



PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR THE REQUIREMENTS OF THE LIMPOPO ECONOMIC DEVELOPMENT AGENCY					
BID NUMBER:	LEDA/2022/23-2	CLOSING DATE:	10 FEBRUARY 2023	CLOSING TIME:	11H00
DESCRIPTION	SERVICES OF LEGAL PROFESSIONALS TO FORM PART OF A PANEL THAT WILL PROVIDE LEGAL SERVICES TO LIMPOPO ECONOMIC DEVELOPMENT AGENCY FOR A PERIOD OF THIRTY-SIX (36) MONTHS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Limpopo Economic Development Agency					
Enterprise Development House					
Main Road, Lebowakgomo					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	SANTY MKHABELA		CONTACT PERSON		
TELEPHONE NUMBER	015 633 4700		TELEPHONE NUMBER		
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	Santy.mkhabela@leda.co.za		E-MAIL ADDRESS		
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					



PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p> <p>1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</p>
2. TAX COMPLIANCE REQUIREMENTS
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p> <p>2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE.”</p>

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g. company resolution)

DATE:



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:
.....
.....

3 DECLARATION

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.

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.

**TERMS OF REFERENCE
FOR**

**SERVICES OF LEGAL PROFESSIONALS COMPRISING A FIRM OF
LEGAL PRACTITIONERS, CONVEYANCERS, ARBITRATORS,
ADVOCATES AND COST CONSULTANTS TO FORM PART OF A
PANEL THAT WILL PROVIDE LEGAL SERVICES TO LIMPOPO
ECONOMIC DEVELOPMENT AGENCY FOR A PERIOD OF THIRTY-
SIX (36) MONTHS**

BID NUMBER : LEDA/2022/23-2

CLOSING DATE : 10 FEBRUARY 2022

CLOSING TIME : 11H00

VALIDITY PERIOD : 180 DAYS

BIDDERS ARE REQUIRED TO SELECT THE CATEGORY AND AREA OF SPECIALITY THEY ARE APPLYING FOR

Kindly indicate under which category you are applying for

Category	Tick Specific Two
Advocate	
Arbitrator	
Conveyancer/Notary	
Law Firm	
Cost Consultant	

Kindly indicate the areas of specialty you are applying for

Area of Law	Tick Specific One
Litigation	
Property Law/Conveyancing	
Corporate Law and Governance (includes procurement law, Legislative drafting, Contracts, Administrative Law)	
Debt Collection and Evictions	
Employment Law	
Aviation Law	
Mining Law	
Arbitration	
International Law	
Information Technology and Communication Law	
Other (Please Specify)	

1. INTRODUCTION

LEDA was established in terms of the Limpopo Economic Development Agency Act 5 of 2016. It complies with the Public Finance Management Act (PFMA) as a Schedule 3D Agency.

2. BACKGROUND

LEDA has a Legal Department that comprises of the Head Legal Services, three Legal Advisors and a Legal Admin Officer who provide legal support to the LEDA Group (including subsidiaries). LEDA procures the services of external legal professionals including but not limited to Legal Practitioners, Advocates, Conveyancers and Arbitrators from time to time.

3. PURPOSE

LEDA is seeking to procure the services of external legal experts to be on the panel to assist to fulfil its mandate and provide legal services.

The purpose of appointing the panel of attorneys is to establish a panel of legal professionals to provide legal skills to LEDA and to curb exorbitant legal costs.

4. INVITATION

Legal Professionals are invited to send proposals to LEDA for consideration. In preparing a proposal it is emphasized that a profile of the legal practitioners firm, advocates, arbitrators, and conveyancers together with demonstrated expertise in the particular field of law be submitted.

The following documents must be attached to the prospective legal professionals' proposal:

- Curriculum Vitae of Legal Expert and/or key personnel;
- Company Profile/Legal Practitioner's Profile;
- Proof of admission as an Attorney/Advocate/Notary/Conveyancer
- Certified copies of LLB degree not older than six (6) months
- Company registration certificate/certificate of Legal Practitioner and certified identity copies;
- Valid SARS tax clearance;
- Fidelity Fund Certificate;
- Letter of good standing;
- Declaration of interest;
- Experience – submit appointment letters and reference letters;
- B- BBEE Certificate;

- Proof of membership with respective governing Councils (e.g bar council)

5. CONTRACT PERIOD

The period of appointment is for a period of thirty-six (36) months which may be renewed and extended by LEDA, for further periods, should the services prove to be of an acceptable standard or should LEDA deem fit.

6. SCOPE OF WORK AND REQUIRED EXPERTISE

6.1 The Legal Professionals providing legal services must be able to provide services including but not limited to the following areas:

- Privacy Law;
- Debt Collection;
- International Law;
- Conveyancing;
- Litigation;
- Law of Delict;
- Procurement Law;
- Property Law;
- Corporate Law and Governance;
- Law related to Public Research;
- Constitutional Law;
- Administrative Law;
- By-law and Policy Formulation;
- Town Planning;
- Legislative Drafting and Review;
- Information Technology and Communications Law;
- Labour and Employment Law;
- Law of Contract;
- Mining Law;
- Aviation Law;
- Arbitration;

6.2. Provide a legal opinion on matters that may have legal implications for LEDA;

6.3. Represent Leda in disciplinary proceedings and labour matters

- 6.4. Any other specialized field that the legal professional has expertise in and that is relevant to the working environment of LEDA.

7. SKILLS TRANSFER

The legal professional will be required to ensure transfer of skills to LEDA's inhouse legal team.

8. REQUIREMENTS

- 8.1. Knowledge of Provincial and/or Public Entities and their operations;
- 8.2. Knowledge and application of Magistrate's and High Court civil procedure, SCA, CCMA, Labour Court and Labour Appeal Court, Constitutional Court the South African Constitution and excellent knowledge of administrative, regulatory and public law.
- 8.3. Excellent drafting and prosecution skills.
- 8.4. Minimum of 2 years post admission legal experience as a Legal Practitioner.

9. CONDITIONS OF TENDER

- 9.1. Only Legal Professionals established in accordance with the provisions of the Attorneys Act, 1979 (Act No 53 of 1979 as amended) will be considered for the tender.
- 9.2. Only Advocates having membership with the respective bar council will be considered.
- 9.3. The requirements of the Preferential Procurement Policy Framework Act 2017 will be applicable to the selection process in respect of this tender proposal.
- 9.4. Legal Professionals who do not score 70 points or more on the functionality evaluation will not be appointed to the panel.
- 9.5. A Service Level Agreement will be signed with each Legal Professional appointed.
- 9.6. The Legal Professionals will be required to sign confidentiality and indemnity agreements with the LEDA.
- 9.7. Panel members are not guaranteed any work under this tender proposal.
- 9.8. The basis of engaging Legal Professionals will be on assignment basis.
- 9.9. LEDA reserves the right to interview the Legal Professionals that are shortlisted for specific assignments.
- 9.10. LEDA may at its own discretion award and assign all or any part thereof to more than one panel members.
- 9.11. LEDA may at its own discretion vary an instruction to include more work.
- 9.12. Failure to comply with any condition of this request for a proposal will invalidate respective tender proposal
- 9.13. The Legal Professionals must declare any interest it has in an assignment as well as declare any possible conflict of interest with LEDA in the pursuance of the proposed assignments.
- 9.14. In the event that any conflict of interest is discovered during the assignment, LEDA reserves the right to summarily cancel the agreement and demand that all the information, documents and property of LEDA be returned forthwith.

- 9.15. LEDA reserves the right to request new or additional information regarding each bidder and any individual or other persons associated with its project proposal.
- 9.16. Bidders shall not make available or disclose details pertaining to their project proposal with anyone not specifically involved, unless authorized to do so by LEDA.
- 9.17. Bidders shall not issue any press release or other public announcement pertaining to the details of their projects without prior written approval of LEDA.
- 9.18. Bidders are advised that submission of a project proposal gives rise to no contractual obligations on the part of LEDA.
- 9.19. Disputes that may arise between LEDA and a bidder must be settled by means of mutual consultation, mediation (with or without legal representation) or, when unsuccessful, in a South African court of law.
- 9.20. In addition to adherence to the specific terms and conditions of proposals, provided in this document, the bidder shall be bound by the provisions of the General Conditions of Contract attached hereto, an originally signed copy of which must be submitted together with all other bid documentation.
- 9.21. All returnable bid documents must be completed in full and submitted together with the bidder's proposal.

10. SERVICE LEVEL AGREEMENT

The successful bidders will be expected to enter into a service-level agreement with LEDA. The service level agreement will include amongst others, the following:

- 10.1. Period of the agreement
- 10.2. Charges
- 10.3. Method of communication and reporting
- 10.4. Performance
- 10.5. Termination of contract
- 10.6. Procedures relating to management of reports
- 10.7. Procedures relating to management of payment
- 10.8. Terms of deliverables
- 10.9. Review
- 10.10. Confidentiality
- 10.11. Breach
- 10.12. Disputes

11. VALIDITY PERIOD

The bid offers and proposals should be valid and open for acceptance by LEDA for a period of **180** days from the date of submission.

12. INTELLECTUAL PROPERTY RIGHTS

All copyright and intellectual property rights that may result as a consequence of the work performed will become the property of LEDA. The Legal Professionals shall deliver to LEDA, on completion of an assignment, all documents, devices, passwords or protective mechanisms of documents that were written and LEDA will have the right to amend these without obligation whatsoever to the Legal Professionals.

13. REPORTING RELATIONSHIP

The respective Legal Professionals will report to the Head: Legal Services of LEDA.

14. EVALUATION OF BIDS

Bid proposals will be evaluated in accordance with the 80/20 preference point system as contemplated in the Preferential Procurement Regulations of 2017, and all bid offers received shall be evaluated based on the following criteria:

Preference points for this bid shall be awarded for:

- a. Functionality 100

14.1. Evaluation stage one: Administrative compliance

Compliance with administrative requirements as stated in the Standard Bidding Documents and the mandatory requirements. In this evaluation stage, all bidders that fail to provide the required information and documentation will be disqualified from further evaluation:

Requirement	Comply/not comply	Disqualifying factor
Is the bidder tax compliant		No
BBBEE certificate or Original Sworn Affidavit		No
Is the bidder registered on the National Treasury Central Supplier Database (CSD)		Yes
SBD Documents signed by an authorized person from the company (attached proof)		Yes
All SBD documents are completed and signed by an authorized person from the company		Yes
A certificate of Good Standing not more than 6 (six months old) from the Legal Practice Council		Yes
A valid Fidelity Fund Certificate (where applicable)		Yes

14.2. Evaluation stage two: Functionality criteria

Bidders are expected to obtain a minimum of **70** out of 100 points to qualify for further evaluation. Failure to obtain the prescribed 70 points will automatically disqualify the bidder from proceeding to the next evaluation stage. Below is a table that shows how the 100 points of functionality will be allocated.

CRITERIA	SUB-CRITERIA	RATING	POINTS	MAX POINTS
COMPANY EXPERIENCE	The service provider must demonstrate and provide comparative projects undertaken within the area of expertise and a brief summary of complex matters under the identified areas of specialization within the last five years. The project(s) must be related to the category that the service provider is bidding for. The project details must cover the following: <ul style="list-style-type: none"> • Details of the work undertaken. • Duration of the project. • Contact details of the client 	Five (5) matters and more in the chosen discipline/category undertaken in the last five (5) years	20	20
		Four (4) matters in the chosen discipline/category undertaken in the last five (5) years	15	
		Three (3) matters in the chosen discipline/category undertaken in the last five (5) years	10	
		Two (2) matters or less in the chosen discipline/category undertaken in the last five (5) years	5	
		No reference letters provided	0	
CLIENT REFERENCES Service provider's proven experience in undertaking similar projects	The service provider must submit written contactable reference letters of recent and current projects from entities who have acquired the same type of services specific to the category the service provider is bidding for. The reference letters should entail the following details: <ul style="list-style-type: none"> • Name of department/organization; • Nature of work; • Duration of the contract; • Contact person, contact details and email address; and • Signed by the appropriate client delegated authority. (Reference Letters must be provided on the client's letterhead and must not be older than five (5) years to obtain scores)	More than three (3) relevant reference letters provided	20	20
		Three (3) relevant reference letters provided	15	
		Two (2) relevant reference letters provided	5	
		No reference letters provided	0	
LEAD ATTORNEY QUALIFICATIONS & EXPERIENCE NB: The following are a precondition for the Lead Attorney to be considered for scoring	Lead Attorney Experience The service provider must attach a brief Curriculum Vitae (CV) for the Lead Attorney role indicating relevant five (5) years post admission experience under the identified areas of specialisation. (Clearly documented brief CV of the Lead Attorney must be provided to obtain scores)	Ten (10) years of experience in the chosen discipline/category post admission.	15	15
		Between nine and five years of experience in the chosen discipline/category post admission	12	
		Less than five to two (2) years of experience in the chosen discipline/category post admission.	5	
		No experience provided.	0	

CRITERIA	SUB-CRITERIA	RATING	POINTS	MAX POINTS
1) Proof of admission as an attorney 2) Clearly certified copies of LLB or any equivalent SAQA accredited Law qualification not older than six (6) months	Brief summary of complex matter attended A brief summary of three (3) complex matters attended to by the lead attorney(s) in the last three (3) years (i.e., from November 2020) relevant to the category that the service provider is bidding for.	A brief summary of four (4) or more complex matters attended	15	15
		A brief summary of three (3) complex matters attended	12	
		A brief summary of two (2) complex matters attended	10	
		A brief summary of one (1) complex matter attended	5	
		No information provided	0	
IMPLEMENTATION OF MEASURES	Measures that the Legal Professional will implement to assist LEDA in achieving its mandate as an economic development agency including but not limited to: <ul style="list-style-type: none"> • Providing a legal risk analysis; • Skills transfer to in house legal team; • Regulating drafting process; • attending to litigation and mitigation controls. NB – A document of not more than 8 pages with the following headings: <ul style="list-style-type: none"> • Introduction; • Measures; • detailed plan, potential risks and analysis to mitigate with controls and; • conclusion. 	Measures provided with a detailed plan and a thorough analysis of potential risks with mitigation controls	30	30
		Measures provided with a detailed plan and identified potential risks but without an analysis to mitigate the risks	25	
		Measures provided with a detailed plan but without identifying the potential risks	15	
		Measures provided without a detailed plan	10	
		No Measures provided	0	
TOTAL				100 points

15. PROCESS TO BE FOLLOWED FOR SELECTING SERVICE PROVIDERS FROM THE PANEL OF LEGAL EXPERTS PER CATEGORY TO RENDER SERVICES

- 15.1. The panel of Legal Professionals will be appointed in accordance with their areas of specialty based on the bidder scoring the highest overall points for functionality.
- 15.2. The successful Legal Professionals per category will be instructed on a rotational basis in accordance with their ranking in respect of that specific category.
- 15.3. LEDA reserves the right to skip a Legal Professional when their turn comes if it is found that there are justifiable reasons to do so.
- 15.4. Such reasons may include, but not limited to the following:
 - 15.4.1. Conflict of interest;
 - 15.4.2. Inability of the Legal Professional to deliver on other previously allocated matters;
 - 15.4.3. Capacity of the Legal Professional to deal with the matter at the time the matter arises;
 - 15.4.4. If a similar matter was previously handled or is being handled by another Legal Professional on the panel.
 - 15.4.5. Expertise in the specific field of law.
- 15.5. When LEDA identifies a specific need for services, a detailed brief, scope of work or instructions will be sent to the Legal Professional.

- 15.6. The appointment of a Legal Professional may be accompanied by a Purchase Order. No payment will be made for any work executed without a valid purchase order.
- 15.7. A Purchase Order will be issued to the service provider for each assignment.
- 15.8. Preference may be given to Legal Professional who practice and have established offices within the area of jurisdiction of the relevant court when allocating work on litigation matters.
- 15.9. Legal Professional are required to respond to the Request for Quotation (RFQ) within two days from receipt thereof. Alternatively, as indicated in the RFQ.
- 15.10. LEDA hereby reserves its right to procure legal professional services not provided by the appointed panel.

16. PAYMENTS

- 16.1. LEDA undertakes to pay out within a reasonable time all valid claims for work done to its satisfaction upon presentation of a substantiated claim. No payment will be made on outstanding information not submitted by the Legal Practitioner.
- 16.2. All fees shall be charged in terms of the agreed fee structure which will be in line with the relevant Magistrates Court, High Court and Constitutional Court Tariff.

17. CONTRACT AWARD

- 17.1. LEDA reserves the right to accept any proposal submitted or reject all proposals.
- 17.2. LEDA reserves the right to reject proposals where parties cannot agree on material terms of the agreement.
- 17.3. Any proposal submitted, that is not in complete compliance with the requirements of the proposal documents may be accepted or disqualified, at the option of LEDA.
- 17.4. Acceptance of any bid does not mean that work on an uninterrupted basis is guaranteed for the duration of the contract.
- 17.5. The successful Legal Professionals will be required to sign a Service Level Agreement (SLA) to govern the business relationship.
- 17.6. LEDA will not be held responsible for any costs incurred by the Legal Professionals in the preparation and submission of the bid.

18. TERMINATION OF CONTRACT

- 18.1. LEDA reserves the right to terminate the agreement with 30 days written notice to the successful bidder subject to the following:
- 18.2. The successful bidder fails to perform in accordance with the specified service requirements as set out in the RFP;
- 18.3. The successful bidder fails to provide the service required written explanation;
- 18.4. The successful bidder otherwise violates the provisions of the RFP to a substantial degree.

19.SPECIAL CONDITIONS

- 19.1. LEDA reserves the right to appoint the bidder that proves to be fully capable and qualified to handle and execute the job.
- 19.2. Bids submitted must be in line with the detailed specification. Failure to bid accordingly will automatically disqualify the submitted bid.
- 19.3. LEDA reserves the right to cancel or withdraw this bid if:
 - 19.3.1. Due to changed circumstances, there is no longer a need for these services; or
 - 19.3.2. Funds are no longer available to cover the total envisaged expenditure; or
 - 19.3.3. No acceptable bids are received; or
 - 19.3.4. There is a material irregularity in the Bid process.
- 19.4. In the case of sub-contracting or joint venture agreement, LEDA will enter into a single contract with the principal bidder.
- 19.5. LEDA reserves the right to call interviews with short-listed bidders before final selection.
- 19.6. LEDA reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include surprise site visits.
- 19.7. Bidders who are not registered on Central Supplier Database (CSD) must register before submission of bids.
- 19.8. Any completion of the bid document in pencil or erasable ink will not be acceptable and will automatically disqualify the submitted bid.
- 19.9. Successful bidder will be required to sign a Service Level Agreement (SLA).
- 19.10. Notwithstanding shortcomings and/or inconsistencies, if any, in this specification, which is only a minimum specification, a bidder shall make provision for a complete solution that will deliver the required service efficiently and cost-effectively.
- 19.11. Bid documents should be deposited in the tender box situated at 1 Main Road Lebowakgomo on or before **10 February 2023 at 11h00** which is the closing date for this bid.
- 19.12. This request for bid document contains confidential information about LEDA, which has been provided to supply potential bidders with the data necessary to provide a holistic response.
- 19.13. No part of the contents may be used, copied, disclosed or conveyed in whole or in part to any party, in any manner whatsoever without the prior written permission of LEDA.
- 19.14. Any reproduction or transmission of information contained in this document except for the sole purpose of responding to this bid is strictly prohibited.
- 19.15. References to LEDA must not be made in any literature, promotional material, and brochures or sales presentations without the express written consent of LEDA.
- 19.16. It is the responsibility of the bidder to ensure that LEDA can receive and open the submitted proposal (electronic and otherwise).

20. COMPULSORY ONLINE BRIEFING SESSION

A **Compulsory Briefing Session** will be held as follows:

Date : 17 January 2023

Time : 15h00 – 16h30

Venue : [virtual](#)

21. CLARIFICATION / QUERIES

21.1. The process of clarification required by a bidder regarding the meaning or interpretation of the Terms of Reference, or any other aspects concerning the bid will be done in writing (letter, facsimile or e-mail).

21.2. Telephonic requests for clarification will not be considered.

21.3. The cut-off date for queries is **07th February 2023** at 16h00.

21.4. The bid reference number should be quoted in all correspondence.

21.5. The contact persons are as follows:

Administrative Enquiries : Santy Mkhabela

E-mail : santy.mkhabela@lieda.co.za

Tel : (015) 633 4700

Proposals and supporting documentation must be placed in the Tender Box in a sealed envelope clearly marked “BID: APPOINTMENT OF PANEL OF ATTORNEYS”

Street Address: Limpopo Economic Development Agency
Enterprise Development House
Main Road, Lebowakgomo
0739

**GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010**

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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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.
 - 1.12. “Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
 - 1.13. “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
 - 1.14. “GCC” means the General Conditions of Contract.
 - 1.15. “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
 - 1.16. “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or

duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

- 1.17. "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18. "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19. "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20. "Project site," where applicable, means the place indicated in bidding documents.
- 1.21. "Purchaser" means the organization purchasing the goods.
- 1.22. "Republic" means the Republic of South Africa.
- 1.23. "SCC" means the Special Conditions of Contract.
- 1.24. "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25. "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application
for

- 2.1. These general conditions are applicable to all bids, contracts and orders including bids of 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
for

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- 3.1. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable any expense incurred in the preparation and submission of a bid. Where applicable a refundable fee for documents may be charged.
- 3.2. With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

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

5. Use of contract documents and information; inspection.

5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

7. Performance security

7.1. Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
- (b) a cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyse

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

8.3 If there are no inspections 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 analysed 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. Packaging

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

- 10. Delivery and documents** 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.
- 11. Insurance** 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 12. Transportation** 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 13. Incidental services** 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts** 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) Following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon 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. Contracts 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 these contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without 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 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or 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 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 wilful 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. Governance language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme** 33.1. The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation
- 34. Prohibition of restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.