



REQUEST FOR QUOTATIONS (RFQ)

RFQ NO: 037/2023/CSO/WEBSITE/RFQ

APPOINTMENT OF A SERVICE PROVIDER TO HOST AND MAINTAIN THE TCTA CORPORATE WEBSITE FOR 24 MONTHS

DESCRIPTION:	Appointment of a service provider to host and maintain the TCTA corporate website
DURATION:	24 months
PROPOSED BID PROCESS:	RFQ
DIVISION:	Strategy
UNIT:	Communication & Stakeholders
ISSUE DATE:	14 Dec 2023
CLOSING DATE:	12 Jan 2024 @ 11h00 a.m.
BID VALIDITY PERIOD:	30 Calendar Days from the closing date
ENQUIRIES:	tenders06@tcta.co.za
RFQ SUBMISSIONS:	tenders06@tcta.co.za

BACKGROUND

The TCTA website is an indispensable instrument in its external communication strategy, playing a pivotal role in the organisation's public relations, marketing and branding endeavours. As the principal platform through which external stakeholders interact with and obtain information about the organisation, the website serves not merely as an informational tool but indeed as TCTA's primary "salesperson".

In the financial year 2020/21, TCTA entered into a three-year agreement with a service provider, delegating the responsibilities of a comprehensive overhaul, hosting and consistent maintenance of the corporate website. This website was developed on the dependable WordPress Content Management System, ensuring both adaptability and efficient manageability. As this agreement is set to conclude on 18 February 2024, it will mark the end of the three-year collaboration.

Looking to the future, TCTA intends to engage with a new web services provider. Industry best practices often advocate for an extensive website redesign every five years and the last revamp was only three years ago. Therefore, the Communication and Stakeholders Department has determined that a full-scale revamp, akin to the scope of the preceding contract, is not requisite at this time. The forthcoming engagement will primarily focus on website hosting and routine

maintenance, ensuring that the platform remains contemporary, secure and reflective of the organisation's ongoing developments and objectives.

SCOPE OF WORK

DETAILED DESCRIPTION OF GOODS/SERVICES

The appointed service provider will:

- Providing reliable and secure web hosting services with 99.9% uptime.
- Regular updates to the website's software, plugins, and themes.
- Monthly website backups.
- Implementing cybersecurity measures.
- Monthly performance and analytics reports.
- Resolving website issues within a 24-hour response time.
- Website maintenance and support, including program updates, functionality enhancements, secure backups, major content updates, hosting, and monitoring.
- Social media integration
- Search Engine Optimisation

COMPANY EXPERIENCE REQUIRED

1. Bidders must have a minimum of three (3) projects/assignment in the website hosting and maintenance business. Proof in the form of signed reference/appointment letters (on clients letterheads) or SLAs must be submitted.
2. Bidders must have a minimum of three (3) projects in websites designed using WordPress: Proof in the form of signed reference/appointment letters (on client's letterheads) or SLAs must be submitted.

PERSONNEL EXPERIENCE REQUIRED

Post-matric diploma or degree equivalent to NQF 6 - 7

DELIVERABLES

Web Hosting Services: Assured 99.9% uptime.

Content Management System: A fully integrated CMS that allows TCTA to conduct routine content updates easily.

Website Software Maintenance: Regular updates to core website software, plugins, and themes.

Website Backups: Secure monthly backups and availability to TCTA upon request.

Cybersecurity Implementation: Measures to guard against cyber threats, including periodic security audits.

Performance and Analytics Reports: Insights on website performance and user metrics.

Issue Resolution: Timely resolution within 24 hours.

SEO and Analytics: Continued SEO initiatives and detailed traffic analytics.

Content Updates & Support: Besides the CMS, the service provider will provide regular content revisions and functionality improvements, especially for more complex changes.

Handover Documentation: Comprehensive document detailing the website for future maintenance.

Training: If applicable, training sessions for TCTA staff on website updates, best practices, and handling minor issues.

RETURNABLES	
MANDATORY	NON-MANDATORY
<p>Company Experience:</p> <p>1.1.: <u>Website hosting and maintenance business</u></p> <p>A bidder must have a minimum of three (3) projects/assignment in the <u>website hosting and maintenance business</u>. Proof in the form of signed reference/appointment letters (on client's letterheads) or SLAs must be submitted.</p> <p>1.2.: <u>Websites designed using WordPress</u></p> <p>A bidder must have a minimum of three (3) projects in <u>websites designed using WordPress</u>. Proof in the form of signed reference/appointment letters (on client's letterheads) or SLAs must be submitted.</p>	<p>BBBEE Certificate issued by Verification Agency accredited by SANAS, or BBBEE Sworn Affidavit for EME and QSE.</p> <p>No points will be awarded if the bidders' Sworn Affidavit does not comply with the requirements outlined in ANNEXURE D.</p>
Fully Completed Annexure B (Part 1 & 2) – Company Experience	Standard Bidding Documents (SBD 1, SBD 4 & SBD 6.1)
<u>Personnel Experience: Qualification(certification must be submitted)</u>	
<u>Post-matric diploma or degree equivalent to NQF 6 - 7</u>	
Fully Completed Annexure A – RFQ Pricing Schedule	Tax Status Compliance Pin
Fully Completed Annexure C – Non-Disclosure Agreement	

Any bidder who fails to submit a non-mandatory document will receive zero points where that document is linked to specific functionality criteria. Any bidder who fails to submit a mandatory document will be disqualified at this stage and not evaluated further.

PROPOSED FUNCTIONALITY CRITERIA

Criteria	Points
COMPANY EXPERIENCE (NB: Attach completion certificates/reference/appointment letters/purchase orders and website links)	20
<u>Number of completed Website Hosting and maintenance projects/assignments:</u> 3 – projects = 5 points 4 – 6 projects = 10 points	20

	7 – 9 projects = 15 points >10 projects = 20 points	
	<u>Number of websites designed using WordPress:</u> 3 – projects = 5 points 4 – 6 projects = 10 points 7 – 9 projects = 15 points >10 projects = 20 points	20
	<u>Post matric qualifications:</u> Diploma or equivalent to NQF 6 = 5 points Degree or equivalent to NQF 7 = 10 points	10
	Total	50

Prospective Bidders will have to attain a minimum score of 30 (thirty) points out of 50 (fifty) points to proceed to the next stage of the evaluation process where bids will be evaluated in terms of Price and Preference point system.

SPECIFIC GOALS

1 B-BBEE: All B-BBEE certificates must be obtained from verification agencies accredited by SANAS unless the bidder is an EME or QSE in which case a valid Sworn Affidavit for the specific sector must be submitted.

The following table will be used to calculate the score out of 20 for BBBEE:

1.1.1. B-BBEE Status Level of Contributor Number of Points for bids evaluated using 80/20.

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

NB: B-BBEE certificate/Sworn affidavit must be compliant to claim specific goals. Any bidder who fails to meet the specific goals will not be disqualified from the process and will score 0 for specific goals.

ANNEXURE A: PRICING SCHEDULE WEB HOSTING AND MAINTENANCE QUOTATION

ANNEXURE A

Description	Qty (months)	Unit Price	Amount
Secure Web Hosting	24		
Website Software Updates & Backups	24		
Performance & Analytics Reports	24		
Content Management Support	24		
SEO & Analytics	24		
Total			
Vat 15%			
Total including VAT			

ANNEXURES ATTACHMENTS

A	RFQ PRICING SCHEDULE
B	COMPANY EXPERIENCE
C	TCTA NDA AGREEMENT
D	AFFIDAVIT REQUIREMENTS FOR EME AND QSE
E	SBD 4 – BIDDERS DISCLOSURE

ANNEXURE B: PART 1 OF 2: FOR COMPANY EXPERIENCE: NUMBER OF COMPLETED WEBSITE HOSTING AND MAINTENANCE

PROJECTS/ASSIGNMENTS:

:

NUMBER OF COMPLETED WEBSITE HOSTING AND MAINTENANCE PROJECTS/ASSIGNMENTS:						
Experience in hosting and maintenance of corporate website. (Indicate total number of projects/assignments in hosting and maintenance of corporate website)						
		Work Experience (indicate the months and years)				
EMPLOYER/CLIENT	PROJECTS WORK SCOPE	Start Date (month & year) dd/mm/yyyy	End Date (month & year) dd/mm/yyyy	NAME & SURNAME OF CONTACT PERSON	DESIGNATION OF CONTACT PERSON	CONTACT DETAILS (email & Telephone number)
1.						
2.						
3.						
4.						
5.						

SIGNATURE: NAME OF BIDDER: (of person authorised to sign on behalf of the

**ANNEXURE B: PART 2 OF 2: FOR COMPANY EXPERIENCE: NUMBER OF COMPLETED WEBSITES DESIGNED USING WORDPRESS
PROJECTS/ASSIGNMENTS:**

NUMBER OF WEBSITES DESIGNED USING WORDPRESS:						
Experience in hosting and maintenance of corporate website. (Indicate total Number of websites designed using WordPress)						
EMPLOYER/CLIENT	PROJECTS WORK SCOPE	Work Experience (indicate the months and years)		NAME & SURNAME OF CONTACT PERSON	DESIGNATION OF CONTACT PERSON	CONTACT DETAILS (email & Telephone number)
		Start Date (month & year) dd/mm/yyyy	End Date (month & year) dd/mm/yyyy			
6.						
7.						
8.						
9.						
10.						

SIGNATURE: NAME OF BIDDER: (of person authorised to sign on behalf of the Bidder)



ANNEXURE C: CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Between

TRANS-CALEDON TUNNEL AUTHORITY

and

(Insert full name of the Bidder)

1. DEFINITIONS AND INTERPRETATION

In this Agreement, unless inconsistent with or otherwise indicated by the context:

- 1.1 the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
 - 1.1.1 "**Agreement**" means the confidentiality and non-disclosure agreement as set out herein;
 - 1.1.2 "**Affiliates**" means, in relation to any person, all subsidiaries, the holding company and all other subsidiaries of the holding company of such person, together with any company, not being a subsidiary, in which that person directly or indirectly has a significant shareholding percentage;
 - 1.1.3 "**Confidential Information**" means, without limiting the generality of the term, any of the following:
 - 1.1.3.1 technical, scientific, commercial, financial or market information, customer lists, know-how or trade secrets;
 - 1.1.3.2 data concerning business relationships, samples, devices, demonstrations, processes or machinery;
 - 1.1.3.3 details of the Disclosing Party's clients and prospects such as customers, marketing campaigns, usage rates and benefits; and
 - 1.1.3.4 all the other information in whatever form, whether or not subject to or protected by law or statutory laws relating to copyright, patent, trademarks, registered or otherwise disclosed or communicated to the Receiving Party or acquired by the Receiving Party from the Disclosing Party pursuant to this Agreement;
 - 1.1.4 "**Disclosing Party**" means TCTA;
 - 1.1.5 "**Parties**" means the parties to this Agreement and "**Party**" means either of them as the context may require; and
 - 1.1.6 "**Permitted Purpose**" means the purpose for which the Confidential Information has been disclosed, being the consideration,
 - 1.1.7 "**Project**" means Service to be provided in conducting A VAPT (Vulnerability Assessment & Penetration Testing) Exercise

- 1.1.8 **“Receiving Party”** means, The Bidder and its duly authorised nominees receiving Confidential Information from the Disclosing Party; and
- 1.1.9 **“TCTA”** means Trans-Caledon Tunnel Authority, established by Notice No. 2631 published in the Government Gazette No. 10545 dated 12 December 1986, as amended by Notice No. 277 published in the Government Gazette No. 21017 dated 24 March 2000, a major public entity listed as such in Schedule 2 of the Public Finance Management Act No 1 of 1999, as amended, in accordance with the laws of South Africa.

In this Agreement:

- 1.2 the Clause headings are for convenience and shall be disregarded in construing this Agreement;
- 1.3 unless the context indicates a contrary intention, the singular shall include plural and *vice versa*;
- 1.4 a natural person includes an artificial or juristic person and *vice versa*;

2. INTRODUCTION

- 2.1 TCTA wishes to engage bidders for selection to conduct a vulnerability assessment and subsequent Penetration testing services on the Internal & External TCTA environment to provide due-diligence and ensure compliance with statutory requirements.
- 2.2 For the above purpose, information of a secret and confidential nature will be disclosed (granting of access to TCTA Information and Data) by TCTA and as such, the Parties wish to record the terms and conditions upon which they are prepared to disclose such information.
- 2.3 TCTA has agreed to disclose certain Confidential Information to the Receiving Party, for the Permitted Purpose only, subject to the Receiving Party providing TCTA with an undertaking to maintain the confidentiality of the Confidential Information, on the terms and conditions set out in this Agreement.

3. RESTRICTIONS ON DISCLOSURE AND USE OF INFORMATION

- 3.1 The Receiving Party may disclose the Confidential Information only:
 - 3.1.1 to its partners, directors, officers, employees, agents, sub-contractors, affiliates and professional advisors and then only to such partners, directors, officers, employees, agents, sub-contractors, affiliates and professional advisors to whom such access is reasonably necessary, provided that such partners, directors, officers, employees, agents, sub-contractors and affiliates agree to be bound by the terms and conditions of this Agreement. For the purposes hereof, the parties' affiliates shall be deemed to include any entity (whether or not incorporated) which carries on business, whether in South Africa or elsewhere, under a name which includes all or part of the parties' name or is otherwise within (or associated or connected with an entity within), or is a correspondent firm of, the worldwide network of the parties' firms;
 - 3.1.2 in relation to any claim or possible claim in connection with this Agreement, to its insurers and legal advisers, provided that such insurers and legal advisers agree to be bound by the terms and conditions of this Agreement.
- 3.2 The Receiving Party agrees:
 - 3.2.1 not to disclose the Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party, save in accordance with the provisions of this Agreement;

- 3.2.2 not to utilise, employ, or exploit or in any other manner whatsoever use the Confidential Information disclosed pursuant to the provisions of this Agreement for any purpose whatsoever other than for purposes of this Agreement without the prior written consent of the Disclosing Party; and
- 3.2.3 that the unauthorised disclosure of the Confidential Information to a third party may cause irreparable loss, harm and damage to the Disclosing Party. Accordingly, the Disclosing Party holds the Receiving Party liable against any direct financial loss, action, expense, claim, harm or damage, of whatever nature, suffered or sustained by the Disclosing Party pursuant to a proven breach by the Receiving Party of the provisions of this Agreement.

3.3 Unless the Parties agree in writing, any documentation or records relating to the Disclosing Party's Confidential Information which comes into the possession of the Receiving Party from the Disclosing Party during the existence of this Agreement or any time thereafter:

- 3.3.1 shall be deemed to form part of the Confidential Information of the Disclosing Party;
- 3.3.2 shall be deemed to be the property of the Disclosing Party;
- 3.3.3 shall not be copied, reproduced, published or circulated by the Receiving Party; and
- 3.3.4 shall be surrendered to the Disclosing Party on written request, and in any event on the termination of this Agreement.

3.4 The Receiving Party shall procure that any of its associates, employees, professional advisors, agents, consultants or other parties who may have the opportunity of receiving or having any access to any of the Confidential Information of the Disclosing Party are aware of and are bound by this Agreement. The Receiving Party agrees to use its best endeavours to procure that such associates, employees, professional advisors, agents, consultants and persons will be bound by this Agreement even after their relationship with the Receiving Party has been terminated.

4. TITLE AND DURATION

- 4.1 All Confidential Information disclosed by the Disclosing Party to the Receiving Party is acknowledged by the Receiving Party:
 - 4.1.1 To be proprietary to the Disclosing Party; and

- 4.1.2 Not to confer any rights of whatever nature in such Confidential Information to the Receiving Party.
- 4.2 This Agreement shall remain in force until the assessment is completed.

5. **STANDARD OF CARE**

- 5.1 The Receiving Party agrees to protect the Confidential Information using the same standard of care used to safeguard its own information of a confidential nature and that the Confidential Information shall be stored and handled in such a way as to prevent any unauthorised disclosure thereof.

6. **PERMITTED DISCLOSURES**

- 6.1 The Receiving Party shall, subject to the provisions of clause 6.4, be entitled to disclose the Confidential Information to permitted recipients, as per clause 3.1.1, but only to the extent that such disclosure is necessary for the Permitted Purpose and exclusively on a “need to know” basis.
- 6.2 The Receiving Party shall inform all permitted recipients of, and take all reasonable steps to impress upon them, the secret and confidential nature of the Confidential Information and the Receiving Party’s obligations under this Agreement.
- 6.3 The Receiving Party shall be responsible for procuring that the permitted disclosures abide by the confidentiality undertakings given to TCTA by the Receiving Party in this Agreement. The Receiving Party shall be responsible and liable for any breach of the terms of this Agreement by any permitted recipients.
- 6.4 The Receiving Party shall, prior to disclosing the Confidential Information to any of its attorneys, accountants, insurers, funders or other advisors, and without detracting from the Receiving Party’s other obligations in terms of this Agreement, procure that the relevant attorneys, accountants, insurers, funders or other advisors give a written undertaking in favour of TCTA in regard to the Confidential Information, per Annexure 1 attached,

7. **EXCLUDED INFORMATION**

- 7.1 The obligations of the Receiving Party pursuant to the provisions of this Agreement shall not apply to any information that:
 - 7.1.1 is known to or in possession of the Receiving Party prior to disclosure thereof by TCTA;

- 7.1.2 is or becomes publicly known, otherwise than pursuant to breach of this Agreement by the Receiving Party;
- 7.1.3 is acquired independently of TCTA by the Receiving Party in circumstances that do not amount to a breach of the provisions of this Agreement;
- 7.1.4 is disclosed by the Receiving Party to satisfy the order of a court of competent jurisdiction or to comply with the provision of any law or regulation in force from time to time or to comply with any rule or directive of a governmental or regulatory authority, or a professional body to which the Receiving Party (or its affiliates or their respective members), its members or employees belong; provided that in these circumstances, the Receiving Party shall advise TCTA if possible and if permitted by law to take whatever prior actions to limit such disclosure to enable TCTA to take whatever steps it deems necessary to protect its interest in this regard; provided further that the Receiving Party will disclose only that portion of the information which it is legally required to disclose and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
- 7.1.5 is disclosed to a third party pursuant to the prior written authorisation of TCTA; and / or
- 7.1.6 is received by the Receiving Party in good faith from a third party in circumstances that do not amount to a breach of the provisions of this Agreement or to a breach by the third party or any undertaking it may have made to a Party to this Agreement in relation to such Confidential Information; and/or
- 7.1.7 is or has been independently developed by the Receiving Party.

8. FORCED DISCLOSURE

- 8.1 In the event that the Receiving Party is required to disclose Confidential Information pursuant to a requirement or request by operation of law, regulation or court order, it will, to the extent that it is legally entitled to do so:
 - 8.1.1 advise TCTA thereof in writing prior to disclosure, if possible and if permitted by law;
 - 8.1.2 on written request from TCTA and at the cost of TCTA, take such steps to limit the disclosure to the minimum extent required to satisfy such requirement and to the extent that it lawfully and reasonably can;

- 8.1.3 afford TCTA a reasonable opportunity, if possible and if permitted by law, to intervene in the proceedings;
- 8.1.4 comply with TCTA's reasonable requests as to the manner and terms of any such disclosure; and
- 8.1.5 notify TCTA of the receipt of, and the form and extent of, any such disclosure or announcement immediately after it is made if possible and if permitted by law.

9. NON-CIRCUMVENTION

- 9.1 The Receiving Party hereby furthermore declares that the Receiving Party will never use the Confidential Information as mentioned above for any commercial purposes and shall not directly or indirectly circumvent the terms or spirit of this Agreement in an effort to gain commercial advantage in any shape or form that benefit the Receiving Party (directly or indirectly) save as agreed in writing with TCTA.

10. RETURN OF CONFIDENTIAL INFORMATION

- 10.1 The Receiving Party shall, at its own expense, within 5 (five) business days of termination of discussions concerning the Permitted Purpose, and in any event within 5 (five) business days of written demand from TCTA:
 - 10.1.1 return or destroy, and procure the return or destruction of all Confidential Information and all copies of it (whether in paper, electronic or other format) held by the Receiving Party or by a Permitted Disclosee without keeping any copies or partial copies thereof;
 - 10.1.2 destroy, and procure the destruction of all analyses, compilations, notes, studies, memoranda or other documents prepared by the Receiving Party or by any Permitted Disclosee which contain or otherwise reflect or are generated from the Confidential Information;
 - 10.1.3 delete or procure the deletion of all Confidential Information from any computer, word processor or other device in the possession or control of the Receiving Party or any Permitted Disclosee; and
 - 10.1.4 confirm in writing to TCTA that the Receiving Party and to the best of the Receiving Party's knowledge, information and belief having made all reasonable enquiries all Permitted Disclosees have complied with the provisions of clause 10.1.

10.2 It is expressly recorded that the provisions of clause 10.1 shall not in any way release the Receiving Party from its obligations under this Agreement, and that notwithstanding the termination of this Agreement for whatsoever reason, the obligations to maintain the secrecy and confidentiality of the Confidential Information shall endure for so long as set out in clause 4.

11. NO WARRANTY OR OFFER

11.1 Unless otherwise specifically stated in writing, TCTA:

11.1.1 does not give or make any warranty, representation or undertaking, express or

11.1.2 implied, as to the accuracy or completeness of any of the Confidential Information or

11.1.3 other information received by the Receiving Party or its Permitted Disclosees or as to the reasonableness of any assumptions on which any of the same is based;

11.1.4 does not accept any responsibility or liability for the use of the Confidential Information by the Receiving Party or its Permitted Disclosees; and

11.1.5 is under no obligation to update or correct any inaccuracies which may become apparent in any of the Confidential Information.

11.2 No Confidential Information or other information, communication or document made available to or supplied to the Receiving Party by TCTA and/or its Affiliates shall constitute an offer or invitation to the Receiving Party, nor will any such information, communication or document form the basis of any contract.

12. GOVERNING LAW AND JURISDICTION

12.1 This Agreement shall be governed and construed in accordance with the laws of the Republic of South Africa.

12.2 The Receiving Party agrees to submit to the non-exclusive jurisdiction of the courts of the Republic of South Africa.

13. BREACH

13.1 Without prejudice to the other rights of TCTA, in the event of any unauthorised disclosure or use of the Confidential Information which is or is reasonably likely to constitute a breach of any provision of this Agreement, the Receiving Party shall, at the sole cost of the Receiving Party:

- 13.1.1 immediately notify TCTA in writing and take such steps as TCTA may reasonably require in order to remedy or mitigate the effects of such actual or threatened breach; and
- 13.1.2 use all reasonable commercial endeavours to assist TCTA in recovering and preventing the use, dissemination, sale or other disposal of such Confidential Information.

13.2 The Parties acknowledge and agree that:

- 13.2.1 cancellation is not an appropriate remedy for breach of this Agreement and this Agreement may not be cancelled or terminated save by written agreement between the Parties; and
- 13.2.2 damages alone may not be an adequate remedy for any breach of the obligations set out in this Agreement and that the remedies of interdict, specific performance and any other equitable relief are appropriate for any threatened or actual breach of this Agreement. TCTA and/or its Affiliates will be entitled to apply for such remedy, in addition to any other remedy to which it may be entitled in law (other than the remedy of cancellation).

13.3 Without prejudice to clause 13.2, the Receiving Party accepts full liability for the maintenance of the confidentiality of the Confidential Information and hereby unconditionally and irrevocably holds TCTA and each of its Affiliates harmless against any and all loss, action, expense, claim, harm or damages of whatsoever nature suffered or sustained by TCTA and/or its Affiliates pursuant to:

- 13.3.1 a breach by the Receiving Party of the provisions of this Agreement; and
- 13.3.2 any Permitted Disclosing party failing to keep the Confidential Information confidential.

13.4 Should any unauthorised disclosure of Confidential Information take place in breach of the provisions of this Agreement, TCTA shall, in addition to the foregoing, be entitled by written notice to the Receiving Party to terminate all obligations to provide information to the Receiving Party with immediate effect and no further information will be disclosed to the Receiving Party in terms of this Agreement.

14. **BENEFIT**

- 14.1 The undertakings given by the Receiving Party in this Agreement shall be for the benefit of and may be enforced by TCTA and its Affiliates. The undertakings shall be deemed

to have been imposed as a *stipulatio alteri* for the benefit of any Affiliate of TCTA and such benefit may be accepted by any such person at any time.

15. NOTICES AND DOMICILIA

15.1 The Parties select as their respective *domicilia citandi et executandi* the following addresses, for the purposes of giving or sending any notice provided for or required under this Agreement:

15.2 TCTA:

Physical address: 1st Floor, Building No. 9,
Byls Bridge Office Park
11 Byls Bridge Boulevard
Cnr Olievenhoutbosch Road and Jean Avenue
Highveld Extension 73
Centurion
South Africa

Email:

Email address:

15.3 THE BIDDER

(Kindly insert details)

Physical address:

Tel number:

Fax number:

Email address:

Attention:

15.4 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by email, provided that that no non-delivery or “out of office” response to the email is received.

15.5 Any Party may by notice to any other Party change its physical or its postal address or its email address, provided that the change shall become effective vis-à-vis that addressee on the 10th (tenth) business day from the receipt of the notice by the addressee.

15.6 Any notice to a Party:

- 15.6.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its domicilium citandi et executandi to which post is delivered shall be deemed to have been received on the 10th (tenth) business day after posting (unless the contrary is proved);
- 15.6.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
- 15.6.3 sent by email to its chosen email address stipulated above, shall, provided that no non-delivery or “out of office” response to the email is received, be deemed to have been received on the business day following the date of transmission (unless the contrary is proved); or
- 15.6.4 sent by courier in a correctly addressed envelope to the physical address stipulated above, shall be deemed to have been received on the 5th (fifth) business day after delivery to the courier.

15.7 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding.

16. GENERAL

- 16.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 16.2 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 16.3 No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with

each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or

16.4 TCTA is not obligated to enter into any commercial or other agreements with the Receiving Party that result or may result from this Agreement or any other agreement.

16.5 Each provision of this Agreement is severable from the other provisions. Should any provision be found by a Court of competent jurisdiction to be invalid or unenforceable for any reason, the parties will consult with one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of this Agreement. The remaining provisions of this Agreement shall nevertheless remain binding and continue with full force and effect.

16.6 No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

16.7 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

16.8 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

Signed at _____ this _____ day of _____ 2023

**For and on behalf of:
TRANS-CALEDON TUNNEL AUTHORITY**

Name:
Capacity:
who warrants that he / she is duly authorised
thereto

Signed at _____ this _____ day of _____ 2023

**For and on behalf of:
THE BIDDER**

Name:
Capacity:
who warrants that he / she is duly authorised
thereto

CONFIDENTIAL UNDERTAKING FOR THE BENEFIT OF TRANS-CALEDON TUNNEL AUTHORITY

Address:

Att:

Date.....

Dear Sir

CONFIDENTIALITY AGREEMENT

We refer to the confidentiality agreement ("CA") concluded between the Receiving Party and Trans-Caledon Tunnel Authority ("TCTA") on or about [*insert date of CA*].

Words and expressions defined in the CA will have the same meanings where used in this letter.

We act as [*insert capacity r*] to [*insert name of bidder*] ("Receiving Party") in relation to the Permitted Purpose.

We confirm that we:

1. have read and fully understand and are familiar with the terms and conditions of the CA; and
2. are aware that pursuant to the implementation of the CA, we have gained access and/or will gain access to Confidential Information pertaining to TCTA and/or its Affiliates.

We hereby irrevocably undertake, for purposes of clause 6.4 of the CA, to be bound, *mutatis mutandis*, by the terms and conditions of the CA as if each reference in the CA to the Receiving Party were a reference to us. Our address for the purpose of clause 16 of the CA are as follows:

Address:

fax number:

for attention of :

This letter has been executed on the date stated above and shall be governed by and construed in accordance with the laws of the Republic of South Africa.

Yours faithfully

[*insert name and capacity*]

Accepted this _____ day of _____ 20_____

TRANS-CALEDON TUNNEL AUTHORITY

ANNEXURE D : AFFIDAVIT REQUIREMENT FOR EME AND QSE

The following information is required:-

- 1. Name/s of deponent as they appear in the identity document and the identity number;**
- 2. Designation of the deponent as either the director, owner or member must be indicated in order to know that person is duly authorised to depose of an affidavit;**
- 3. Name of enterprise as per enterprise registration documents issued by the CIPC, where applicable, and enterprise business address.;**
- 4. Percentage of black ownership, black female ownership and designated group. In the case of specialised enterprises as per Statement 004, the percentage of black beneficiaries must be reflected;**
- 5. Indicate total revenue for the latest financial year and whether it is based on audited financial statements or management accounts;**
- 6. Full financial year end as per the enterprise's registration documents, which was used to determine the total revenue. Example 28 February 2022;**
- 7. B-BBEE Status level. An enterprise can only have one status level;**
- 8. Nature of business;**
- 9. VAT Number;**
- 10. Date deponent signed and date of Commissioner of Oath must be the same;**
- 11. Commissioner of Oath cannot be an employee or ex officio of the enterprise because, a person cannot by law, commission a sworn affidavit in which they have an interest; Correct Sector Codes Affidavit to be used**

BIDDER'S DISCLOSURE**1. PURPOSE OF THE FORM**

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

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

2. Bidder's declaration

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

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

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....

.....

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

2.3.1 If so, furnish particulars:

.....

.....

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

3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

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

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1. Definitions

The following terms shall be interpreted as indicated:

- 1.1 **“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.
- 1.2 **“Contract price”** means the price payable to the supplier under the contract for the full and proper performance of the supplier’s contractual obligations.
- 1.3 **“Corrupt practice”** means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.4 **“Countervailing duties”** are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.5 **“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.
- 1.6 **“Day”** means calendar day.
- 1.7 **“Delivery”** means delivery in compliance of the conditions of the contract or purchase order.
- 1.8 **“Delivery ex stock”** means immediate delivery directly from stock actually on hand.
- 1.9 **“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 purchase order, the supplier bearing all risks and charges involved until the supplies or goods are so delivered and a valid receipt is obtained.
- 1.10 **“Dumping”** occurs when a private enterprise abroad market its goods on own initiative in the Republic at lower prices than that of the country of origin and which have the potential to harm the local industries in the Republic.
- 1.11 **“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.
- 1.12 **“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.

1.13 “**GCC**” means the General Conditions of Contract.

1.14 “**Goods**” means all of the equipment, machinery, and/or other materials other than services that the supplier is required to supply to the purchaser under the contract or purchase order.

1.15 “**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.

1.16 “**Local content**” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.17 “**Manufacture**” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.18 “**Purchase Order**” means an official written order issued for the supply of goods or works or the rendering of a service.

1.19 “**Project site**,” where applicable, means the place indicated in bidding documents, contract or purchase, where the goods or services will be delivered or rendered.

1.20 “**Purchaser**” means the organization purchasing the goods or services, and in this instance means Trans-Caledon Tunnel Authority (“TCTA”).

1.21 “**Republic**” means the Republic of South Africa.

1.22 “**SCC**” means the Special Conditions of Contract.

1.23 “**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.

1.24 “**Supplier**” means the successful bidder who is awarded the contract to maintain and administer the required and specified services and supply the required and specified goods.

1.25 “**Tort**” means in breach of contract.

1.26 “**Turnkey**” means a procurement process where one supplier assumes total responsibility for all aspects of the project and delivers the full end product / service required under the contract.

1.27 “**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 purchase 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. Standards

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

4. Use of contract documents and information; inspection.

- 4.1. 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.
- 4.2. 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.
- 4.3. 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.
- 4.4. 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.

5. Patent rights

- 5.1. 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.

6. Performance security

- 6.1. Within thirty (30) days of receipt of the notification of contract award the successful bidder shall, where applicable, furnish to the purchaser the performance security of the amount specified in SCC.
- 6.2. 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 as set out in the contract.
- 6.3. 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.
- 6.4. 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 as set out in the contract, including any warranty obligations, unless otherwise specified in SCC.

7. Inspections, tests and analyses

- 7.1. All pre-bidding testing will be for the account of the bidder.
- 7.2. 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 purchaser.
- 7.3. 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.
- 7.4. 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.
- 7.5. 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.

- 7.6. 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.
- 7.7. 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.
- 7.8. 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.

8. Packing

- 8.1. 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.
- 8.2. 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.

9. Delivery and documents

- 9.1. 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.
- 9.2. Documents to be submitted by the supplier are specified in SCC.

10. Insurance

10.1. The goods supplied under the contract shall, where applicable, 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.

11. Transportation

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

12. Incidental services

12.1. The supplier may, where applicable, 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.

12.2. 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.

13. Spare parts

13.1. 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
- (c) 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.

14. Warranty

- 14.1. 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.
- 14.2. 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.
- 14.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 14.4. 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.
- 14.5. 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.

15. Payment

- 15.1. The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 15.2. 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.
- 15.3. 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.
- 15.4. Payment will be made in Rand unless otherwise stipulated in SCC.

16. Prices

16.1. 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.

17. Contract amendments

17.1. No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

18. Assignment

18.1. The supplier shall not assign to any person, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

19. Subcontracts

19.1. 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 be in accordance with regulation 12 Preferential Procurement Regulations, 2017, and not relieve the supplier from any liability or obligation under the contract.

20. Delays in the supplier's performance

- 20.1. 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.
- 20.2. 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.
- 20.3. 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.
- 20.4. 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 22.2 without the application of penalties.

20.5. 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.

21. Penalties

21.1. 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.

22. Termination for default

22.1. 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.

22.2. 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. Anti-dumping and countervailing duties and rights

23.1. When, after the date of bid, provisional payments are required, or antidumping 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 purchaser 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 supplier to the purchaser or the latter may deduct such amounts from moneys (if any) which may otherwise be due to the supplier 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.

24. Force Majeure

- 24.1. 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.
- 24.2. 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.

25. Termination for insolvency

25.1. 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.

26. Settlement of Disputes

- 26.1. 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.

- 26.2. 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.
- 26.3. Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 26.4. Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 26.5. 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 for goods delivered and /or services rendered according to the prescripts of the contract.

27. Limitation of liability

- 27.1. 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.

28. Governing language

- 28.1. 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.

29. Applicable law

- 29.1. The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

30. Notices

- 30.1. Every written acceptance of a bid shall be posted or communicated to the supplier concerned by registered or certified mail or electronic mail and any other notice to him shall be posted

by ordinary mail or electronic 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.

30.2. 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.

31. Taxes and duties

- 31.1. A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 31.2. A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 31.3. No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the purchaser must verify that the tax matters of the successful bidder are in order. The successful bidder must submit the tax compliance status pin or the Central Supplier Database Master Registration Number which the purchaser will use to confirm the tax status of the successful bidder.

32. Transfer of contracts

33.1 The supplier shall not abandon, transfer, cede, assign or sublet a contract or part thereof without the written permission of the purchaser.

33. Amendment of contracts

34.1 No agreement to amend or vary a contract or purchaser order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

34. Prohibition of restricted practices

- 35.1 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 supplier(s) was /were in collusive bidding.
- 35.2 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 Competitive Commission for investigation and possible imposition of administrative penalties as contemplated in section 59 of the Competition Act No. 89 of 1998.

35.3 If a bidder(s) or supplier(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 items(s) offered, and / or terminate the contract in whole or part, and /or restrict the bidder(s) or supplier(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 supplier(s) concerned.