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# MPUMALANGA PROVINCIAL GOVERNMENT



## DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVOROMENTAL AFFAIRS

**BID NUMBER: ALA/576/24/MP**

### **CALL FOR EXPRESSION OF INTEREST FOR THE DEVELOPMENT OF SUNFLOWER OIL PROCESSING PLANT AND SOYABEAN OIL PROCESSING PLANT UNDER DR. JS MOROKA LOCAL MUNICIPALITY, NKANGALA DISTRICT**

ISSUED BY:

Department of Agriculture, Rural Development, Land & Environmental Affairs  
Private Bag X11219  
Mbombela  
1200

**NAME OF BIDDER:** .....

**TOTAL BID PRICE (all inclusive) :**.....

**(Also in words):** .....

.....

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND &amp; ENVIRONMENTAL AFFAIRS</b>					
BID NUMBER:	ALA/576/24/MP	CLOSING DATE: 07 March 2024		CLOSING TIME:	12h00
DESCRIPTION	CALL FOR EXPRESSION OF INTEREST FOR THE DEVELOPMENT OF SUNFLOWER OIL PROCESSING PLANT AND SOYABEAN OIL PROCESSING PLANT UNDER DR. JS MOROKA LOCAL MUNICIPALITY, NKANGALA DISTRICT				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
<b>MBOMBELA</b> , Riverside Government Complex, Building No 9, Government Boulevard, Mbombela, 1200, <b>PIET RETIEF</b> , No. 11 Measroch Street, Piet Retief Office, <b>KWAMHLANGA</b> , KwaMhlanga Government Complex, Department of Finance, Building No. 12, Computer Centre <b>EVANDER</b> , 10 Cornell Road (previously occupied by Evander Home Affairs Offices), Evander, 2280, <b>BUSHBUCKRIDGE</b> , Bushbuckridge Advice Centre, Department of Finance, Protea building (old Telkom building), <b>MIDDELBURG</b> , Department of Public Works, Cnr. Lillian Ngoyi and Dr Beyers Naudé Streets – Old TPA Building, Upper ground floor, Office numbers A20, 21 and 25, <b>MALELANE</b> , 24 Air Street, Malelane, <b>ELUKWATINI</b> , Elukwatini Sub Regional offices, Office numbers A49 and A50 (opposite Elukwatini Community Hall) Stand number 12 Extension A, Elukwatini.					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	<b>Ms. NI Mbuyane</b>		CONTACT PERSON	<b>Ms. SD Maleni</b>	
TELEPHONE NUMBER	<b>013 766 6118</b>		TELEPHONE NUMBER	<b>013 759 4000</b>	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	<b>NIMbuyane@mpg.gov.za</b>		E-MAIL ADDRESS	<b>MaleniSD@mpg.gov.za</b>	
<b>SUPPLIER INFORMATION</b>					
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:		<b>OR</b>	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	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
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 ]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
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**

<b>1. BID SUBMISSION:</b>
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b>
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.
1.4. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
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."

**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: .....

**MPUMALANGA PROVINCIAL GOVERNMENT**



**DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS**

**BID DOCUMENT**

**CALL FOR EXPRESSION OF INTEREST FOR THE DEVELOPMENT OF SUNFLOWER OIL PROCESSING PLANT AND SOYABEAN OIL PROCESSING PLANT UNDER DR JS MOROKA LOCAL MUNICIPALITY, NKANGALA DISTRICT**

**NAME OF BIDDER** : \_\_\_\_\_

**TEL NUMBER** : \_\_\_\_\_

**FAX NUMBER** : \_\_\_\_\_

<b>PREPARED FOR:</b>	<b>PREPARED BY:</b>
 HEAD OF DEPARTMENT MPUMALANGA DEPT. OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS PRIVATE BAG X11219 NELSPRUIT 1200	 AGRO-PROCESSING SUPPORT MPUMALANGA DEPT. OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS PRIVATE BAG X11219 NELSPRUIT 1200

**CLOSING DATE: AS PER BID BULLETIN at 12:00  
THIS BID IS VALID FOR 90 DAYS**

**CALL FOR EXPRESSION OF INTEREST FOR THE DEVELOPMENT OF SUNFLOWER OIL PROCESSING PLANT AND SOYA BEAN PROCESSING PLANT UNDER DR JS MOROKA MUNICIPALITY, NKANGALA DISTRICT**

**DETAILS of BIDDER**

**NAME OF BIDDER** .....

.....

.....

**PHYSICAL ADDRESS** .....

.....

.....

**POSTAL ADDRESS** .....

.....

.....

**CONTACT PERSON (NAME)** .....

(SURNAME) .....

(PHONE No) .....

(CELL No) .....

(FAX No) .....

(E-MAIL) .....



**MPUMALANGA PROVINCIAL GOVERNMENT  
DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL  
AFFAIRS**

**BID NOTICE AND INVITATION TO BID**

The Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs invites tenders for the **CALL FOR EXPRESSION OF INTEREST FOR THE DEVELOPMENT OF SUNFLOWER OIL PROCESSING PLANT AND SOYABEAN OIL PROCESSING PLANT UNDER DR JS MOROKA MUNICIPALITY, NKANGALA DISTRICT**

BID documents will be obtainable from the following supply chain management offices **Mbombela Riverside Government Complex, Malelane 24 Air Street, Siyabuswa Old Parliament Building, Middleburg Department of Public Works, KwaMhlanga Government Complex Department of Finance, Piet Retief no. 11 Mearsorch Street, Evander 10 Cornell Road, Elukwatini Sub-Regional Offices and Bushbuckridge The Provincial Treasury, R40 Road, Bakoena Business Complex**, on payment of a non-refundable levy of **R100.00** or can be **downloaded at <https://etenders.treasury.gov.za>**. Only bank-guaranteed cheques or cash will be accepted and documents can be collected between 7:45 and 16:00 Cheques shall be made payable to the Mpumalanga Provincial Government.

The closing date for receipt of tenders is: **AS PER BID BULLETIN at 12h00**

Tenders must be submitted in sealed envelopes. The bid number and closing date must appear on the front of the envelope. The name and address of the bidder must appear on the back of the envelope. Tenders can be submitted in the following Supply Chain Offices: Mbombela, Bushbuckridge, KwaMhlanga, Evander, Piet Retief, Middelburg, Malelane, and Siyabuswa. Tender submission results are read out to the public immediately after closure

Telegraphic, telephonic, telex, facsimile, e-mail and late bids WILL NOT be accepted.

Bidders should ensure that bids are delivered on time to the correct address. If the bid is late, it will not be accepted for consideration. All documentation submitted in response to this bid must be in English, unless otherwise indicated under technical specification.

**NB: COMPULSORY BRIEFING SESSION will be held as follows:**

<b>Date and Time</b>	<b>Venue</b>	<b>Location</b>
As per Bid Bulletin	<b>Marapyane college, (GPS Coordinates: 24.96401°S, 28.76243°E)</b>	DR JS Moraka Municipality

## 1. BACKGROUND

Sunflower is one of the leading grain crops produced in South Africa following maize and wheat. Sunflower is well acclimatized in both hot and dry areas of South Africa. Sunflower seed is essentially used for the production of sunflower oil and oilcake. Following dehulling, the seed can be consumed as a snack or utilized for manufacturing of various oils. The extraction of oil from the sunflower seed is the greatest importance of sunflower production. Most of the seed produced is marketed to local expressers, animal feed producers and for seed. The sunflower seed supplies about 40-50% of oil, which is generally processed to cooking oil. The oil is mainly utilized in households, restaurants, and different food industries on a daily basis. Sunflower is the primary raw material for the preparation of margarine and spreads, used daily by millions of people. Some pet food also contains oilseed raw material. The processing of sunflower seed requires specialized skills and high technology, and it is highly capital intensive. The large refineries are based in Gauteng and Kwazulu Natal province.

Soya bean seed is also essentially used for the production of soya bean oil and oilcake. The Mpumalanga Province is the second largest producer of soya beans in South Africa. The greatest quantities of soybeans in the province are produced in the Steve Tshwete area, Nkangala district. Soyabean crude oil and oilcake are extracted during processing of soya bean seed. The crude oil is then refined to produce soybean oil which is used in food industries. There has been increasing interest in soybean products in South Africa more recently due the associated health benefits. The benefits include lowering cholesterol and preventing heart diseases. Soybeans are an important source of protein. The consumption of soybean is high for oil and oilcake (70%) as compared to poultry feed (15%) and human consumption (3%).

It is evident that demand for sunflower and soybean is very high when these commodities are intended for processing. Most of the agro-processing facilities are situated outside the Mpumalanga Province. Farmers do not generate good financial returns when marketing raw products. Some of the objectives the Agriculture and Agro-processing Master Plan (AAMP) is to promote sustainable transformation in the agriculture and agro-processing sectors, improve access to local and export markets and enhance competitiveness and entrepreneurship

opportunities through technological, infrastructure construction and digitalization. In support of AAMP, the Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs (DARDLEA) will partner with the investor in the establishment, development and management of an oil processing plants at Marapyane agricultural college in the Dr J.S Moroka Municipality under Nkangala District. The oil will be extracted and/processed from sunflower and soyabean seed produced by local farmers. This initiative will provide value adding and agro-processing opportunities and improve sustainability through creation of economies of scale. The establishment of the sustainable oil extraction/processing plant will ensure that more profits are yielded for farmers, while serving a wider gap in the market and encourage future-centric economic growth initiatives. The project will ensure more farmers are supported through production and subsequently reduce unemployment, particularly among the youth in both the primary and secondary stages of agro-processing

## **2. PURPOSE**

This serves to call on investors to invest in the establishment, development and management of sunflower oil processing plant and soya bean processing plant in the Nkangala district. The investor will partner with the Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs (DARDLEA) in this regard.

## **3. CONTRACT**

- 3.1** The Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs intends to source an investor to commit capital with the expectation of financial returns;
- 3.2** An Investor that has experience and interest in oil production and processing, in the field of agriculture;
- 3.3** Therefore, in order for DARDLEA to partner with a suitable investor, a detailed proposal with a clear partnership model and an implementation approach must be submitted;
- 3.4** The department will make site available for the development of the oil processing plants.
- 3.5** In this regard, the main objective of this contract is to partner with an investor in the establishment, development and management of a sunflower oil processing plant and

soya bean oil processing plant at the Marapyane Agricultural College. The ultimate goal, the investor will enter into a market contract with producers, whereby the investor will collect sunflowers and soybeans from producers, process them into oil products for selling purposes

#### **4. SCOPE OF WORK**

- Conduct Feasibility studies for sunflower oil processing plant and soya bean oil processing plant in the province
- Develop and present Business Proposal
- Mobilize capital and funding
- Carry out the full establishment of the oil processing plant.
- Apply for food safety accreditation.
- Staff recruitment and placement
- Staff capacity building.
- Signing of off-take agreements with producers
- Develop a production support plan for producers together with DARDLEA to ensure sustainable product availability

#### **5. COMPETENCIES, RESOURCES AND EXPERTISE REQUIRED**

- Capital funding;
- Health and safety;
- Beverage Production
- Food safety/ quality control
- Handling and transport logistics
- Business management
- Management of human resources;
- Guide, maintain and manage the processing plant infrastructure.

#### **6. EVALUATION PROCESS**

The valuation process comprises of the following phases:

## 6.1 Phase I: Initial Screening Process

During this phase, bid documents will be reviewed to determine compliance with the following:

- All SBD forms must be fully completed and signed
- Attendance of compulsory briefing session and signing of attendance register.
- Signed Joint Venture Agreement and Power of Attorney in case of Joint Ventures;
- Company Profile, including previous similar work done, value of the work and contactable references per contract.
- A comprehensive proposal with a clear partnership model and implementation approach.

**All bidders must be registered with the Central Supplier Database (CSD) failure to do so will be automatically disqualified**

**NB: It is the responsibility of the bidder to ensure that the following key information is in order, during the bid evaluations:**

- The Business registration status
- Bid restrictions and defaulters' status
- Identification number and the service of the state status

## 6.2 Phase II: Functionality evaluation

- a) Tenders will be evaluated strictly according to the bid evaluation criteria stipulated below.
- b) Bidders must as part of their bid documents, submit supportive documentation for all technical requirements as indicated hereunder. The panel responsible for scoring for the respective tenders will evaluate and score all tenders based on their submissions and the information provided.
- c) The BEC members will individually evaluate the responses received against the following criteria as set out below:

### EVALUATION CRITERIA ON FUNCTIONALITY

Criteria	Evidence	Value	Weight
<p>A comprehensive proposal with a clear partnership model and implementation approach (Proposal presentation to the Department)</p> <p><i>The proposal must clearly indicate the four main elements:</i></p> <ul style="list-style-type: none"> <li>• Methodology and market research (product to produce, at what price, to be sold where, ect)</li> <li>• Equipment needed to achieve the planned production level</li> <li>• Number of staff required with their different jobs</li> <li>• Level of stock to be held as raw material, ingredients, packaging and finished products</li> </ul>	No proposal to the department	1	<b>25</b>
	A proposal covering 1 of the main elements	2	
	A proposal covering 2 of the main elements	3	
	A proposal covering 3 of the main elements	4	
	A proposal covering all 4 main elements	5	
<p>Details of staff available for this Contract with written and signed consent from relevant personnel with reference to this bid. The following skills are required:</p> <ul style="list-style-type: none"> <li>• A diploma in Food Quality Control</li> <li>• A certification in Health and Safety</li> <li>• Artisan with millwright certification</li> <li>• A diploma in Business Management</li> </ul> <p><i>Attach CVs, certified copies of qualifications and letters of consent from the relevant personnel. Certification should not be more than 6 months by the closing of this bid</i></p>	None	1	<b>20</b>
	1 of the required skills	2	
	2 of the required skills	3	
	3 of the required skills	4	
	ALL 4 required skills	5	
<p>A comprehensive business plan (business proposal presentation to the Department)</p> <p><i>The business proposal must clearly indicate the 4 main elements:</i></p>	No business proposal submitted	1	<b>25</b>
	A business proposal covering 1 of the main elements	2	
	A business proposal covering 2 of the main elements	3	

<ul style="list-style-type: none"> <li>• <i>the cash flow projections and own financial contribution (Investment Confirmation Letter), return on investment</i></li> <li>• <i>Resources required</i></li> <li>• <i>Timeframe</i></li> <li>• <i>Detailed milestones/ activities</i></li> </ul>	A business proposal covering 3 of the main elements	4	
	A business proposal covering all 4 main elements	5	
Draft layout plan indicating process flow for the oil processing plants	draft layout plan not attached	1	<b>20</b>
	Attached draft layout plan not prepared and signed off by a professional architect	3	
	Attached draft layout plan prepared and signed off by a professional architect	5	
A comprehensive financial proposal and stamped bank guarantee letter (Proposal presentation to the Department) <i>The proposal should clearly define the bidder's ability to finance a project indication of risk acceptance and the bidder's strength of covenant/ commitment</i>	No proposal and no stamped bank guarantee letter	1	<b>10</b>
	Proposal without the details of information above and no stamped bank guarantee letter	2	
	Proposal with all of the details above but without stamped guarantee letter	3	
	Proposal with all of the details above and stamped bank guarantee letter	5	
		<b>TOTAL</b>	<b>100</b>

**The bid evaluation committee may conduct physical verification during the evaluation process.**

- d) Individual value scores will be multiplied with the specified weighting for the criterion to obtain the marks scored for all elements. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- e) The value scored for each criterion will be multiplied by the specified with weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- f) All bidders/investors who qualified in phase one will be invited to present their proposals to the departmental bid Evaluation Committee
- g) The department will be appointing based on the capacity (financial, technical and

business skills) by the bidder/investor

- h) The bidder who scored the highest points in functionality will be recommended for appointment.
- i) NB: It is the responsibility of the service provider to ensure that tax is compliant during the appointment stage and have a valid bank account.
- j) Where the recommended bidder is not tax compliant, the bidder will be notified by email or in writing of their non-compliant status and the bidder will be requested to provide written proof from SARS on their compliance status or proof that they have made an arrangement to meet their outstanding tax obligation, within 7 working days. The bidder should thereafter provide the Department with proof of their tax compliance status which should be verified via the Central Supplier Database.
- k) Should the recommended bidder fail to provide written proof of their tax compliance status within seven (7) working days for bids; the Accounting Officer or Accounting Authority must reject the bid submitted by the bidder.

## **7. ASSUMPTION OF DUTY**

The successful bidder(s) will be expected to offer the services for a minimum of 10 years not exceeding a maximum of 20 years after signing the Service Level Agreement (SLA).

## **8. CLIENT BASE**

All the information submitted with regards to the experience may be verified in terms of contactable references which are on the company profile. The references may include the names of relevant persons as well as their phone numbers, fax numbers, and email addresses. DARDLEA may utilize this data to obtain information during the evaluation and/or adjudication process.

## **9. INDEMNITY IMPLICATIONS**

Successful service providers must be prepared to enter into a service-level agreement with the DARDLEA.

## **10. COMMUNICATION**

Supply Chain Management will communicate with bidders for, among others. Where bid clarity is sought, to obtain information or to extend the validity period. Any communication either by letter or electronic mail or any other form of correspondence to any government official, department or a person acting in an advisory capacity for DARDLEA in respect of this bid between the closing date and the award of the bid by the bidder is prohibited.

## **11. COUNTER CONDITIONS**

Bidders' attention is drawn to the fact that amendments to any of the Special Conditions by bidders will result in invalidation of such tenders.

## **12. PROHIBITION OF RESTRICTIVE PRACTICES**

- a. In terms of section 4(1) 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:
- Directly or indirectly fixing a purchase or selling price or any other trading condition;
  - Dividing markets by allocation customers, suppliers, territories or specific types of goods or services; or
  - Collusive bidding.
- b) If a bidder(s) or contractor(s), in the judgment of purchaser, has/have engaged in any of the restrictive practices referred to above, the purchaser may, without prejudice to any other remedy provided for, invalidate the bid(s) for such items(s) offered or terminate the contract in whole or in part and refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Completion Act no.89 of 1998.

### **13. FRONTING**

DARDLEA supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background DARDLEA condemns any form of fronting.

DARDLEA, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary verification to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and industry be established during such enquiry, the onus will be on the bidder / contractor to prove that fronting does not exist.

Failure to do so within a period of 14 days from the date of notification may invalidate the bid/contract and may also result in the restriction of the bidder/contractor from conducting business with the public sector for a period not exceeding ten years, in addition on any other remedies DARDLEA may have against the bidder/contractor concerned.

Fronting is prohibited. Any bidder found to have fronted shall automatically be disqualified. For contracts already awarded, the contract shall be cancelled and any costs borne shall be for the account of the defaulting Bidder. These costs shall include the costs of appointing another Bidder to complete the work.

### **14. MONITORING**

Bidders are to note that the Department will monitor and evaluate the project through its Agro-processing support section. The bidder must report within 7 (seven) days after the end of each quarter on the performance of the project.

## **15. RIGHT OF DARDLEA TO INVESTIGATE AND SEEK CLARIFICATION**

The Department may, in its sole discretion, seek clarification, during the process. In the process of clarification, no change in the substance of the Technical Section or in the Financial Section shall be sought, offered or permitted.

The Department shall seek all clarifications in writing and the Bidder's responses shall also be in writing.

Without limiting the information above, the Department may, in its sole discretion;

- Investigate evidence of the ability and experience of a Bidder under consideration, including joint venture partners, proposed sub-contractors, and parties otherwise related to the Bidder or the Bidder's Proposal; and
- Require or seek out confirmation from other parties of information furnished by a Bidder.

## **16. SIGNATURE OF AUTHORITY.**

Only persons duly authorized by a company shall sign the documents that are to be submitted to the Department. A letter of authorization must accompany bid documents. In terms of joint ventures, a document of the establishment of the venture must accompany bid documents. Representatives of all the parties in the joint venture shall sign the establishment document.

## **17. ACCEPTANCE AND REJECTION**

The Department may reject any bid document if it deviates from the set criteria and reserves the right to accept or reject any bid if it does not meet the necessary requirements.

## **18. TIME SCHEDULE**

All tenders will be valid for **90 days** after closing date. In cases where the bidder fails to sign the contract of agreement or produce the required security within the required time, be unable to undertake work given or withdraw during the appointment period, the bidder shall repay the full expenses of re-advertising and preparing of new tenders. This shall not apply if the Department accepts another bidder from the list.

## 19. JURISDICTION

The applicable legislation of the Republic of South Africa shall apply to each contract on its acceptance as *domicilium citandi et executandi*, where any legal process may be resumed on the contractor.

Each bidder binds itself to the jurisdiction and the stipulated laws of the Republic of South Africa.

## 20. MEDIATION AND ARBITRATION

Mediation and Arbitration proceedings shall be in terms of rules laid by the Law Society of South Africa.

## 21. CLOSING DATE

The closing date for this Expression of Interest shall be as per bid bulletin

## 22. ENQUIRIES

### Technical Enquiries:

Ms. SD Maleni

Contact number: 013 759 4000

Email address: [MaleniSD@mpg.gov.za](mailto:MaleniSD@mpg.gov.za)

### Administrative Enquiries:

Ms. NI Mbuyane

Tel: 013 766 6118

[nimbuyane@mpg.gov.za](mailto:nimbuyane@mpg.gov.za)

*No visit to the respective persons will be entertained to ensure fairness to all prospective bidders and for audit ability purposes*



### Application for a Tax Clearance Certificate

**Purpose**

Select the applicable option

Tenders

Good standing

If "Good standing", please state the purpose of this application

.....

**Particulars of applicant**

Name/Legal name  
(Initials & Surname  
or registered name)

Trading name  
(if applicable)

ID/Passport no

Company/Close Corp.  
registered no

Income Tax ref no

PAYE ref no 7

VAT registration no 4

SDL ref no L

Customs code

UIF ref no U

Telephone no

Fax  
no

E-mail address

Physical address

Postal address

**Particulars of representative (Public Officer/Trustee/Partner)**

Surname

First names

ID/Passport no

Income Tax ref no

Telephone no

Fax  
no

E-mail address

Physical address

**Particulars of tender** (If applicable)

Tender number

Estimated Tender amount R ,

Expected duration of the tender  year(s)

**Particulars of the 3 largest contracts previously awarded**

Date started	Date finalised	Principal	Contact person	Telephone number	Amount
<input type="text"/>					
<input type="text"/>					
<input type="text"/>					

**Audit**

Are you currently aware of any Audit investigation against you/the company?  YES  NO  
 If "YES" provide details

**Appointment of representative/agent (Power of Attorney)**

I the undersigned confirm that I require a Tax Clearance Certificate in respect of  Tenders  or  Goodstanding.

I hereby authorise and instruct  to apply to and receive from SARS the applicable Tax Clearance Certificate on my/our behalf.

Signature of representative/agent  Date

Name of representative/agent

**Declaration**

I declare that the information furnished in this application as well as any supporting documents is true and correct in every respect.

Signature of applicant/Public Officer  Date

Name of applicant/Public Officer

**Notes:**

- It is a serious offence to make a false declaration.
- Section 75 of the Income Tax Act, 1962, states: Any person who
  - fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
  - without just cause shown by him, refuses or neglects to-
    - furnish, produce or make available any information, documents or things;
    - reply to or answer truly and fully, any questions put to him ...
 As and when required in terms of this Act ... shall be guilty of an offence ...
- SARS will, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.**
- Your Tax Clearance Certificate will only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.

## 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 interest<sup>1</sup> 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

<sup>1</sup> 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.

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**

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 consortium<sup>2</sup> 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.

<sup>2</sup> 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.

- 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

## DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

### 1. General Conditions

- 1.1. Preferential Procurement Regulations, 2017 (Regulation 8) make provision for the promotion of local production and content.
- 1.2. Regulation 8.(2) prescribes that in the case of designated sectors, organs of state must advertise such tenders with the specific bidding condition that only locally produced or manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. Where necessary, for tenders referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

- x is the imported content in Rand  
y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

**The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.**

1.6. A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

**2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:**

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
_____	_____ %
_____	_____ %
_____	_____ %

3. Does any portion of the goods or services offered have any imported content?

(Tick applicable box)

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

3.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on [www.reservebank.co.za](http://www.reservebank.co.za)

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

<b>Currency</b>	<b>Rates of exchange</b>
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

**LOCAL CONTENT DECLARATION**  
**(REFER TO ANNEX B OF SATS 1286:2011)**

**LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)**

**IN RESPECT OF BID NO. ....**

**ISSUED BY: (Procurement Authority / Name of Institution):**

.....

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on <http://www.thdti.gov.za/industrialdevelopment/ip.jsp>. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ..... (full names),  
do hereby declare, in my capacity as .....  
of .....(name of bidder  
entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
  - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

**If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.**

**The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.**

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2017

promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 1** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 2** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT:  
GENERAL CONDITIONS OF CONTRACT**

**July 2010**

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

**NOTES**

The purpose of this document is to:

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

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

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

## TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 “Day” means calendar day.
  - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
  - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
  - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

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

obligations of the supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

**2. Application**

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

**3. General**

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](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.

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

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

**22. Penalties**

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

**23. Termination for default**

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

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

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

23.4 If a purchaser intends imposing a restriction on a supplier or any

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

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

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

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

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

- 24.1 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.
- 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.

Js General Conditions of Contract (revised July 2010)