

TENDER NO: RFP 28/12/2023

A PANEL OF LEGAL PRACTITIONERS FOR PROVISION OF LEGAL SERVICES FOR A PERIOD OF 36 MONTHS

ISSUED BY:

Department of Infrastructure Development
Chief Directorate Supply Chain Management
Private Bag X 83
Marshalltown
2107

NAME OF TENDERING ENTITY:

INVITATION TO TENDER

Short description of requirements:	A Panel of Legal Practitioners for provision of legal services for a period of 36 months
Tender number:	RFP28/12/2023
Tender documents available from: 01 December 2023	Tender documents can be downloaded from: E-Tender portal on the below link: http://e-tenders.treasury.gov.za http://e-tenders.gauteng.gov.za
Price of tender documents:	Bid documents must be downloaded and printed on the e-Tender portal at bidders' cost
Closing date:	19 JANUARY 2024
Tender Validity	Calendar 180 days
Address for submission of tenders:	Department of Infrastructure Development (GDID Tender Box) Corner House Building, Corner Commissioner and Pixley Ka Isaka Seme (Sauer Street) Marshalltown Johannesburg
Evaluation Steps:	<div>1) Mandatory Compliance Requirements</div> <div>2) Other Admin Compliance Requirements Applicable to this Procurement</div> <div>3) Functionality Evaluation Criteria</div> <div>4) Specific Goals</div>
Compulsory pre-bid meeting/site meeting:	MEETING ADDRESS: Lower ground Auditorium Department of Infrastructure Development Corner House Building, Corner Commissioner and Pixley Ka Isaka Seme (Sauer Street) Marshalltown, Johannesburg DATE OF MEETING: 11 DECEMBER 2023 TIME: 10h00 am
Mandatory Compliance Requirements	Failure to submit / meet or comply with the following requirements outlined in Section 1 automatically constitutes disqualification of tender offer.
Other Administrative Requirements	The returnable documents applicable to Section 2 of the Terms of reference must be fully completed and submitted.
Functionality Evaluation	Functionality evaluation will be conducted in accordance with Section 9 of the Terms of Reference.

Specific Goals	Specific goals will be conducted in accordance with <u>Section 10</u> of the Terms of Reference.
Enquiries Technical:	Project Manager: Thobeng Mongale Email Address: Thobeng.mongale@gauteng.gov.za
Enquiries general:	SCM: Millicent Chauke Email Address: millicent.chauke@gauteng.gov.za

Note to tenderers:
All successful service provider will be subject to signing Service Level Agreement (SLA) and standard Rates as prescribed by the department and the Preferential Procurement Policy Framework Act no 5 of 2000 and its Regulations of 2022.

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (GAUTENG DEPARTMENT OF INFRASTRUCTURE)

BID NUMBER:	RFP28/12/2023	CLOSING DATE:	19 JANUARY 2024	CLOSING TIME:	11:00 AM
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DESCRIPTION	A Panel of Legal Practitioners for provision of legal services for a period of 36 months
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BID RESPONSE DOCUMENTS MAY BE DEPOSITED
IN THE BID BOX SITUATED AT (STREET ADDRESS)

Corner House Building

63 Commissioner Street

Johannesburg

2001

SUPPLIER INFORMATION

NAME OF BIDDER					
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POSTAL ADDRESS					
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STREET ADDRESS					
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TELEPHONE NUMBER	CODE		NUMBER		
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CELLPHONE NUMBER					
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FACSIMILE NUMBER	CODE		NUMBER		
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E-MAIL ADDRESS					
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VAT REGISTRATION NUMBER					
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	TCS PIN:		OR	CSD No:	
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B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No	B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No
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<u>ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</u>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	<u>ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</u>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW]
<u>SIGNATURE OF BIDDER</u>	<u>DATE</u>		
<u>CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)</u>			
<u>TOTAL NUMBER OF ITEMS OFFERED</u>		<u>TOTAL BID PRICE (ALL INCLUSIVE)</u>	
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT/ PUBLIC ENTITY	Department of Infrastructure Development	CONTACT PERSON	Thobeng Mongale
CONTACT PERSON	Millicent Chauke	TELEPHONE NUMBER	N/A
TELEPHONE NUMBER	N/A	FACSIMILE NUMBER	N/A
FACSIMILE NUMBER	N/A	E-MAIL ADDRESS	
E-MAIL ADDRESS	millicent.chauke@gauteng.gov.za thobeng.Mongale@gauteng.gov.za		

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR ONLINE
- 1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
- 1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. ORIGINAL B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
- 1.5. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS PINS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL DATABASE (CSD) A CSD NUMBER MUST BE PROVIDED

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? ☐
YES ☐ NO
- 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?
- 3.3. ☐ YES ☐ NO
- 3.4. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? ☐
YES ☐ NO
- 3.5. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? ☐
YES ☐ NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

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

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.

TENDER NO: RFP28/12/2023

SPECIFICATION

A Panel of Legal Practitioners for provision of legal services for a period of 36 months

TERMS OF REFERENCE (BID SPECIFICATIONS)

1. PURPOSE

- 1.1 The Department of Infrastructure Development (DID) would like to invite suitable, qualified and competent Legal Practitioners to send proposals to be considered for inclusion on its panel of Legal Practitioners, as 'preferred service providers'. Preferred service providers imply that the selected firms are a pool, not necessarily the only contracted service provider.
- 1.2 The panel of Legal Practitioners will be required to provide legal services to DID, on an *ad hoc* basis, for a period of three (3) years.

2. TERMS AND CONDITIONS

- 2.1 This Request for Proposal (RFP), as compiled by DID is being made available, on the same basis to all bidders and a bidder submitting a response thereto will be deemed to do on the basis that they acknowledge and accept the terms and conditions set out below: -
- 2.2. Supplier performance management is viewed by DID as a critical component in ensuring value for money acquisition and good supplier relations between DID and all its suppliers. The successful bidder shall upon receipt of written notification of an award, be required to conclude a Master Services Agreement (MSA) which will form an integral part of the General Conditions of Contract. This MSA will serve as a tool to measure, monitor and assess the supplier's performance and ensures effective delivery of service, quality and value-add to DID. The scope of work shall form part of the aforementioned agreement.
- 2.3. Confidentiality
 - 2.3.1 The Legal Practitioners will be required to sign confidentiality and/or indemnity agreements with DID.
 - 2.3.2 The bidder undertakes, at any time during the term of its appointment and after any termination or cancellation thereof, not to directly or indirectly disclose, or directly or indirectly use, whether for its own benefit or that of any other person any confidential information of DID including that of or any information relating to its clients, customers, suppliers, donors, sponsors or agents.
- 2.4 Intellectual property rights
 - 2.4.1 All copyright and intellectual property rights that may result as consequences of the work to be performed will be become the property of DID.
 - 2.4.2 Legal Practitioners must hand over all documents and information in any format, including copies thereof, that it received from DID or that it had access to during the assignment immediately after completion of the assignments to DID.
 - 2.4.3 Legal Practitioners shall deliver to DID, on completion of an assignment, any security devices, passwords or protective mechanisms to the soft versions of documents that were written and DID will have the right to amend and change these without obligation whatsoever to the firms of attorneys upon completion of the assignment.
- 2.5. A due diligence review may be conducted at the sole discretion of DID at any time prior to the awarding of the contract which may include but is not limited to conducting site visits at bidder's corporate offices.
- 2.6. Only legal practices established and registered in accordance with the provisions of the Legal Practitioners Act, 2014 (Act No. 28 of 2014 as amended) will be considered for this tender.
- 2.7. DID does not guarantee that bidders will receive instructions in the event that they are appointed onto the DID panel of Legal Practitioners.
- 2.8. All instructions to selected practitioners on the panel of Legal Practitioners shall be given in writing, by a duly authorised representative of DID.

- 2.9. DID promotes local production and content and for purposes of this RFP, DID reserves the right to only consider South African Based Legal Practices for appointment under this RFP.
- 2.10. DID reserves the right to interview panel members that would have been short listed for specific assignments.
- 2.11. DID may, at its sole discretion award an assignment or any part thereof to more than one panel member or to any legal firm not forming part of the panel of attorneys depending on the nature of the assignment.
- 2.12. Legal Practitioners may not cede or assign any part of its agreement with DID nor subcontract any part of the work assigned to them without the prior written authorisation of DID.
- 2.13. Failure to comply with any condition of this request for a proposal will invalidate respective tender proposal.
- 2.14. Regular monthly written feedback must be given to the Chief Director: Legal Services, or his/her nominee on all matters, including employment law matters, received from the DID with the service provider, at no costs to the DID.
- 2.15. When cases have been postponed at the request of the service provider acting on behalf of DID owing to non-compliance with any procedural requirements, the service provider who was negligent in this regard will bear the costs of postponement, and this amount will not be recovered from DID.
- 2.16. Successful bidders will be required to negotiate fees with advocates and inform DID in writing before a brief is finalised. Service providers may not appoint Senior Counsel, unless written instructions to this effect has been received from DID.
- 2.17. Payment of legal fees by DID will be effected within 30 (thirty) days from date of receipt of an acceptable invoice.
- 2.18. In the event that any conflict of interest is discovered during a particular assignment, DID reserves the right to summarily cancel the services agreement and demand that all information, documents and property of DID be returned forthwith.
- 2.19. A bidder shall, in the event of a sale, acquisition, merger, or other change of control of a bidder after submission of a bid (Change Event) where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially all of the assets of the bidder in a single or series of related transactions procure the prior written approval of DID, failing which DID shall at its own discretion exclude the bidder from further participation in the bid process.
- 2.20. Where the panel falls short of other fundamental legal aspects, DID reserves the right to appoint Legal Practitioners outside the appointed panel.
- 2.21. DID shall be entitled, in its discretion to remove a Legal Practitioner from the panel before the expiry of the three (3) years period by written notice and recall all the files in the possession of the said firm of attorneys.
- 2.22. No entity may be involved, whether directly or indirectly, in more than one Bid in response to the RFP. A failure to comply with this requirement may, within the sole discretion of DID, result in disqualification of the relevant entity.

3. SCOPE OF WORK

3.1 The preferred service providers will be expected to render services on an ad hoc basis to DID in the following service categories aligned to the core functions of Contract Administration and Legal Advisory Directorates within Legal Services: -

ITEM	SERVICE CATEGORIES	PLEASE TICK ()
1.	Commercial Litigation & Dispute Resolution	
2.	Employment and Labour Law	
3.	Property Law	
4.	Regulatory Compliance & Administrative Law	
5.	Public Private Partnerships (PPP)	
6.	Construction Law	
7.	Contract Law	
8.	Conveyancing and Notary	
9.	Procurement Law	
10.	Competition Law	

NOTE: Bidders may submit proposals in respect of any one or a combination of the 10 services categories. Please indicate which service categories under 3.1 you are bidding for. Bidders must indicate in their proposals the relevant experience and exposure in relation to the selected service categories.

3.2 DID intends to promote broad based transformation and development of small and medium firms in this industry and as such will appoint Legal Practitioners in the following categories. The bidder must indicate, in the table below, with a tick (X) the category relevant to it:

FIRM CATEGORY	DEFINITION	PLEASE TICK ()
Category 1: Small Firms	Firms with an annual turnover of not more than R10 million	
Category 2: Medium Firms	Firms with an annual turnover greater than R10 million but less than R50 million	
Category 3: Large Firms	Firms with an annual turnover greater than R50 million	

Note: Bidders must submit their latest financial statements as proof of their annual turnover as confirmed by an independent Accountant. Small businesses with no financial history, must submit a letter from their independent accounting firm confirming their financial status and/or projections.

3.3 It is DID's objective to promote the participation of historically disadvantaged professionals through its panel of Legal Practitioners Bidders are requested to indicate in their proposals how they will assist DID in achieving this objective.

4. SKILLS TRANSFER

The successful preferred suppliers will be required to ensure transfer of skills to in house legal advisors of DID as and when they are issued with instructions/assignments by DID.

5. SUBMISSION OF BIDS

DID may request clarification or further information regarding any aspect of the bid. The bidder must supply the requested information within 48 hours or unless otherwise indicated after the request has been made, otherwise, the bidder may be disqualified.

6. EVALUATION PHASES

The evaluation of the bids will be conducted in line with the Preferential Procurement Regulations of 2022 as issued in terms of section 5 of the Preferential Procurement Policy Framework Act number 5 of 2000 (PPPFA) as follows:

- **Mandatory Compliance**
- **Administration Compliance**
- **Desktop Evaluation (Functional Evaluation) and**
- **Specific Goals**

6.1 MANDATORY REQUIREMENTS

Bidders must ensure that the following mandatory returnable documents are duly completed, signed and Submitted.

Failure to submit/meet or comply with the following requirements constitutes automatic disqualification of tender.
Submission of duly completed and signed Invitation to tender (SBD 1)
Submission of duly completed and signed bidders' disclosure (SBD 4)
Compulsory Briefing session Bidders are to attend a Compulsory Site Briefing Session and sign the attendance register. N.B. Failure to sign attendance register at Briefing session will constitute automatic disqualification.
Proof of valid registration with the Legal Practice Council
Valid Fidelity Fund Certificate
Proof of enrolment as a Legal Practitioner
Company profile
Certificate of good standing from the Legal Practice Council
Proof of address for service of documents
Association Agreement (signed by all parties) where the Legal Practice is in association with another Legal Practice.

6.2 OTHER ADMINISTRATIVE COMPLIANCE REQUIREMENTS

The following returnable documents are required for this procurement and must be fully completed and submitted.

Note: Failure to submit does not constitute disqualification

Submission of proof of registration with CSD (CSD registration report or MAAA number)
Submission of a Tax Compliance Status PIN that will grant third-party access to the bidder's Tax Compliance Status bid closing.
Certified copy of the identity documents of all owners/shareholders/members/directors/Trustees. Certification as a true copy of the original must not be older than 6 months prior to bid closing.
Company Registration Certificate

7 SPECIAL CONDITIONS OF CONTRACT (SCC)

- 7.1 The appointment of legal firm (s) will be for a period of 36 months from the date of signing a Services Agreement.
- 7.2 The successful Legal Practitioner may be assigned work as and when required.
- 7.3 For every appointment, an appointment letter will be issued to the appointed Legal Practitioner
- 7.4 DID may, in respect of any appointment, negotiate fees with any successful Legal Practitioner
- 7.5 A Legal Practice assigned any work may not cede, assign or sub-contract any part thereof to any person unless with the written consent of DID or as may be required by the applicable laws, for instance, in cases where a correspondent may be necessary.
- 7.6 The appointment to DID's Panel of Legal Practitioners does not guarantee appointment for any work to any of the successful Legal Practitioners.
- 7.7 The successful Legal Practitioners shall report directly to the Chief Director: Legal Services or any person delegated by DID in respect of any engagement (instructions, case management etc.) and for the receipt and handling of all forms of reports and all administration pertaining to any particular appointment.

8 TENDER VALIDITY PERIOD

Tender validity period is 180 calendar days.

9 DURATION OF THE PROJECT

- 9.1 This panel of service providers will be for a period of three (3) years after appointment.
- 9.2 The Department reserves its discretionary right to award a tender.
- 9.3 The successful service providers will be expected to provide a quote, as and when required, for the services required on the planning and implementation.
- 9.4 The appointed panel of legal practitioners will be allocated work on a rotational basis.

9. FUNCTIONALITY EVALUATION APPLICABLE:

During this stage bidder/s that do not meet the minimum threshold for functionality will be disqualified and will not be included on the panel.

Functionality:																									
Functionality total weight points:		100																							
Minimum % that should be achieved to be found responsive		65%																							
Main functionality criteria:	Sub criteria:	Points allocation for sub-criteria:	Weighting factor:																						
PRACTICE EXPERIENCE – Practice must provide referral letters for each selected service category/ies and corresponding appointment letter / Purchase order.	4 reference letters (on client's letter head) where service has been rendered for every selected category with contactable referee and 4 corresponding appointment letter/Purchase order.	40	40																						
	3 reference letters (on client's letter head) where service has been rendered for every selected category with contactable referee and 3 corresponding appointment letter/Purchase order.	30																							
	2 reference letters (on client's letter head) where service has been rendered for every selected category with contactable referee and 2 corresponding appointment letter/Purchase order.	20																							
	1 reference letters (on client's letter head) where service has been rendered for every selected category with contactable referee and 1 corresponding appointment letter/Purchase order.	10																							
	No reference letters (on client's letter head) where service has been rendered for every selected category with contactable referee and no corresponding appointment letter/Purchase order.	0																							
	<table border="1"> <thead> <tr> <th>CATEGORIES</th> <th>Please tick ()</th> </tr> </thead> <tbody> <tr> <td>Commercial litigation & Dispute Resolution;</td> <td></td> </tr> <tr> <td>Employment & Labour law</td> <td></td> </tr> <tr> <td>Property law</td> <td></td> </tr> <tr> <td>Regulatory Compliance & Administrative law</td> <td></td> </tr> <tr> <td>Construction law</td> <td></td> </tr> <tr> <td>Procurement law</td> <td></td> </tr> <tr> <td>Competition law;</td> <td></td> </tr> <tr> <td>Conveyancing & Notary</td> <td></td> </tr> <tr> <td>Private Public Partnership (PPP)</td> <td></td> </tr> <tr> <td>Contract Law</td> <td></td> </tr> </tbody> </table>			CATEGORIES	Please tick ()	Commercial litigation & Dispute Resolution;		Employment & Labour law		Property law		Regulatory Compliance & Administrative law		Construction law		Procurement law		Competition law;		Conveyancing & Notary		Private Public Partnership (PPP)		Contract Law	
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Notes! <ul style="list-style-type: none"> Submission of referral letter/s and corresponding appointment letters/purchase without contactable references and not on the client's letter head will result in bidder forfeiting points in this criterion. Submission of referral letter/s which does not correspond with any of the selected service category will result in bidder scoring zero points in this criterion. 																									
KEY PERSONNEL EXPERIENCE: - The Practice must have at least 1 qualified Director. (CV of Director(s) or Lead Practitioner (s) must be attached) - The Director(s) or Lead Practitioner(s) must at least have practical experience in any of the selected service category/ies.	12 years or more experience in relation to selected category.	60	60																						
	9 to less than 12 years' experience in relation to selected category.	45																							
	7 to less than 9 years' experience in relation to selected category.	30																							
	5 to less than 7 years' experience in relation to selected category.	15																							
	Less than 5 years' experience in relation to selected category.	0																							
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Construction law			
Procurement law			
Competition law;			
Conveyancing & Notary			
Private Public Partnership (PPP)			
Contract Law			
Notes! <ul style="list-style-type: none"> • Director(s) or Lead Practitioner (s) who does not have practical experience in selected practical category as mentioned above will be disqualified for submitting non- responsive tender. • Practices without a qualified director/s or Lead Practitioner (s) will be disqualified for submitting non-responsive tender. • Practices that fails to submit CV of the director (s) or Practitioner (s) with the bid will score zero points on key personnel. 			
Functionality total weight points:			100

10. SPECIFIC GOALS

HDI TARGETED GROUPS – AT- LEAST 51% OWNERSHIP AS FOLLOWS:	POINTS ALLOCATION
BLACK OWNERSHIP: A company that is at least 51% owned by black people. (Provide ID documents for Members / shareholder / Directors / Owners and certificate of Incorporation, no points will be allocated if documents are not provided.)	2 POINTS
WOMEN: A company that is at least 100% owned by black women. (Provide ID documents for Members / shareholder / Directors / Owner, no points will be allocated if ID's are not provided.)	4 POINTS
YOUTH: A company that is at least 100% owned by youth. (Provide ID documents for Members / shareholder / Directors / Owner, no points will be allocated if ID's are not provided.)	4 POINTS
PEOPLE WITH DISABILITY (PwD): A company that is at least 51% owned by people living with Disability. (Provide a confirmation letter / certificate from medical practitioner, no points will be allocated if no confirmation letter or certificate from medical practitioner stating the permanent disability for the owner/ director / member shareholder of the company.)	4 POINTS
MILITARY VETERANS: A company that is at least 51% owned by Military Veterans (Provide a confirmation letter with a force number from department of military veterans, no points will be allocated if no confirmation letter or certificate from	2 POINTS

department of military veterans stating the membership of the owner/ director / member shareholder of the company.)	
TOWNSHIPS, RURAL OR UNDERDEVELOPED AREAS: A company that is at least 51% owned by people from Townships, Rural or Underdeveloped Areas. The address on CIPC company registration documents will be utilized to determine the allocation of points, no points will be allocated if the company is not registered under the township, Rural or Underdeveloped area	4 POINTS
TOTAL HDI's POINTS	20 POINTS

Annexure A

GOVERNMENT PROCUREMENT GENERAL CONDITIONS OF CONTRACT

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.

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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 anything 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.
- 11.2 " 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 ancillaries 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

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof,

**information;
inspection.**

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, 8.1
tests and
analyses**

- 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 them 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 fulfilment 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 contract 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 cancelling 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 212;
 - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
 - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5 Any restriction imposed on any person by the Accounting Officer /Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
 - (ii) the date of commencement of the restriction
 - (iii) the period of restriction; and
 - (iv) the reasons for the restriction.

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

- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court

may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

supplier.

28. Limitation of Liability	28.1	Except in cases of criminal negligence or willful misconduct , and in the case of infringement pursuant to Clause 6; (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
29. Governing Language	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
30. Applicable law	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
31. Notices	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
	31.2	The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
32. Taxes and duties	32.1	A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
	32.2	A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
	32.3	No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
33. National Industrial Participation (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.

General Conditions of Contract (revised February 2008)