

## MUNICIPAL INFRASTRUCTURE SUPPORT AGENT (MISA)

REFERENCE NO: MISA/IA/061/2021/22

### APPOINTMENT OF A SUITABLY QUALIFIED PROFESSIONAL SERVICE PROVIDER FOR THE PROVISION OF INTERNAL AUDIT FUNCTION

JANUARY 2022

<b>Beneficiary</b>	Municipal Infrastructure Support Agent
<b>Contact Person and Details</b>	Ms. Lumka Tyikwe <a href="mailto:Lumka.tyikwe@misa.gov.za">Lumka.tyikwe@misa.gov.za</a>
<b>Postal Address</b>	1303 Heuwel Avenue, Riverside Office Park, Letaba House, Centurion 0046
<b>Project Name</b>	APPOINTMENT OF A SUITABLY QUALIFIED PROFESSIONAL SERVICE PROVIDER FOR THE PROVISION OF INTERNAL AUDIT FUNCTION
<b>Reference No.</b>	<b>MISA/IA/061/2021/22</b>
<b>Closing Date and Time</b>	24 February 2022 @ 11h00am
<b>Non-Compulsory Briefing Session and time</b>	<b>11 February 2022 @ 10H00 am</b>

## 1. BACKGROUND

1.1 MISA emanates from the State of Local Government Report (2009) and the Local Government Turn-Around Strategy (LGTAS). As part of implementing the LGTAS, in May 2012 the government established MISA as a government component accountable to the Executive Authority of Cooperative Governance and Traditional Affairs (COGTA). MISA is a special purpose vehicle whose primary mandate is to coordinate and provide support to municipalities to facilitate sustainable municipal infrastructure provisioning and management.

1.2 The Public Finance Management Act (PFMA), No.1 of 1999, as amended requires the establishment of an effective internal audit and risk management function under the control and direction of an Audit Committee (Section 38(1)(a)(ii)). This function will be co-sourced to an independent reputable service provider.

## 2. PURPOSE OF THE TERMS OF REFERENCE

In terms of the PFMA, MISA should have an effective Internal Audit function which should also comply with the Institute of Internal Auditors (IIA) standards. The Internal Audit function should assist MISA to accomplish its objectives by bringing a systematic and disciplined approach to evaluating and improving the effectiveness of risk management control and governance processes. The risk management strategy including the fraud prevention plan must be used to direct the internal audit efforts.

Some of these objectives/ standards/ controls are subject to evaluation, are to review:

- Internal control processes
- The information systems environment
- The reliability and integrity of financial, operational and performance information
- The effectiveness of operations
- The safeguarding of assets
- The economical and efficient use of resources
- Achievement of established operational goals and objectives
- Compliance with policies, laws, regulations, and controls
- Assisting the Audit Committee and management in the effective discharge of their responsibilities, furnishing them with analyses, appraisals, recommendations, counsel, and information concerning the

activities reviewed and regular follow ups.

### **3. SCOPE OF WORK FOR INTERNAL AUDIT SERVICES**

The scope of Internal Audit function includes at least the under-mentioned. Should any other function be regarded as imperative by the bidder the functions shall be offered and clearly defined.

The Internal Audit function must, in consultation with the Audit and Risk Management Committee prepare:

- A three-year rolling strategic Internal Audit Plan based on its assessment of key areas of risk for the entity, having regard to its current operations. The operations proposed in MISA's strategic plan and its risk management strategy.
- An annual Internal Audit Plan.
- Plans indicating the scope, cost and timelines of each audit in the annual internal audit where applicable.
- Audit reports directed to the Audit Committee detailing its performance against the plan, to allow effective monitoring and intervention when necessary.
- Adhoc requests from Management and Executive Authority where necessary.

The Internal Audit function must co-ordinate with other internal and external providers of assurance to ensure proper coverage and to minimise duplication of effort.

The Internal Audit function must assist the Accounting Officer in maintaining effective controls by evaluation of those controls and by developing recommendations for enhancement or improvement.

The Internal Audit function must assist the Accounting Officer in achieving the objectives of the institution by evaluating and developing recommendations for the enhancement or improvement of the processes through which:

- Objectives and values are established and communicated.
- The accomplishment of objectives is monitored.
- Accountability is ensured.
- Corporate values are preserved.
- The adequacy and effectiveness of the system of internal control are reviewed and appraised.
- The relevance, reliability and integrity of management, financial and operating data and reports are appraised.

- Systems establishment to ensure compliance with policies, plans, procedures, statutory requirements, and regulations, which could have a significant impact on operations are reviewed.
- The means of safeguarding assets are reviewed and as appropriate verifying the existence of such assets.
- The economy, efficiency and effectiveness with which resources are employed, are appraised.
- The results of operation or programmes are reviewed to ascertain whether results are consistent with MISA's established objectives and goals whether the operations or programmes are being carried out as planned.
- The adequacy of established systems and procedures are assessed.

The audits that will be needed to be taken into account at the MISA are among others:

- IT security and systems processes audit.
- Conducting special assignments and investigations on behalf of the Audit Committee/Executive Authority/Accounting Officer into any matter or activity affecting the probity, interest and operating efficiency of MISA.
- Audit designed to detect fraud.
- All statutory and risk-based audits.
- Financial audit.
- Performance Information audit.
- Evaluate the effectiveness of Risk Management.
- Corporate Governance systems including governance structures.
- Ad hoc requests from management.

### **3.1 Fraud and Irregularities**

In planning and conducting its work, the internal auditor should seek to identify serious defects in the internal controls, which might result in possible malpractices. Any such defects must be reported immediately to the Accounting Officer/Executive Authority and/or the Audit Committee, without disclosing these to any other staff. This also applies to instances where serious fraud and irregularities is uncovered.

### **4. Performing audit assignments**

Each assignment should at least consist of the following:

- Preliminary survey
- Notification letter

- Engagement letter
- Minutes of entrance meeting
- Risk assessment/ control adequacy assessment and the conclusion thereof
- System descriptions
- Audit programmes
- Sampling methods applied
- Mechanisms for follow up on matters previously reported and feedback to the Audit and Risk Management Committee
- Mechanism to ensure that working papers are reviewed at the appropriate level.
- Record of work performed
- Audit of work performed
- Audit findings and recommendations
- Reporting (draft internal audit report and final internal audit report)
- Follow up of previous audit findings
  - Compliance with MISA Internal Audit Methodology and provide possible improvements in order to ensure uniformity in the operations of all internal audit assignments.

#### **4.1 Reporting Requirements**

The structure of the report is to be as follows:

- Introduction
- Audit objective and scope
- Background
- Executive summary highlighting significant findings
- Findings, recommendations, and management response (including action plans and implementation dates)
- All audits are to be carried out according to the Internal Audit Plan approved by the Audit Committee.
- Conclusion

The service provider is to deliver an electronic and the final report to the Chief Audit Executive (CAE) for signature who in turn will make the reports available to the Audit Committee, the relevant Auditee, and the Accounting Officer. The final audit file (hard and electronic) quality checked complying with IIA standards must be made delivered to the CAE.

## **5. QUALITY ASSURANCE REVIEWS OF THE WORK**

The service provider shall ensure that all work conforms to the International Standards for the Professional Practice of the Institute of Internal Audit (IIA). Such work may further be subject to an external quality assurance as may be considered necessary. The service provider must also conduct a high level readiness assessment of the Internal Audit Activity for the preparation of an external quality assurance assessment or assist with the development of internal quality assessment.

## **6. MONITORING PROGRESS OF ASSIGNMENTS**

On completion of each assignment, the service provider shall distribute the reports to the Audit and Risk Committee, Accounting Officer (CEO) through CAE. On quarterly basis a report to the Audit Committee on progress against the plan, significant findings and administrative matters will be presented. Weekly progress report should be made available to the CAE.

## **7. INDEPENDENCE AND OBJECTIVITY OF STAFF**

In carrying out the work, the service provider must ensure that their staff maintain objectivity by remaining independent of the activities they audit.

The service provider shall:

- Have no executive or managerial powers, functions or duties relating to Internal Audit Activity.
- Not be involved in the day to day operation of the MISA.
- Not be responsible for the detailed development or implementation of new systems and procedures.

## **8. TECHNICAL PROPOSAL**

- 8.1 Identification of tools and technologies developed and utilised by your company to increase the efficiency and effectiveness of the Internal Audit function.
- 8.3 Experience for this purpose is defined as time spent as an Internal Auditor before and after joining your firm. The above resources should also subscribe to the International Standards for the Professional Practice of Internal Auditing and be members of the Institute of Internal Auditors.
- 8.3 Description of your specific capabilities and expertise in conducting risk based internal audits including information technology systems as well as for other services, including specialised expertise in cyber security reviews, implementation and evaluation of projects, systems, and network security reviews.

8.4 Description of the ways in which your company will bring innovation thought leadership, best practise to MISA internal audit function. Describe tools and techniques which the firm will ensure easy access to such information and any other capabilities that will enhance the performance of the internal audit function and ensure continuous improvement that will add value to the organisation.

## **9. DURATION OF CONTRACT**

The duration of the contract is anticipated to run for a period of three years.

## **10. CONFIDENTIALITY**

10.1 Due to the sensitive information that is usually handled in the Finance and SCM unit, the service provider will sign a confidentiality and non-disclosure agreement.

## **11. SELECTION OF SERVICE PROVIDER**

11.1 The selection of the service provider is solely at the discretion of MISA and will be based mainly on the following consideration points amongst others:

11.1.1 Demonstration of relevant technical experience and competence in the fields of government entity.

11.1.2 Black Economic Empowerment status level of the service provider.

11.1.3 Methodology of undertaking the work; and

11.1.4 Skills transfer to MISA employees.

11.2 It will be an added advantage for the incumbent service provider to deploy Personnel who are members of the Professional bodies, e.g. Member of the Institute of Internal Auditors (IIA), Information Systems Audit and Control Association (ISACA). South African Institute of Chartered Accountants (SAICA) etc.

## **12. EVALUATION CRITERIA**

Bids are invited on the basis of submission of proposal and will be evaluated in three stages, namely pre-qualification, functionality, price and B-BEEE.

**NB: Bidders (and as well as each member of JV or consortium or partnership agreement ) must submit proof of registration with the National Treasury's centralised supplier database Bidders must ensure that they are registered on the CSD before bid closing date and before they submit bid proposals.**

## 12.1 FIRST STAGE – PRE- QUALIFICATION

### Mandatory Requirements:

- 12.1.1 Detailed Company Profile indicating the experience of the bidder.
- 12.1.2 Is registered in terms of the Companies Act, 2008 (Act 71 of 2008) or Close Corporation Act, 1984, (Act No. 69 of 1984) or, if a partnership, has a partnership agreement (buy and sell agreement for participating partners in this tender) in place that enables the partnership to automatically continue to function in the event of death or withdrawal of one of the partners.
- 12.1.3 Sign and Submit SBD 1, SBD, 3.3, SBD 4, SBD 6.1, SBD 8,SBD 9
- 12.1.4 Initial and submit the General condition of Contracts

All bids will be pre-qualified to ensure compliance to mandatory requirements. Should the mandatory requirements as stated above not be met, bids will be considered as non-responsive and will be disqualified.

## 12.2 SECOND STAGE - FUNCTIONALITY EVALUATION FOR

The following criteria and weights will be applied when bids are evaluated on functionality:

### 12.2.1 FUNCTIONALITY

- 12.2.2 Service providers need to score a minimum of **65 points** on technical proposal to proceed to the next phase of evaluation.
- 12.2.3. The Bidder must clearly mark and indicate on the CV's which personnel or resource will play which role.
- 12.2.4 Detailed CVs of key personnel(background, field of specialisation , and experience of team members) as well as copies of certified qualifications.
- 12.2.5 Minimum of three(3) contactable reference letters on the company letter head detailing the experience in conducting internal audit in the public sector.

Phase 2. Evaluation on Functionality

Functionality Evaluation Criteria and Weight Scores:

No	Criteria	Max Sub score
	<b>Company profile and work experience</b>	
1	<p>A minimum of five years' experience is required in conducting Internal Audit in the public sector. References accompanied by at least three signed letters not older than 10 years from referees proving that such projects were executed in the company's letterhead. MISA reserved the right to contact those references in the Public Sector</p> <p>0&lt;5 years = 0 points                      ≥5 &lt;7 years = 10 points                      ≥7 &lt; 9 years = 15 points                      9 years and above = 20 points</p>	20
2.	<p><b>Relevant qualifications of proposed team members to render the services</b></p> <p>Senior Manager: Chartered Accountant (CA) = 5 points</p> <p>Manager: CIA/ CISA or Honours (Accounting or Auditing) = 5 points</p> <p>Senior Auditor/ Supervisor: Bachelor's degree in Auditing /Accounting = 5 points</p> <p>Auditor: Bachelor's degree/BTEC/Advanced Diploma in Internal Auditing /Accounting =5 Points</p> <p>IT Auditor Advanced Diploma in Computer Auditing /CISA =5 Points</p>	25

3.	<p><b>Number of years' experience conducting Audit services including information system Audits</b></p> <p><b>Senior Manager:</b></p> <p>&lt; 7 years =0 Points          ≥7 years &lt; 10 years = 5 Points          ≥10 Years = 10 points</p> <p><b>Manager:</b></p> <p>&lt; 5 years = 0 Points          ≥5 years &lt; 8 years = 3 Points          ≥ 8 years = 5 points</p> <p><b>Senior Auditor/ Supervisor:</b></p> <p>&lt; 4 years = 0 Points          ≥4 Years &lt; 7 Years = 3 points          ≥7 Years = 5 Points</p> <p><b>Auditor</b></p> <p>&lt; 2 Years = 0 Points          ≥2 Years &lt; 5 Years = 3 Points          ≥ 5 years = 5 Points</p> <p><b>IT Auditor :</b></p> <p>&lt; 2 Years = 0 Points          ≥ 2 Years &lt; Years = 3 Points          ≥ 5 years = 5 Points</p>	30
4.	<p><b>Company's Internal Audit Methodology including transfer of skills</b></p> <p>Detailed breakdown of the audit processes from</p> <ul style="list-style-type: none"> <li>• <b>Planning phase: (6 points)</b> <ul style="list-style-type: none"> <li>○ development of system description; (2)</li> <li>○ control adequacy assessment;(2)</li> <li>○ development of the audit programme: (2)</li> </ul> </li> <li>• <b>Execution phase (6 points)</b> <ul style="list-style-type: none"> <li>○ Test the effectiveness of the controls that were assessed as adequate (1)</li> <li>○ Gather evidence regarding the effectiveness of controls (1)</li> <li>○ Document evidence regarding the effectiveness of controls to support the findings and opinions; (2)</li> <li>○ To formulate findings to be reported to management regarding the effectiveness of the controls (2)</li> </ul> </li> <li>• <b>Reporting Phase and follow-up (8 points)</b> <ul style="list-style-type: none"> <li>○ Confirmation of audit findings (2)</li> <li>○ Drafting and discussion of audit report (2)</li> <li>○ Plan of action to improve on the existing Internal Audit methodology = (4)</li> </ul> </li> </ul>	25

	<ul style="list-style-type: none"> <li>• How to Conduct readiness of Internal Audit function in preparation of External quality Assurance Assessment (3 points)</li> <li>• Detailed training programme for internal audit professionals including transfer of skills to MISA Internal Audit Activity (2 points)</li> </ul>	
	<b>TOTAL:</b>	<b>100</b>

NB: Bidders must obtain a minimum threshold of **65 points** to be considered for further evaluation on price and B-BBEE.

### 13. THIRD STAGE – EVALUATION FOR PRICE AND BEE

#### Stage 3 - Price and BBBEE

#### Points for B-BBEE Status Level of Contribution ( $P_p$ )

Maximum of **20 points** are allocated for Preferential Procurement Goal. Preference point must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of point (80/20 system)</b>
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2

B-BBEE Status Level of Contributor	Number of point (80/20 system)
Non-compliant contributor	0

### Points for Bid Price ( $P_s$ )

Maximum of 80 points are allocated to Bid Price on the following basis:

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where,

$P_s$  = Points scored for comparative price of the Bid under consideration

$P_t$  = Comparative price of the Bid under consideration

$P_{\min}$  = Comparative price of lowest qualified Bid

A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has the capability to execute the subcontract.

## 14. MISA's RIGHTS

MISA reserves the right to cancel this solicitation in whole or in part, at its sole discretion, at any time before the Agreement is fully executed. This RFP does not commit MISA to award an Agreement, to pay any costs incurred by bidders in the preparation of their proposals submitted in response to this RFP, or to procure or contract for services. MISA reserves the right to modify or cancel in whole or in part this FRP, to reject any and all proposals, to accept the proposal it considers most favorable to MISA's interests at its sole discretion, and to waive irregularities or informalities in any proposal or in the proposal procedures. MISA further reserves the right to reject all proposals and seek new proposals when MISA considers such a procedure to be in its best interest. If there is any evidence indicating that two or more bidders are in collusion to restrict competition or are otherwise engaged in anti-competitive practices, the proposals of all such bidders shall be rejected, and such evidence

may be a cause for disqualification of the participants in any future solicitations issued by MISA.

MISA reserves the right to hold discussions and/or negotiations with any individual or qualified company, to interview or not, to request additional information or revised proposals or to request best and final offers if it is in the best interest of MISA to do so. However, MISA may make an award without conducting any negotiations; therefore, proposers are encouraged to submit their best proposal at the outset. Appointment will be subject to the outcome of the vetting process on the recommended bidder.

## **15 MISA'S OBLIGATIONS**

MISA will steer the project internally and will monitor and evaluate all activities and reports on work delivered. MISA will review, evaluate and approve the services provided by the service provider as stipulated in the terms of references on an on-going basis;

Supply all reasonable, relevant, available data and information required and requested by the service provider for the proper execution of the project, and such assistance as shall reasonably be required by the service provider in carrying out their duties as per the terms of reference for the project.

## **16 REPORTING**

16.1 The appointed service provider will report to the appointed Project Manager by MISA.

16.1.1 The detailed reporting requirements will be provided to the successful service provider during the contract negotiation and project inception.

16.1.2 The service provider will have to generate monthly reports for submission to Project Manager.

16.1.3 The resources deployed will report directly to the Chief Audit Executive (CAE)

## **17 MONITORING AND EVALUATION**

17.1 MISA or its nominee reserves the right to monitor and evaluate the progress on the services provided by the selected service provider;

MISA or its nominee reserves the right to replace the service provider if the quality of service rendered is being compromised and this was brought to the attention of the service provider and there was no improvement.

## 18 PRICING SCHEDULE

- 18.1. Your proposed fees and billing arrangement must indicate whether actual or average rates would be used as per AG/SAICA rates.
- 18.2. Appropriate detail of both your proposed hourly and project fees must be provided i.e. human resources cost per category vs other expenses where applicable.
- 18.3. Detailed Project breakdown list is attached as **Annexure A** to enable the costing of the audits as an example.

It is understood that internal audits are based on hourly rates and that budgets are compiled once the appointed auditor has assessed the likely extent of the work.

Financial proposals will be compared on the basis of hourly rates. Firms are required to submit a table of hourly rates as required in the table below. An indication must be made whether quoting and invoicing is based on actual or average rates. If a particular category does not exist in the firm, it can be omitted.

ITEM	HOURLY RATES (Incl. all overheads) (Excl. VAT) Year 1		HOURLY RATES (Incl. all overheads) (Excl. VAT) Year 2		HOURLY RATES (Incl. all overheads) (Excl. VAT) Year 3	
	Rate	No. of Hrs	Rate	No. of Hrs	Rate	No. of Hrs
Senior Manager	R		R		R	
Manager	R		R		R	
Audit Supervisor/Senior Auditor	R		R		R	
Auditor	R		R		R	
IT Auditor	R		R		R	
Total offer price						

It is recognised that it is difficult for a prospective bidder to be firm about the extent of work solely on the terms of reference. However, to assist with assessments a firm must provide a typical distribution of time for members of the audit team on a job of this nature. This is to be expressed in percentages of the total person-hours billed on a typical job (see table below).

**NB: This will only be indicative and will not be binding on the firm.**

ITEM	Role	TYPICAL PERCENTAGE OF TOTAL HOURS ON PROJECT
Senior Manager	Sign off the report Quality assurance on the completed work	25%
Manager	Review the work done by Auditors	15%

Audit Supervisor	Execution of the audits	15%
Senior Auditor	Execution of the audits	15%
Auditor	Execution of the audits	15%
IT Auditor	Execution of the audits	15%
<b>Total</b>		<b>100%</b>

The service provider must submit a price, broken down into clear milestones and key deliverables. All the prices must be **VAT inclusive**.

## 19.1 PAYMENTS

19.1.1A payment schedule together with all delivery requirements associated with the release of payments will be agreed upon up-front with the successful service provider.

19.1.2 MISA does not pay any amount in advance.

19.1.3 All reports and documents needed for the processing of payment should be forwarded to MISA.

19.1.4 Only original signed invoices must be submitted for payments.

19.1.5 No invoice shall be paid if it is not an original invoice, is not signed and is not accompanied by the necessary documentation and deliverables.

19.1.6 The Project Manager must approve the documents before payment can be recommended.

19.1.7 The service provider will be paid within **30** days after approval of the invoice, by means of electronic transfer directly into the service provider's bank account.

## 20. BRIEFING SESSION (NON-COMPULSORY)

20.1. Bidders are invited to attend a non-compulsory virtual briefing session. The link to the briefing session will be made available on MISA website on the specified date and time of the briefing session. Non-compulsory Briefing session date on the **11 February 2022 Time: 10 H00am**

## 21. CONTACT PERSON

All technical queries should be addressed to Ms. Lumka Tyikwe ([lumka.tyikwe@misa.gov.za](mailto:lumka.tyikwe@misa.gov.za)).



## Annexure A (Example)

NO	SECTION AUDITED	REVIEW TYPE	KNOWLEDGE /REQUIRED	2021/22	2022/23	2023/24
1.	Finance and Supply Chain Management	Review of Financial Statements (Interim and Final)  <b>AGSA Management letter</b>	160	✓	✓	✓
2.	Human Resource Management	Review of Human resource Management and payroll Management	160	✓	✓	✓
3.	Financial Management and SCM	Accounts payable including payments made to suppliers within 30 days	140	✓	✓	✓
4.	Asset and Facilities Management	Review of Asset Management	160	✓	✓	✓

5.	Financial Management and SCM	Review of SCM processes including verification of irregular expenditure  (Bi -annually)	200	✓	✓	✓
6.	Information and Communication Technology	Review of IT Security	175	✓	✓	✓
7.	Office of the CEO (All Programmes)	Review of Performance Information( Pre-determined Objectives) (quarterly)	240	✓	✓	✓
8.	Technical Skills	Review of Municipal Sectoral and Technical Skills processes	120	✓	✓	✓

9.	Financial Management and SCM	Verification of Post Audit Action Plan (PAAP)  (Quarterly)	320	✓	✓	✓
10	Technical Support	Review of business processes to enhance infrastructure processes in municipalities	140	✓	✓	✓
11	Financial Management and SCM	Review of Internal Budgeting Process	160	✓	✓	✓
12.	ALL	Review of Governance including governance structures	160	✓	✓	✓
13.	Financial Management and SCM	Review of subsistence and other allowances	160	✓	✓	✓

### INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/PUBLIC ENTITY)

BID NUMBER: ..... CLOSING DATE: ..... CLOSING TIME: 11:00

DESCRIPTION.....

**The successful bidder will be required to fill in and sign a written Contract Form (SBD 7).**

BID DOCUMENTS MAY BE POSTED TO:.....

OR .....

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

.....

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

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

**THE FOLLOWING PARTICULARS MUST BE FURNISHED  
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)**

NAME OF BIDDER .....

POSTAL ADDRESS .....

STREET ADDRESS .....

TELEPHONE NUMBER CODE.....NUMBER.....

CELLPHONE NUMBER .....

FACSIMILE NUMBER CODE ..... NUMBER.....

E-MAIL ADDRESS .....

VAT REGISTRATION NUMBER .....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2) YES or NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (SBD 6.1) YES or NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA).....

A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS); OR.....

A REGISTERED AUDITOR .....

[TICK APPLICABLE BOX]

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE 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?  
NO

YES or

[IF YES ENCLOSE PROOF]

SIGNATURE OF BIDDER .....

DATE .....

CAPACITY UNDER WHICH THIS BID IS SIGNED .....

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED .....

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**ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:**

Department: .....

Contact Person: .....

Tel: .....

Fax: .....

E-mail address:.....

**ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:**

Contact Person: .....

Tel: .....

Fax: .....

E-mail address:.....

**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: .....	BID NO.: .....
CLOSING TIME 11:00	CLOSING DATE.....

OFFER TO BE VALID FOR .....DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
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1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project. R.....

3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

4. PERSON AND POSITION	HOURLY RATE	DAILY RATE
_____	R_____	_____
_____	R_____	_____
_____	R_____	_____
_____	R_____	_____
_____	R_____	_____

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

_____	R_____	_____ days
_____	R_____	_____ days
_____	R_____	_____ days
_____	R_____	_____ days

5.1 Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
_____	.....	.....	R.....
_____	.....	.....	R.....
_____	.....	.....	R.....
_____	.....	.....	R.....

TOTAL: R.....

\*\* "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance contributions and skills development levies.

Name of Bidder: .....

5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
TOTAL: R.....			

- 6. Period required for commencement with project after acceptance of bid .....  
.....
- 7. Estimated man-days for completion of project .....  
.....
- 8. Are the rates quoted firm for the full period of contract? \*YES/NO
- 9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index. ....  
.....  
.....  
.....

\*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –  
(INSERT NAME AND ADDRESS OF DEPARTMENT/ENTITY)

Tel:

Or for technical information –

(INSERT NAME OF CONTACT PERSON)

Tel:

## DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

2.1 Full Name of bidder or his or her representative: .....

2.2 Identity Number: .....

2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>): .....

2.4 Company Registration Number: .....

2.5 Tax Reference Number: .....

2.6 VAT Registration Number: .....

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

<sup>1</sup>"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

<sup>2</sup>"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member: .....  
Name of state institution at which you or the person connected to the bidder is employed : .....  
Position occupied in the state institution: .....

Any other particulars:  
.....  
.....  
.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....  
.....  
.....

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**

2.8.1 If so, furnish particulars:

.....  
.....  
.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

2.9.1 If so, furnish particulars.

.....



**4 DECLARATION**

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF  
PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION  
PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

May 2011

terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
  - 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

### 3. POINTS AWARDED FOR PRICE

#### 3.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:  
**80/20**

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for price of bid under consideration

$P_t$  = Price of bid under consideration

$P_{\min}$  = Price of lowest acceptable bid

### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14

4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

**5. BID DECLARATION**

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

**6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1**

6.1 B-BBEE Status Level of Contributor: . = .....(maximum of 20 points)  
 (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

**7. SUB-CONTRACTING**

7.1 Will any portion of the contract be sub-contracted?

*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE

*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

8. **DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
  - One person business/sole propriety
  - Close corporation
  - Company
  - (Pty) Limited
- [TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
  - Supplier
  - Professional service provider
  - Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;

- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

<p>WITNESSES</p> <p>1. ....</p> <p>2. ....</p>
--

<p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE: .....</p> <p>ADDRESS .....</p> <p>.....</p> <p>.....</p>
--

## DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
  - a. abused the institution's supply chain management system;
  - b. committed fraud or any other improper conduct in relation to such system; or
  - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?  <b>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</b></p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?  <b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		

4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

**SBD 8**

**CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME).....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION  
FORM IS TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,  
ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION  
PROVE TO BE FALSE.**

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

Js365bW

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

10. 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.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

Js914w 2

**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 any thing of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 "Day" means calendar day.
  - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
  - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
  - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
  - 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable.

Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection.**
- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections,  
tests and  
analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with

supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## **9. Packing**

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

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

## **10. Delivery and documents**

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

## **11. Insurance**

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

## **12. Transportation**

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

## **13. Incidental services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts
  - 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
    - (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
    - (b) in the event of termination of production of the spare parts:
      - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
      - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. Warranty
  - 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
  - 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
  - 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
  - 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
  - 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

the intended penalty as not objected against and may impose it on the supplier.

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

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

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

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

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

**24. Anti-dumping and countervailing duties and rights**

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

**25. Force Majeure**

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security,

damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.