

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>					
BID NUMBER:	SCM002/2024	CLOSING DATE: 4 SEPTEMBER 2024	CLOSING TIME:	11:00	
DESCRIPTION	<b>APPOINTMENT OF A SERVICE PROVIDER TO MANAGE AND RENDER ON-SITE CANTEEN AND CATERING SERVICES FOR A PERIOD OF 36 MONTHS.</b>				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
Batho Pele House					
546 Edmond Street,					
(C/O Hamilton Street)					
Arcadia					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	Lorraine Masenya / Mmapula Kotsokoane		CONTACT PERSON	RAYMOND RAATH	
TELEPHONE NUMBER	013 3361126/012 3361389		TELEPHONE NUMBER	012 336 1110	
FACSIMILE NUMBER			FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS			E-MAIL ADDRESS	<a href="mailto:raymond@dpsa.gov.za">raymond@dpsa.gov.za</a>	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
<b>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.</b>					

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

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

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

SIGNATURE OF BIDDER: .....

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

DATE: .....

**THERE WILL BE A COMPULSORY BRIEFING SESSION ON THE 23 AUGUST 2024 @ 10:00-11:00 DPSA CANTEEN GROUND FLOOR, BATHO PELE HOUSE, 546 EDMOND STREET (C/O HAMILTON STREET) ARCADIA.**

**NB: FAILURE TO ATTEND A COMPULSORY BRIEFING SESSION WILL RESULT IN THE DISQUALIFICATION OF THE BID.**

**NB: KINDLY REGISTER YOUR PROPOSALS/BIDS IN THE SUBMISSION REGISTER AT THE DPSA RECEPTION.**

**PRICING SCHEDULE**  
**(Professional Services)**

NAME OF BIDDER: .....	BID NO.: <b>SCM002/2024</b>
CLOSING TIME 11:00 ON <b>4 SEPTEMBER 2024</b>	

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

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY INCLUSIVE OF <u>VALUE ADDED TAX</u>
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**APPOINTMENT OF A SERVICE PROVIDER TO MANAGE AND RENDER ON-SITE CATEEN AND CATERING SERVICES FOR A PERIOD OF 36 MONTHS.**

Services must be quoted in accordance with the attached terms of reference.

Total cost of the assignment (R inclusive VAT) R.....

**NB; Bidders are also advised to indicate a total cost breakdown for this assignment.**

The financial proposal for this assignment should cover all assignment activities and outputs enumerated above.

2. Period required for commencement with project after acceptance of bid .....

3. Are the rates quoted firm for the full period? YES/NO

4. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.

.....  
.....

.....  
Signature Date

.....  
Position

Any enquiries regarding bidding procedures may be directed to the

**DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION**

For SCM related enquiries – Lorraine Masenya/ Mmapula Kotsokoane

[Tel:012 336 1126/1389](tel:01233611261389)

Or for technical information – Raymond Raath

[Tel:012 336 1110](tel:0123361110)

**PLEASE REFER TO THE ATTACHED TERMS OF REFERENCE FOR MORE INFORMATION.**

## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

### 2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship

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<sup>1</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....  
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....  
.....

**3 DECLARATION**

I, \_\_\_\_\_ the \_\_\_\_\_ undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

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<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
Signature Date

.....  
Position Name of bidder

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- 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).

#### 1.2 To be completed by the organ of state

a) The applicable preference point system for this tender is the **80/20** preference point system.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

#### 1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	<b>80</b>
<b>SPECIFIC GOALS</b>	<b>20</b>
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is

adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“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; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- (f) **“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
- (g) **“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
- (h) **“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.
- (i) **“Youth”** means persons between the ages of 14 and 35 in terms of the National Youth Development Agency Act, 2008. For the purpose of this bid the date to be used for determination of age will be the closing date of the bid and in a case where the closing date of a bid has been extended, the original (first) closing date shall be used for the purpose of determining age.
- (j) **“disability”** means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.
- (k) **“Local Content and Production”** means locally produced and manufactured products within the borders of South Africa in support of the Reconstruction Development Programme.

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

#### 3.1.1 THE 80/20 PREFERENCE POINT SYSTEM

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

**80/20**

$$Ps = 80 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

- Ps = Points scored for price of tender under consideration  
Pt = Price of tender under consideration  
Pmin = Price of lowest acceptable tender

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

#### 3.2.1. POINTS AWARDED FOR PRICE

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

**80/20**

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

Where

- Ps = Points scored for price of tender under consideration  
Pt = Price of tender under consideration  
Pmax = Price of highest acceptable tender

## 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point

system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

***(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.***

***Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)***

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Black Equity Ownership	8	
Women Equity Ownership	6	
Persons living with disability Equity Ownership	3	
Youth Equity Ownership	3	

Refer to the Preference Point Matrix attached for ease of claiming points for the specific goals for this tender.

**DECLARATION WITH REGARD TO COMPANY/FIRM**

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. 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
- [TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender,

qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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; and
  - (e) forward the matter for criminal prosecution, if deemed necessary.

.....	
<b>SIGNATURE(S) OF TENDERER(S)</b>	
<b>SURNAME AND NAME:</b>	.....
<b>DATE:</b>	.....
<b>ADDRESS:</b>	.....
	.....
	.....
	.....

**PREFERENCE POINT MATRIX (80/20)**

<b>SPECIFIC GOALS</b>	<b>POINTS OUT OF 20</b>	<b>REQUIRED PROOF</b>
<b>Black Equity Ownership</b>	<b>Maximum = 8</b>	<p><i>One or more of the following is to be provided for the verification of points claimed by the tenderer:</i></p> <ul style="list-style-type: none"> <li>• Company Registration Certificate (CIPC).</li> <li>• Company Shareholders Certificate.</li> <li>• Certified Identification Documentation of company director/s.</li> <li>• Detailed Central Supplier Database Report (CSD).</li> <li>• B-BBEE Certificate / B-BBEE Sworn Affidavit of the tendering company.</li> <li>• Consolidated B-BBEE Certificate if the tendering company is a Consortium, Joint Venture or Trust issued by a verification agency accredited by the South African Accreditation Body.</li> <li>• Agreement for a Consortium, Joint Venture or Trust.</li> <li>• Declaration from a registered medical practitioner in support of Persons Living with Disabilities.</li> </ul>
100% Black ownership	8 Points	
>51% Black ownership	6 Points	
>0<51% Black ownership	2 Points	
0% Black Ownership	0 Points	
<b>Women Equity Ownership</b>	<b>Maximum = 6</b>	
100% ownership	6 Points	
>51% ownership	4 Points	
>0<51% ownership	2 Points	
0% ownership	0 Points	
<b>Persons Living with Disabilities Equity Ownership</b>	<b>Maximum = 3</b>	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	
<b>Youth Equity Ownership</b>	<b>Maximum = 3</b>	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	



the dpsa

Department:  
Public Service and Administration  
REPUBLIC OF SOUTH AFRICA

### INFORMATION SESSION CERTIFICATE

This is to certify that the company..... attended a  
briefing session at **DPSA** Canteen Ground Floor, on **23 August 2024**

\_\_\_\_\_  
Signed for the DPSA

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signed for the Bidder

\_\_\_\_\_  
Date

**NB: THIS CERTIFICATE MUST BE SIGNED BY BOTH PARTIES AND  
MUST FORM PART OF THE BID DOCUMENT**



**the dpsa**

Department:  
Public Service and Administration  
REPUBLIC OF SOUTH AFRICA

**THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION**

**BID CHECK LIST**

<b>Have you submitted a proof of registration on the Central Supplier Database (CSD) with National Treasury?</b>	<b>YES</b>	<b>NO</b>
<b>In case of consortium, have all parties to the consortium/joint venture submitted a valid Tax Clearance Certificate?</b> (Failure to submit a valid Tax Clearance Certificate for each party of the consortium/joint venture WILL result in the invalidation of your bid)	<b>YES</b>	<b>NO</b>
<b>Is the SBD 6.1 form fully completed and signed by the duly authorized person?</b> (Failure to fully sign the SBD 6.1 will result in the invalidation of your bid)	<b>YES</b>	<b>NO</b>
<b>Are the following forms fully completed and signed?</b>  <b>1. SBD 1</b> <b>2. SBD 3.3</b> <b>3. Declaration of Interest (SBD 4)</b> <b>4. SBD 6.1</b> <b>5. Information session certificate</b>	<b>YES</b>	<b>NO</b>

.....  
**Signature**

.....  
**Date:**



**the dpsa**

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Department:  
Public Service and Administration  
**REPUBLIC OF SOUTH AFRICA**

**TERMS OF REFERENCE INCORPORATING SPECIAL CONDITIONS OF CONTRACT**

**FOR THE APPOINTMENT OF A SERVICE PROVIDER TO MANAGE AND RENDER ON-SITE CANTEEN AND CATERING SERVICES FOR A PERIOD OF 36 MONTHS**

**DELIVERY ADDRESS: THE DPSA, GROUND FLOOR (DIRECTORATE: SUPPLY CHAIN MANAGEMENT),  
BATHO PELE HOUSE, 546 EDMOND STREET, ARCADIA, 0083**

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**ABBREVIATIONS**

<b>ABBREVIATION</b>	<b>DESCRIPTION</b>
<b>BAC</b>	<b>Bid Adjudication Committee</b>
<b>BBBEE</b>	<b>Broad Based Black Economic Empowerment</b>
<b>BEC</b>	<b>Bid Evaluation Committee</b>
<b>CV</b>	<b>Curriculum Vitae</b>
<b>DPSA</b>	<b>Department of Public Service and Administration</b>
<b>EHWC</b>	<b>Employee Health and Wellness Committee</b>
<b>SCM</b>	<b>Supply Chain Management</b>
<b>ToR</b>	<b>Terms of Reference</b>
<b>VAT</b>	<b>Value Added Tax</b>

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## 1. INTRODUCTION

The Department of Public Service and Administration (DPSA) intends to outsource the catering services to a reputable Service Provider to manage and render on-site Canteen and Coffee shop services at Batho Pele House, 546 Edmond Street, Arcadia. The DPSA intends to enter into a Service Level Agreement with a service provider who is to provide the services required for a period of 36 months. The service rendered will be for the Service Provider's own account.

## 2. BACKGROUND

- 2.1. The Department considers workers nutrition as an element of a healthy workplace and recognises that "workers' health will be affected by both the quality of what they eat and drink at work and the conditions in which they consume such. The department therefore seeks to take measures to ensure the availability of food and beverages in a clean and healthy environment, with nutritional meal options, at the workplace.
- 2.2. The food and beverages employees consume at work influence their productivity and their risk of occupational conditions such as hypertension, cardiovascular disease and cancer. "Many workers consume at least half of their meals and snacks during work hours. This makes the workplace an important setting to promote healthy eating by creating an environment where healthy food choices are readily accessible through canteens, function catering or vending machines," Lynn Moeng, Chief-Director: Health Promotion, Nutrition and Oral Health at the Department of Health.
- 2.3. According to the Department of Health and in line with Outcome 2 of the National Development Plan, Vision 2030, a long and healthy life for all South Africans, commits government to improving long-term health outcomes by prioritising, amongst other things, nutrition and physical activity.
- 2.4. The DPSA believes in the promotion of employee health and wellness by, amongst others, enabling productive working lunches and ultimately promoting efficiency at work.
- 2.5. Having an on-site canteen contributes towards a productive organisational culture whereby less time is wasted during lunch breaks.
- 2.6. The objective of having an on-site canteen service is to:
  - 2.6.1. Promote healthy eating in the workplace.
  - 2.6.2. Provide meals for convenience without compromising good nutrition.
  - 2.6.3. Provide a social break from the desk in a pleasant, dedicated space that encourages a sense of community.
  - 2.6.4. Create a hub where information can be shared, ideas exchanged, and a productive organisational culture is strengthened. (<http://expensereduction.eu>)

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### 3. THE ROLE OF THE DEPARTMENT

The DPSA fulfils the following roles and responsibilities in relation to the canteen services:

- 3.1. In terms of the appointment of the service provider, the DPSA manages the Supply Chain process to appoint a service provider. This includes, amongst others, the preparation of the bid specification documents, the advertisements, the communication related to the bidding process, facilitating the evaluation and adjudication phases, appointment of a service provider, contract negotiations, drafting and approval of the contracts.
- 3.2. The Department shall conduct business in a courteous and professional manner and provide appropriate information as and when required by the service provider to fulfil their duties.
- 3.3. The DPSA sets service standards to ensure good customer service related to the following areas:
  - 3.3.1. The contracting of a service provider for a period of 36 months to provide the canteen and coffee shop service required in the department.
  - 3.3.2. The turnaround times that should be adhered to by the service provider and the department to ensure compliance with standards set.
  - 3.3.3. The minimum reporting standards of quarterly reports that the service provider must submit to the DPSA.
- 3.4. Provide access to the Canteen and Catering services and immovable equipment, DPWI is responsible for the maintenance excluding the damages resulting from incorrect use/negligence.
- 3.5. Procure the services of a recognized/qualified health inspector, to inspect the catering facilities on a regular basis and submit inspection reports to the department.
- 3.6. DPSA reserves the right to compare the rendered prices to prices in the surrounding areas and similar service providers.
- 3.7. The DPSA monitors and evaluates the canteen services, as well as the contracts it concluded with the Service Provider by:
  - 3.7.1. Analysing quarterly reports from the Canteen manager to the DPSA as per a reporting template that is provided with the contract.
  - 3.7.2. Periodic inspection of the canteen environment for health and safety issues as well as food safety.
  - 3.7.3. Conducting annual surveys; and serve as the liaison between canteen users and the service provider.
  - 3.7.4. Monitoring the consumption of electricity and water against specified targets for efficiency usage, as stipulated in the contract.
  - 3.7.5. Conducting meetings with the Service Provider should the need arise.

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#### **4. THE ROLE OF THE SERVICE PROVIDER**

- 4.1. The service provider's management and staff must provide services in accordance with the terms of the contract, as well as all legal prescripts related to the service.
- 4.2. The Service Provider must provide reports to the DPSA as specified in the contract.
- 4.3. Preparation and service of food (eats and drinks) to employees and visitors of the department as well as catering for departmental functions when required.
- 4.4. Preparation and service of food must be considerate to the various cultures, religions and dietary requirements of the diverse workforce represented in the Department.
- 4.5. Maintaining food preparation and kitchen standards of cleanliness and hygiene that complies with the relevant prescribed food safety standards.
- 4.6. Provide adequate and environmentally friendly (where possible) equipment, cutlery and crockery.
- 4.7. Maintain existing equipment and report any faults through the relevant processes.
- 4.8. Ensure that purchase prices of the items offered are lower than surrounding market prices.
- 4.9. Practice appropriate work methods to comply with Workplace Health and Safety requirements.
- 4.10. The service provider is responsible for maintaining a clean and tidy-canteen area and are required to provide waiting services.
- 4.11. Responsible for any additional equipment, as required,

##### **4.12. Staffing**

- 4.12.1. Consider proper training opportunities for its staff to ensure further development (in the form of skills development plan per employee).
- 4.12.2. The service provider is responsible for the employment conditions of its staff.
- 4.12.3. Any labour disputes/ unrest should take place at the service provider's operating offices and not the DPSA.
- 4.12.4. Any industrial action by the Service Provider's staff must be done at the premises of the Service Provider and should in no way cause disturbance to the day-to-day operations of the Department.
- 4.12.5. Establish an assistance plan for its staff regarding their personal health and welfare, e.g. awareness of HIV/AIDS and other disease/illness, information and assistance on abuse of woman and children, injury on duty, etc.

##### **4.13. Menu**

- 4.13.1. Provide staff nutrition services by monitoring the menus, work with wellness committees and be involved in campaigns /promotions for healthy living /healthy eating e.g. National Nutrition week.
- 4.13.2. The service provider is required to at the least, subscribe to the guidelines for healthy eating in line with the National Institute for Occupational Health. The menu should be considerate of the various cultures, religions and dietary requirement of the diverse workforce represented in the Department e.g. vegetarian, halaal and diabetic options.
- 4.13.3. The service provider is required to ensure that there is a variety of foods available, meals offered in the workplace should meet the following specifications:

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- a. Meals for lunch should comprise of a minimum of three meat dishes (with a vegetarian option), two starch options, three vegetable options (hot and cold), two fruit options and water.
  - b. If a platter is requested for functions, this should include a mixture of fruits, vegetables, starches and meats/deli.
  - c. Sandwiches should be made with an assortment of whole grain breads (whole wheat, seed, rye, brown), pita, buns/rolls or wraps.
  - d. Quality graded meat should be used to limit the use of processed meats like Vienna's and plony as they are high in fat and salt.
  - e. Vegetables should be prepared with little or no added fat, sugar or salt.
  - f. Salads/dishes should include beans and legumes.

4.13.4. The Service Provider is required to also ensure that healthy snacks are available at the workplace / kiosks /coffee shop, such as:

- a. Unflavoured and low-salt popcorn,
- b. Low salt whole wheat crackers,
- c. Unsalted nut trail mix,
- d. Fruit in tubs (kiosks),
- e. Dried fruit, fruit rolls, fruit bars (no added sugar),
- f. Cake and pastries.

4.13.5. Healthy drinks should be provided (including at departmental events and through the coffee shop) including:

- a. Water, still or sparkling/soda water,
- b. Tea, coffee (regular or decaffeinated), sugar/sugar substitutes, variety of milk,
- c. Low-energy beverages e.g. light/zero/diet drinks
- d. Juices in packs

#### 4.14. Safety

- 4.14.1. Maintaining food preparation and kitchen standards of cleanliness and hygiene that complies with the Food Safety Standards.
- 4.14.2. Continually strive to provide a safe work environment for staff and customers/service beneficiaries.
- 4.14.3. Every staff member must successfully complete a comprehensive background check.
- 4.14.4. All staff members that handle food are adequately trained in (not only) food preparation, hygiene, food safety, food service and housekeeping.
- 4.14.5. The food handlers should wear clean and neatly pressed white uniforms daily (including PPE).
- 4.14.6. Food servers should always wear hairnets and gloves.
- 4.14.7. Comply with departmental safety rules.
- 4.14.8. The use of kitchen equipment must comply with set rules and requirements.
- 4.14.9. Daily inspection of food.
- 4.14.10. Provide suitable disposable containers for the serving of food & beverages.
- 4.14.11. Provide fresh food and those with valid shelf life.

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#### 4.15. Environmental Stewardship

In line with the Batho Pele construction green status, the service provider is expected to assist the department in its drive and commitment to reduce the carbon footprint- by working towards:

- 4.15.1 Offering organic and "fair" trade products.
- 4.15.2 Eco-friendly products and packaging.
- 4.15.3 Recycle more than ¾ of the waste stream (including bottles, cans, cardboard, waste food).
- 4.15.4 Make the canteen facility energy efficient and environmentally friendly.
- 4.15.5 The distribution of consumable to staff /less fortunate organisations/communities.

#### 4.16. Operating hours /use of Canteen

- 4.16.1 The official opening/functioning of the facility must be within 30 days of the tender being awarded.
- 4.16.2 It would be required that the canteen is open for business from **07h30 to 16h00** on week days (Monday to Friday excluding Public holidays). Any extended operating hours will either be at the discretion of the Service Provider and or be negotiated directly with the Department should such a requirement be deemed necessary.
- 4.16.3 Provide an information board to display the daily menus and other relevant information (e.g. canteen rules to inform diners):
  - a. How to behave, for example, to wash hands before meals.
  - b. Operating times of the canteen.
  - c. Queuing rules: First come, first serve.
  - d. Process of ordering and receiving food: simple map showing the direction
  - e. Cleaning procedures.
  - f. Locations of waste bins for leftover food, cans, plastic bottles, knives, forks, paper plates and polystyrene containers. Etc.
- 4.16.4 The canteen facilities are solely for use by the DPSA and its employees- no external private services will be provided through the departmental canteen.

### 5. PRICING

To ensure reasonable pricing to DPSA staff members, the prices of all items must be competitive and agreed between the service provider and the Department. The service provider is required to, as part of the proposal to include a cost structure and ingredients for the following dishes:

#### 5.1. Breakfast:

- 5.1.1. Toasted ham, cheese and tomato sandwich on white bread.
- 5.1.2. Two eggs, two slices of brown toast, two rashers of bacon and a hash brown.
- 5.1.3. A health sandwich (suitable for diabetics)

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## 5.2. Lunch:

- 5.2.1. Chicken (quarter leg), potato wedges, rice and two vegetables (green beans and pumpkin) and a side order of green salad.
- 5.2.2. Beef Hamburger with chips
- 5.2.3. Chicken Hamburger with chips
- 5.2.4. Grilled hake and green salad.

## 5.3. Catering menu for caterings for functions / meetings (halaal and vegetarian dishes included)

- 5.3.1. Finger lunch for 8 people;
- 5.3.2. Light hot meal (grilled fish and French salad) for 8 people;
- 5.3.3. Full hot meal for 8 people; and
- 5.3.4. Vegetarian platter.

**The sum of the above-mentioned pricing will be used to determine the total price for the bid. Bidders to provide for the respective costing and the consolidated total thereof in their price proposal.**

### **Operating Costs**

The department will not be advancing any financial assistance to the service provider, the successful service provider will derive their operating costs directly from their sales and services.

## **6. THE CANTEEN AND COFFEE SHOP FACILITIES AND EQUIPMENT**

The Department will provide the following:

- 6.1. Physical space to operate the Canteen and Coffee Shop services.
- 6.2. Provide the following facilities (amongst others):
  - 6.2.1. Telephone and email connection for internal use.
  - 6.2.2. Water points.
  - 6.2.3. Geyser.
  - 6.2.4. Refrigeration.
  - 6.2.5. Microwave Ovens.
  - 6.2.6. Wash hand basin (optional).
  - 6.2.7. Dishwasher.
  - 6.2.8. Industrial stoves.
  - 6.2.9. Air conditioning.
- 6.3. The Service provider will be required to enter into an agreement for the use and repairs of the fitted equipment.
- 6.4. The Service provider may not affect any structural changes to the existing premises without written consent/approval by the department.
- 6.5. The service provider has to procure the LPG Gas for the gas stoves.

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## 7. NATURE OF SERVICES REQUIRED

### 7.1. SCOPE AND EXTENT OF WORK

#### 7.1.1. Provision of Canteen Service:

Provide an all-inclusive catering service that provides basic meals, beverages, snacks & other items to acceptable food industry standards on a daily basis to on-site personnel during working hours, including providing and maintaining equipment and the provision of consumables required for the intended. The service is intended for a duration of 36 months from date of awarding the contract. The Service provider to cater for both the Canteen and the Coffee shop. Provide a today special meal at a competitive price.

**The DPSA reserves the right to source services for special functions and meetings from other local suppliers, the appointed service provider may compete with outside service providers to meet specified requirements.**

#### 7.1.2. Service Conditions

- a. Maintain safe and healthy conditions in which food is consumed, remove waste on a daily basis.
- b. Provide the minimum healthy meals in the workplace as per nutrition guidelines of the National Institute for Occupational Health.
- c. The preferred service provider must be prepared to cater for a diverse dietary requirements.
- d. Provide the services of general cleanliness to the canteen and surrounding areas at his/her own cost.
- e. Provide an on-site manager, available at all times and the name, picture and contact details displayed at all times.
- f. The preferred Service Provider must enter into a service level agreement with the Department.
- g. This Scope of Work is subject to all conditions and requirements as stated herein and annexures to the terms of reference.
- h. No branding of the service provider on the premises will be allowed.

### 7.2. GENERAL CONDITIONS

The Preferred Service Provider is required to:

- 7.2.1. Conduct business in a courteous, hospitable, friendly and professional manner.
- 7.2.2. Provide the necessary documentation as requested prior to the Catering Service contract being awarded.
- 7.2.3. Comply with all relevant employment legislation and the Compensation for Occupational Injuries and Diseases Act 1993 (Act No 130 of 1993, including UIF, PAYE, etc. Proof must be submitted within 14 days from awarding the contract to the successful Service Provider.
- 7.2.4. Ensure that all personnel working under this contract are in good health and pose no risk to any personnel in the DPSA.
- 7.2.5. Comply with the Departments security and emergency policies, procedures and regulations.

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- 7.2.6. Ensure that all work performed and all vehicles and equipment brought onto or used on site will be in compliance with the Occupational Health and Safety Act of 85 of 1993 and any Regulations promulgated in terms of this Act and the standard instructions of DPSA.
  - 7.2.7. Maintain its equipment in good order so as to comply with DPSA's occupational health and safety standards. Where meals are to be prepared off-site- DPSA reserves the right to inspect such facilities to ensure that the same health standards are maintained.
  - 7.2.8. Ensure that all personnel that will be working under this contract are adequately trained prior to the commencement of the contract.
  - 7.2.9. Prices of food should always be lower /competitive with surrounding areas and reasonable increases are to be negotiated as and when necessary/annually.
  - 7.2.10. Provide all personnel working under this contract with uniforms, DPSA reserves the right to order the immediate removal of a staff member that does not adhere to this arrangement.
  - 7.2.11. Provide all personnel working under this contract with adequate and appropriate Personal Protective Equipment (PPE) and clothing and to ensure these items are worn at all times.
  - 7.2.12. Ensure that the DPSA is immediately alerted of any terminations/removal and replacement of personnel.
  - 7.2.13. For security reasons, DPSA reserves the right to vet all personnel working under this contract.
  - 7.2.14. The DPSA shall not accept responsibility for any damages/ losses suffered by the service provider or their personnel for the duration of the contract where such damages/losses was caused intentionally or negligently.
  - 7.2.15. The DPSA shall not accept any responsibility of accounts/expenses incurred by the service provider that was not agreed upon by the contracting parties.

## 8. GENERAL BID SUBMISSION CONDITIONS, INSTRUCTIONS AND INFORMATION

### 8.1. GENERAL REQUIREMENTS

- 8.1.1. Service Providers are to take note of the implications of contravening the Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004 and any other Act applicable.
- 8.1.2. The Department of Public Service and Administration issues the Terms of Reference (ToR).
- 8.1.3. **A compulsory briefing session will be held at the DPSA's offices, 3rd Floor Boardroom, Batho Pele House, 546 Edmond Street, Arcadia.**
- 8.1.4. **The certificate of attendance must be included in the bid proposal. Failure to include the certificate of attendance of the compulsory briefing session as part of the bid will result in the disqualification of a bid.**
- 8.1.5. Questions of clarity can be forwarded to the under-mentioned email address. These questions will be included in the above-mentioned briefing session. Questions that might arise after the briefing session will be dealt with strictly in writing. The Service Provider may forward the written questions for clarity related to the meaning or interpretation of any part of the terms of reference or any other aspect concerning the bid for the attention of Mr R Raath e-mail, by not later than midnight on the second working day after the compulsory briefing session. A global response to all questions will

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be provided to all Service Providers by e-mail within five (5) working days after the compulsory briefing session.

8.1.6. The e-mail address to which questions of clarity must be submitted is Raymond@dpsa.gov.za

## 8.2. PACKAGING OF BID PROPOSAL

- 8.2.1. Service Providers must submit a complete response to the TOR to the DPSA, Batho Pele House, 546 Edmond Street, Arcadia on the date and time specified on the SBD1.
- 8.2.2. Fully completed and signed Standard Bidding Documentation (SBD) forms and associated support documentation.
- 8.2.3. No other distribution of proposals is to be made by the Service Provider. The proposal must **include a statement as to the period during which the proposal remains valid**. The proposals must be valid for a period of **three (3) months** from the due date for responses to be submitted.
- 8.2.4. This is a one -stage bidding process in which only one functional proposals **must** be submitted.
- 8.2.5. The bidder shall place the sealed Proposal envelope into an outer sealed envelope or package, and must be clearly marked as follows:

### FUNCTIONALITY/TECHNICAL PROPOSAL

- i) Mark envelope as follows:
- Bid No: SCM002/2024.
- Description: **Appointment of a service provider for the outsourcing of canteen and coffee shop services for a period of 36 months.**
- Bid closing date and time.
- Name and address of the bidder.
- ii) The submission of one original hard copy document, clearly marked "Original", and five (5) hardcopies, clearly marked "Copy". **The original version must be signed in ink.**
- 8.2.6 Economy of Proposal Preparation: Each proposal should be prepared simply and economically, providing a straightforward, concise description of the Service Provider's ability to meet the requirements of the ToR. Excessive proposal preparation will receive no extra evaluation credit. Emphasis should be on a clear, concise and factual proposal.
- 8.2.7 The bid proposals once submitted will become the property of the DPSA and shall not be returned to the Service Provider.
- 8.2.8 Receipt of all bid proposals will be recorded in a register at the point of receipt.

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### **8.3. LATE BIDS**

- 8.3.1. Bids received late will not be considered. Bids received late shall where possible, be returned unopened to the Service Provider. Service Providers are therefore strongly advised to ensure that bids are dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid.
- 8.3.2. The official Telkom time (Dial 1026) will be used to verify the exact closing time.
- 8.3.3. Bids sent via any other means than hand delivery shall be deemed to be received on the date and time of arrival at the DPSA premises. Bids received at the physical address after the closing date and time of the bid, shall therefore be deemed to have been received late.

### **8.4. WITHDRAWAL OR MODIFICATION OF BIDS**

Any Service Provider who submits a proposal in response to the ToR will have the right to withdraw, modify or correct a proposal after delivery thereof provided that the request for such withdrawal, modification or correction, together with the full details of such modification or correction must be received by the DPSA at the address provided above before the closing date stipulated for the receipt of proposals. Failure to do so before the closing date and time as stipulated will result in the bid being considered as a late bid and being returned unopened to the Service Provider.

### **8.5. ACCEPTANCE/REJECTION OF BIDS**

The DPSA reserves the right not to award the bid/project/contract.

### **8.6. PROPOSAL COST**

Respondents shall bear all costs incurred in the process of responding to the ToR and in any subsequent negotiations.

### **8.7. PRESENTATION**

- 8.7.1. If required, shortlisted Service Providers shall be expected to make a presentation of a maximum of thirty (30) minutes to the Bid Evaluation Committee. The presentation should be focused solely on the requirements of the ToR. The Service Provider should also be able to answer questions related to any aspect of the bid proposal.
- 8.7.2. The DPSA will notify the Service Provider, in the event where such need arises, of the date, time and venue where the presentation must be made.

### **8.8. FORMAT OF TECHNICAL PROPOSAL**

- 8.8.1. The Service Provider must prepare and package their bid proposals and all related documents in accordance with the following framework:
  - a) A Service Provider's proposal must be clear, factual and to the point.
  - b) All matters addressed in the TOR must be responded to.

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- c) Should a Service Provider wish to provide additional information, the said information must be appended to the specific section of the proposal to which it pertains and/or be referred to and included in a file of Annexures.

8.8.2. The Technical Proposal must include the following:

a) Service Provider Background and History (organisational track record)

- i.) Date that the firm was founded.
- ii.) A brief description of the historical background on the company/Service Provider, as well as the services provided by the Service Provider.
- iii.) The Service Provider must provide a list of its past and current customers, i.e. the name of the customer, the size, industry and products of these customers must be described as well as the types of services provided.
- iv.) The date of service to each customer should be included as well as whether the Service Provider was the primary contractor or subcontractor. If a subcontractor, the Service Provider should list who the primary contractor was/is, and should provide information on the portion of service(s) that they were responsible for as subcontractors.
- v.) Revenue history of the firm.

b) Service Provider Experience

- i.) The Service Provider must provide a list of customers for whom projects of this nature and magnitude have been conducted. Reference letters of these customers, as well as their contact details must be included for reference purposes.
- ii.) The date of service to each customer must be stipulated.
- iii.) Experience of canteen and catering service which must include the following –
  - The clients to which the service has been provided.
  - The geographical areas in which previous canteen and catering were done.

c) Service Provider Capabilities

- i.) Description of experience for VIP graded functions.
- ii.) Description of current infrastructure, including, but not limited to staffing numbers.
- iii.) Description of current employers who are clients of the Service Providers, including, but not limited to the number of employees of each of the employers.
- iv.) The proposal should state the size of the Service Provider, the location of the office from which the work on this project is to be performed and the number and nature of the

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professional staff to be employed in this project on a full-time basis and the number of the staff to be employed on a part-time basis.

- v.) The Service Provider must clearly outline and demonstrate the methodology in respect of which it envisages delivering the deliverables as set out in the terms of reference.

d) General Issues

- i.) All health certifications or commitment to obtaining certifications.
- ii.) Outstanding/current contractual obligations and liabilities.

e) Declarations

- i.) It is required that the Service Provider submits with the proposals a declaration that–
  - the information provided is true and correct;
  - Documentary proof regarding any issue related to the proposal will when required be submitted to the satisfaction of the DPSA.
  - the outstanding or current contractual obligations and liabilities will not adversely impact the timely completion of the project
- ii.) Furthermore, the Service Provider should also submit a declaration clarifying the relationships between the party (parties) tendering and the DPSA.
- iii.) **The Service Provider must capture the above information in a separate letter, which must be attached to the proposal.**

## 9. EVALUATION PROCESS

The evaluation process comprises the following stages:

### 9.1. Phase I: Minimum Mandatory Criteria Evaluation Phase

a) **Minimum Mandatory Criteria Evaluation Process**

During this phase the bid documents will be reviewed to determine compliance with the minimum mandatory criteria stipulated in the Terms of Reference. Any bid not meeting all the minimum mandatory criteria shall be excluded by the BEC from further adjudication processes. To this end **the following compulsory minimum requirements apply:**

- i.) Letter confirming that the proposal is valid for at least three (3) months.
- ii.) Proposal signed by the designated responsible person.
- iii.) Original signed briefing session certificate.
- iv.) List of customers for whom projects of this nature and magnitude have been conducted.

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- v.) Comprehensive CV's included of professional personnel to be used by Service Provider.
  - vi.) Profile of the company: background and History.
  - vii.) Proposal to comply with Kitchen and food safety standards.
  - viii.) Proposal on initiatives to encourage healthy eating habits.
  - ix.) Proposal on the pricing structure.
  - x.) Past and Current client list.
  - xi.) At least three (3) references of clients for who projects of this nature and magnitude have been conducted.
  - xii.) Copies of identity documents of directors or shareholders of the company who will be responsible for this project.
  - xiii.) Proof of registration on the central supplier database (CSD) with National Treasury
  - xiv.) Latest proof of company registration from Companies and Intellectual Property Commission (CIPC) must be submitted in the form of certified copies of the relevant registration documents.

**NB:** Prospective bidders responding to this bid must be registered as a service provider on the Central Supplier Database (CSD). If your company is not registered on the CSD, proceed to complete the registration of your company prior to submitting your proposal. Refer to <https://secure.csd.gov.za/> to register your company. Ensure that all documentation on the database is updated and valid.

No bid will be awarded to a Supplier/Service Provider who has not registered on the CSD.

Note: all personal information provided will be used in accordance with the provisions of the Protection of Personal Information Act No. 4 of 2013.

## 9.2. Phase II: Functionality Evaluation

- a) The BEC will conduct the technical evaluation.
- b) Bids will be evaluated strictly according to the bid evaluation criteria stipulated in this section of the terms of reference. During this stage bidders' responses will be evaluated for functionality based on achieving a minimum score of 65 out of 100.
- c) Bidders must, as part of their bid documents, submit supportive documentation for all technical requirements as indicated hereunder. The panel responsible for scoring the respective bids will evaluate and score all bids based on their submissions and the information provided.

- d) Bidders will not rate themselves, but need to ensure that all information is supplied as required. The Bid Evaluation Committee (BEC) will evaluate and score all responsive bids and will verify all documents submitted by the bidders.
- e) If required the short listed Service Providers shall be contacted to conduct a presentation on their bid to the BEC. The BEC shall score the presentations of the Service Providers.
- f) If a need is identified, the BEC may assign a team to conduct a site visit to the offices of all short listed Service Providers.
- g) The panel members will individually evaluate the responses received against the following criteria as set out below:

### 9.3. Selection Criteria

1. Proven experience and capability of the Service Provider in providing canteen and catering services			Weighting: 25 x2= 50
Criteria		Scoring Indicators	Score
1.1	Organizational track record	More than 4 years in operation	(5)
		3-4 years in operation	(4)
		2-3 years in operation	(3)
		1-2 years in operation	(2)
		0-1 year in operation	(1)
1.2	General expertise in catering and/or canteen services	Provided services to at least 5 clients of this nature.	(5)
		Provided services to at least 4 clients of this nature.	(4)
		Provided services to at least 3 clients of this nature.	(3)
		Provided services to least 2 clients of this nature.	(2)
		Provided services to at least 1 client of this nature	(1)
1.3	Experience in providing services	List of current and past customers must include at least 5 projects. Projects listed should not be older than 5 years	(5)
		List of current and past customers must include at least 4 projects. Projects. listed should not be older than 5 years	(4)

		List of current and past customers must include at least 3 projects. Projects listed should not be older than 5 years	(3)
		List of current and past customers must include at least 2 projects. Projects listed should not be older than 5 years	(2)
		List of current and past customers must include at least 1 project. Projects listed should not be older than 5 years	(1)
1.4	Qualifications and experience of team members including comprehensive CVs of all professional members	Team members possess qualifications and with 10 and more year's collective experience in the catering and service industry.	(5)
		Team members possess qualifications and with 7 - 9 years collective experience in the catering and service industry.	(4)
		Team members possess qualifications and with 5 - 6 years collective experience in the catering and service industry.	(3)
		Team members possess qualifications and with 3 - 4 years collective experience in the catering and service industry.	(2)
		Team members possess qualifications and with 2 years collective experience in the catering and service industry.	(1)
1.5	Capacity to take on project of this size and ability to manage it to the end within the prescribed project time lines	Allocated team to project comprises at least 9 and more members.	(5)
		Allocated team to project comprises at least 8 members.	(4)
		Allocated team to project comprises of at least 7 members.	(3)
		Allocated team to project comprises of at least 6 members.	(2)
		Allocated team to project comprises of at least 5 members.	(1)
<b>2.</b>	<b>Understanding and conceptualization of the assignment (technical approach and procedures)</b>		<b>Weighting : 25x2=50</b>
	<b>Criteria</b>	<b>Scoring Indicators</b>	<b>Score</b>
2.1	Operation Plan	Operational Plan reflecting allocated staff compliment with listed qualifications, additional catering equipment to be provided and proposed menu.	(5)
		Operational Plan reflecting allocated staff compliment with listed qualifications and proposed menu .	(4)

		Operational Plan reflecting allocated staff compliment with listed qualifications and proposed menu	(3)
		Operational Plan reflecting allocated staff compliment and proposed menu	(2)
		Operational Plan provided (not detailed) and proposed menu	(1)
2.2	Organisational project management experience	At least 5 and more years project management experience	(5)
		At least 4 years project management experience	(4)
		At least 3 years project management experience	(3)
		At least 2 years project management experience	(2)
		At least 1 year project management experience	(1)
2.3	Content and details of Menu	Menu is extensively health orientated with innovative food creations.	(5)
		Menu is fairly health orientated with limited food option creativity.	(4)
		Menu is fairly health orientated with no food creative innovatively.	(3)
		Menu is not health orientated and consists of oily foods.	(2)
		Menu does not contain health orientated dishes and is limited to item description.	(1)
2.4	Safety / Protective clothing	Adequately trained staff that are provided with protective clothing and required uniform, and capacity to conduct daily food inspection.	(5)
		Adequately trained staff that are provided with protective clothing and required uniform.	(4)
		Outlined appropriate work methods to comply with Workplace Health and Safety requirements.	(3)
		All staff members that will handle food are adequately trained and Food handlers have required uniform.	(2)
		Not all staff members are adequately trained and do not have required uniform,	(1)

2.5	Kitchen cleanliness/ assistance	<p>Have staff members and a schedule to maintain a clean kitchen throughout the day and means to assist people with disabilities/ provide waiting service. (5)</p> <p>Have staff members and a schedule to maintain a clean kitchen throughout the day and a plan to assist people with disabilities. (4)</p> <p>Have staff members and schedule to maintain a clean kitchen and eating area throughout the day. (3)</p> <p>Have staff that will maintain a clean kitchen and eating area. (2)</p> <p>Do not have staff members to maintain the cleanliness of kitchen and eating area. (1)</p>	
Total functionality score		100%	
Minimum threshold for function		65%	

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## 10. EVALUATION CRITERIA

The evaluation criteria for the assessment of the proposals will be based on both functionality and financial aspects of the proposal.

- 10.1 The bid documents will be evaluated individually on score sheets, by representatives in the Bid Evaluation Panel, and according to the evaluation criteria indicated in the Terms of Reference.
- 10.2 **All bidders who score less than 65 out of 100 points for functionality will not be considered for further evaluation.** Bidders will be shortlisted and may be invited to do a presentation on their proposals at their own cost.
- 10.3 The bidders doing the presentation will be evaluated by a representative evaluation panel, according to the evaluation criteria indicated in the Terms of Reference
- 10.4 Only service providers that score points which exceed the minimum threshold provided on functionality will be evaluated further. The Department will in terms of specific goals focus on persons historically disadvantaged based on race (Black people), gender (women) and persons living with disabilities as well as categories of persons being youth referenced in the Preferential Procurement Policy Framework Act and its associated regulations. The Preference point system will therefore be based on Price and the consolidated points scored for the four respective goals. Responsive bids will be adjudicated by the Department on the 80/20 preference point system in terms of which points are awarded to bidders based on the formulae below:
- 10.5 **The following formula will be used to calculate the points for price in respect of bidders:**

$$Ps = 80 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

- 10.5 Points will be awarded to a bidder for attaining specific goals for the procurement initiative. A maximum of 20 points may be awarded to a bidder who meets the criteria for the four specific goals from a preference point perspective. For this Bid, the maximum number of points that could be allocated are indicated in the table below:

Specific goals	Number of points (80/20 system)
1. Black Equity Ownership	8
2. Women Equity Ownership	6
3. Persons living with disability Equity Ownership	3
4. Youth Equity Ownership	3
5. Goals not met	0

**PREFERENCE POINT MATRIX (80/20)**

SPECIFIC GOALS	POINTS OUT OF 20	REQUIRED PROOF
<b>Black Equity Ownership</b>	<b>Maximum = 8</b>	<p><i>One or more of the following is to be provided for the verification of points claimed by the tenderer:</i></p> <ul style="list-style-type: none"> <li>• Company Registration Certificate (CIPC).</li> <li>• Company Shareholders Certificate.</li> <li>• Certified Identification Documentation of company director/s.</li> <li>• Detailed Central Supplier Database Report (CSD).</li> <li>• B-BBEE Certificate / B-BBEE Sworn Affidavit of the tendering company.</li> </ul>
100% Black ownership	8 Points	
>51% Black ownership	6 Points	
>0<51% Black ownership	2 Points	
0% Black Ownership	0 Points	
<b>Women Equity Ownership</b>	<b>Maximum = 6</b>	
100% ownership	6 Points	
>51% ownership	4 Points	

>0<51% ownership	2 Points	<ul style="list-style-type: none"> <li>• Consolidated B-BBEE Certificate if the tendering company is a Consortium, Joint Venture or Trust issued by a verification agency accredited by the South African Accreditation Body.</li> <li>• Agreement for a Consortium, Joint Venture or Trust.</li> <li>• Declaration from a registered medical practitioner in support of Persons Living with Disabilities.</li> </ul>
0% ownership	0 Points	
<b>Persons Living with Disabilities Equity Ownership</b>	<b>Maximum = 3</b>	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	
<b>Youth Equity Ownership</b>	<b>Maximum = 3</b>	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	

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- 10.6 Failure to capture the required points claimed and to submit the required support documentation will lead to a zero (0) status level for non-compliant service providers.
- 10.7. The points scored by a bidder in respect of the points indicated above will be added to the points scored for price.
- 10.8. Bidders are requested to complete the various preference claim forms in order to claim preference points.
- 10.9 Only a bidder who has fully completed and signed the declaration part of the preference claim form will be considered for points scored with the provision of support documentation thereto.
- 10.10 Supply Chain Management may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made regarding points claimed for specific goals.
- 10.11 Points scored will be rounded off to the nearest two decimals.
- 10.12 In the event that two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for the specific goals. In the event that two or more bidders are equal in all respects, the award shall be decided by drawing of lots.
- 10.13 The following criteria will be used as the criteria for appointment, apart from those laid down in the Preferential Procurement Regulations, 2022 pertaining to the Preferential Procurement Policy Framework Act 5 of 2000.
- 11. VALUE ADDED TAX**
- All bid prices must be inclusive of 15% Value-Added Tax (if VAT registered).
- 12. REGISTRATION**
- Latest proof of company registration from Companies and Intellectual Property Commission (CIPC) must be submitted in the form of certified copies of the relevant registration documents.
- 13. CLIENT BASE**
- 13.1 Bidders must have specific experience and submit at least three recent references (in a form of written proof (s) on their company's letterhead including relevant person (s), telephone, fax numbers and e-mails) of similar work undertaken. The Reference letters are to be signed by at least a Senior Manager of the company.
- 13.2 Department of Public Service and Administration reserves the right to contact references the evaluation and adjudication process to obtain information.

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## 14 LEGAL IMPLICATIONS

- 14.1 Successful service providers must be prepared to enter into a service level agreement with the Department of Public Service and Administration.
- 14.2 Department of Public Service and Administration reserves the right to award this tender on a non-exclusive basis, i.e. Department of Public Service and Administration may procure similar services outside this tender with the view of securing the best service and value for money.

## 15 COMMUNICATION

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

## 16 COUNTER CONDITIONS

- 16.1 Bidders' attention is drawn to the fact that amendments to any of the Terms of Reference by bidders will result in invalidation of such bids.

## 17 PROHIBITION OF RESTRICTIVE PRACTICES

- 17.1 In terms of section 4(1) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is/ are or a contractor(s) was/were involved in:
  - 17.1.1 directly or indirectly fixing a purchase or selling price or any other trading condition.
  - 17.1.2 dividing markets by allocating customers, suppliers, territories or specific types of goods or services; or
  - 17.1.3 collusive bidding.
- 17.2 If a bidder(s) or contractor(s), in the judgment of the purchaser, has/have engaged in any of the restrictive practices referred to above, the purchaser may, without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered or terminate the contract in whole or in part and refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

## 18 FRONTING

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

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18.2 The Department of Public Service and Administration, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry/investigation, the onus will be on the bidder / contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the bid/contract and may also result in the restriction of the bidder/contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the Department of Public Service and Administration may have against the bidder/contractor concerned.

## **19 TIMEFRAMES AND FORMAL CONTRACT**

19.1 Successful bidder(s) will be required to enter into formal contract with the Department of Public Service and Administration.

## **20 CONFIDENTIALITY**

20.1 Service Providers shall hold the ToR and all information related to the Bid in strict confidence and usage of such information shall be limited to the preparation of the Bid. Service Providers shall undertake to limit the number of copies of this document.

20.2 Upon award, all Service Providers are bound by this confidentiality provision preventing the unauthorized disclosure of any of the information contained in the above documents to other organisations or individuals. The Service Providers may not disclose any information or documentation to other organisations or individuals.

## **21 INTELLECTUAL PROPERTY**

21.1 Copyright of all documents belongs to the DPSA. A Service Provider may not use or disclose any information, documentation or products to other clients without the written consent of the DPSA.

## **22 CONTACT DETAILS**

### **22.1 SCM Enquiries:**

Ms Lorraine Masenya

Tel: 336 1126

### **22.2 Functional/Technical Enquiries:**

Mr R Raath

Email: raymond@dpsa.gov.za.

Any request for clarification must be submitted by e-mail to the contact person.

**AGREEMENT**

**ENTERED INTO BY AND BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA** through its  
**DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION**  
[HEREIN REFERRED TO AS “**the DPSA**”]

DULY REPRESENTED BY ..... IN HIS/HER CAPACITY AS  
.....  
duly authorised thereto

**and**

..... (Pty) Ltd /CC  
Company/CC Registration Number: .....

**OR**

Name: .....  
Id No: .....

[HEREIN REFERRED TO AS “**the SERVICE PROVIDER**”]

DULY REPRESENTED BY ..... IN HIS/HER CAPACITY AS  
.....  
duly authorised thereto by a Resolution of Directors/Members dated .....,  
attached hereto marked .....

**ANNEXURES**

A. Terms of Reference

B. [State other Annexures, if any – EG: Proposal /Quotation, Resolution of Directors etc]

**WHEREBY THE PARTIES AGREE AS FOLLOWS:****1. INTERPRETATION**

1.1 In this Agreement, unless the context otherwise indicates—

“**Agreement**” means the Agreement set out in this document and the Annexure/s attached hereto;

“**Letter of Award**” means the letter of award issued to the Service Provider by DPSA, dated.... [insert date]

“**POPIA**” means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

“**Terms of Reference**” means the Terms of Reference in Annexure A

“**Term**” means the term of this Agreement defined in **Clause 3** below;

“**Services**” means the functions and responsibilities to be provided by the Service Provider to DPSA in respect of the provision of goods and or services as detailed in the Terms of Reference as they may evolve or be supplemented;

“**staff**” means any employee, agent, consultant, sub-contractor or other representative of the Parties;

“**working days**” means any day, except Saturdays, Sundays and public holidays, in terms of the Public Holidays Act, 1994 (Act 36 of 1994), and shall be calculated exclusive of the first and inclusive of the last day.

1.2 In the Agreement, unless the context otherwise indicates—

(a) the masculine includes the feminine;

(b) the singular includes the plural; and

(c) any reference to a natural person includes a juristic person.

1.3 The headnotes to the clauses of the Agreement are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.

## 2. APPOINTMENT

- 2.1. The Service Provider is hereby appointed in accordance with the Letter of Award, to provide Services to DPSA under the Terms of Reference as attached in **annexure A**.
- 2.2. Subject to the provisions of the Terms of Reference, the Agreement generally, DPSA hereby appoints the Service Provider, on a non-exclusive basis, to provide the Services on the terms and conditions of this Agreement, and the Service Provider hereby accepts such appointment.
- 2.3. DPSA shall not be precluded from obtaining services that may be similar or identical to the Services from any other service provider and nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for services in the future, whether under this Agreement or otherwise from.
- 2.4. The Service Provider shall report directly to.....[**state position, e.g. Director: Finance, rather than the name of an individual**], who shall be the Project Manager for purposes of the Agreement and provide all instructions to the Service Provider.
- 2.5. The Service Provider shall, within 10 working days, after the last signature of the Agreement, submit a draft workplan to the Project Manager for a written approval. The Service Provider and the Project Manager may from time to time agree in writing to amend the workplan.

## 3. COMMENCEMENT AND DURATION

- 3.1. The Agreement shall commence on the last date of signature to this agreement and shall terminate after a period of \_\_\_\_\_ [**State the duration of the contract**]
- 3.2. The Parties may, subject to their respective prescripts for extension, in writing agree to extend the term of the Agreement.

#### 4. FEES INVOICING AND PAYMENT

- 4.1. Fees under **Annexure "B"** (price schedule) are the only amounts payable by DPSA to the Service Provider for the Services or otherwise in connection with this Agreement, and no other charges, expenses, costs or other amounts incurred by the Service Provider will be chargeable to or payable by DPSA to the Service Provider.
- 4.2. The Service Provider will not be entitled to: (i) impose or seek payment of any amounts or charges under the Agreement other than the fees; (ii) establish any new types of charges under the Agreement; or (iii) modify any of the fees under the Agreement; unless DPSA has subject to the procurement policies and procedures agreed thereto in writing.
- 4.3. Payment shall be made once all deliverables as set out in the Terms of Reference are successfully delivered within 30 days after receipt by the DPSA of-
- (a) Satisfactory proof that the deliverables complies with the Agreement and the Terms of Reference; and
  - (b) An original specified invoice certified as correct by the Project Manager.
- 4.4. Each invoice will consist of or have attached statement of the total amount due which will be itemised per Goods delivered / Service rendered.
- 4.5. The Service Provider will verify that each invoice is complete and accurate and that it conforms to the requirements of the Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to DPSA.
- 4.6. All payments in terms of this clause shall be made into the banking account of the Service Provider as provided in writing to the DPSA.
- 4.7. Payment may only be withheld in terms of this clause if the Service Provider has failed to remedy a default or breach within the required time after written notice was given in terms of clause 14.

## **5. TAX, DUTIES AND CURRENCY ISSUES**

- 5.1. Unless otherwise specified, all Fees and expenses are recorded inclusive of Value Added Tax. The Service Provider will be financially responsible for all taxes associated with the Services and will comply with all applicable laws relating to tax and tax invoices.
- 5.2. All Fees set out in this Agreement are inclusive of any export and import tax, if applicable.
- 5.3. The Fees are stated in South African Rand and will be quoted, invoiced and paid in South African Rand. The Fees are not subject to adjustment due to any currency fluctuations for the duration of the Agreement.

## **6. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES**

- 6.1. The Service Provider will ensure that its personnel will at all times, whilst on the DPSA's premises, adhere to the standard health, safety and security procedures and guidelines applicable to DPSA's personnel, as such procedures and guidelines may be changed by DPSA from time to time and are available to the Service Provider on request. Should DPSA at any time have reason to believe that any member of the Service Provider's personnel is failing to comply with such standard health, safety and security procedures and guidelines, DPSA will be entitled to deny such member of Service Provider's personnel to any or all of location/s and require the Service Provider to replace such member of staff without delay.
- 6.2. The Service Provider hereby agrees and undertakes, in terms of section 37(2) of the Occupational Health and Safety Act, 1993, to ensure that the Service Provider and the Service Provider's staff comply with the aforesaid Act and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the duration of this Agreement, including with regard to the Service Provider personnel and ensuring that neither DPSA's staff's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

## 7. OBLIGATIONS OF DPSA

The obligations of the DPSA are as set out in the Terms of Reference.

*[OR state them hereunder]*

## 8. OBLIGATIONS OF SERVICE PROVIDER

The obligations of the Service Provider are as set out in the Terms of Reference.

*[OR state them hereunder]*

## 9. CONFIDENTIALITY, OWNERSHIP AND COPYRIGHT

- 9.1 A Party shall treat information furnished by the other Party or another person for purposes of the execution of the Agreement, as confidential. Subject to this clause, the Party so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.
- 9.2 The DPSA shall become the owner of information and materials derived from the provision of services under the Agreement. The Service Provider shall submit all such information and material to the DPSA before or on the termination of the Agreement, on written request by the DPSA, without the right of retention.
- 9.3 The Service Provider shall not use any information or material derived from the provision of the services under the Agreement for any purposes other than those of the DPSA, except with the written approval of the DPSA.
- 9.4 The copyright in every work or any part thereof, in which copyright may subsist, created by the Service Provider, or any person performing work on the Service Provider's behalf, in the execution of the Agreement shall vest in the State and such works or part thereof, may only be reproduced, or disclosed to another person, with the written consent of the DPSA. The term "works or any part thereof", shall not be interpreted to include a work or part thereof in which

copyright already vests in the Consultant or another person and not created in the execution of the Agreement.

- 9.5 The Service Provider may use any experience or learning acquired in the execution of the Agreement, provided that such use may not be to the detriment of the DPSA.
- 9.6 This clause is severable from the Agreement and shall remain in effect when the Agreement terminates for whatever reason.

## **10. PROTECTION OF PERSONAL INFORMATION**

- 10.1. Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Services.
- 10.2. Each Party shall only provide, collect and/or Process the Personal Information:
- 10.2.1. in compliance with POPIA and where binding on a Party;
  - 10.2.2. as is necessary for the purposes of this Agreement and the Services;
  - 10.2.3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
  - 10.2.4. for internal business-related purposes; and
  - 10.2.5. in accordance with the lawful Purpose and reasonable instructions of DPSA as the Responsible Party.

## **11 AUDITS**

### **11.1 Audit Rights:**

- 11.1.1 The Service Provider will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. The Service Provider will provide to DPSA, its internal or external auditors, inspectors and regulators access at all reasonable times to such facility or part of a facility at which either the Service Provider is providing the Deliverables and/or Services, to Service Provider Personnel, and to equipment, software, personnel, data, records and

documentation relating to the Deliverables and/or Services for the purpose of performing audits and inspections of the Service Provider to: (i) verify the accuracy of the Service Provider's Fees and invoices; (ii) verify the accuracy of payments by or credits from the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider's costs or changes thereto; (v) examine the Service Provider's performance of the Services or Deliverables, including verifying compliance with the industry standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law;

- 11.1.2 DPSA reserves the right to appoint a third party to perform an audit under this Clause.
- 11.1.3 The Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require. In the case of audits, DPSA's audits will not unreasonably interfere with the Service Provider's normal course of business and will comply with the Service Provider's reasonable confidentiality requirements.
- 11.1.4 Unless DPSA has a good faith suspicion of fraud, DPSA will provide the Service Provider with reasonable notice for audits.
- 11.1.5 All costs incurred by DPSA in performing audits of the Service Provider will be borne by DPSA unless any such audit reveals a material inadequacy or material deficiency in respect of the Services including compliance with the relevant Applicable Laws, in which event the cost of such audit will be borne by Service Provider.
- 11.1.6 If an audit reveals an overcharge, the Service Provider will promptly refund the overcharge plus interest at Repo Rate, from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.

## **12. WARRANTIES**

- 12.1. The Service Provider hereby represents and warrants to DPSA that-
- 12.1.1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;
- 12.1.2. it is acting as a principal and not as an agent of an undisclosed principal;
- 12.1.3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its

business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;

- 12.1.4. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to DPSA;
  - 12.1.5. it will have the requisite insurance to cover for professional liability claims (to the extent that it may be applicable), that may be instituted against it;
  - 12.1.6. it has the necessary resources, skills and experience to render the Service and/or deliver the Deliverables to DPSA; and
  - 12.1.7. it is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced DPSA to conclude this Agreement.
- 12.2. The provisions of this Clause shall survive the termination of this Agreement.

### **13 INDEMNITY**

- 13.1 Without in any way detracting from DPSA's rights in terms of this Agreement, the Service Provider hereby indemnifies DPSA from any and all losses which may be suffered as a result of any breach of the warranties including the provisions of this Agreement by the Service Provider or Service Provider personnel.
- 13.2 In addition to any remedy available to DPSA, the Service Provider agrees to indemnify in full on demand and to keep DPSA so indemnified from and against all claims, demands, actions, proceedings and losses, which are made or brought against or incurred or suffered by DPSA resulting from any action arising from the Service Provider's breach of any obligation with respect to confidential information and/or personal information.
- 13.3. The Service Provider indemnifies the DPSA against any claims or court actions, including all legal costs in respect thereof, that may be instituted by any person against the DPSA arising out of any act, omission or default on the part of the Service Provider or, any person performing work on behalf of the Service Provider, in the provision of services under the Agreement.

**14. BREACH**

If a Party is in default or breach of any obligation which arises in terms of the Agreement and that defaulting Party fails to remedy such default or breach within 7 working days after receipt of a written notice given by the aggrieved Party calling upon the defaulting Party to remedy such default or breach, then the aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law—

- (a) claim specific performance;
- (b) cancel the Agreement, such cancellation to be effective immediately on receipt by the defaulting Party of a written notice to that effect; or
- (c) claim any money due and payable in terms of the Agreement and claim damages from the defaulting Party.

**15. INDEPENDENT CONTRACTOR**

The Service Provider is employed as an independent contractor and not as an agent of the DPSA and has no authority to bind or represent the DPSA in any matter.

**16. GOOD FAITH AND REASONABLENESS**

In their dealings with each other for purposes of the Agreement, the Parties—

- (a) undertake to act in good faith and reasonably; and
- (b) warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the rights or obligations of each other.

**17. CONFLICT OF INTEREST**

17.1 Neither the Service Provider nor their staff shall engage in any activity which conflict with or could potentially conflict with the services to be provided in terms of the Agreement.

17.2 The Service Provider shall notify the DPSA immediately of any activities or circumstances which give rise to or could potentially give rise to such conflict of interest and shall inform the DPSA how the Service Provider intends dealing with such conflict.

## 18. **FORCE MAJEURE**

- 18.1 *Force majeure* shall be considered to be circumstances where the performance of any obligation in terms of the Agreement are suspended or postponed by-
- (a) strikes or lock-outs or any combination thereof by employees of either of the Parties;
  - (b) war or civil commotion;
  - (c) any cause, except as may otherwise be provided for in the Agreement, beyond the reasonable control of either of the Parties; and
  - (d) any natural disaster.
- 18.2 If the completion of any obligation be delayed as a result of *force majeure*, the Party who is unable to perform its obligation shall, within 7 working days of the occurrence of such *force majeure*, give notice thereof in writing to the other Party and request an extension of time in which to comply with its obligation. On receipt of such notice and supporting particulars of the claim, the other Party may in writing grant an extension of time as may be justified.
- 18.3 The Party who is incapable of performing its obligation shall not be liable for any such claim which the other Party may have as a result of such obligation not being performed provided that the reason why it cannot perform its obligation is due to *force majeure* and provided further that the notice referred to in 18.2 has been duly delivered.
- 18.4 In the event of *force majeure* continuing for a period of 7 working days, either Party shall be entitled to terminate the Agreement by written notice to the other Party and without any Party incurring any liability to the other Party.

## 19. **TERMINATION**

### 19.1. **Termination for cause by DPSA**

- 19.1.1. DPSA may, by giving notice to the Service Provider, terminate this Agreement or rendering of the Services in whole or part, as of a date set out in the notice of termination, in the event that the Service Provider-

- 19.1.1.1. breaches the confidentiality provisions of this Agreement;
- 19.1.1.2. breaches applicable laws;
- 19.1.1.3. is found guilty of an offence in terms of applicable laws;
- 19.1.1.4. commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated;
- 19.1.1.5. commits an act of professional misconduct or professional or technical incompetence, which is substantial and serious; or
- 19.1.1.6. commits or participates in any unlawful, dishonest or unethical act in executing this Agreement.

19.1.2. DPSA shall have no liability to the Service Provider with respect to a termination under this clause.

## **19.2. Termination Upon Sale, Acquisition, Merger or Change of Control**

19.2.1. In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a "Change Event") where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially of all the assets of the Service Provider in a single or series of related transaction, then the Service Provider shall notify DPSA of such Change Event within ten (10) working days after the Change Event is achieved.

19.2.2. No sale, acquisition, merger or other change of control shall be effective against and legally binding on DPSA if the Service Provider failed to notify DPSA, as required by clause 19.2.1 above.

19.2.3. DPSA may terminate this Agreement, at any time after being notified by the Service Provider of the Change Event, by giving the Service Provider thirty (30)

days written notice designating a date upon which such termination shall become effective.

19.2.4. In the event that the Service Provider fails to notify DPSA, as required by clause 19.2.1 above, then DPSA may upon discovery of the Change Event terminate the Agreement by giving the Service Provider (30) days written notice and designating a date upon which such termination shall be effective.

19.2.5. DPSA shall have no liability to the Service Provider with respect to termination of the Agreement on terms of this clause.

19.2.6. "Control" in terms of this clause means, with regard to any entity, the right or power to dictate the management of and otherwise control such by entity by any of the following:

19.2.6.1. holding directly or indirectly the majority of the issued share capital stock (or other ownership interest if not a company) of such entity ordinarily having voting rights;

19.2.6.2. controlling the majority of the voting rights in such entity; or

19.2.6.3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.

19.2.7. Any termination of this Agreement pursuant to the provisions of this clause shall be without prejudice to any prior claim, which either Party may have.

19.2.8. The DPSA may terminate the Agreement without prejudice to any of its rights upon the occurrence of any of the following:

(a) on commencement of any action for the dissolution and/or liquidation of the Service Provider, except for purposes of an amalgamation or restructuring approved in advance by the DPSA;

(b) the Service Provider receives a court order to be placed under judicial management, business rescue or to commence liquidation procedures that is not withdrawn or struck out within five working days;

(c) the Service Provider informs the DPSA that it intends to cease performing its obligations in terms of the Agreement;

(d) the Service Provider informs the DPSA that it is incapable of completing the Services.

19.2.9. The Service Provider shall receive remuneration for the services provided to the satisfaction of the DPSA up to the date of termination of the project.

19.2.10. Termination of the Agreement shall relieve the DPSA and the Service Provider of their respective obligations in terms of the Agreement.

19.2.11. The Service Provider shall not be entitled to advance a right of retention or any similar right if the Agreement is terminated in terms of this clause.

## **20. GENERAL TERMS AND CONDITIONS**

### **20.1 WHOLE AGREEMENT AND AMENDMENT**

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to the applicable Service Agreement and assigned a sequential letter to be included in the title.

### **20.2 INTERPRETATION OF AGREEMENT**

The law of the Republic of South Africa shall govern the interpretation of the Agreement.

### **20.3 NO ASSIGNMENT WITHOUT CONSENT**

The Service Provider shall not be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of DPSA which consent shall if approved by DPSA in its sole discretion, be in compliance with the provisions of the PFMA and DPSA's procurement policies and procedures.

#### 20.4 ADVERTISING AND MARKETING

The Service Provider shall not make or issue any formal or informal announcement (with the exception of Authority announcements), advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of DPSA.

#### 20.5 JURISDICTION OF COURTS

If any legal proceedings arise from the provisions of the Agreement, both Parties submit to the jurisdiction of the courts of the Republic of South Africa.

#### 20.6 ENTIRE CONTRACT

The Agreement and the Annexures attached hereto constitute the entire contract between the Parties.

#### 20.7 VARIATION

No amendment, alteration, addition or suspension of any provision of the Agreement shall be of any force, unless reduced to writing and signed by both Parties.

#### 20.8 WAIVER

No waiver of any right in terms of the Agreement shall be binding for any purpose unless expressed in writing and signed by the Party concerned and such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right precludes any other or further exercise thereof or the exercise of any other right.

## 20.9 CESSION

A Party may not cede any right or obligation in terms of the Agreement to another person without the other Party's written consent.

## 20.10 INVALID PROVISIONS

If any provision of the Agreement contravenes any provision of the law, that provision shall be deemed to be void or the scope of the provision shall be deemed to have been limited to exclude such contravention, provided that if any Party—

- (a) can establish in a court of law that it is adversely affected or prejudiced thereby; or
  - (b) unsuccessfully relies on that provision in any legal proceedings,
- that Party may terminate the Agreement immediately.

## 20.11 INTERVENING CHANGES IN LAW

If any change in the law renders any material provision of the Agreement illegal or void, either Party may terminate the Agreement immediately.

## 20.12 SEVERABILITY

If any provision of the Agreement is or becomes invalid or unenforceable, such provision shall be divisible and be regarded as *pro non scripto* and the remainder of the Agreement shall be regarded as valid and binding unless materially affected.

## 21. COSTS

Each party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.

## 22. AUTHORISED SIGNATORIES

- 22.1 The Parties agree that this Agreement and any contract document concluded in terms hereof shall not be valid unless signed by all authorised signatories of DPSA.
- 22.2 This Agreement is signed by the Parties on the dates and at the places indicated below.
- 22.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 22.4 The persons signing this Agreement in a representative capacity warrant their authority to do so.

## 23. DOMICILIUM CITANDI ET EXECUTANDI

- 23.1 DPSA chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

**(Insert details)**

- 23.2 The Service Provider chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

**(Insert details)**

- 23.3 Each of the Parties shall be entitled at any time by way of written notice to the other Party, to change its *domicilium citandi et executandi* to another physical address.
- 23.4 Any notice in terms of the Agreement shall either be—
- (a) delivered by hand during normal business hours of the recipient; or
  - (b) sent by prepaid registered post to the address chosen by the addressee.

23.5 A notice in terms of the Agreement shall be considered to be duly received if—  
(a) hand-delivered on the date of delivery;  
(b) sent by registered post as indicated in clause 23.4(b), 10 days after the date it was posted,  
unless the contrary is proved.

23.6 Notwithstanding anything to the contrary contained or implied in the Agreement, the written notice or communication actually received by one of the Parties from the other, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.

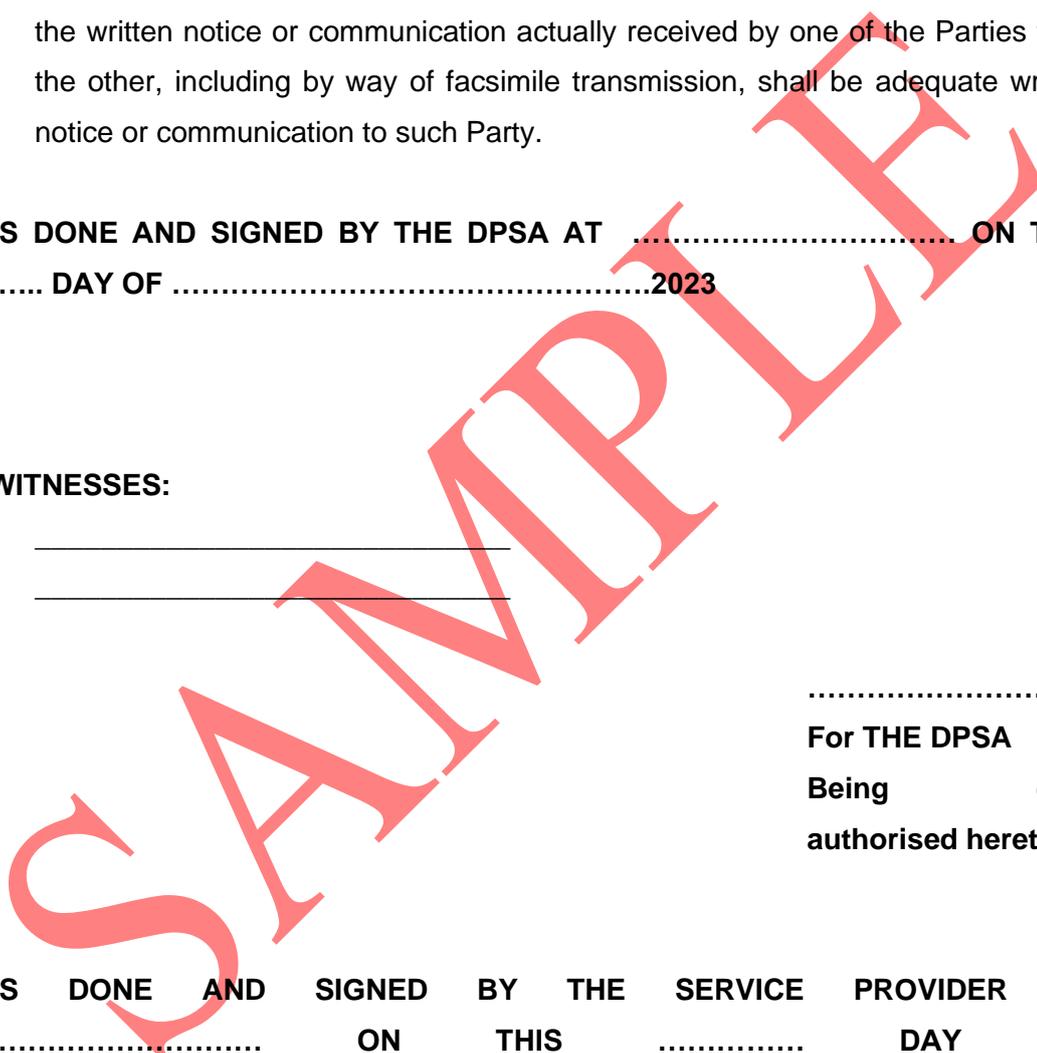
**THUS DONE AND SIGNED BY THE DPSA AT ..... ON THIS  
..... DAY OF .....2023**

**AS WITNESSES:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

.....  
**For THE DPSA  
Being                   duly  
authorised hereto**

**THUS    DONE    AND    SIGNED    BY    THE    SERVICE    PROVIDER    AT  
.....                   ON    THIS                   .....                   DAY                   OF  
..... 2023**



**AS WITNESSES:**

1. \_\_\_\_\_
2. \_\_\_\_\_

.....  
**For SERVICE  
PROVIDER being  
duly authorised  
hereto**

**SAMPLE**

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT**

**July 2010**

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

**NOTES**

The purpose of this document is to:

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

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

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

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## General Conditions of Contract

### 1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

## **2. Application**

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

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

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

## **3. General**

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

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

## **4. Standards**

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

## **5. Use of contract documents and information; inspection.**

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

5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

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

## **6. Patent rights**

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

**7. Performance security**

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

**8. Inspections, tests and analyses**

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

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

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

**9. Packing**

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

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

**10. Delivery and documents**

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

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

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental services**

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

#### **14. Spare parts**

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### **15. Warranty**

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

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

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

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

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.