woodstock/Maitland |
| 12 | Sentinel News | 60 | Tygerburger Link |
| 13 | Southern Mail | 61 | Tygerburger Bellville |
| 14 | Southern Suburbs Tatler | 62 | Tygerburger Brackenfell |
| 15 | Tabletalk | 63 | Tygerburger Durbanville |
| 16 | Tygertalk (Goodwood/Parow Edition) | 64 | Tygerburger Eerste River |
| 17 | Tygertalk (Bellville/Durbanville Edition) | 65 | Tygerburger Elsies River |
| 18 | Vukani | 66 | Tygerburger Goodwood |
| 19 | Sunday Times - Money & Careers | 67 | Tygerburger Kraifontein |
| 20 | Sowetan Job Market and/or Sunday World JM | 68 | Tygerburger Kuilsrivier |
| 21 | Mail & Guardian | 69 | Tygerburger Milnerton |
| 22 | CXPress Vacancy and Auction | 70 | Tygerburger Parow |
| 23 | George Herald | 71 | Tygerburger Ravensmead/Belhar |
| 24 | George Mini Ads News | 72 | Tygerburger Tableview |
| 25 | Graaff Reinet Advertiser & Karoonus/News | 73 | Die Hoorn |
| 26 | Knysna Plett Herald | 74 | District Mail - Vacancies |
| 27 | Mossel Bay Advertiser | 75 | Eikestadnuus - Vacancies |
| 28 | Oudtshoorn Courant | 76 | Gazette Breederivier - Vacancies |
| 29 | South Cape Forum | 77 | Gazette Drakenstein |
| 30 | Die Herrie | 78 | Gazette Helderberg |
| 31 | Ons Kontrei | 79 | Gazette Stellenbosch - Vacancies |
| 32 | aufort West Courier | 80 | Gazette Swartland |
| 33 | Swartland & Weskus Courant | 81 | Gazette Theewaterskloof - Vacancies |
| 34 | Northern Bulletin | 82 | Hermanus Times - Vacancies |
| 35 | Suidernuus/Southern Post | 83 | Paarl Post - Vacancies |
| 36 | Witzenberg Herald | 84 | Weskusnuus - Vacancies |
| 37 | The Courier | 85 | Weslander |
| 38 | Die Burger Saterdag Talent | 86 | Worcester Standard - Vacancies |
| 39 | Son Op Sondag | 87 | Langeberg Bulletin |
| 40 | Die Son Wes | 88 | SA Medical Journal (Quarter Page) |
| 41 | Die Beeld | 89 | IA Advisor (Quarter Page) |
| 42 | City Press - Careers | 90 | Business Day |
| 43 | Rapport - Loopbane | 91 | Financial Mail |
| 44 | Careers/Loopbane (City Press & Rapport) Eng/both | 92 | Construction Insight Magazine - Quarter Page |
| 45 | Careers/Loopbane (City Press & Rapport) Eng/Afr | 93 | Institute of Risk Management South Africa |
| 46 | City Vision Link | 94 | Breede Forum |
| 47 | City Vision Khayelitsha - Vacancies | 95 | Prince Albert Friend |
| 48 | City Vision Lagunya - Vacancies | 96 | Various Internet/Digital Advertising platforms as required |

PROVINCIAL GOVERNMENT WESTERN CAPE

DECLARATION OF INTERESTS, SERVICE PROVIDERS PAST SCM PRACTICES AND INDEPENDENT BID DETERMINATION

1. To give effect to the requirements of the Western Cape Provincial Treasury Instructions, 2019: Supply Chain Management (Goods and Services), Public Finance Manage Act (PFMA) Supply Chain Management (SCM) Instruction No. 3 of 2021/2022 - SBD 4 Declaration of Interest, Section 4 (1)(b)(iii) of the Competition Act No. 89 of 1998 as amended together with its associated regulations, the Prevention and Combating of Corrupt Activities Act No 12 of 2004 and regulations pertaining to the tender defaulters register, Paragraph 16A9 of the National Treasury Regulations and/or any other applicable legislation.
2. 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 Service Provider to make this declaration in respect of the details required hereunder.
3. All prospective Service Providers intending to do business with the Institution must be registered on the Central Supplier Database (CSD) and the Western Cape Supplier Evidence Bank (WCSEB) if they wish to do business with the Western Cape Government (WCG) via the electronic Procurement Solution (ePS).
4. The status of enterprises and persons listed on the National Treasury's Register for Tender Defaulters will be housed on the ePS. Institutions may not under any circumstances procure from enterprises and persons listed on the Database of Tender Defaulters.
5. The status of suppliers listed on the National Treasury's Database of Restricted Suppliers will be housed on the ePS; however, it remains incumbent on institutions to check the National Treasury Database of Restricted Suppliers before the conclusion of any procurement process. For suppliers listed as restricted, institutions must apply due diligence and risk assessment before deciding to proceed with procurement from any such supplier.

1. Definitions

"bid" means a Service Provider's response to an institution's invitation to participate in a procurement process which may include a bid, price quotation or proposal;

"Bid rigging (or collusive bidding)" occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and/or services through a bidding process. Bid rigging is, therefore, an agreement between competitors;

"business interest" means –

- (a) a right or entitlement to share in profits, revenue or assets of an entity;
- (b) a real or personal right in property;
- (c) a right to remuneration or any other private gain or benefit, or
- (d) includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;

"Consortium or Joint Venture" 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;

"Controlling interest" means, 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;

If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701

This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

"Corruption"- General offences of corruption are defined in the Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) as:

Any person who directly or indirectly –

- (a) accepts or agrees or offers to accept an! gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person., in order to act personally or by influencing another person so to act, in a manner—
 - (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (ii) that amounts to-
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, of the, is guilty of the offence of corruption.

"CSD" means the Central Supplier Database maintained by National Treasury;
"employee", in relation to –

- (a) a department, means a person contemplated in section 8 of the Public Service Act, 1994 but excludes a person appointed in terms of section 12A of that Act; and
- (b) a public entity, means a person employed by the public entity;

"entity" means any –

- including a
 - (a) association of persons, whether or not incorporated or registered in terms of any law, company, corporation, trust, partnership, close corporation, joint venture or consortium; or
 - (b) sole proprietorship

"entity conducting business with the Institution" means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Province;

"Family member" means a person's –

- (a) spouse; or
- (b) child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption or some other legal arrangement (as the case may be);

"intermediary" means a person through whom an interest is acquired, and includes a representative or agent or any other person who has been granted authority to act on behalf of another person;

"Institution" means –

a provincial department or provincial public entity listed in Schedule 3C of the Act;

"Provincial Government Western Cape (PGWC)" means

- (a) the Institution of the Western Cape, and
- (b) a provincial public entity;

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31 May 2022

"RWOEE" means –

Remunerative Work Outside of the Employee's Employment

"spouse" means a person's –

- (a) partner in marriage or civil union according to legislation;
- (b) partner in a customary union according to indigenous law; or
- (c) partner with whom he or she cohabits and who is publicly acknowledged by the person as his or her life partner or permanent companion.

7. Regulation 13(c) of the Public Service Regulations (PSR) 2016, effective 1 February 2017, prohibits any employee from conducting business with an organ of state, or holding a directorship in a public or private company doing business with an organ of state unless the employee is a director (in an official capacity) of a company listed in schedules 2 and 3 of the Public Finance Management Act.
 - a) Therefore, by 31 January 2017 all employees who are conducting business with an organ of state should either have:
 - (i) resigned as an employee of the government institution or;
 - (ii) cease conducting business with an organ of state or;
 - (iii) resign as a director/shareholder/owner/member of an entity that conducts business with an organ of state.
8. Any legal person, or their family members, may make an offer or offers in terms of this invitation to bid. In view of potential conflict of interest, in the event that the resulting bid, or part thereof, be awarded to family members of persons employed by an organ of state, it is required that the Service Provider or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where the Service Provider is employed by the Institution.
9. The bid of any Service Provider may be disregarded if that Service Provider or any of its directors abused the institution's supply chain management system; committed fraud or any other improper conduct in relation to such system; disclosure is found not to be true and complete; or failed to perform on any previous contract.
10. Section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds.
11. Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorises accounting officers and accounting authorities to:
 - a) disregard the bid of any Service Provider if that Service Provider, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b) cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
12. Communication between partners in a joint venture or consortium will not be construed as collusive bidding.
13. 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 of Corruption and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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SECTION A DETAILS OF THE ENTITY

| SECTION A DETAILS OF THE ENTITY | | |
|--|--|------|
| | CSD Registration Number | MAAA |
| | Name of the Entity | |
| | Entity registration Number (where applicable) | |
| | Entity Type | |
| | Tax Reference Number | |

Full details of directors, shareholder, member, partner, trustee, sole proprietor or any persons having a controlling interest with a right or entitlement to share in profits, revenue or assets of the entity should be disclosed in the Table A below.

TABLE A

SECTION B: DECLARATION OF THE SERVICE PROVIDER'S INTEREST

The supply chain management system of an institution must, irrespective of the procurement process followed, prohibit any award to an employee of the state, who either individually or as a director of a public or private company or a member of a close corporation, seek to conduct business with the WCG, unless such employee is in an official capacity a director of a company listed in Schedule 2 or 3 of the PFMA as prescribed by the Public Service Regulation 13(c).

Furthermore, an employee employed by an organ of state conducting remunerative work outside of the employee's employment should first obtain the necessary approval by the delegated authority (RWOEE), failure to submit proof of such authority, where applicable, may result in disciplinary action.

| | | | |
|------------|--|----|-----|
| B1. | Are any persons listed in Table A identified on the CSD as employees of an organ of state? (If yes, refer to Public Service Circular EIM 1/2016 to exercise the listed actions) | NO | YES |
| B2. | Are any employees of the entity also employees of an organ of state? (If yes complete Table B and attach their approved "RWOEE") | NO | YES |
| B3. | Are any family members of the persons listed in Table A employees of an organ of state? (If yes complete Table B) | NO | YES |

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31 May 2022

TABLE B Details of persons (family members) connected to or employees of an organ of state should be disclosed in Table B below.

SECTION C: PERFORMANCE MANAGEMENT AND SERVICE PROVIDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES To enable the prospective Service Provider to provide evidence of past and current performance.

C1. Did the entity conduct business with an organ of state in the last twelve months? (If yes complete Table C) NO YES

C2. TABLE C

Complete the below table to the maximum of the last 5 contracts.

| Complete the below table to the maximum of the last 5 contracts. | | | | | |
|--|--|-------------------------------|------------------------|--------------------|-------------------|
| Name of Contractor | Provincial Department or Provincial Entity | Type of Services or Commodity | Contract/ Order Number | Period of Contract | Value of Contract |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| C3. Is the entity or its principals listed on the National Database as companies or persons prohibited from doing business with the public sector? | | | | NO | YES |
| C4. Is the entity or its principals listed on the National Treasury Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)? (To access this Register enter the National Treasury's website, www.treasury.gov.za , click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 326 5445.) | | | | NO | YES |
| C5. If yes to C3 or C4, were you informed in writing about the listing on the database of restricted suppliers or Register for Tender Defaulters by National Treasury? | | | | NO | YES |
| C6. Was the entity or persons listed in Table A convicted for fraud or corruption during the past five years in a court of law (including a court outside the Republic of South Africa)? | | | | NO | YES |
| C7. Was any contract between the Service Provider and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract? | | | | NO | YES |

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31 May 2022

SECTION D: DULY AUTHORISED REPRESENTATIVE TO DEPOSE TO AFFIDAVIT

This form must be signed by a duly authorised representative of the entity in the presence of a commissioner of oaths

I, hereby swear/affirm;

i. that the information disclosed above is true and accurate;

ii. that I have read understand the content of the document;

iii. that I have arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor.

iv. that the entity undertakes to independently arrive at any offer at any time to the Institution without any consultation, communication, agreement or arrangement with any competitor. In addition, that there will be no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specification, 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;

v. that the entity or its representative are aware of and undertakes not to disclose the terms of any bid, formal or informal, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract; and

vi. that there have been no consultations, communications, agreements or arrangements made 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 that my entity was not involved in the drafting of the specifications or terms of reference for this bid.

DULY AUTHORISED REPRESENTATIVE'S SIGNATURE

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

1.1 Do you know and understand the contents of the declaration? ANSWER:

1.2 Do you have any objection to taking the prescribed oath? ANSWER:

1.3 Do you consider the prescribed oath to be binding on your conscience? ANSWER:

1.4 Do you want to make an affirmation? ANSWER:

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed and the deponent's signature/thumbprint/mark was placed thereon in my presence.

SIGNATURE FULL NAMES Commissioner of Oaths

Designation (rank) ex officio: Republic of South Africa

Date: Place:

Business Address:

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31 May 202

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 AND THE WESTERN CAPE GOVERNMENT'S INTERIM STRATEGY AS IT RELATES TO PREFERENCE POINTS

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE TO THE BID, PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT AND CODES OF GOOD PRACTICE

1. DEFINITIONS

- 1.1 **“Acceptable bid”** means any bid which complies in all respects with the specifications and conditions of bid as set out in the bid document.
- 1.2 **“Affidavit”** is a type of verified statement or showing, or in other words, it contains a verification, meaning it is under oath or penalty of perjury, which serves as evidence to its veracity and is required for court proceedings.
- 1.3 **“All applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 1.4 **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 1.5 **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a codes of good practice of black economic empowerment, issued in terms of section 9(1) of The Broad-Based Black Economic Empowerment Act;
- 1.6 **“Bid”** means a written offer on the official bid documents or invitation of price quotations, and “tender” is the act of bidding/tendering;
- 1.7 **“Code of Good Practice”** means the generic codes or the sector codes as the case may be;
- 1.8 **“Consortium”** or **“joint venture”** 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;
- 1.9 **“Contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 1.10 **“EME”** is an exempted micro enterprise with an annual total revenue of R10 million or less.
- 1.11 **“Firm price”** means a price that is only subject to adjustments in accordance with an actual increase or decrease resulting from the change, imposition or abolition of customs or excise duty and any other duty, levy, or tax, which is binding on the contractor in terms of the law or regulation and demonstrably has an influence on the price of any supplies or the rendering costs of any service for the execution of the contract;
- 1.12 **“Large Enterprise”** is any enterprise with an annual total revenue above R50 million;
- 1.13 **“Non-firm prices”** means all prices other than “firm” prices
- 1.14 **“Person”** includes a juristic person;
- 1.15 **“Price”** means an amount of money bid for goods and services and includes all applicable taxes less all unconditional discounts;
- 1.16 **“Proof of B-BBEE status level contributor”** means –
 - (a) The B-BBEE status level certificate issued by an authorized body or person;
 - (b) A sworn affidavit as prescribed in terms of the B-BBEE Codes of Good Practice; or
 - (c) Any other requirements prescribed in terms of the Broad-based Black Economic Empowerment Act

1.17 **“QSE”** is a Qualifying Small Enterprise with an annual total revenue between R10 million and R50 million;

1.18 **“Rand value”** means the total estimated value of a contract in South African currency calculated at the time of bid invitation, and includes all applicable taxes;

1.19 **“Sub-contract”** means the primary contractor's assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract;

1.20 **“Tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide services through price quotations, competitive bidding processes or any other method envisaged in legislation;

1.21 **“Tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation to originate 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, which produces revenue for the organ of state, and includes but is not limited to leasing and disposal of assets and concessions contracts, but excludes direct sales and disposal of assets through public auctions;

1.22 **“The Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);

1.23 **“the Regulations”** means the Preferential Procurement Regulations, 2022;

1.24 **“Total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-based Black Economic Empowerment Act and promulgated in the Government Gazette on 11 October 2013;

1.25 **“Trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and

1.26 **“Trustee”** means any person, including the founder of a trust, to whom property is bequeathed for such property to be administered for the benefit of another person.

2. GENERAL CONDITIONS

2.1 The following preference points systems are applicable to all bids:

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

2.2 Preference points system for this bid:

- (a) The value of this bid is estimated **to exceed/not exceed R50 000 000** (all applicable taxes included) and therefore the preference points system shall be applicable;
or
- (b) Either the **80/20 or 90/10** preference points system will be applicable to this bid.
(Delete whichever option is not applicable to this bid)

2.3 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE status level of contribution.

2.4 The maximum points for this bid are allocated as follows:

| POINTS | |
|--|------------|
| PRICE | 80 |
| B-BBEE STATUS LEVEL OF CONTRIBUTOR | 90 |
| Total points for Price and B-BBEE must not exceed | 100 |

2.5 Failure on the part of a bidder to complete and sign this form and submit, in the circumstances prescribed in the Codes of Good Practice, either a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS), or an affidavit confirming annual total revenue and level of black ownership, along with the bid, or an affidavit issued by the Companies Intellectual Property Commission, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

3. ADJUDICATION USING A POINT SYSTEM

3.1 Subject to Regulation 2(1)(f) of the Preferential Procurement Policy Framework Act, 2000, the bidder obtaining the **highest number of total points** will be awarded the contract.

3.2 A bidder must submit proof of its B-BBEE status level to claim points for B-BBEE.

3.3 A bidder failing to submit proof of B-BBEE status level, or who is a non-compliant contributor to B-BBEE will not be disqualified, but will only score:

- (a) points out of **80/90** for **price**; and
- (b) 0 points out of **20/10** for **B-BBEE**.

3.4 Points scored must be rounded off to the nearest 2 decimal places.

3.5 If two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.

3.6 Per Regulation 2 (1)(f) of the Preferential Procurement Policy Framework Act, 2000, the contract may be awarded to a bidder other than the one scoring the highest number of total points based on objective criteria in addition to those contemplated in paragraph (d) and (e) of the Act, which justifies the award to another bidder provided that it has been stipulated upfront in the bid conditions.

3.7 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

THE 80/20 OR 90/10 PREFERENCE POINT SYSTEM

4. FORMULAE FOR PROCUREMENT OF GOODS & SERVICES

4.1 POINTS AWARDED FOR PRICE

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

$$\text{80/20} \quad \text{90/10}$$

$$Ps = 80 \left(1 - \frac{Pt - Pmin}{Pmin} \right) \quad Ps = 90 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid



5. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS & INCOME-GENERATING PROCUREMENT

5.1 POINTS AWARDED FOR PRICE

80/20

90/10

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

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

Where

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmax = Price of highest acceptable bid

6. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

6.1 In terms of WCG interim strategy, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the following table:

| B-BBEE Status Level of Contributor | No of points (90/10 system) | No of points (80/20 system) |
|------------------------------------|-----------------------------|-----------------------------|
| 1 | 10 | 20 |
| 2 | 9 | 18 |
| 3 | 6 | 14 |
| 4 | 5 | 12 |
| 5 | 4 | 8 |
| 6 | 3 | 6 |
| 7 | 2 | 4 |
| 8 | 1 | 2 |
| Non-compliant contributor | 0 | 0 |

6.2 An **EME** must submit a valid originally certified affidavit confirming annual turnover and level of black ownership, or an affidavit issued by Companies Intellectual Property Commission.

6.3 A **QSE that is less than 51% (50% or less) black-owned** must be verified in terms of the QSE scorecard issued via Government Gazette and submit a valid, original or a legible certified copy of a B-BBEE Verification Certificate issued by SANAS.

6.4 A **QSE that is at least 51% black-owned** must submit a valid, originally certified copy of an affidavit confirming turnover and level of black ownership, or an affidavit issued by Companies Intellectual Property Commission, as well as declare its empowering status.

6.5 A **large enterprise** must submit a valid, original or originally certified copy of a B-BBEE Verification Certificate issued by a verification agency accredited by SANAS.

6.6 A **trust, consortium or joint venture** will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

6.7 A **trust, consortium or joint venture (including unincorporated consortia and joint ventures)** must submit a consolidated B-BBEE status level verification certificate for every separate bid.

6.8 **Tertiary institutions and public entities** will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

7. BID DECLARATION

7.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:



8. B-BBEE STATUS LEVEL CLAIMED IN TERMS OF PARAGRAPH 5

8.1 B-BBEE Status Level: = (*maximum of 20 points in terms of 80/20*)8.2 B-BBEE Status Level: = (*maximum of 10 points in terms of 90/10*)

(Points claimed in paragraphs 8.1 & 8.2 must correspond with the table in paragraph 5.1 and must be substantiated by a B-BBEE certificate issued by a verification agency accredited by SANAS or an affidavit confirming annual total revenue and level of black ownership in terms of the relevant sector code applicable to the bid).

9. SUB-CONTRACTING

9.1 Will any portion of the contract be sub-contracted? (delete which is not applicable) **YES/NO**

9.1.1 If yes, indicate:

(i) what percentage of the contract will be subcontracted? %

(ii) the name of the sub-contractor?

(iii) the B-BBEE status level of the sub-contractor?

(iv) whether the sub-contractor is an EME or QSE? (delete which is not applicable) **YES/NO**9.1.2 Sub-contracting relates to a **particular** contract and if sub-contracting is applicable, the bidder must state in its response to a particular RFQ that a portion of that contract will be sub-contracted.

10. DECLARATION WITH REGARD TO COMPANY/FIRM

10.1 Name of company/ entity:

10.2 VAT registration number:

10.3 Company Registration number:

10.4 Type of company/firm (Select applicable (option)) Partnership/Joint venture consortium One-person business/sole proprietor Close corporation Public company Personal liability company (Pty) Ltd Non-profit company State-owned company

10.5 I/we, the undersigned, who am/are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBEE status level of contribution indicated in paragraph 8 above, qualifies the company/firm for the preference(s) shown and I/we acknowledge that:

- (a) The Western Cape Government reserves the right to audit the B-BBEE status claim submitted by the bidder.
- (b) As set out in Section 130 of the B-BBEE Act as amended, any misrepresentation constitutes a criminal offence. A person commits an offence if that person knowingly:



- (i) misrepresents or attempts to misrepresent the B-BBEE status of an enterprise;
- (ii) provides false information or misrepresents information to a B-BBEE verification professional to secure a particular B-BBEE status or any benefit associated with compliance with the B-BBEE Act;
- (iii) provides false information or misrepresents information relevant to assessing the B-BBEE status of an enterprise to any organ of state or public entity; or
- (iv) engages in a fronting practice.

(c) if a B-BBEE verification professional, any procurement officer or any official from another organ of state or public entity becomes aware of the attempted or actual commission of any offence referred to in paragraph 10.5 (b), this will be reported to an appropriate law enforcement agency for investigation,

(d) any person convicted of an offence by a court in the case of contravention of paragraph 10.5 (b) is liable to a fine or imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment, or, if the convicted person is not a natural person, to a fine not exceeding 10% of its annual turnover.

(e) the purchaser may investigate the matter if it becomes aware that a bidder may have obtained its B-BBEE status level fraudulently. If the investigation warrants the imposition of a restriction, this will be referred to the National Treasury for investigation, processing and restriction of the bidder on the National Treasury's List of Restricted Suppliers. After the *audi alteram partem* (hear the other side) rule has been applied, the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted fraudulently, may be restricted from obtaining business from any organ of state for a period not exceeding 10 years,

(f) in addition to any other remedy it may have, the organ of state may -

- (i) disqualify the bidder from the bid process,
- (ii) recover costs, losses or damages it has incurred or suffered as a result of that bidder's conduct,
- (iii) cancel the contract, and, having had to make less favourable arrangements due to such cancellation, claim any damages it has suffered from the contractor, and
- (iv) forward the matter for criminal prosecution.

(g) The information furnished is true and correct.

(h) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 2 of this form.

SIGNATURE(S) OF THE BIDDER(S):

DATE:

ADDRESS:

WITNESSES:

1.
2.

SWORN AFFIDAVIT – B-BBEE/QUALIFYING SMALL ENTERPRISE

1. I, the undersigned

| | |
|------------------------------|--|
| Full name and surname | |
| Identity number | |

2. Hereby declare under oath as follows:

- (i) The contents of this statement are to the best of my knowledge a true reflection of the facts.
- (ii) I am a member/director/owner of the following enterprise and am duly authorized to act on its behalf:

| | |
|----------------------------|--|
| Enterprise name | |
| Trading name | |
| Registration number | |
| Enterprise address | |

3. I hereby declare under oath that:

- The enterprise is _____ % Black owned;
- The enterprise is _____ % Black woman owned;
- Based on management accounts and other information available for the _____ financial year, the income did not exceed R50 000, 000.00 (fifty million Rands)
- The entity is an Empowering Supplier in terms of Clause 3.3 (a) or (b) or (c) or (d) r (e) as amended (select one) _____ of the dti Codes of Good Practice.
- Please confirm in the table below the B-BBEE contributor by **ticking the applicable box**.

| | |
|--|---|
| 100% Black owned | Level One (133% B-BBEE procurement recognition) |
| More than 31% Black owned | Level Two (123% B-BBEE procurement recognition) |
| (a) At least 23% of cost of sales (excluding labour costs and depreciation) must be procurement from local producers or suppliers in South Africa; For the service industry, include labour costs capped at 13%. | (b) At least 30% of jobs created are for Black people, provided that the number of Black employees in the B-BBEE measurement verified immediately before is maintained. |
| (c) At least 23% transformation of raw material/beneficiation, which includes local manufacturing, production and/or assembly, and/or packaging. | (d) At least 12 days per annum of productivity deployed in assisting QSE and EME beneficiaries to increase their operational or financial capacity. |
| (e) At least 83% of labour costs should be paid to South African employees by service industry entities. | |

4. I know and understand the content of this affidavit, I have no objection to taking the prescribed oath, I consider the oath binding on my conscience and not on the owners of the enterprise which I represent in this matter.

5. The sworn affidavit will be valid for a period of 12 months from the date of signature by the commissioner.

Deponent signature: _____

Date: _____

Commissioner of Oaths signature & stamp

SPECIAL CONDITIONS OF BID

These Special Conditions of Contract are applicable to this bid by the Western Cape Government. Should there be a conflict between the provisions of these Special Conditions of Contract and those of the General Conditions of Contract, the provisions of these Special Conditions of Contract shall prevail.

1. APPLICATION

- 1.1 These Special Conditions of Contract ("SCC") are applicable to this bid invited and to be awarded by the Western Cape Government ("WCG").
- 1.2 By submitting a bid in response to the bid invitation from the WCG, a bidder accepts and agrees to these SCC, as well as the provisions of the General Conditions of Contract for Government Procurement as issued by National Treasury ("GCC"), unless specified otherwise in writing.

2. SPECIFIC EXCLUSIONS

The following clauses of the GCC are specifically excluded and shall not form part of the contract to be awarded and concluded with the WCG:

- 2.1 Subcontracts – clause 20;
- 2.2 Penalties – clause 22;
- 2.3 Settlement of Disputes – clause 27; and
- 2.4 Limitation of liability – clause 28.

3. REPLACEMENT CLAUSES

- 3.1 *Clause 20 of the GCC is substituted with the following:*

Subcontracts and assignment

- 3.1.1 The Service-provider may not assign, cede, delegate or transfer any of its rights or obligations without the WCG's prior written consent and subject to the relevant WCG procurement prescripts.
- 3.1.2 The Supplier may only sub-contract with the prior written consent of the WCG and subject to the provisions of the Preferential Procurement Policy Framework Regulations, 2011 and other relevant WCG procurement prescripts.

- 3.2 *Clauses 22 and 28 of the GCC are substituted with the following:*

Penalties and Damages

- 3.2.1 The WCG may, in respect of every breach, impose penalties in terms of clause 22 of the GCC (or such other penalties as may be agreed upon), or claim damages *in lieu* of a penalty.
- 3.2.2 The WCG's decision to impose a penalty, or claim damages *in lieu* of a penalty, shall not prevent it from exercising any other rights it may have in law, including, but not limited to, the right to claim specific performance.
- 3.2.3 In the event of cancellation of the contract due to breach, the non-defaulting Party shall be entitled to recover all damages which may be suffered as a result of such breach, or from any liability which the non-defaulting Party may directly or indirectly incur as a result of such breach.

- 3.3 *Clause 27 of the GCC substituted with the following:*

Settlement of Disputes

- 3.3.1 Should a dispute arise between the parties concerning this contract, the parties shall attempt to resolve the dispute by negotiation. As such the aggrieved party must invite the other party in writing to a meeting within 7 (seven) calendar days to endeavour to resolve the dispute as soon as possible.
- 3.3.2 If the dispute is not resolved by such negotiation, the parties will, upon agreement, refer the dispute to mediation and/or arbitration to be conducted as set out further on. If agreement cannot be reached on whether to refer the dispute to mediation or arbitration, or if better suited, a party may institute legal proceedings in a court of competent jurisdiction to resolve the dispute.

SPECIAL CONDITIONS OF BID (CONTINUED)

| | |
|--|---|
| 3. REPLACEMENT CLAUSES | Settlement of Disputes |
| | 3.3.3 No referral of any dispute for a resolution process will relieve any party from any liability for the due and punctual performance of its responsibilities under the contract. |
| | 3.3.4 Notwithstanding anything other provisions a party shall be precluded from obtaining interim, interdictory or similar relief from a court of competent jurisdiction. |
| 4. PAYMENT | 4.1 The WCG will pay the service-provider for the services rendered or goods provided. 4.2 Notwithstanding the WCG's right to impose penalties, the WCG may also withhold payment in respect of services not rendered or goods not supplied in accordance with the contract with the supplier. |
| 5. INDEMNITY | The service-provider indemnifies the WCG against all and any claims which may arise, directly or indirectly, from the rendering of the services or supply of the goods by the supplier and where such claim was caused by the negligence, violation of law or breach of any contractually agreed terms or conditions by the service-provider, its employees, agents or representatives. |
| 6. CONFIDENTIALITY AND DISCLOSURE | 6.1 The supplier must treat all information and records furnished to it by the WCG, or arising from the execution of the contract, as confidential. The service-provider will not disclose this information to a third party without the WCG's prior written consent. 6.2 The WCG may only disclose records of the supplier, including the service-provider's bid response, to a third party in accordance with the provisions of the Promotion of Access to Information Act 2 of 2000. 6.3 The supplier will not, without the prior written consent of the WCG, cause any public statement to be made relating to the contract with the WCG. 6.4 This clause and its sub-clauses will survive termination of the contract between the parties unless otherwise agreed in writing. |
| 7. BREACH | 7.1 If a party commits a breach of any of the provisions of the contract the other party may notify the defaulting party of such breach by giving written notice, setting out the breach, and requesting the defaulting party to remedy the breach within, at least, seven calendar days. 7.2 In the event that the defaulting party fails to remedy a material breach to the satisfaction of the non-defaulting party, after notice was given in terms of clause 7.1 above, the non-defaulting party may, notwithstanding any other provision of the contract, or rights which the non-defaulting party may have in law, cancel the contract. 7.3 A repeated non-material breach of any of the terms and conditions of the contract, and of which notice was given in terms of clause 7.1 above, may also constitute a material breach. In such event the provisions of clause 7.2 above will apply <i>mutatis mutandis</i> . 7.4 Notwithstanding any other provision of the contract between the parties, the WCG may suspend the contract, or part thereof, without payment, with reasonable written notice to the service-provider, when there is an imminent and serious public safety or environmental risk caused by the rendering of the services. |

SPECIAL CONDITIONS OF BID

These Special Conditions of Contract are applicable to this bid by the Western Cape Government. Should there be a conflict between the provisions of these Special Conditions of Contract and those of the General Conditions of Contract, the provisions of these Special Conditions of Contract shall prevail.

8. WAIVER

- 8.1 No waiver of any of the terms and conditions of the contract will be binding unless agreed to in writing by the party waiving the right, and any such waiver will be limited to the specific instance and for the purpose given.
- 8.2 No failure or delay by either party in exercising any right, power or privilege precludes any other, or further, exercising thereof or the exercising of any other right, power or privilege.
- 8.3 No indulgence, leniency or extension of time which a party ("the Grantor") may grant or show the other party, will in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of the contract

DISPUTE RESOLUTION PROCESSES

MEDIATION

1. Any dispute arising out of or in connection with this contract may be referred by the parties, without legal representation, to a mediator.
2. The dispute shall be heard by the mediator at a place and time to be determined by him or her in consultation with the parties.
3. The mediator shall be selected by agreement between the parties.
4. If agreement cannot be reached upon a particular mediator within five calendar days after the parties have agreed to refer the matter to mediation, then the President for the time being of the Law Society of the Cape of Good Hope shall nominate the mediator within ten calendar days after the parties have failed to agree.
5. The mediator shall at his or her sole discretion determine whether the reference to him or her shall be made in the form of written or verbal representations, provided that in making this determination he or she shall consult with the parties and may be guided by their common reasonable desire of the form in which the said representations are to be made.
6. The parties shall have fourteen calendar days within which to finalise their representations. The mediator shall within fourteen calendar days of the receipt of the representations express in writing an opinion on the matter and furnish the parties each with a copy thereof by hand or by registered post.
7. The opinion so expressed by the mediator shall be final and binding upon the parties unless a party is unwilling to accept the opinion expressed by the mediator. In such event, the aggrieved party may institute legal proceedings in a court of competent jurisdiction, unless the parties agree to refer the dispute to arbitration. The expressed opinion of the mediator shall not prejudice the rights of either party in any manner whatsoever in the event of legal proceedings or arbitration, as the case may be.
8. The cost of mediation shall be determined by the mediator.
9. Liability for such cost shall be apportioned by the mediator and shall be due and payable to the mediator on presentation of his or her written account.

ARBITRATION

1. The Parties may agree to refer any dispute arising out of or in connection with this contract, to arbitration.
2. Arbitration shall be held in Cape Town in accordance with the provisions of the Arbitration Act, No. 42 of 1965, it being intended that, if possible, it shall be held and concluded within fourteen calendar days.
3. Save as otherwise specifically provided herein, the arbitrator shall be if the matter in dispute is:
 - (a) primarily a legal matter, a practising senior advocate of the Cape Bar;

- (b) any other matter, an independent and suitably qualified person as may be agreed upon between the parties to the dispute.
- 4. If agreement cannot be reached on whether the question in dispute falls under 3(a) or 3(b) above and/or upon a particular arbitrator within seven calendar days after the parties have agreed to refer the dispute to arbitration, then the Chairperson for the time being of the Cape Bar Council shall:
 - (a) determine whether the question in dispute falls under 3(a) or 3(b); and/or
 - (b) within seven calendar days after the parties have failed to agree, appoint an arbitrator from two arbitrators nominated by each party.
- 5. The arbitrator shall give his or her decision within fourteen calendar days after the completion of the arbitration. The arbitrator may determine that the costs of the arbitration be paid either by one or both parties and at such ratio as deemed appropriate by the arbitrator.
- 6. The decision of the arbitrator shall be final and binding and may be made an order of the Western Cape High Court, Cape Town, upon application by either party.

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
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6. Patent rights
7. Performance security
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20. Subcontracts
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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 Where, 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 (NIP) Programme

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.