



INVITATION TO BID: NUMBER: FMA 0003-2025/26

VALIDITY PERIOD OF BID OFFER: 90 DAYS FROM CLOSING DATE

THE DEPARTMENT OF THE PREMIER WISHES TO INVITE POTENTIAL BIDDERS FOR THE ESTABLISHMENT OF PANELS CONSISTING OF LAW FIRMS TO SUPPLEMENT THE SERVICES THAT ARE PROVIDED BY THE OFFICE OF THE STATE ATTORNEY IN LITIGATION AND LEGAL ADVISORY MATTERS INVOLVING THE WESTERN CAPE GOVERNMENT ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE (3) YEARS (36 MONTHS)

Bid Number: FMA 0003-2025/26
Contact person: Adv. Lucas Buter
Date of advertisement: 08 October 2025
Closing Date and Time: 31 October 2025 @ 11H00

Late bid offers shall not be admitted for consideration.

Bidders to note that should the Bid document be too big to fit into the Bid Box, to please contact the following Supply Chain Management official/s who will ensure that bid documents get deposited into the bid box before the closing date and time: PROCUREMENT OFFICE – 021 483 4679/ 3578/ 2943/ 3578/ 5710/ 3004/ 2902.

Completed and signed (in ink) bid documents must be submitted on the official bid forms and may not be re-typed.

Completed and signed (in ink) bid documents if posted must be addressed to:

The Director, Supply Chain Management and Administration, P.O. Box 659 Cape Town, 8000 and sufficient time must be allowed for the delivery of the bid to the offices of SCM, situated in 7 Wale Street, Cape Town.

Or

DEPOSITED IN THE DEPARTMENT OF THE PREMIER TENDER BOX SITUATED ON THE GROUND FLOOR (ENTRANCE) OF NO. 4 DORP STREET, CAPE TOWN (CNR KEEROM AND DORP STREET) before the closing time of the bid.

Bids will be regarded as late if received after the closing time of the bid.

The Department of the Premier (DotP) reserves the right to cancel the bid at any stage of the process.

ALL PRICES MUST BE QUOTED IN RSA CURRENCY AND MUST BE INCLUSIVE OF VAT.

The service provider/s must comply with the conditions for the processing of personal information as prescribed by the Protection of Personal Information Act, No 4 of 2013 (POPI). The service provider/s is required to provide the WCG with a certificate confirming that the personal information provided to the service provider/s by the WCG has been destroyed.

This bid is subject to the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations 2022, the General Conditions of Contract (GCC) and any other Conditions and or Special Conditions of Contract that might be stipulated in the requirement. Bidder's attention is drawn to the fact that amendments to any of the Bid Conditions or setting of counter conditions by bidders may result in the invalidation of such bids.

The successful bidder will be required to sign a written contract form within 7 days after the award of the bid.

PART A INVITATION TO BID

ZERO-TOLERANCE TO FRAUD, THEFT AND CORRUPTION (ANTI-FRAUD, THEFT AND CORRUPTION)

THE WCG IS COMMITTED TO GOVERN ETHICALLY AND TO COMPLY FULLY WITH ANTI-FRAUD, THEFT AND CORRUPTION LAWS AND TO CONTINUOUSLY CONDUCT ITSELF WITH INTEGRITY AND WITH PROPER REGARD FOR ETHICAL PRACTICES.

THE WCG HAS A ZERO TOLERANCE APPROACH TO ACTS OF FRAUD, THEFT AND CORRUPTION BY ITS OFFICIALS AND ANY SERVICE PROVIDER CONDUCTING BUSINESS WITH THE WCG.

THE WCG EXPECTS ALL ITS OFFICIALS AND ANYONE ACTING ON ITS BEHALF TO COMPLY WITH THESE PRINCIPLES TO ACT IN THE BEST INTEREST OF THE WCG AND THE PUBLIC AT ALL TIMES.

THE WCG IS COMMITTED TO PROTECTING PUBLIC REVENUE, EXPENDITURE, ASSETS AND REPUTATION FROM ANY ATTEMPT BY ANY PERSON TO GAIN FINANCIAL OR OTHER BENEFIT IN AN UNLAWFUL, DISHONEST OR UNETHICAL MANNER.

INCIDENTS AND SUSPICIOUS ACTIVITIES WILL BE THOROUGHLY INVESTIGATED AND WHERE CRIMINAL ACTIVITY IS CONFIRMED, RESPONSIBLE PARTIES WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

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

BID NUMBER:	FMA 0003-2025/26	CLOSING DATE:	31 October 2025	CLOSING TIME:	11H00
DESCRIPTION	THE DEPARTMENT OF THE PREMIER WISHES TO INVITE POTENTIAL BIDDERS FOR THE ESTABLISHMENT OF PANELS CONSISTING OF LAW FIRMS TO SUPPLEMENT THE SERVICES THAT ARE PROVIDED BY THE OFFICE OF THE STATE ATTORNEY IN LITIGATION AND LEGAL ADVISORY MATTERS INVOLVING THE WESTERN CAPE GOVERNMENT ON AN AS AND WHEN REQUIRED BASIS FOR A PERIOD OF THREE (3) YEARS (36 MONTHS)				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT THE GROUND FLOOR (ENTRANCE) OF NO. 4 DORP STREET, CAPE TOWN (CNR KEEROM AND DORP STREET) BEFORE THE CLOSING TIME OF BID.					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Jade Haupt / Stacey Campbell		CONTACT PERSON	Adv. Lucas Buter	
TELEPHONE NUMBER	021 483 3578 / 021 483 3004		TELEPHONE NUMBER		
E-MAIL ADDRESS	Jade.Haupt@westerncape.gov.za Stacey.Campbell@westerncape.gov.za		E-MAIL ADDRESS	dotp.acq@westerncape.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		AND	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	
IF YES, WAS THE CERTIFICATE ISSUED BY A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN NATIONAL ACREDITATION SYSTEM (SANAS)	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No				

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT (FOR EMEs & QSEs) MUST BE SUBMITTED TOGETHER WITH A COMPLETED 6.1 IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/ SERVICES/ WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
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QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.	

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED – (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (WCBD7).

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE WITH TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE AND CSD NUMBER AS MENTIONED IN 2.3 ABOVE.
- 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 (INCLUDE FULL NAME AND SURNAME):

CAPACITY UNDER WHICH THIS BID IS SIGNED:

(Proof of authority must be submitted e.g. company resolution)

DATE:

000003

PRICING SCHEDULE

(Professional Services)

NAME OF BIDDER: _____	BID NO.: FMA 0003-2025/26
CLOSING TIME: 11H00	CLOSING DATE: 31 OCTOBER 2025

OFFER TO BE VALID FOR **90** DAYS FROM THE CLOSING DATE OF BID

THE ESTABLISHMENT OF A PANEL OF PRIVATE ATTORNEY'S FIRMS / PRIVATE ATTORNEY'S PRACTICING FOR THEIR OWN ACCOUNT TO SUPPLEMENT THE SERVICES BY THE OFFICE OF THE STATE ATTORNEY IN LITIGATION AND LEGAL ADVISORY MATTERS INVOLVING WESTERN CAPE GOVERNMENT (WCG) ON AN AS WHEN REQUIRED BASIS FOR A PERIOD OF THREE (3) YEARS (36 MONTHS)

Please note:

1. The bidder must quote an hourly, all-inclusive rate, which must be inclusive of:
 - a. travel costs incurred in the normal course (excluding instances where the WCG granted approval for the payment of travel costs);
 - b. parking costs;
 - c. stationery costs (excluding costs related to printing and photocopies);
 - d. costs related to e-mails and telephone calls; and
 - e. VAT, if relevant.

Period	All-inclusive hourly rate (excluding VAT)	All-inclusive hourly rate (including VAT)
First year		

2. The contract period will be three years.
3. The price payable for the second and third years of the contract period will be increased annually on the anniversary of the contract commencement date, in accordance with the official Consumer Price Index (CPI) rate published by Statistics South Africa for the relevant anniversary month.

PROVINCIAL GOVERNMENT WESTERN CAPE**DECLARATION OF INTERESTS, BIDDERS PAST SCM PRACTICES AND INDEPENDENT BID DETERMINATION**

1. To give effect to the requirements of the Western Cape Provincial Treasury Instructions, 2019: Supply Chain Management (Goods and Services), Public Finance Management Act (PFMA) Supply Chain Management (SCM) Instruction No. 3 of 2021/2022 - SBD 4 Declaration of Interest, Section 4 (1)(b)(iii) of the Competition Act No. 89 of 1998 as amended together with its associated regulations, the Prevention and Combating of Corrupt Activities Act No 12 of 2004 and regulations pertaining to the tender defaulters register, Paragraph 16A9 of the National Treasury Regulations and/or any other applicable legislation.
2. 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.
3. All prospective bidders intending to do business with the Institution must be registered on the Central Supplier Database (CSD) and the Western Cape Supplier Evidence Bank (WCSEB) if they wish to do business with the Western Cape Government (WCG) via the electronic Procurement Solution (ePS).
4. The status of enterprises and persons listed on the National Treasury's Register for Tender Defaulters will be housed on the ePS. Institutions may not under any circumstances procure from enterprises and persons listed on the Database of Tender Defaulters.
5. The status of suppliers listed on the National Treasury's Database of Restricted Suppliers will be housed on the ePS; however, it remains incumbent on institutions to check the National Treasury Database of Restricted Suppliers before the conclusion of any procurement process. For suppliers listed as restricted, institutions must apply due diligence and risk assessment before deciding to proceed with procurement from any such supplier.

6. Definitions

"bid" means a bidder's response to an institution's invitation to participate in a procurement process which may include a bid, price quotation or proposal;

"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;

If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701

This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

"business interest" means -

- (a) a right or entitlement to share in profits, revenue or assets of an entity;
- (b) a real or personal right in property;
- (c) a right to remuneration or any other private gain or benefit, or
- (d) includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;

"Consortium or Joint Venture" 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;

"Controlling interest" means, 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;

"Corruption"- General offences of corruption are defined in the Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) as:

Any person who directly or indirectly -

- (a) accepts or agrees or offers to accept an! gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person., in order to act personally or by influencing another person so to act, in a manner—
 - (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (ii) that amounts to-
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or 45 not to do anything, of the, is guilty of the offence of corruption.

"CSD" means the Central Supplier Database maintained by National Treasury;

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“employee”, in relation to –

- (a) a department, means a person contemplated in section 8 of the Public Service Act, 1994 but excludes a person appointed in terms of section 12A of that Act; and
- (b) a public entity, means a person employed by the public entity;

“entity” means any –

- (a) association of persons, whether or not incorporated or registered in terms of any law, including a company, corporation, trust, partnership, close corporation, joint venture or consortium; or
- (b) sole proprietorship;

“entity conducting business with the Institution” means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Province;

“Family member” means a person's –

- (a) spouse; or
- (b) child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption or some other legal arrangement (as the case may be);

“intermediary” means a person through whom an interest is acquired, and includes a representative or agent or any other person who has been granted authority to act on behalf of another person;

“Institution” means –

a provincial department or provincial public entity listed in Schedule 3C of the Act;

“Provincial Government Western Cape (PGWC)” means

- (a) the Institution of the Western Cape, and
- (b) a provincial public entity;

“RWOEE” means –

Remunerative Work Outside of the Employee's Employment

“spouse” means a person's –

- (a) partner in marriage or civil union according to legislation;
- (b) partner in a customary union according to indigenous law; or
- (c) partner with whom he or she cohabits and who is publicly acknowledged by the person as his or her life partner or permanent companion.

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7. Regulation 13(c) of the Public Service Regulations (PSR) 2016, effective 1 February 2017, prohibits any employee from conducting business with an organ of state, or holding a directorship in a public or private company doing business with an organ of state unless the employee is a director (in an official capacity) of a company listed in schedules 2 and 3 of the Public Finance Management Act.
 - a) Therefore, by 31 January 2017 all employees who are conducting business with an organ of state should either have:
 - (i) resigned as an employee of the government institution or;
 - (ii) cease conducting business with an organ of state or;
 - (iii) resign as a director/shareholder/owner/member of an entity that conducts business with an organ of state.
8. Any legal person, or their family members, may make an offer or offers in terms of this invitation to bid. In view of potential conflict of interest, in the event that the resulting bid, or part thereof, be awarded to family members of persons employed by an organ of state, 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 Institution.
9. The bid of any bidder may be disregarded if that bidder or any of its directors abused the institution's supply chain management system; committed fraud or any other improper conduct in relation to such system; disclosure is found not to be true and complete; or failed to perform on any previous contract.
10. 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). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds.
11. 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 authorises 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.
12. Communication between partners in a joint venture or consortium will not be construed as collusive bidding.

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SECTION B: DECLARATION OF THE BIDDER'S INTEREST

The supply chain management system of an institution must, irrespective of the procurement process followed, prohibit any award to an employee of the state, who either individually or as a director of a public or private company or a member of a close corporation, seek to conduct business with the WCG, unless such employee is in an official capacity a director of a company listed in Schedule 2 or 3 of the PFMA as prescribed by the Public Service Regulation 13(c).

Furthermore, an employee employed by an organ of state conducting remunerative work outside of the employee's employment should first obtain the necessary approval by the delegated authority (RWOEE), failure to submit proof of such authority, where applicable, may result in disciplinary action.

B1.	Are any persons listed in Table A identified on the CSD as employees of an organ of state? (If yes, refer to Public Service Circular EIM 1/2016 to exercise the listed actions)	NO	YES
B2.	Are any employees of the entity also employees of an organ of state? (If yes complete Table B and attach their approved "RWOEE")	NO	YES
B3.	Are any family members of the persons listed in Table A employees of an organ of state? (If yes complete Table B)	NO	YES

TABLE B

Details of persons (family members) connected to or employees of an organ of state should be disclosed in Table B below.

FULL NAME OF EMPLOYEE	IDENTITY NUMBER	DEPARTMENT/ ENTITY OF EMPLOYMENT	DESIGNATION/ RELATIONSHIP TO BIDDER**	INSTITUTION EMPLOYEE NO./ PERSAL NO. (Indicate if not known)

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SECTION C: PERFORMANCE MANAGEMENT AND BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

To enable the prospective bidder to provide evidence of past and current performance.

C1.	Did the entity conduct business with an organ of state in the last twelve months? (If yes complete Table C)	NO	YES
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C2. TABLE C

Complete the below table to the maximum of the last 5 contracts.

NAME OF CONTRACTOR	PROVINCIAL DEPARTMENT OR PROVINCIAL ENTITY	TYPE OF SERVICES OR COMMODITY	CONTRACT/ ORDER NUMBER	PERIOD OF CONTRACT	VALUE OF CONTRACT	
C3. Is the entity or its principals listed on the National Database as companies or persons prohibited from doing business with the public sector?					NO	YES
C4. Is the entity or its principals listed on the National Treasury Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)?					NO	YES
<i>(To access this Register enter the National Treasury's website, www.treasury.gov.za, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 326 5445.)</i>						
C5. If yes to C3 or C4, were you informed in writing about the listing on the database of restricted suppliers or Register for Tender Defaulters by National Treasury?				NO	YES	N/A
C6. Was the entity or persons listed in Table A convicted for fraud or corruption during the past five years in a court of law (including a court outside the Republic of South Africa)?					NO	YES
C7. 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?					NO	YES

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SECTION D: DULY AUTHORISED REPRESENTATIVE TO DEPOSE TO AFFIDAVIT

This form must be signed by a duly authorised representative of the entity in the presence of a commissioner of oaths.

I, hereby swear/affirm;

- i. that the information disclosed above is true and accurate;
- ii. that I have read understand the content of the document;
- iii. that I have arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor.
- iv. that the entity undertakes to independently arrive at any offer at any time to the Institution without any consultation, communication, agreement or arrangement with any competitor. In addition, that there will be no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specification, 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;
- v. that the entity or its representative are aware of and undertakes not to disclose the terms of any bid, formal or informal, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract; and
- vi. that there have been no consultations, communications, agreements or arrangements made 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 that my entity was not involved in the drafting of the specifications or terms of reference for this bid.

DULY AUTHORISED REPRESENTATIVE'S SIGNATURE

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

- 1.1 Do you know and understand the contents of the declaration? ANSWER:
- 1.2 Do you have any objection to taking the prescribed oath? ANSWER:
- 1.3 Do you consider the prescribed oath to be binding on your conscience? ANSWER:
- 1.4 Do you want to make an affirmation? ANSWER:
2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed and the deponent's signature/thumbprint/mark was place thereon in my presence.

.....
SIGNATURE FULL NAMES Commissioner of Oaths

Designation (rank) ex officio: Republic of South Africa

Date: Place

Business Address:

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PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 AND IN TERMS OF THE WESTERN CAPE GOVERNMENTS INTERIM STRATEGY AS IT RELATES TO PREFERENCE POINTS

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS (TENDERERS) MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER, PREFERENTIAL PROCUREMENT REGULATIONS, 2022 AND THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT AND THE CODES OF GOOD PRACTICE

1. DEFINITIONS

- 1.1 **"acceptable tender"** means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document.
- 1.2 **"affidavit"** is a type of verified statement or showing, or in other words, it contains a verification, meaning it is under oath or penalty of perjury, and this serves as evidence to its veracity and is required for court proceedings.
- 1.3 **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 1.4 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 1.5 **"B-BBEE status level of contributor"** means the B-BBEE status of an entity 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;
- 1.6 **"bid"** means a written offer on the official bid documents or invitation of price quotations and "tender" is the act of bidding /tendering;
- 1.7 **"Code of Good Practice"** means the generic codes or the sector codes as the case may be;
- 1.8 **"consortium or joint venture"** 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;
- 1.9 **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;

- 1.10 **"EME"** is an Exempted Micro Enterprise with an annual total revenue of R10 million or less.
- 1.11 **"Firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 1.12 **"Large Enterprise"** is any enterprise with an annual total revenue above R50 million;
- 1.13 **"non-firm prices"** means all prices other than "firm" prices;
- 1.14 **"person"** includes a juristic person;
- 1.15 **"price" means an amount of money tendered for goods or services, and** includes all applicable taxes less all unconditional discounts;
- 1.16 **"proof of B-BBEE status level contributor"** means-
- (a) The B-BBEE status level certificate issued by an authorized body or person;
 - (b) A sworn affidavit as prescribed in terms of the B-BBEE Codes of Good Practice; or
 - (c) Any other requirement prescribed in terms of the Broad- Based Black Economic Empowerment Act.
- 1.17 **QSE** is a Qualifying Small Enterprise with an annual total revenue between R10 million and R50 million;
- 1.18 **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- 1.19 **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract.
- 1.20 **"tender"** means a written offer in the form determined by an organ of state in response to an invitation to provide or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- 1.21 **"tender for income-generating contracts"** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions;
- 1.22 **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- 1.23 **"the Regulations"** means the Preferential Procurement Regulations, 2022;

- 1.24 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 11 October 2013;
- 1.25 **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 1.26 **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

2. GENERAL CONDITIONS

2.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

2.2 Preference point system for this bid:

(a) The value of this bid is estimated to exceed/not exceed R50 000 000 (all applicable taxes included) and therefore the preference point system shall be applicable; or

(b) Either the 80/20 or ~~90/10~~ preference point system will be applicable to this tender

(delete whichever is not applicable for this tender).

2.3 Preference points for this bid (even in the case of a tender for income-generating contracts) shall be awarded for:

(a) Price; and

(b) B-BBEE Status Level of Contribution.

2.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

2.5 Failure on the part of a bidder to fill in, sign this form and submit in the circumstances prescribed in the Codes of Good Practice either a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) or an affidavit confirming annual total revenue and level of black ownership together with the bid or an affidavit issued by Companies Intellectual Property Commission, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

- 2.6 The organ of state reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 Subject to Section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the **bidder obtaining the highest number of total points** will be awarded the contract.
- 3.2 A tenderer must submit proof of its B-BBEE status level of contributor in order to claim points for B-BBEE.
- 3.3 A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE will not be disqualified but will only score:
- (a) points out of 80 for price; and
 - (b) 0 points out of 20 for B-BBEE
- 3.4 Points scored must be rounded off to the nearest 2 decimal places.
- 3.5 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.6 As per section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the contract may be awarded to a bidder other than the one scoring the highest number of total points based on objective criteria in addition to those contemplated in paragraph (d) and (e) of the Act that justifies the award to another tenderer provided that it has been stipulated upfront in the tendering conditions.
- 3.7 Should two or more bids be equal in all respects; the award shall be decided by the drawing of lots.

4. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

4.1 POINTS AWARDED FOR PRICE

4.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEM

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20	or	90/10
$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	or	$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$

Where

P_s = Points scored for price of bid under consideration

P_t = Price of tender under consideration

P_{\min} = Price of lowest acceptable tender

5. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

5.1 POINTS AWARDED FOR PRICE

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20

or

90/10

$$Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

$$Ps = 90 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

or

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

6. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 6.1 In terms of WCG interim strategy, 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 (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 6.2 An **EME** must submit a valid, originally certified affidavit confirming annual turnover and level of black ownership or an affidavit issued by Companies Intellectual Property Commission
- 6.3 A **QSE that is less than 51 per cent (50% or less) black owned** must be verified in terms of the QSE scorecard issued via Government Gazette and submit a valid, original or a legible certified copy of a B-BBEE Verification Certificate issued by SANAS.
- 6.4 A **QSE that is at least 51 per cent black owned (51% or higher)** must submit a valid, originally certified affidavit confirming turnover and level of black ownership as well as declare its empowering status or an affidavit issued by Companies Intellectual Property Commission.

- 6.5 A **large enterprise** must submit a valid, original or originally certified copy of a B-BBEE Verification Certificate issued by a verification agency accredited by SANAS.
- 6.6 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 6.7 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE status level verification certificate for every separate tender.
- 6.8 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

7. BID DECLARATION

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

8. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPH 6

- 8.1 B-BBEE Status Level of Contribution..... = (*maximum of 20 points*)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 6.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or an affidavit confirming annual total revenue and level of black ownership in terms of the relevant sector code applicable to the tender.

9. SUB-CONTRACTING

- 9.1 Will any portion of the contract be sub-contracted? **YES/NO** (*delete which is not applicable*)

- 9.1.1 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? **YES/NO** (*delete which is not applicable*)

- 9.1.2 Sub-contracting relates to a **particular** contract and if sub-contracting is applicable, the bidder to state in their response to a particular RFQ that a portion of that contract will be sub-contracted.

10. DECLARATION WITH REGARD TO COMPANY/FIRM

10.1 Name of company/ entity:

10.2 VAT registration number:

10.3 Company Registration number:

10.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/ Joint Venture/ Consortium
- ☐ One-person business/ sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company
- ☐ (Pty) Limited
- ☐ Non-Profit Company
- ☐ State Owned Company

[SELECT APPLICABLE ONE]

10.5 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-BBEE status level of contribution indicated in paragraph 7 above, qualifies the company/ firm for the preference(s) shown and I/we acknowledge that:

- (a) The Western Cape Government reserves the right to audit the B-BBEE status claim submitted by the bidder.
- (b) As set out in Section 13O of the B-BBEE Act as amended, any misrepresentation constitutes a criminal offence. A person commits an offence if that person knowingly:
 - (i) misrepresents or attempts to misrepresent the B-BBEE status of an enterprise;
 - (ii) provides false information or misrepresents information to a B-BBEE Verification Professional in order to secure a particular B-BBEE status or any benefit associated with compliance to the B-BBEE Act;
 - (iii) provides false information or misrepresents information relevant to assessing the B-BBEE status of an enterprise to any organ of state or public entity; or
 - (iv) engages in a fronting practice.
- (c) If a B-BBEE verification professional or any procurement officer or other official of an organ of state or public entity becomes aware of the commission of, or any attempt to commit any offence referred to in paragraph 10.5 (a) above will be reported to an appropriate law enforcement agency for investigation.

- (d) Any person convicted of an offence by a court is liable in the case of contravention of 10.5 (b) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person to a fine not exceeding 10 per cent of its annual turnover.
- (e) The purchaser may, if it becomes aware that a bidder may have obtained its B-BBEE status level of contribution on a fraudulent basis, investigate the matter. Should the investigation warrant a restriction be imposed, this will be referred to the National Treasury for investigation, processing and imposing the restriction on the National Treasury's List of Restricted Suppliers. The bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, may be restricted 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.
- (f) The purchaser may, in addition to any other remedy it may have –
 - (i) disqualify the person from the bidding process;
 - (ii) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (iii) 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; and
 - (iv) forward the matter for criminal prosecution.
- (g) The information furnished is true and correct.
- (h) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 2 of this form.

SIGNATURE(S) OF THE BIDDER(S):

DATE:

ADDRESS:

.....

WITNESSES:

1.

2.

TERMS OF REFERENCE

**ESTABLISHMENT OF PANELS CONSISTING OF LAW FIRMS TO
SUPPLEMENT THE SERVICES THAT ARE PROVIDED BY THE OFFICE OF THE
STATE ATTORNEY IN LITIGATION AND LEGAL ADVISORY MATTERS
INVOLVING THE WESTERN CAPE GOVERNMENT ON AN AS AND WHEN
REQUIRED BASIS FOR A PERIOD OF THREE YEARS.**

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PART 1: BACKGROUND AND CONTEXT

1. The Western Cape Government (WCG) has been dependent on the Office of the State Attorney to perform work on its behalf as is by law, practice or custom performed by practising attorneys.
2. The WCG's need for legal services has evolved in that it has now become necessary to supplement the services provided by the Office of the State Attorney.
3. The WCG intends to establish panels in accordance with Provincial Treasury Instruction 5.5.7(b), which will consist of suitably qualified and experienced law firms, or individual legal practitioners duly admitted and enrolled to practise for their own account to supplement the services that are currently being provided by the Office of the State Attorney in litigation and legal advisory matters involving the WCG on an as and when required basis for a period of three years.
4. The WCG, via the Provincial Treasury, is facilitating a transversal term contract for this purpose as the terms of reference form part of a provincial transversal contract as envisaged in National Treasury Regulation 16A6.5. The Department of the Premier is, however, the principal procuring department for the corporate legal services function and will be responsible for contract oversight, performance evaluation and compliance monitoring.

PART 2: INFORMATION TO BIDDERS

5. Enquiries

- 5.1. Bidding procedure and technical enquiries may be directed in writing to:
dotp.acq@westerncape.gov.za
- 5.2. Any written queries received from prospective bidders that may materially affect or influence the preparation or content of bid responses shall be formally addressed by the Department. Responses to such queries will be published on the official eTenders portal (<https://www.etenders.gov.za>) to ensure equal access to information and maintain transparency in the bidding process. It remains the responsibility of all bidders to regularly consult the portal for updates, clarifications, or amendments.
- 5.3. The deadline for the submission of an enquiry is **31 October 2025**.
- 5.4. Any enquiries submitted after the deadline will not be considered.

6. Registration on the Central Supplier Database

- 6.1. The bidder must be registered on the Central Supplier Database at the time of the submission of a bid offer.
- 6.2. A bidder who is not yet registered on the Central Supplier Database must self-register on www.csd.gov.za before submitting a bid offer.

7. Returnable schedules

- 7.1. The standard bidding documents, which have been included with this bid under Part 9.1 must be used for this bid:
 - 9.1.1. WCBD 1: Invitation to Bid;
 - 9.1.2. WCBD 3.3: Pricing Schedule (Professional Services);

9.1.3. WCBD 4: Declaration of Interest, Declaration of Bidder's Past Supply Chain Management Practices, and Certificate of Independent Bid Determination; and

9.1.4. WCBD 6.1: Preference Points Claim Form as it relates to Preference Points (only applicable if Preference Points are claimed).

7.2. These standard bidding forms may not be re-typed or altered in any way.

7.3. The tables, which have been included with this bid under Part 9.2, must be used for this bid.

7.4. The bid submission checklist, which has been included with this bid under Part 9.3, may be used by the bidder to ensure that all relevant information and documents are included in the bid. The bid submission checklist will not be required for evaluation purposes.

8. **General**

8.1. Handwriting on any document forming part of a bid offer must be legible and in indelible ink.

8.2. All relevant documents forming part of a bid offer must be signed, and initialled where required, by a duly authorised signatory.

9. **Submission of bid offers**

9.1. A bid offer must be timeously delivered to the correct address.

Closing date	Friday, 31 October 2025
Closing time	11:00AM

9.2. A bid offer must be deposited into the bid box marked Department of the Premier, which is available 24 hours a day, 7 days a week, and situated at the following street

address: Situated on the Ground Floor (Entrance) of No.4 Dorp Street, Cape Town (CNR Keerom and Dorp Street) before the closing time of the bid.

- 9.3. If a bid offer is too bulky to be deposited through the slot opening of the bid box **please contact the following Supply Chain Management official/s who will ensure that bid documents get deposited into the bid box before the closing date and time: PROCUREMENT OFFICE – 021 483 4679/ 3578/ 2943/ 3578/ 5710/ 3004/ 2902** must be contacted to open the bid box, to allow for the bid offer to be dropped into the box.

- 9.4. A bid offer will not be considered if submitted:

9.4.1 after the closing date;

9.4.2 after the closing time on the closing date; or

9.4.3 to the incorrect address.

10. **Opening of bid offers**

Immediately after the closing time on the closing date:

- 10.1. bid offers will be opened at the bid box; and

- 10.2. the names of bidders who submitted bid offers timeously will be read and recorded in the bid register.

11. **Bid evaluation process**

- 11.1. The bid evaluation process will be conducted in the following three phases:

11.1.1 Phase 1: Evaluation of compliance with compulsory bid conditions;

11.1.2 Phase 2: Evaluation of compliance with specifications; and

11.1.3 Phase 3: Price and Preference Points.

- 11.2. The bid evaluation process and evaluation criteria are detailed in Part 6: Evaluation.

12. Conflict of interest

- 12.1. The WCG, the bidder and their employees involved in the bid process must avoid any conflict of interest.
- 12.2. In accordance with regulation 13(c) of the Public Service Regulations, 2016, a public service employee, as defined in the Public Service Act, 1994 (Proclamation 103 of 1994), may not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is a director in an official capacity of a company listed in Schedules 2 or 3 of the Public Finance Management Act, 1999 (Act 1 of 1999).
- 12.3. A public service employee must recuse himself or herself from any official action or decision-making process, that may result in improper personal gain or conflict of interest.
- 12.4. Any conflict of interest or potential conflict of interest, that may arise during the bid process, or the contract term must be duly declared.
- 12.5. In the case of conflict of interest of a panel member in a specific matter, the matter will be allocated to the next service provider on the applicable panel.

13. Grounds on which a bid may be disregarded

A bid offer may be disregarded if the bidder or any of its directors:

- 13.1. abused the WCG's supply chain management system;
- 13.2. committed fraud or any other improper conduct in relation to such system; or
- 13.3. failed to perform on any previous WCG contract if a finding was made in this regard.

14. Grounds on which a bid must be rejected

A bid offer must be rejected if:

- 14.1. the bidder or any of its directors are listed as a company or persons prohibited from doing business with the public sector on the Database of Tender Defaulters;
- 14.2. the bidder is not tax compliant at the time of the award of the bid;
- 14.3. the bidder committed a corrupt or fraudulent act in competing for the contract.

15. Cancellation of the bid process before award

The WCG may, without accepting or incurring any liability, cancel the bid process before award, due to justifiable reasons, which may include any of the following:

- 15.1. There is a change in circumstances;
- 15.2. Funds are no longer available to cover the total envisaged expenditure;
- 15.3. No acceptable bid offer is received; or
- 15.4. There is a material irregularity in the bid process.

16. Appointment of panel members

16.1. Subject to section 2(1)(f) of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (Preferential Procurement Policy Framework Act), a maximum of five highest-scoring bidders for each panel, who accepted a standardised all-inclusive hourly rate, will be appointed onto the following panels:

16.1.1. Public law;

16.1.2. Private law;

16.1.3. Tax law;

16.1.4. Intellectual property law;

16.1.5. Labour law; and

16.1.6. Commercial law.

16.2. A bidder may select to participate in any one or more of the panels, provided that the bidder has relevant experience, as required for the specific panel(s) selected, between 1 June 2020 and the date of publication of the bid advertisement.

16.3. Work will be allocated on a rotational basis, starting with the bidder who scored the highest total points for price and preference, to the lowest scoring bidder on each panel.

16.4. The WCG reserves the right to not establish one or more of the above panels.

17. Communication of outcome of decision

In accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000):

17.1. the WCG will communicate the outcome to successful and unsuccessful bidders;

17.2. the WCG will provide written reasons for a decision related to the award of a bid, where required; and

17.3. an unsuccessful bidder has the right to institute judicial review proceedings.

18. Access to information regarding the bid process

All requests for access to information pertaining to the bid process will be managed in accordance with the Promotion of Access to Information Act, 2000 (Act 2 of 2000) and the Protection of Personal Information Act, 2013 (Act 4 of 2013).

19. General Conditions of Contract and Special Conditions of Contract

19.1. This bid and resultant contract are subject to the General Conditions of Contract, issued by the National Treasury in July 2010, and the applicable Special Conditions of Contract.

19.2. Where there is a conflict between the General Conditions of Contract and the Special Conditions of Contract, the provisions in the Special Conditions of Contract will apply.

20. Service Level Agreement

A Service Level Agreement will be concluded between the WCG and each appointed panel member.

PART 3: COMPULSORY BID CONDITIONS

21. Bidders must comply with the compulsory bid conditions set out below.
22. A bid offer will not be considered an acceptable bid if the compulsory bid conditions, as outlined in these terms of reference, are not complied with.
23. The WCG will use Table 1 to evaluate the bidder's bid offer for compliance with the compulsory bid conditions.

24. Registration on the Central Supplier Database

- 24.1. A bidder must be registered on the Central Supplier Database at the time of the submission of a bid offer.
- 24.2. For evaluation purposes, the Central Supplier Database Number must be provided on standard bidding document WCBD 1 (Invitation to Bid).

25. Tax compliance

The bidder must be registered with the South African Revenue Service and its tax affairs must be in order at the time of the award of the bid.

26. Standard bidding documents

- 26.1. The following standard bidding forms, which have been included with this bid under Part 9.1 must be used for this bid:
 - 26.1.1. WCBD 1: Invitation to Bid;
 - 26.1.2. WCBD 3.3: Pricing Schedule (Professional Services);
 - 26.1.3. WCBD 4: Declaration of Interest, Declaration of Bidder's Past Supply Chain Management Practices, and Certificate of Independent Bid Determination;
and

26.1.4. WCBD 6.1: Preference Points Claim Form as it relates to Preference Points
(only applicable if Preference Points are claimed).

26.2. These standard bidding forms may not be re-typed or altered in any way.

26.3. The following standard bidding documents must be completed, signed, and submitted as part of the bid offer:

26.3.1. WCBD 1: Invitation to Bid;

26.3.2. WCBD 3.3: Pricing Schedule (Professional Services); and

26.3.3. WCBD 4: Declaration of Interest, Declaration of Bidder's Past Supply Chain Management Practices and Certificate of Independent Bid Determination.

26.4. If Preference Points are claimed, standard bidding document WCBD 6.1: Preference Points Claim Form must be completed, signed, and submitted as part of the bid offer.

27. **Subcontracting**

27.1. **Subcontracting will not be permitted** as the panel members who will be appointed and the attorneys who will do the work must have the required skills, expertise, and competence as set out in this bid document.

27.2. **Paragraph 2.5 of standard bidding document WCBD 1 (Invitation to Bid), and paragraph 9 of standard bidding document WCBD 6.1 (Preference Points Claim Form) which relates to subcontracting are not applicable to this contract. A bid offer indicating that the service will be subcontracted will not be considered an acceptable bid.**

28. **Tables and supporting evidence**

28.1. The tables, which have been included with this bid under Part 9.2, must be used for this bid.

28.2. All relevant tables must be completed, duly signed, and submitted together with the required evidence.

29. **Bid validity**

A bid offer must remain valid for 90 days from the date of bid closing.

30. **Minimum experience**

A bidder practising for own account, or, if a commercial juristic entity, the attorney identified to do the work, must have at least five years' post admission experience.

31. **Signature of bid offers**

31.1. The signatory of a bid offer must be duly authorised to sign the bid offer on behalf of the bidder.

31.2. For evaluation purposes, the signatory must submit proof of authority to sign a bid offer on behalf of the bidder, for example, a company resolution.

32. **Submission of bid offers**

32.1. A bid offer must be submitted before the specified closing time and date and must be deposited in the bid box located at the specified address.

32.2. No late bids will be accepted.

32.3. The onus is placed on bidders to check that all pages of their bid are included to ensure that no pages are missing. The WCG will not accept liability for claims related to missing pages.

PART 4: SPECIFICATIONS

33. Background

- 33.1. The Branch: Legal Services, in the Department of the Premier, provides legal services to the WCG Executive and Departments.
- 33.2. The WCG has been dependent on the Office of the State Attorney to perform work on its behalf as is by law, practice or custom performed by practising attorneys.
- 33.3. The WCG's need for legal services has evolved in that it has now become necessary for the WCG to supplement the services provided by the Office of the State Attorney.

34. Scope

- 34.1. The WCG, through the Department of the Premier, intends to establish panels consisting of suitably qualified and experienced law firms to supplement the services that are currently being provided by the Office of the State Attorney in litigation and legal advisory matters involving the WCG on an as and when required basis for a period of three years.
- 34.2. Based on the required expertise, the following panels will be established:
 - 34..1 Public law;
 - 34..2 Private law;
 - 34..3 Tax law;
 - 34..4 Intellectual property law;
 - 34..5 Labour law; and
 - 34..6 Commercial law.

- 34.3. Conveyancing and debt collecting, as well as any field of practice not listed in 34.2.1 to 34.2.6 above, are excluded from the scope of work.

35. Required services

- 35.1. **The services** that a panel member must render, after receipt of instructions to attend to a particular matter, include the following:

35.1.1 Serve as the WCG's attorneys of record in –

- i. a high priority, high profile or complex litigation matter;
- ii. an urgent litigation matter;
- iii. a litigation matter involving significant financial implications for the WCG;
- iv. a litigation matter that cannot be referred to the Office of the State Attorney as a result of a conflict of interest or for any other reason; or
- v. any other litigation matter as may be required.

35.1.2 Provide advice on litigation strategy, merits, and court processes.

35.1.3 Provide legal opinions and strategic legal advice on complex or specialised legal issues.

35.1.4 Draft or review legal documents and correspondence.

36. Liaison person

36.1. Where a panel member is practising for his or her own account, he or she will be the liaison person for the duration of the Service Level Agreement between the parties.

36.2. Where the panel member is a commercial juristic entity established to conduct a legal practice, the panel member must:

- i. identify the attorney within the firm, with the same level of expertise and experience required of a bidder practising for own account seeking to become a panel member, who will be the liaison person for the duration of the Service Level Agreement between the parties; and
- ii. communicate the details of the liaison person to the WCG for inclusion in the Service Level Agreement.

36.3 The liaison person must, amongst others, attend to the following:

- i. receive instructions from the WCG;
- ii. identify an attorney within the firm with the same level of expertise required of a panel member practising for own account to do the work related to an instruction received and may be required to provide proof to confirm that the identified attorney has the same level of expertise required of a panel member practising for own account;
- iii. provide the WCG State Law Adviser with the name and contact details of the identified attorney within the timeframe required indicated on the instruction received;
- iv. ensure that the identified attorney fulfils the required functions timeously and diligently;
- v. manage and address any concerns or challenges identified;
- vi. submit invoices to the WCG; and
- vii. provide feedback to the WCG as may be required.

36.4 Where an attorney who was identified to do the work is replaced, the liaison person must:

- i. ensure that the identified replacement attorney also has the same level of expertise required of a panel member practising for own account;
- ii. provide the WCG State Law Adviser with the name and contact details of the identified replacement attorney; and
- iii. may be required to provide proof to confirm that the identified replacement attorney has the same level of expertise required of a panel member practising for own account.

36.5 Should the liaison person need to be replaced, the panel member:

- 36.5.1. must ensure that a suitably qualified attorney, with the same level of expertise required of a panel member practising for own account is, within 48 hours, identified as the replacement liaison person and must communicate the name and contact details of the replacement liaison person to the WCG after such replacement; and
- 36.5.2. may be required to provide proof to confirm that the replacement liaison person has the same level of expertise required of a panel member practising for own account.

37 **Attorney required to do the work**

- 37.1. A panel member practising for own account or, if a commercial juristic entity, the attorney identified to do the work must:
 - 37.1.1 have at least five years' post admission experience;
 - 37.1.2 comply with the same level of expertise required of a panel member practising for own account;
 - 37.1.3 render the required services in a professional manner and ensure that an instruction is effectively attended to;

- 37.1.4. physically attend all necessary and required consultations with clients, including scheduled, unscheduled, and urgent consultations, in relation to the allocated matter, unless otherwise agreed with the responsible WCG State Law Adviser;
- 37.1.5 physically attend all court proceedings, unless otherwise agreed with the responsible WCG State Law Adviser;
- 37.1.6 report to clients related to an instruction when required;
- 37.1.7. maintain accurate updated files; and
- 37.1.8 return all original documents to the WCG State Law Adviser assigned to the matter upon finalisation of the matter as the relevant department in the WCG retains ownership of the original documents relating to an instruction.
- 37.2 The WCG may require proof to confirm that the attorney identified to do the work, has the same level of expertise required of a panel member practising for own account.
- 37.3 Should the attorney who will be required to do the work need to be replaced, the requirements in paragraph 38.4 are applicable.

38 **Liaison with WCG State Law Adviser**

A panel member must liaise with the WCG State Law Adviser assigned to a matter and any other WCG representative duly authorised to represent the WCG in the matter.

39 **Other services**

- 39.1. A panel member may, after due consultation with the assigned WCG State Law Adviser and subject to written approval by the relevant Accounting Officer, be required to:

- 39.1.1 recommend and brief an advocate who is willing and able to accept an instruction, after due consideration of the facts, complexity, expertise required and costs to assist a client in a litigation or legal advisory matter;
- 39.1.2 appoint a correspondent attorney;
- 39.1.3. appoint an expert;
- 39.1.4. arrange the presence of a witness at consultations and court proceedings; and
- 39.1.5 provide regular updates regarding the matter to the WCG State Law Advisor and/or the Department involved upon request and within the timeframe specified in the request.

40 **Required experience**

- 40.1. A bidder may select to participate in any one or more of the panels, provided that the bidder has relevant experience as required for the specific panel(s) selected, between 1 June 2020 and the date of publication of the bid advertisement.
- 40.2. For the public law panel, the bidder must have relevant experience in superior court civil litigation and legal advisory work in constitutional law and administrative law between 1 June 2020 and the date of publication of the bid advertisement.
- 40.3. For the private law panel, the bidder must have relevant experience in superior court civil litigation and legal advisory work in the law of contract, law of delict and property law between 1 June 2020 and the date of publication of the bid advertisement.
- 40.4. For the tax law panel, the bidder must have relevant experience in tax law between 1 June 2020 and the date of publication of the bid advertisement.
- 40.5. For the intellectual property law panel, the bidder must have relevant experience in intellectual property law between 1 June 2020 and the date of publication of the bid advertisement.

- 40.6. For the labour law panel, the bidder must have relevant experience in Labour Court or Labour Appeal Court litigation and legal advisory work in labour law between 1 June 2020 and the date of publication of the bid advertisement.

For the commercial law panel, the bidder must have relevant experience in commercial law between 1 June 2020 and the date of publication of the bid advertisement.

41. Good standing with the Legal Practice Council

Where the bidder is:

- 41.1. practising for his or her own account, the bidder must be in good standing with the Legal Practice Council; or
- 41.2. a commercial juristic entity established to conduct a legal practice, the attorneys who will provide the required services must be in good standing with the Legal Practice Council.

42. Required resources

The bidder must have access to the necessary resources to be able to effectively render the services, including, but not limited to:

- 42.1 adequate access to research tools;
- 42.2 a computer with MS Office 365, including MS Teams;
- 42.3 Internet;
- 42.4 e-mail;
- 42.5. a secretary or other administrative support as required to effectively deliver the services;

- 42.6. photocopier;
- 42.7. printer;
- 42.8. scanner;
- 42.9. telephone;
- 42.10. IT security systems to protect private and confidential information while processing information (including malicious software protection, firewalls and encryption); and
- 42.11. Data protection and business continuity systems.

43. Local office

The bidder must have a local office within the service area (within 25 km of the Office of the Registrar of the High Court of South Africa, Western Cape Division at Cape Town (Western Cape High Court) as informed by the Uniform Rules of Court issued in terms of the Supreme Court Act, 1959 (Act 59 of 1959)) for the following reasons:

- 43.1 most of the litigation matters that the WCG is a party to, are enrolled in the Western Cape High Court and the Cape Town Labour Court;
- 43.2 the offices of the Executive and the head offices of the WCG Provincial Departments (with the exception of the Department of Agriculture) are situated in the Cape Town City Centre;
- 43.3 panel members may be required to attend urgent consultations and court proceedings in person arranged at short notice;
- 43.4 the WCG must comply with austerity measures implemented by the National Treasury to contain costs and will therefore only approve travel expenses in limited circumstances; and

43.5 the WCG will not pay for the services of correspondent attorneys, unless the relevant Accounting Officer's prior written approval was obtained in a specific instance.

44. The evaluation criteria stipulated in Part 6.2 will be used for evaluation purposes.

45. A bid offer may not be considered an acceptable bid if:

45.1 the specifications are not complied with;

45.2 the applicable tables have not been completed; and/or

45.3 the required evidence has not been submitted.

PART 5: PRICE TENDERED

46. A bid offer must contain a duly completed and signed standard bidding document WCBD 3.3: Pricing Schedule (Professional Services) which must stipulate an all-inclusive hourly rate for services to be rendered during year 1 of the contract period.
47. The all-inclusive hourly rate tendered must be inclusive of:
 - 47.1. costs related to e-mails and telephone calls;
 - 47.2. parking costs;
 - 47.3. stationery costs (excluding costs related to printing and photocopies);
 - 47.4. travel costs incurred in the normal course (excluding instances where the relevant Accounting Officer granted approval for the payment of travel costs); and
 - 47.5. VAT, if relevant.
48. A bid offer must remain valid for 90 days from the date of bid closing.
49. The price payable for the second and third years of the contract period will be increased annually on the anniversary of the contract commencement date, in accordance with the official Consumer Price Index (CPI) rate published by Statistics South Africa for the relevant anniversary month.
50. The disbursements that may be payable are set out in the Special Conditions of Contract (Part 8).

PART 6: EVALUATION

PART 6.1: BID EVALUATION PROCESS

51. The bid evaluation process will be conducted in the following three phases:

51.1 Phase 1: Evaluation of compliance with compulsory bid conditions;

51.2 Phase 2: Evaluation of compliance with specifications;

51.3 Phase 3: Price and Preference Points.

52. The WCG reserves the right to, in writing, request certified copies of relevant documents for clarification purposes during the bid evaluation process. If so requested, the certified copies of the documents must be submitted within the time period indicated in the request. Non-compliance with this request may render the bid invalid.

53. Phase 1: Evaluation of compliance with compulsory bid conditions

53.1 The WCG will use Table 1 to evaluate a bid offer for compliance with the compulsory bid conditions.

53.2 If a bid offer complies with all of the compulsory bid conditions, it will be further evaluated in Phase 2.

54. Phase 2: Evaluation of compliance with specifications

54.1 The WCG will use the following Tables to evaluate a bid offer for compliance with the specifications:

54.1.1. Table 2 (a): Public law Panel;

54.1.2. Table 2 (b): Private law Panel;

54.1.3. Table 2 (c): Tax law Panel;

54.1.4. Table 2 (d): Intellectual property law Panel;

54.1.5. Table 2 (e): Labour law Panel;

54.1.6. Table 2 (f): Commercial law Panel;

54.1.7. Table 3: Compliance with specifications [required experience];

54.1.8. Table 4(a): Good standing with the Legal Practice Council [where a bidder is practicing for his or her own account];

54.1.9. Table 4(b): Good standing with the Legal Practice Council [where the bidder is a commercial juristic entity established to conduct a legal practice];

54.1.10. Table 5: Required resources;

54.1.11. Table 6: Local office; and

54.1.12. Table 7: Compliance with specifications [Good standing with the Legal Practice Council, Required resources, and Local office].

54.2 If a bid offer complies with the bid specifications, it will be further evaluated in Phase 3 (Price and Preference).

55. Phase 3: Price and Preference Points

55.1. The 80/20 preference point system will be used to calculate the points for price and preference in the manner set out in regulation 6 of the Preferential Procurement Regulations, 2022, made in terms of the Preferential Procurement Policy Framework Act.

55.2. A maximum of 20 points may be allocated for Broad-Based Black economic empowerment, claimed in respect of B-BEE Status Level of Contribution, in standard bidding document WCBD 6.1: Preference Points Claim Form as it relates to Preference Points.

- 55.3. For Preference Points to be allocated, the bidder must submit the required proof as contemplated in standard bidding document WCBD 6.1: Preference Points Claim Form as it relates to Preference Points.
- 55.5 Should the bidder not submit the required proof, the bidder will not be eligible for the allocation of Preference Points.
- 55.5 Preference Points scored will be added to the points scored for price.
- 55.6 The total score will be rounded off to the nearest two decimal places.

56. Listing of acceptable bids per panel

- 56.1 In respect of each panel, the WCG will list the five bidders who submitted acceptable bids, according to the scores allocated to each bidder after the evaluation stage, starting with the bidder who scored the highest for price and preference.
- 56.2 If two or more bidders score an equal number of points, the criteria for breaking a deadlock in scoring as stipulated in regulation 8 of the Preferential Procurement Regulations, 2022 will be applied.

57. Standardisation of all-inclusive hourly rate for each panel

- 57.1 The WCG will determine a standardised all-inclusive hourly rate for each panel in the manner set out below.
- 57.2 Should there be five or more bidders who submitted acceptable bids for a panel, the WCG will calculate the average of the all-inclusive hourly rates offered by the five highest points scoring bidders, which will inform the standardised all-inclusive hourly rate to be paid to a panel member.
 - 57.2.1 The standardised all-inclusive hourly rate will not be recalculated.

57.2.2 The WCG will approach the five highest-scoring bidders to confirm acceptance of the standardised all-inclusive hourly rate prior to award.

57.2.3 In the event of a bidder not confirming acceptance of the standardised all-inclusive hourly rate, the next listed bidder will be approached to confirm acceptance of the standardised all-inclusive hourly rate. This process may be repeated until there are at least five bidders who accepted the all-inclusive hourly rate or until all bidders who submitted acceptable bids have been approached to accept the all-inclusive hourly rate.

57.3 Should there be fewer than five bidders who submitted acceptable bids for a panel, the WCG will calculate the average of the all-inclusive hourly rates offered by these bidders, which will inform the standardised all-inclusive hourly rate to be paid to a panel member.

59.3.1 The standardised all-inclusive hourly rate will not be recalculated.

59.3.2 The WCG will approach these bidders to confirm acceptance of the standardised all-inclusive hourly rate prior to award.

58. Ranking of bidders

The bidders who accepted the standardised all-inclusive hourly rate will be ranked for each panel, based on the total number of points scored for price and preference, starting with the bidder with the highest points.

59. Award / Appointment of panel members for each panel

59.1 Subject to section 2(1)(f) of the Preferential Procurement Policy Framework Act, a maximum of five highest-scoring bidders who accepted the standardised all-inclusive hourly rate for each panel will be appointed to the panel.

59.2 The WCG expressly reserves the right to appoint fewer than five members onto a panel.

59.3 The WCG reserves the right to not establish one or more of the panels.

60. Allocation of work

Work will be allocated to panel members on a rotational basis in the manner set out in the Special Conditions of Contract (Part 8).

PART 6.2: BID EVALUATION CRITERIA

61. Required experience

61.1 For the public law panel, the bidder must demonstrate relevant experience in superior court civil litigation and legal advisory work in constitutional law and administrative law between 1 June 2020 and the date of publication of the bid advertisement by:

61.1.1 completing Table 2(a);

61.1.2 completing item 1 in Table 3; and

61.1.3 submitting the required documentary proof.

61.2 For the private law panel, the bidder must demonstrate relevant experience in superior court civil litigation and legal advisory work in the law of contract, law of delict and property law between 1 June 2020 and the date of publication of the bid advertisement by:

61.2.1 completing Table 2(b);

61.2.2 completing item 2 in Table 3; and

61.2.3 submitting the required documentary proof.

61.3 For the tax law panel, the bidder must demonstrate relevant experience in experience in tax law between 1 June 2020 and the date of publication of the bid advertisement by:

61.3.1 completing Table 2(c);

61.3.2 completing item 3 in Table 3; and

61.3.3 submitting the required documentary proof.

61.4 For the intellectual property law panel, the bidder must demonstrate relevant experience in intellectual property law between 1 June 2020 and the date of publication of the bid advertisement by:

61.4.1 completing Table 2(d);

61.4.2 completing item 4 in Table 3; and

61.4.3 submitting the required documentary proof.

61.5 For the labour law panel, the bidder must demonstrate relevant experience in Labour Court or Labour Appeal Court litigation and legal advisory work in labour law between 1 June 2020 and the date of publication of the bid advertisement by:

61.5.1 completing Table 2(e);

61.5.2 completing item 5 in Table 3; and

61.5.3 submitting the required documentary proof.

61.6 For the commercial law panel, the bidder must demonstrate relevant experience in commercial law between 1 June 2020 and the date of publication of the bid advertisement by:

61.6.1 completing Table 2(f);

61.6.2 completing item 6 in Table 3; and

61.6.3 submitting the required documentary proof.

62. Good standing with the Legal Practice Council

62.1 Where the bidder is practising for his or her own account, the bidder must:

62.1.1 submit proof of good standing with the Legal Practice Council;

62.1.2 complete and submit Table 4(a); and

62.1.3 complete and submit item 1 in Table 7.

62.2 Where the bidder is a commercial juristic entity established to conduct a legal practice, the bidder must:

62.2.1 submit proof that the attorneys who will provide the required services are in good standing with the Legal Practice Council;

62.2.2 complete and submit Table 4(b); and

62.2.3 complete and submit item 1 in Table 7.

63. Required resources

The bidder must complete the following to demonstrate access to the necessary resources to be able to effectively render the required services:

63.1 Table 5; and

63.2 Item 2 in Table 7.

64. Local office

The bidder must complete the following to demonstrate compliance with the requirement to have a local office within the service area (within 25 km of the Office of the Registrar of the Western Cape High Court, Cape Town):

64.1 Table 6; and

64.2 Item 3 in Table 7.

PART 7: GENERAL CONDITIONS OF CONTRACT

Bidders are advised to consult the full General Conditions of Contract, which are provided at the end of the Standard Bidding Documents.

PART 8: SPECIAL CONDITIONS OF CONTRACT

65. Where the Special Conditions of Contract conflict with the General Conditions of Contract, the Special Conditions of Contract will apply.

66. Service Level Agreement

- 66.1 A Service Level Agreement will be concluded between the WCG, through the Department of the Premier, and each panel member.
- 66.2 Being appointed as a panel member will not:
- 66.2.1 confer an exclusive right to provide services to the WCG;
 - 66.2.2 guarantee that a panel member will receive any work at all under the Service Level Agreement; and
 - 66.2.3 guarantee that a panel member will be issued with a minimum number of instructions during the term of the Service Level Agreement.

67. Relationship between the WCG and a panel member

No employer/employee relationship will be established or exist between the WCG and a panel member.

68. Required services

All services required and as stipulated in the specifications must be delivered by a panel member.

69. Liaison person

- 69.1 Where a panel member is practising for his or her own account, he or she will be the liaison person for the duration of the Service Level Agreement between the parties.

- 69.2 Where the panel member is a commercial juristic entity established to conduct a legal practice, the panel member must:
- 69.2.1 identify the attorney within the firm, with the same level of expertise required of a panel member practising for own account, who will be the liaison person for the duration of the Service Level Agreement between the parties; and
 - 69.2.2 communicate the details of the liaison person to the WCG at the conclusion of the Service Level Agreement.
- 69.3 The liaison person must, amongst others, attend to the following:
- 69.3.1 receive instructions from the WCG;
 - 69.3.2 identify an attorney within the firm with the same level of expertise required of a panel member practising for own account to do the work related to an instruction received and may be required to provide proof to confirm that the identified attorney has the same level of expertise required of a panel member practising for own account;
 - 69.3.3 provide the WCG State Law Adviser with the name and contact details of the identified attorney within the timeframe required on the instruction received;
 - 69.3.4 ensure that the identified attorney fulfils the required functions;
 - 69.3.5 manage and address any concerns or challenges identified;
 - 69.3.6 submit invoices to the WCG; and
 - 69.3.7 provide feedback to the WCG as may be required.
- 69.4 Should the liaison person need to be replaced, the panel member:

- 69.4.1 must ensure that a suitably qualified attorney, with the same level of expertise required of a panel member practising for own account is, within 48 hours, identified as the replacement liaison person and must communicate the name and contact details of the replacement liaison person to the WCG immediately after such replacement; and
 - 69.4.2 may be required to provide proof to confirm that the replacement liaison person has the same level of expertise required of a panel member practising for own account.
- 69.5 Where an attorney who was identified to do the work is replaced, the liaison person must:
- 69.5.1 ensure that the identified replacement attorney also has the same level of expertise required of a panel member practising for own account;
 - 69.5.2 provide the WCG State Law Adviser with the name and contact details of the identified attorney; and
 - 69.5.3 may be required to provide proof to confirm that the identified attorney has the same level of expertise required of a panel member practising for own account.

70. Attorney required to do the work

- 70.1 A panel member practising for own account or, if a commercial juristic entity, the attorney identified to do the work must:
- 70.1.1 have at least five years' post admission experience;
 - 70.1.2 comply with the same level of expertise required of a panel member practising for own account;
 - 70.1.3 render the required services and ensure that an instruction is effectively attended to;

- 70.1.4 physically attend all necessary and required consultations with clients, including scheduled, unscheduled, and urgent consultations, in relation to the allocated matter, unless otherwise agreed with the responsible WCG State Law Adviser;
 - 70.1.5 physically attend all court proceedings, unless otherwise agreed with the responsible WCG State Law Adviser;
 - 70.1.6 report to clients related to an instruction when required; and
 - 70.1.7 maintain accurate updated files and, as the relevant department in the WCG retains ownership of the content of these files relating to an instruction, all original documents must be returned to the WCG State Law Adviser assigned to the matter upon finalisation of the matter.
- 70.2 The WCG may require proof to confirm that the attorney identified to do the work has the same level of expertise required of a panel member practising for own account.
- 70.3 Should the attorney that will be required to do the work need to be replaced:
- 70.3.1 a suitably qualified attorney, with the same level of expertise required of a panel member practising for own account, must be appointed as the replacement attorney and the name and contact details of the replacement attorney must be communicated to the WCG immediately after the appointment; and
 - 70.3.2 the WCG may require proof to confirm that the replacement attorney has the same level of expertise required of a panel member practising for own account.

71. Other services

A panel member may, after due consultation with the assigned WCG State Law Adviser and subject to written approval by the relevant Accounting Officer, be required to:

- 71.1 recommend and brief an advocate who is willing and able to accept an instruction, after due consideration of the facts, complexity, expertise required and costs, to assist a client in a litigation or legal advisory matter;
- 71.2 appoint a correspondent attorney;
- 71.3 appoint an expert; and
- 71.4 arrange the presence of a witness at consultations and court proceedings.

72. Liaison with WCG State Law Adviser

A panel member must liaise with the WCG State Law Adviser assigned to a matter and any other WCG representative duly authorised to represent the WCG in the matter.

73. Allocation of work

- 73.1 Instructions will be issued to the panel members listed on each of the panels on a rotational basis.
- 73.2 The order in which instructions will be issued to a panel member will depend on the listing order of the panel member. The first instruction will be issued to the panel member who received the highest total score for price and preference. Further instructions will be issued to panel members according to their position on the list.
- 73.3 The WCG will issue an instruction in the following manner:
 - 73.3.1 The WCG will request a panel member to confirm capacity to provide the required services and to accept the instruction within the timeframe required on the instruction;

- 73.3.2 If the panel member accepts the instruction within the timeframe required on the instruction, the panel member will be required to attend to the instruction for the full duration of the matter; and
- 73.3.3 If the panel member declines the instruction, the next listed panel member will be approached in the same manner.
- 73.4 Panel members must ensure that any instruction received from the WCG will not result in any conflict of interest.
- 73.5 Should a panel member receive an instruction, which poses a conflict of interest or a potential conflict of interest, the panel member must timeously inform the WCG and decline the opportunity to render services in the particular matter.
- 73.6 If the panel member declines the instruction based on a conflict of interest or a potential conflict of interest, the next listed panel member will be approached in the same manner.
- 73.7 The WCG reserves the right to terminate the mandate of a panel member on a particular matter if, in the opinion of the WCG, a conflict of interest has arisen.

74. Performance of services

A panel member must:

- 74.1 render the required services in terms of the applicable requirements professionally and in a manner that enhances and maintains the corporate image of the WCG;
- 74.2 diligently comply with all lawful instructions issued by the WCG;
- 74.3 be available for the full duration of a litigation matter for which instructions were issued; and

74.4 at its own cost remedy any failures or unsatisfactory performance.

75. Good standing with the Legal Practice Council

75.1 A panel member practising for his or her own account must remain in good standing with the Legal Practice Council throughout the term of the Service Level Agreement. The panel member must submit proof of such good standing to the Department of the Premier annually on each anniversary of the commencement date of the contract.

75.2 A panel member which is a commercial juristic entity established to conduct a legal practice must ensure that the staff members providing the required services are in good standing with the Legal Practice Council throughout the term of the Service Level Agreement.

76. Tax compliance and Central Supplier Database Registration

Throughout the term of the Service Level Agreement, a panel member:

76.1 must ensure that its tax affairs remain in order; and

76.2 must remain registered on the Central Supplier Database.

77. Confidential information

A panel member must keep all information obtained in the context of the contract confidential and not disclose it to any third parties without the prior written approval of the relevant Accounting Officer or unless required by law to do so.

78. Intellectual property and file retention

78.1 Intellectual property held by the WCG at any time and/or arising from the implementation of the contract remains the property of the WCG.

78.2 Panel members will retain and safeguard files opened and maintained for instructions attended to for a period of seven years from the date of conclusion of each matter.

79. Data protection

All communication must comply with IT security requirements for safeguarding client data, including, but not limited to, the following:

- Complying with encryption standards for electronic documents, and
- Firewall and malicious software protection for case-sensitive information.

80. Subcontracting

80.1 **Subcontracting will not be permitted** as the panel members appointed and the attorneys who will do the work must have the required skills, expertise, and competence as set out in this bid document.

80.2 **Paragraph 2.5 of standard bidding document WCBD 1 (Invitation to Bid), and paragraph 9 of standard bidding document WCBD 6.1: Preference Points Claim Form** which relate to subcontracting, **are not applicable** to this contract.

81. Payment

81.1 Invoices must be submitted to the WCG within 90 days of rendering the services.

81.2 Invoices must be submitted to the assigned WCG State Law Adviser on an official letterhead addressed to the relevant instructing department and reflect the following information:

81.2.1 correct purchase order number;

81.2.2 itemised billing, including the relevant details of each item (consultation attended, court appearance attended, etc.), the date and the time spent on each item against the approved all-inclusive rate; and

81.2.3 any disbursements.

81.3 Only one matter may be billed per invoice.

81.4 In relation to claims for disbursements, the bidder must attach the following to an invoice:

81.4.1 the prior written approval obtained from the relevant Accounting Officer, where applicable;

81.4.2 the relevant details related to the disbursements; and

81.4.3 documentary proof to substantiate the claim, where relevant.

81.5 The WCG will process payments within 30 days of a correct and valid invoice being received, provided that the services reflected on the invoice have been rendered satisfactorily.

81.6 The price payable for the second and third years of the contract period will be increased annually on the anniversary of the contract commencement date, in accordance with the official Consumer Price Index (CPI) rate published by Statistics South Africa for the relevant anniversary month.

82. Disbursements

82.1 A panel member may incur the following disbursements:

82.1.1 prescribed sheriff's fees;

82.1.2 costs related to printing and photocopies;

82.1.3 other disbursements, including the following, may be incurred only after obtaining prior written approval from the relevant Accounting Officer:

82.1.3.1 an advocate's fees;

- 82.1.3.2 a correspondent attorney's fees;
- 82.1.3.3 fees charged by experts;
- 82.1.3.4 witness' fees in accordance with the prescribed rate unless the relevant Accounting Officer's prior written approval was obtained for the payment of any other rate or amount; and
- 82.1.3.5 travel and accommodation costs, where a panel member, advocate, expert or witness is required to travel beyond 25 km of the Office of the Registrar of the Western Cape High Court, for consultations or court appearances, subject to the Department of the Premier's approved tariff rates, as per the approved Travel and Subsistence Policy (accommodation and subsistence allowances), shall apply. In addition, the monthly rate prescribed by the Department of Transport for the use of private vehicles shall be applicable for travel purposes.

83. Briefing of an advocate

- 83.1 An advocate may only be briefed after due consultation with the assigned WCG State Law Adviser and subject to approval by the relevant Accounting Officer.
- 83.2 A panel member may be required to recommend and brief an advocate who is willing and able to accept an instruction, after due consideration of the facts, complexity, expertise required, and costs to assist a client in a litigation or legal advisory matter.
- 83.3 The use of one or more advocates in any matter will be at the WCG's sole discretion.
- 83.4 An advocate's fees must be reflected as disbursements on a panel member's invoice.

84. Appointment of a correspondent attorney

- 84.1 A correspondent attorney may only be appointed for the service of documents, where required.
- 84.2 The relevant Accounting Officer's prior written approval must be obtained before a correspondent attorney may be appointed.
- 84.3 A correspondent attorney's fees must be reflected as disbursements on a panel member's invoice.

85. Appointment of experts

An expert may only be appointed after due consultation with the assigned WCG State Law Adviser and subject to written approval by the relevant Accounting Officer.

86. Witness fees

- 86.1 The relevant Accounting Officer's prior written approval must be obtained before a witness may be appointed and called upon to attend a consultation or court proceedings.
- 86.2 A witness will be paid in accordance with the prescribed rate published in the Government Gazette from time to time unless the relevant Accounting Officer's prior written approval was obtained for the payment of any other rate or amount.

87. Travel and accommodation

Where a panel member, advocate, expert, or witness is required to travel beyond 25 km of the Office of the Registrar of the Western Cape High Court, for consultations or court appearances, such as court appearances in the Supreme Court of Appeal, the costs related to accommodation and travelling may be paid by the WCG, as disbursements, subject to:

- 87.1 the panel member obtaining the relevant Accounting Officer's prior written approval; and

- 87.2 The Department of the Premier's approved tariff rates, as per the approved Travel and Subsistence Policy (accommodation and subsistence allowances), shall apply. In addition, the monthly rate prescribed by the Department of Transport for the use of private vehicles shall be applicable for travel purposes.

88. Dispute Resolution

Disputes pertaining to the interpretation and application of the contract between the WCG and a panel member will be governed by the provisions of the dispute resolution clause in the Service Level Agreement that will be concluded between the parties.

89. Incomplete instructions upon expiry of the three-year period

If an instruction, issued to a panel member before expiry of the three-year contract period, has not been completed by the panel member when the contract ends upon expiry of the three-year period, the panel member will retain the matter and provide the services in accordance with the contract until the matter has been concluded, unless the panel member's mandate is terminated by three business days' written notice prior to expiry of the three-year period.

90. Termination of Contract

The WCG, without prejudice to any other remedy for breach of contract, may, by written notice sent to a panel member, terminate the contract and Service Level Agreement concluded with a panel member if:

- 90.1 the panel member fails to comply with any one or more of their obligations;
- 90.2 the panel member, in the judgment of the WCG, engaged in corrupt or fraudulent conduct during the bidding process or the execution of the Service Level Agreement; or

- 90.3 if a WCG or other role player committed any corrupt or fraudulent act during the bidding process or the execution of the Service Level Agreement that benefited the panel member.

PART 9: RETURNABLE SCHEDULES

91. The bidder must complete and submit all relevant returnable schedules and attach the required evidence.

92. Standard bidding documents

92..1 The following standard bidding forms, which have been included with this bid under Part 9.1 must be used for this bid:

92.1.1 WCBD 1: Invitation to Bid and Proof of Authority

92.1.2 WCBD 3.3: Pricing Schedule (Professional Services);

92.1.3 WCBD 4: Declaration of Interest, Declaration of Bidder's Past Supply Chain Management Practices and Certificate of Independent Bid Determination; and

92.1.4 WCBD 6.1: Preference Points Claim Form as it relates to Preference Points (Only applicable if the bidder wishes to claim Preference Points).

92.2 These standard bidding forms may not be re-typed or altered in any way.

92.3 The following standard bidding documents must be completed, signed and submitted as part of the bid offer:

92.3.1 WCBD 1: Invitation to Bid. Accompanying WCBD 1, the bidder must submit proof of authority to sign the bid offer on behalf of the bidder, for example, a company resolution or equivalent documentation confirming such authority.

92.3.2 WCBD 3.3: Pricing Schedule (Professional Services); and

92.3.3 WCBD 4: Declaration of Interest, Declaration of Bidder's Past Supply Chain Management Practices and Certificate of Independent Bid Determination.

- 92.4 If Preference Points are claimed, standard bidding document WCBD 6.1: Preference Points Claim Form as it relates to Preference Points must be completed, signed and submitted as part of the bid offer.

93. Tables to be used for evaluation purposes

- 93.1 The tables, which have been included with this bid under Part 9.2 must be used for this bid.

- 93.2 The following tables must be completed and submitted with every bid:

93.2.1 Table 1: Compliance with compulsory bid conditions;

93.2.2 Table 3: Compliance with specifications [Required experience];

93.2.3 Table 5: Required resources;

93.2.4 Table 6: Local office; and

93.2.5 Table 7: Compliance with specifications [Required resources, Good standing with the Legal Practice Council and Local office].

- 93.3 The following tables must be completed and submitted only in respect of the selected panels:

93.3.1 Table 2 (a): Public law Panel;

93.3.2 Table 2 (b): Private law Panel;

93.3.3 Table 2 (c): Tax law Panel;

93.3.4 Table 2 (d): Intellectual property law Panel;

93.3.5 Table 2 (e): Labour law Panel; and

93.3.6 Table 2 (f): Commercial law Panel.

93.4 The following tables must be completed and submitted, only insofar as it is relevant, i.e. depending on whether the bidder practices for his or her own account or is a commercial juristic entity established to conduct a legal practice:

93.4.1 Table 4(a): Good standing with the Legal Practice Council [where the bidder is practising for his or her own account]; or

93.4.2 Table 4 (b): Good standing with the Legal Practice Council [where the bidder is a commercial juristic entity established to conduct a legal practice].

94. Bid submission checklist

The Bid submission checklist, which has been included with this bid under Part 9.3 may be used by the bidder to ensure that all relevant information and documents were included in the bid. The bid submission checklist will not be required for evaluation purposes.

PART 9.1: STANDARD BIDDING DOCUMENTS

PART 9.2: TABLES TO BE COMPLETED FOR EVALUATION PURPOSES

Table 1: Compliance with compulsory bid conditions

Table 2 (a): Public law Panel;

Table 2 (b): Private law Panel;

Table 2 (c): Tax law Panel;

Table 2 (d): Intellectual property law Panel;

Table 2 (e): Labour law Panel;

Table 2 (f): Commercial law Panel;

Table 3: Compliance with specifications [Required experience];

Table 4(a): Good standing with the Legal Practice Council [where bidder is practising for his or her own account];

Table 4(b): Good standing with the Legal Practice Council [where the bidder is a commercial juristic entity established to conduct a legal practice];

Table 5: Required resources;

Table 6: Local office; and

Table 7: Compliance with specifications [Good standing with the Legal Practice Council, required resources, and Local office].

Table 1: Compliance with compulsory bid conditions

No	Compulsory bid conditions	For official/ evaluation purposes		
		Comply	Does not comply	Notes
1	Registration on the Central Supplier Database			
	The bidder is registered on the Central Supplier Database at the time of the submission of the bid offer.			Central Supplier Database number: _____
2	Tax compliance			
	The bidder is registered with the South African Revenue Service and the bidder's tax affairs are in order at the time of the award of the bid.			Tax verification PIN: _____
3	Bid offer			
3.1	The bidder submitted a completed and signed standard bidding document WCBD 1: Invitation to Bid.			
3.2	The bidder submitted a completed and signed standard bidding document WCBD 3.3: Pricing Schedule (Professional Services).			
3.3	The bidder submitted a completed and signed standard bidding document WCBD 4: Declaration of interests, Bidders Past SCM Practices and Certificate of Independent Bid Determination.			
3.4	The bidder submitted a completed and signed standard bidding document WCBD 6.1: Preference Points Claim Form as it relates to Preference Points .			A bidder who does not claim Preference Points is not required to submit a completed and signed WCBD 6.1.

No	Compulsory bid conditions	For official/ evaluation purposes		
		Comply	Does not comply	Notes
3.5	For Preference Points to be allocated, the bidder must submit the required proof as contemplated in standard bidding document WCBD 6.1: Preference Points Claim Form as it relates to Preference Points.			A bidder who does not claim Preference Points is not required to submit a completed and signed WCBD 6.1.
3.6	A bidder practising for own account has submitted proof that the bidder has at least five years' post admission experience, or, if a commercial juristic entity, the bidder has submitted proof that the attorney identified to do the work has at least five years' post admission experience.			
3.7	Paragraph 2.5 of standard bidding document WCBD 1 (Invitation to Bid), and paragraph 9 of standard bidding document WCBD 6.1 (Preference Points Claim Form) which relates to subcontracting are not applicable to this contract. A bid offer indicating that the service will be subcontracted will not be considered an acceptable bid.			
4	Bid validity			
	The bid offer is valid for 90 days from the date of bid closing.			
5	Signature of the bid offer			
5.1	The signatory duly signed the bid offer on behalf of the bidder as is required in standard bidding document WCBD 1: Invitation to Bid.			
5.2	The bidder provided proof that the signatory of the bid offer was duly authorised to sign the bid			

No	Compulsory bid conditions	For official/ evaluation purposes		
		Comply	Does not comply	Notes
	offer on behalf of the bidder as is required in standard bidding document WCBD 1: Invitation to Bid.			
6	Submission of the bid offer			
	The bid offer was timeously submitted to the correct address.			
For official/evaluation purposes: The bidder has complied with all the compulsory bid conditions. YES <input type="checkbox"/> NO <input type="checkbox"/>				

[Note: Only complete and submit this Table and the required evidence if this panel was selected]

Table 2(a): Public law Panel (Also refer to item 1 in Table 3)

The bidder is required to demonstrate experience in superior court (Constitutional Court, Supreme Court of Appeal and/or the High Court) civil litigation and legal advisory work in constitutional and administrative law between 1 June 2020 and the date of publication of the bid advertisement by providing the following information:

1. **Identifying details of two matters for each of the required legal fields**, i.e. constitutional law and administrative law that the bidder was involved in as attorney of record, and which was concluded or is ongoing in a Superior Court during the period specified above.
2. **Documentary proof, reflecting the bidder's name as the attorney of record which serves as proof that the identified matter was concluded or is ongoing**, for example, a copy of the judgment. For ease of evaluation, the documentary proof must be clearly marked with the corresponding reference number indicated in the table below e.g. 'PUBLP 1')
3. **For each of the identified matters, a reference letter** with the contact details of the client or any other person who has knowledge of the matter, who consented to being contacted by the WCG for evaluation purposes, to verify the information included in the reference letter and that the bidder, as the attorney of record, satisfactorily concluded the matter or is involved in an ongoing matter.

Required legal fields for public law panel	Name of Superior Court and case number	Name and contact details of references	Clearly mark the proof with the reference number below and confirm submission by ticking the box.	For official/ evaluation purposes		
				Comply	Does not comply	Notes
Constitutional law case 1			PUBLP 1			
Constitutional law case 2			PUBLP 2			
Administrative law case 1			PUBLP 3			
Administrative law case 2			PUBLP 4			
For official/evaluation purposes: PUBLIC LAW PANEL: The bidder has demonstrated experience in Superior Court civil litigation and legal advisory work in constitutional law and administrative law between 1 June 2020 and the date of publication of the bid advertisement. YES <input type="checkbox"/> NO <input type="checkbox"/>						

[Note: Only complete and submit this Table and the required evidence if this panel was selected]

Table 2(b): Private law Panel (Also refer to item 2 in Table 3)

The bidder is required to demonstrate experience in superior court (Constitutional Court, Supreme Court of Appeal and/or the High Court) civil litigation and legal advisory work in the law of contract, law of delict, and property law between 1 June 2020 and the date of publication of the bid advertisement by providing the following information:

1. **Identifying details of two matters for each of the required legal fields**, i.e. law of contract, law of delict, and property law, that the bidder was involved in as attorney of record and concluded or is ongoing in a Superior Court during the period specified above.
2. **Documentary proof, reflecting the bidder's name as the attorney of record, which serves as proof that the identified matter was concluded or is ongoing** for example, a copy of the judgment. For ease of evaluation, the documentary proof must be clearly marked with the corresponding reference number indicated in the table below e.g. 'PRILP 1'
3. **For each of the identified matters, a reference letter** with the contact details of the client or any other person who has knowledge of the matter, who consented to be contacted by the WCG for evaluation purposes, to verify the information included in the reference letter and that the bidder, as the attorney of record, satisfactorily concluded the matter or is involved in an ongoing matter.

Required legal fields for private law panel	Name of Superior Court and case number	Name and contact details of references	Clearly mark the proof with the reference number below and confirm submission by ticking the box.	For official/ evaluation purposes		Notes
				Comply	Does not comply	
Law of contract case 1			PRILP 1			
Law of contract case 2			PRILP 2			
Law of delict case 1			PRILP 3			
Law of delict case 2			PRILP 4			
Property law case 1			PRILP 5			
Property law case 2			PRILP 6			
For official/evaluation purposes: The bidder has demonstrated experience in Superior Court civil litigation and legal advisory work in the law of contract, law of delict, and property law between 1 June 2020 and the date of publication of the bid advertisement.						
				YES <input type="checkbox"/>	NO <input type="checkbox"/>	

[Note: Only complete and submit this Table and the required evidence if this panel was selected]

Table 2(c): Tax law Panel (Also refer to item 3 in Table 3)

The bidder is required to demonstrate experience in tax law between 1 June 2020 and the date of publication of the bid advertisement by providing the following information:

1. **Description of two tax law matters** that the bidder was involved in and concluded or is ongoing in relation to the period specified above.
2. **For each of the identified matters, a reference letter** with the contact details of the client or any other person who has knowledge of the matter, who consented to being contacted by the WCG for evaluation purposes, to verify information included in the reference letter and confirm that the bidder satisfactorily concluded the matter or is involved in an ongoing matter. For ease of evaluation, the documentary proof must be clearly marked with the corresponding reference number indicated in the table below e.g. 'TLP 1'.

Matters required for tax law panel	Description of the matter	Clearly mark the reference letter with the reference number below and confirm submission by ticking the box.		For official/ evaluation purposes		
				Comply	Does not comply	Notes
Tax law matter 1		TLP 1				
Tax law matter 2		TLP 2				
For official/evaluation purposes: The bidder has demonstrated experience in tax law between 1 June 2020 and the date of publication of the bid advertisement. YES <input type="checkbox"/> NO <input type="checkbox"/>						

[Note: Only complete and submit this Table and the required evidence if this panel was selected]

Table 2(d): Intellectual property law Panel (Also refer to item 4 in Table 3)

The bidder is required to demonstrate experience in intellectual property law between 1 June 2020 and the date of publication of the bid advertisement by providing the following information:

1. **Description of two intellectual property law matters** that the bidder was involved in and concluded or is ongoing in relation to the period specified above.
2. **For each of the identified matters, a reference letter** with the contact details of the client or any other person who has knowledge of the matter, who consented to be contacted by the WCG for evaluation purposes, to verify information included in the reference letter and confirm that the bidder satisfactorily concluded the matter or is involved in an ongoing matter. For ease of evaluation, the documentary proof must be clearly marked with the corresponding reference number indicated in the table below e.g. 'IPLP 1'.

Matters required for intellectual property law panel	Description of the matter	Clearly mark the reference letter with the number below and confirm submission by ticking the box.	For official/ evaluation purposes		
			Comply	Does not comply	Notes
Intellectual property law matter 1		IPLP 1			
Intellectual property law matter 2		IPLP 2			
For official/evaluation purposes: The bidder has demonstrated experience in intellectual property law between 1 June 2020 and the date of publication of the bid advertisement. YES <input type="checkbox"/> NO <input type="checkbox"/>					

[Note: Only complete and submit this Table and the required evidence if this panel was selected]

Table 2(e): Labour law Panel (Also refer to item 5 in Table 3)

The bidder is required to demonstrate a minimum of five years proven experience in Labour Court or Labour Appeal Court litigation and legal advisory work in labour law between 1 June 2020 and the date of publication of the bid advertisement by providing the following information:

1. **Identifying details of three labour law matters** that the bidder was involved in as attorney of record and concluded or is ongoing in the Labour Court or the Labour Appeal Court in relation to the period specified above.
2. **Documentary proof, reflecting the bidder's name as the attorney of record which serves as proof that the identified matter was concluded or is ongoing**, for example, a copy of the judgment. For ease of evaluation, the documentary proof must be clearly marked with the corresponding reference number indicated in the table below e.g. 'LP 1')
3. **For each of the identified matters, a reference letter** with the contact details of the client or any other person who has knowledge of the matter, who consented to be contacted by the WCG for evaluation purposes, to verify the information included in the reference letter and that the bidder, as the attorney of record, satisfactorily concluded the matter or is involved in an ongoing matter.

Matters required for labour law panel	Name of Court (i.e. Labour Court or Labour Appeal Court) and case number	Name and contact details of references	Clearly mark the proof with the reference number below and confirm submission by ticking the box.		For official/ evaluation purposes		
					Comply	Does not comply	Notes
Labour law case 1			LP 1				
Labour law case 2			LP 2				
Labour Law case 3			LP 3				
For official/evaluation purposes: The bidder has demonstrated experience in Labour Court or Labour Appeal Court litigation and legal advisory work in labour law between 1 June 2020 and the date of publication of the bid advertisement. YES <input type="checkbox"/> NO <input type="checkbox"/>							

[Note: Only complete and submit this Table and the required evidence if this panel was selected]

Table 2(f): Commercial law Panel (Also refer to item 6 in Table 3)

The bidder is required to demonstrate experience in commercial law between 1 June 2020 and the date of publication of the bid advertisement by providing the following information:

1. **Description of three commercial law matters** that the bidder was involved in and concluded or is ongoing in relation to the period specified above.
2. **For each of the identified matters, a reference letter** with the contact details of the client or any other person who has knowledge of the matter, who consented to be contacted by the WCG for evaluation purposes, to verify information included in the reference letter and confirm that the bidder satisfactorily concluded the matter or is involved in an ongoing matter. For ease of evaluation, the documentary proof must be clearly marked with the corresponding reference number indicated in the table below e.g. 'CLP 1'.

Matters required for commercial law panel	Description of the matter	Clearly mark the reference letter with the reference number below and confirm submission by ticking the box.	For official/ evaluation purposes		
			Comply	Does not comply	Notes
Commercial law matter 1		CLP 2			
Commercial law matter 2		CLP 2			
Commercial law matter 3		CLP 3			
For official/evaluation purposes:					
The bidder has demonstrated experience in commercial law between 1 June 2020 and the date of publication of the bid advertisement.					
YES <input type="checkbox"/> NO <input type="checkbox"/>					

[Note: Only complete and submit this Table in respect of the selected panel(s)]

Table 3: Compliance with specifications [required experience] (Also refer to Tables 2(a) to 2(f))

No	Proven experience	Evidence attached (include reference e.g. annexure/ page number etc.)	For official/ evaluation purposes		
			Comply	Does not comply	Notes
1	Public law Panel The bidder has demonstrated experience in superior court civil litigation and legal advisory work in constitutional law and administrative law between 1 June 2020 and the date of publication of the bid advertisement. Refer to Table 2(a).				
2	Private law Panel The bidder has demonstrated experience in superior court civil litigation and legal advisory work in the law of contract, law of delict and property law between 1 June 2020 and the date of publication of the bid advertisement. Refer to Table 2(b).				
3	Tax law Panel The bidder has demonstrated experience in tax law between 1 June 2020 and the date of publication of the bid advertisement. Refer to Table 2(c).				
4	Intellectual property law Panel The bidder has demonstrated experience in intellectual property law between 1 June 2020 and the date of publication of the bid advertisement. Refer to Table 2(d).				

No	Proven experience	Evidence attached (include reference e.g. annexure/ page number etc.)	For official/ evaluation purposes		
			Comply	Does not comply	Notes
5.	Labour law Panel The bidder has demonstrated experience in Labour Court or Labour Appeal Court litigation and legal advisory work in labour law between 1 June 2020 and the date of publication of the bid advertisement. Refer to Table 2(e).				
6.	Commercial law Panel The bidder has demonstrated experience in commercial law between 1 June 2020 and the date of publication of the bid advertisement. Refer to Table 2(f).				

[Note: Submit Table 4(a) OR Table 4(b), whichever one is relevant]

Table 4(a): Good standing with the Legal Practice Council [Where the bidder is practising for his or her own account]
(Also refer to item 1 in Table 7)

No	Requirement	Attached	Not attached	For official/ evaluation purposes		Notes
				Comply	Does not comply	
1	The bidder has submitted proof of good standing with the Legal Practice Council.					
For official/evaluation purposes: The bidder has submitted proof of good standing issued by the Legal Practice Council: YES <input type="checkbox"/> NO <input type="checkbox"/> Refer to item 1 in Table 7						

[Note: Submit Table 4(a) OR Table 4(b), whichever one is relevant]

Table 4(b): Good standing with the Legal Practice Council [Where the bidder is a commercial juristic entity established to conduct a legal practice] (Also refer to item 1 in Table 7)

No	Requirement	Attached	Not attached	For official/ evaluation purposes		Notes
				Comply	Does not comply	
1	The bidder submitted proof that the staff members who will provide the required services are in good standing with the Legal Practice Council.					
For official/evaluation purposes: The bidder has submitted proof that the staff members who will provide the required services are in good standing with the Legal Practice Council YES <input type="checkbox"/> NO <input type="checkbox"/> Refer to item 1 in Table 7						

Table 5: Required resources (Also refer item 2 in Table 7)

		Confirm which of the resources are available	Yes/No	For official/evaluation purposes		
				Comply	Does not comply	Notes
1.		A secretary or other administrative support				
2.		Computer with MS Office 365, including MS Teams				
3.		Internet				
4.		E-mail				
5.		Adequate access to research tools				
6.		Printer				
7.		Scanner				
8.		Photocopier				
9.		Telephone				
10.		IT security systems to protect private and confidential information while processing information (including malicious software protection, firewalls and encryption)				
11.		Data protection and business continuity systems				
For official/evaluation purposes:						
The bidder has demonstrated access to the necessary resources to be able to render the required services. (Refer to item 2 in Table 7)						
YES		<input type="checkbox"/>	NO	<input type="checkbox"/>		

Table 6: Local Office (Also refer to item 3 in Table 7)

Bidder's business address	Distance from the Office of the Registrar of the Western Cape High Court, Cape Town	Evidence of business address E.g. municipal account or lease contract		For official/ evaluation purposes		Notes
		Attached	Not attached	Comply	Does not comply	
For official/evaluation purposes: The bidder has demonstrated compliance with the requirement to have a local office within the service area (within 25 km) of the office of the Office of the Registrar of the Western Cape High Court. (Refer to item 3 in Table 7) YES <input type="checkbox"/> NO <input type="checkbox"/>						

Table 7: Compliance with specifications [Good standing with the Legal Practice Council, Required resources, and Local office]
(Also refer to Table 4(a), Table 4(b), Table 5, and Table 6)

No	Specifications	Evidence attached (include reference e.g. annexure/ page number etc.)	For official/ evaluation purposes		
			Comply	Does not comply	Notes
1	The bidder practising for his or her own account submitted proof of good standing with the Legal Practice Council [Refer to Table 4(a)] OR The bidder, which is a commercial juristic entity established to conduct a legal practice, submitted proof that the staff members who will provide the required services are in good standing with the Legal Practice Council. [Refer to Table 4(b)]				
2	The bidder has demonstrated access to the necessary resources to be able to effectively render the required services. Refer to Table 5.				
3	The bidder has demonstrated compliance with the requirement to have a local office. [Refer to Table 6]				

PART 9.3 BID SUBMISSION CHECKLIST

Description	Submitted	
	Yes	No
The compulsory standard bid documents must be completed and submitted.		
WCBD 1: Invitation to Bid		
WCBD 3.3: Pricing Schedule (Professional Services)		
WCBD 4: Declaration of Interest, Declaration of Bidder's Past Supply Chain Management Practices, and Certificate of Independent Bid Determination		
This standard bid document must only be completed and submitted if the bidder wishes to claim Preference Points		
WCBD 6.1: Preference Points Claim Form as it relates to Preference Points		
Table 1 must be completed and submitted.		
Table 1: Compliance with compulsory bid conditions		
Tables 2(a) to 2(f): The bidder must only complete and submit the table(s) in respect of the selected panel(s).		
Table 2 (a): Public law Panel		
Table 2 (b): Private law Panel		
Table 2 (c): Tax law Panel		
Table 2 (d): Intellectual property law Panel		
Table 2 (e): Labour law Panel		
Table 2 (f): Commercial law Panel		
Table 3 must be submitted after completion in respect of the selected panel(s).		
Table 3: Compliance with specifications [required experience]		
Table 4(a) <u>or</u> 4(b) must be completed and submitted (whichever is relevant).		
Table 4(a): Good standing with the Legal Practice Council [Where bidder is practising for his or her own account]		
Table 4(b): Good standing with the Legal Practice Council [Where the bidder is a commercial juristic entity established to conduct a legal practice].		
Tables 5, 6, and 7 must be completed and submitted.		
Table 5: Required resources		
Table 6: Local office		
Table 7: Compliance with specifications [Good standing with the Legal Practice Council, Required resources, and Local office]		

THE NATIONAL TREASURY

Republic of South Africa



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

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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

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.

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| 16. Payment | <p>16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.</p> <p>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.</p> <p>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.</p> <p>16.4 Payment will be made in Rand unless otherwise stipulated in SCC.</p> |
| 17. Prices | <p>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.</p> |
| 18. Contract amendments | <p>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.</p> |
| 19. Assignment | <p>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.</p> |
| 20. Subcontracts | <p>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.</p> |
| 21. Delays in the supplier's performance | <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p> |

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)