



transport

Department:  
Transport  
REPUBLIC OF SOUTH AFRICA

Ref: CSS 5/11/1  
Enq: Mr. J. Mashinini/Mr. T Mkhari  
Tel Number: (012) 309-3045/3011

Dear Sir / Madam

**BID NUMBER: DOT/18/2023/ODG**

1. The Department of Transport requires the service as described per attached bid invitation and you are requested to complete the bidding documents and to submit it in accordance with the under mentioned stipulations:
  - The bid must be submitted in a sealed envelope with the name and address of the bidder with the number and closing date indicated on the envelope. The envelope must not contain documents relating to any bid other than that shown on the cover of the envelope;
  - Bids submitted per post must be sent per registered mail. The bid must still reach this office before the closing time. Couriered bid documents must be received before the closing date and time failure to do so may invalidate the bid;
  - The attached forms, if completed in detail and returned, will form part of your bid; and
  - Prices must be VAT inclusive and all other expenses/disbursements, and be valid for a period of at least **120 days** from closing date.
  - **Bidders must submit one (1) original hard copy of the Technical proposal inside an envelope marked "Technical proposal" and four PDF format USB's of the technical proposal, and one (1) Original hard copy of the financial proposal inside marked "Financial proposal" on the closing date. If Bidders are not sure of the two envelope separation submission requirements kindly contact the administrative contacts on SBD 3.3 to avoid being disqualified.**
  - **A Compulsory Briefing Session will be held on the 30 of August 2023 at the Department of Transport Indaba Boardroom at 11:00 am.**
- 2 You are advised to acquaint yourself with the contents of the attached general conditions of contract and the checklist.
- 3 It will be expected of the successful bidder to sign a formal contract at this office within seven (7) days after receiving a letter of acceptance.

- 4 Kindly take note that this is a two-envelope system (Technical and Financial) proposals must be marked and put in separate envelopes). Annexure A which will be for Technical proposal and Annexure B for Financial proposal. Bids that do not comply with a two-envelope system will be disqualified.

Kind Regards



**DIRECTOR GENERAL: TRANSPORT**

DATE: 21/08/2023

**CHECKLIST:DOT/18/2023/ODG: TERMS OF REFERENCES FOR THE APPOINTMENT OF A PANEL OF SERVICE PROVIDERS TO PERFORM PROBITY AUDITS FOR THE INTERNAL AUDIT SERVICE OF THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF FIVE (05) YEARS.**

<b>NB</b>	<b>SERVICE PROVIDERS MUST INDICATE WITH A TICK</b>	<b>YES</b>	<b>NO</b>
1	Did you take note that bids submitted per mail must be sent per registered mail and reach the Department in time to be <b>deposited in the Tender Box before the closing date and time?</b>		
2	Are you familiar with the contents of the SBD 1 Form? Did your authorised official <b>complete and sign the SBD 1 Form?</b>		
3	Did you submit an <b>original and valid Tax Clearance Certificate?</b> In bids where consortia/joint venture/sub-contractors are involved; <b>each party must submit a separate Tax Clearance Certificate</b> (paragraph 4 of the SBD 2 form)		
4	Please note that <b>SBD 1</b> must form part of the Technical proposal. <b>(The envelope must be marked Technical proposal)</b>		
6	Is the <b>SBD 6.1 Form completed and signed?</b> In bids where consortia /joint ventures sub-contractors are involved, <b>both parties must submit one B-BBEE Status Level Verification Certificate.</b>		
7	Have you taken note of the General Conditions of Contract and <b>signed</b> the bottom of each <u>page</u> thereof?		
8	<b>Is your bid/proposal complete and responsive in all respects to the specifications/terms of reference?</b>		
9	<b>Please note that late bids will not be considered.</b>		
10	<b>Updated CSD report must be attached, and all companies forming a JV/Consortium/Subcontract submitted their CSD report?</b>		

**Declaration:** I, the undersigned (Full Name) .....  
certify that I have noted the contents of the above-mentioned checklist and have complied with the stipulations contained therein.

.....  
**Signature**

.....  
**Date**

.....  
**Position**

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

# **ANNEXURE A**

## **TECHNICAL**

## **PROPOSALS**

## PART A INVITATION TO BID

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

BID NUMBER:	DOT/18/2023/ODG	CLOSING DATE:	12/09/2023	CLOSING TIME:	11:00
DESCRIPTION	TERMS OF REFERENCES FOR THE APPOINTMENT OF A PANEL OF SERVICE PROVIDERS TO PERFORM PROBITY AUDITS FOR THE INTERNAL AUDIT SERVICE OF THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF FIVE (05) YEARS.				

**BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)**

**NATIONAL DEPARTMENT OF TRANSPORT 159 FORUM BUILDING CORNER BOSMAN AND STRUBEN STREET**

**PRIVATE BAG X 193**

**PRETORIA 0001**

**BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO**

**TECHNICAL ENQUIRIES MAY BE DIRECTED TO:**

CONTACT PERSON	MR J MASHININI / MR T MKHARI	CONTACT PERSON	MS. Bongzi Mngwazi
TELEPHONE NUMBER	012 309-3045/3011	TELEPHONE NUMBER	012 309 309 3220/9155
FACSIMILE NUMBER		FACSIMILE NUMBER	
E-MAIL ADDRESS	Mashinij@dot.gov.za/Mkharit@dot.gov.za	E-MAIL ADDRESS	MngwaziB@dot.gov.za

**SUPPLIER INFORMATION**

NAME OF BIDDER			
POSTAL ADDRESS			
STREET ADDRESS			
TELEPHONE NUMBER	CODE	NUMBER	
CELLPHONE NUMBER			
FACSIMILE NUMBER	CODE	NUMBER	
E-MAIL ADDRESS			
VAT REGISTRATION NUMBER			
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:	OR	CENTRAL SUPPLIER DATABASE No:
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT [TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No

**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED? <input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED? <input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
---	--

**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?

☐ YES ☐ NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?

☐ YES ☐ NO

**IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.**

## PART B TERMS AND CONDITIONS FOR BIDDING

### 1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED—(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

### 2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO 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](http://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 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:

.....

## TAX CLEARANCE CERTIFICATE REQUIREMENTS

**It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.**

- 1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website [www.sars.gov.za](http://www.sars.gov.za).
- 6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website [www.sars.gov.za](http://www.sars.gov.za).

## DECLARATION OF INTEREST

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

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

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

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

2.2 Identity Number: .....

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

2.4 Company Registration Number: .....

2.5 Tax Reference Number: .....

2.6 VAT Registration Number: .....

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

<sup>1</sup>"State" means –

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

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

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

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member: .....

Name of state institution at which you or the person connected to the bidder is employed : .....

Position occupied in the state institution: .....

Any other particulars:

.....

.....

.....

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

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

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

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

.....

.....

.....

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

2.8.1 If so, furnish particulars:

.....

.....

.....

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

2.9.1 If so, furnish particulars.

.....

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

2.10.1 If so, furnish particulars.

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?

**YES/NO**

2.11.1 If so, furnish particulars:

### 3 Full details of directors / trustees / members / shareholders.

[illegible]

**4 DECLARATION**

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

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

May 2011

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

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

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

### 1. GENERAL CONDITIONS

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

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

1.2

- a) The value of this bid is estimated to **exceed/not exceed** R50 000 000 (all applicable taxes included) and therefore the ..... preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

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

	POINTS
<b>PRICE</b>	
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

## 2. DEFINITIONS

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

## 3. POINTS AWARDED FOR PRICE

### 3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

**80/20**

**or**

**90/10**

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

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

$P_t$  = Price of bid under consideration

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

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

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

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

## 5. BID DECLARATION

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

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

6.1 B-BBEE Status Level of Contributor: . = .....(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

## 7. SUB-CONTRACTING

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

(Tick applicable box)

YES		NO	
-----	--	----	--

7.1.1 If yes, indicate:

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

(Tick applicable box)

YES		NO	
-----	--	----	--

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

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

Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

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

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

8.2 VAT \_\_\_\_\_ registration  
number:.....

8.3 Company \_\_\_\_\_ registration  
number:.....

**8.4 TYPE OF COMPANY/ FIRM**

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

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

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

**8.6 COMPANY CLASSIFICATION**

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

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

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

- i) The information furnished is true and correct;  
ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;  
iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;  
iv) If the B-BBEE status level of contributor has been claimed or obtained on a

fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

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

WITNESSES

1. ....

2. ....

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

.....



**transport**

Department:  
Transport  
REPUBLIC OF SOUTH AFRICA



**TERMS OF REFERENCES FOR THE APPOINTMENT OF A PANEL OF SERVICE PROVIDERS TO PERFORM PROBITY AUDITS FOR THE INTERNAL AUDIT SERVICE OF THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF FIVE (05) YEARS.**

**DOT/18/2023/ODG**

**CONTACT DETAILS**

<b>Administrative Contact</b>	<b>Technical Contact</b>
<b>Bidding Office</b>	<b>Project Managers</b>
Name: Tyron Mkhari	Name: Bongzi Mnqwazi
Directorate: Supply Chain Management	Directorate: Internal, Performance & IT Audit
Tell: 012 309 3011	Tell: 012 309 9155/3220
E-mail: mkharit@dot.gov.za	E-mail: MnqwaziB@dot.gov.za

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B.M



**transport**

Department:  
Transport  
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# **TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF SERVICE PROVIDERS TO PERFORM PROBITY AUDITS FOR THE INTERNAL AUDIT SERVICE OF THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF FIVE (05) YEARS OR SIXTY (60) MONTH**

## **1. PURPOSE**

Department seeks to appoint a suitably qualified panel of service providers to conduct probity audits for a period of five (05) years or in respect of tenders amounting to R 3,000,000.00 and above within the department.

### **1.1. OBJECTIVES OF A PROBITY PROCESS**

The broad objectives of the probity audit process are to:

- 1.1.1 ensure conformity to processes and legislation;
- 1.1.2 ensure that the interests of tenderers/ bidders are protected by a fair, transparent and equitable process;
- 1.1.3 ensure that all bids are assessed against the set and approved criteria;
- 1.1.4 preserve public and tenderer confidence in the government processes; and
- 1.1.5 improve defensibility of decisions to potential legal challenge.
- 1.1.6 Risks that may affect the department from award process are identified and addressed accordingly.

## **2. BACKGROUND**

- 2.1 The National Department of Transport has got its offices based in 159 Struben Street in Pretoria, Forum Building. The department has adopted a threshold on which all tenders above the threshold are pre-audited before the tenders are awarded to successful bidders. Probity Audits have been introduced to mitigate fraud, corruption and other related tender risks within the department.
- 2.2 A probity audit is an assurance engagement, in which a probity auditor provides an independent scrutiny of a procurement process and expresses an objective opinion as to whether the prescribed compliance requirements have been adhered to. The conclusion

*B.M*

expressed should be based on evidence gathered against prescribed criteria. Independence is essential to a probity audit. A third party to the procurement should be able to rely on the probity audit to obtain greater confidence as to whether the compliance requirements of that procurement have been adhered to. Key elements of a probity audit are • Criteria • Evidence.

**The criteria** should be clarified and agreed prior to commencement of the audit and would be informed by the plan. The criteria are then used by the probity auditor to establish a program of audit assessment.

**Evidence.** The probity auditor is required to obtain sufficient, appropriate evidence for all established criteria. The probity auditor's decision must be supported by robust facts and documentary evidence. It is not sufficient for professional judgement to be used as the justification for decisions that are not otherwise supported by the facts and circumstances of the audit or sufficient relevant evidence. However, the probity auditor will use professional judgement as to whether the evidence is adequate so as to support the decision based on the determined criteria.

- 2.3 The service provider must demonstrate the capability to perform the internal audit services in accordance with the Institute of Internal Auditing Standards and Practices, SCM Prescripts, Treasury Regulations, PFMA, and all other relevant legislation.

### 3. SCOPE OF WORK

The following will form part of the areas for the scope of work but the list is not exhaustive:

#### 3.1 Review Procurement Plan

- 3.1.1 Review the procurement plan and confirm whether the procurement event was budgeted for in line with the departmental mandate, business objectives, and the nature of operations.
- 3.1.2 All tenders that are within the procurement plan and in exceptional circumstances tenders that are outside the procurement plan.
- 3.1.3 Document the findings on the procurement plan process;
- 3.1.4 Recommend appropriate corrective action in respect of findings identified;

#### 3.2 Review of Bid Specifications

- 3.2.1 Confirm that bid specifications were drafted in an unbiased manner and were not restrictive to a certain group of suppliers or specific supplier.
- 3.2.2 Review specifications prepared by the end users.

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- 3.2.3 Review specifications committee processes and capacity to develop terms of reference.
- 3.2.4 Confirm whether members of the committee are as per the approved Bid Specification nomination form.
- 3.2.5 Confirm that bid specifications were approved by the BAC prior to the tender being issued to the market and the approval was in accordance with SCM process requirements.
- 3.2.6 Review extracts of tender advertisement to ensure that the advertisement has been compiled in line with the specifications.
- 3.2.7 Document the findings on the bid specification process;
- 3.2.8 Recommend appropriate corrective action in respect of findings identified;

### **3.3 Tender publishing**

- 3.3.1 Review if tender was advertised in the department's website and the e-tender portal.
- 3.3.2 Review if bid opening certificate was published within 10 working days after bid opening on the DoT website and eTender portal.
- 3.3.3 Document the findings on the tender publishing process;
- 3.3.4 Recommend appropriate corrective action in respect of findings identified;

### **3.4 Review the Tender briefing sessions**

- 3.4.1 Ensure the attendance registers were signed by all potential bidder's present/ electronically recorded;
- 3.4.2 Ensure the briefing/ site visit register was closed off immediately after the session;
- 3.4.3 Interview relevant parties as and when required in order to deliver on the audit objectives,
- 3.4.4 Verify compliance with relevant policies/ procedures and legislation;
- 3.4.5 Document the findings on the tender briefing/ site visits process;
- 3.4.6 Recommend appropriate corrective action in respect of findings identified;

### **3.5 Review the closure/opening session of the bids**

- 3.5.1 Review the process of tender opening to ensure that late tenders were not included in the process and that the process was in line with applicable policies and procedures;
- 3.5.2 Verify complete recording of submissions made by the bidders;
- 3.5.3 Confirm if tender opening register was cancelled in all blank spaces to ensure that no tenders were added after tender closing/ opening;
- 3.5.4 Compare the submissions received to the bids recorded in the tender register;
- 3.5.5 Verify the bid opening certificate;
- 3.5.6 Confirm whether bids received were published;

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- 3.5.7 Review storages where tenders are kept;
- 3.5.8 Document the findings in the closure/opening session of bids; and
- 3.5.9 Recommend appropriate corrective action in respect of findings identified.

### **3.6 Review the evaluation of bids**

- 3.6.1 Confirm if the bid evaluation committee was appropriately briefed of their roles and responsibilities before the evaluation;
- 3.6.2 Review, verify and ensure all administrative documents were submitted and completed according to the requirements of the specifications as advertised;
- 3.6.3 Confirm that all acceptable tenders qualified for administrative and pre-qualification requirements as indicated in the request for proposal;
- 3.6.4 Review, verify that the bidders that advanced technical evaluation submitted all mandatory documents;
- 3.6.5 Ensure that bidders were correctly eliminated or advanced from technical evaluation to the price evaluation phase;
- 3.6.6 Ensure that there was consistency in the evaluation criteria applied by the Evaluation committee;
- 3.6.7 Confirm that scores were recorded correctly through recalculation;
- 3.6.8 Confirm that all members of the bid evaluation committee declared their interests;
- 3.6.9 If the financial stability is a requirement, review the test results and confirm if risks were adequately identified and addressed;
- 3.6.10 Confirm that all tenders which failed to meet the minimum qualifying score for technical and functionality were disqualified;
- 3.6.11 Confirm that the evaluation and adjudication criteria applied is the same as indicated in the original request for proposal;
- 3.6.12 Inspect evidence that the tender scoring is in line with the TORs.
- 3.6.13 Review functionality criteria against the specifications;
- 3.6.14 Interrogate scores and allocations of points;
- 3.6.15 Confirm if there are no indicators of bid rigging that are supported by evidence;
- 3.6.16 Confirm that the bidders submitted all the required declarations and documents;
- 3.6.17 Confirm that all bid evaluation committee members were appointed as required by the SCM policy;
- 3.6.18 Confirm that the bid evaluation committee was composed as required by the SCM policy;
- 3.6.19 Confirm that the tax affairs of the recommended bidder are in order. Confirm that the points for B-BBEE were correctly awarded in accordance with the valid B-BBEE certificate;

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- 3.6.20 Verify if the BEC recommendations for accepting all bidders that passed technical evaluation is in accordance with the specifications;
- 3.6.21 Confirm if tender validity period has not lapsed.

### **3.7 Bid Committees**

- 3.7.1 Review adjudication processes against the evaluation criteria,
- 3.7.2 Review the required (policy/legislation) compliance and composition of the Specification (BSC), Evaluation (BEC) committees to confirm that they are constituted in line with DOT 's procurement policies and procedures; and
- 3.7.3 Confirm that all committee members signed Declarations of Interest and that conflicted members have recused themselves from the process or potential conflicts have been declared accordingly.

## **4 DELIVERABLES**

It is envisaged that successful service providers will be expected to deliver the following deliverables:

- 4.1 Compile report based on the tender processes followed;
- 4.2 Submit a draft probity report to the Chief Audit Executive within three days from the date project is assigned;
- 4.3 Issue final report within two days;
- 4.4 Present findings to supply chain management and line functions;
- 4.5 Discuss and motivate the findings based on applicable supply chain management policies, prescripts and legislations; and
- 4.6 Incorporate managements inputs into the final report and issue final report to the Chief Audit Executive with five working days' turnaround time.

## **5 SKILLS AND CAPACITY REQUIRED**

The service provider should have the following;

- 5.6 Demonstrate technical competence and expertise in the discipline of supply chain management, financial management and accounting, and internal auditing within the public sector;
- 5.7 Develop a detailed project plan or methodology for undertaking the assignment;
- 5.8 Team members assigned to the project should possess the required qualifications, skills and expertise to execute the project successfully; be registered as practitioners with minimum of 3 years individual experience;

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- 5.9 The resources should have membership and/or registration with relevant professional bodies ( IIA, ISACA and SAICA).

## 6 EVALUATION

### 6.1 STAGE 1: MANDATORY REQUIREMENTS

- 6.1.1 Bidders must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria will be disqualified.
- 6.1.2 Bidders are required to be registered on the Central Supplier Database and the Department of Transport shall verify the bidder's tax compliance status through the Central Supplier Database.
- 6.1.3 Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.
- 6.1.4 It is therefore a condition of this bid that the tax matters of the bidder be in order at any point in time from the closing date of the bid. This bid will only be awarded to a bidder(s) whose tax status on Central Supplier Database is compliant.
- 6.1.5 Compliance should remain valid for the duration of the contract
- 6.1.6 Bidders are required to attend compulsory briefing sessions.

### 6.2 STAGE 2: FUNCTIONAL EVALUATION CRITERIA

- 6.2.1 Only bidders who have complied with mandatory requirements will be evaluated for functionality. Bidders must, as part of their bid documents, submit supportive documentation for all functional requirements as indicated hereunder. The Bid Evaluation Committee (BEC) responsible for scoring the respective bids will evaluate and score all bids based on their submissions and the information provided.

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- 6.2.2 The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- 6.2.3 Functionality will be evaluated on the basis of the supporting documentation supplied by the bidders in accordance with the below functionality criteria and values.
- 6.2.4 The evaluation of the functionality will be evaluated individually by Members of Bid Evaluation Committee in accordance with the below functionality criteria and values.
- 6.2.5 The applicable values that will be utilized when scoring each criteria ranges from:  
**1 being Poor, 2 = Average 3 = Good, 4 = Very Good & 5 = Excellent**
- 6.2.6 The Bids that fail to achieve a minimum of **70** points out of **100** points for functionality will be disqualified. This means that such bids will not be evaluated on the Preference Points System stage.

**6.2.7 EVALUATION CRITERIA – APPOINTMENT OF A PANEL OF SERVICE PROVIDERS TO PERFORM PROBITY AUDITS FOR THE INTERNAL AUDIT SERVICE OF THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF FIVE (05) YEARS**

EVALUATION CRITERIA	GUIDELINES FOR CRITERIA APPLICATION	WEIGHT
ABILITY AND CAPABILITY	<b>Company experience:</b> Experience of the firm in Risk and Compliance Audits, Operational Audits, Supply Chain Management Reviews and other the required services (Reference letters under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was completed successfully.	20
	<b>Team Leader</b> to be utilized in the execution of the contract – please attach personnel CVs with skill(s)/ experience / qualification/s relevant to Risk and Compliance Audits, Operational Audits, Internal Auditing and Supply Chain Management Team Leader or Manager must provide valid proof of registration with IIA or SAICA	35
	<b>Audit Project Team members:</b> to be utilized in the execution of the contract – please attach personnel CVs with skill(s)/ experience / qualification/s relevant to Finance/Accounting, Internal Auditing and Supply Chain Management. The individual team members must each provide valid proof of registration with IIA as a member.	30
METHODOLOGY	<b>Bidders should provide a comprehensive project execution plan</b> indicating the methods to get the work done. The methodology must be aligned to the IIA standards.	15
<b>TOTAL POINTS ON FUNCTIONALITY MUST ADD TO 100</b>		<b>100</b>

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Scoring Criterion	1 Poor	2 Average	3 Good	4 Very Good	5 Excellent
<b>Company experience:</b> <b>Experience of the firm in Financial management and /or Accounting Audits, Operational Audits, Supply Chain Management Reviews the required services (Reference letter under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was completed successfully.</b>	0 to 2 year of similar knowledge and experience	3 to 4 years of similar knowledge and experience	5 to 7 years of similar knowledge and experience	8+ to 9 years of similar knowledge and experience	10+ years of similar knowledge and experience.

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<p><b>Team Leader to be utilized in the execution of the contract – please attach personnel CVs with skill(s)/experience / qualification/s relevant to Finance/Accounting, Internal Auditing and Supply Chain Management Team Leader or Manager must provide valid proof of registration with IIA or SAICA</b></p>	<p>0 to 2 year of similar knowledge and experience</p> <p>Matric Certificate.</p>	<p>3 to 4 years of similar knowledge and experience</p> <p>National Diploma</p>	<p>5 to 6 years of similar knowledge and experience</p> <p>Bachelor's Degree</p>	<p>Over 7 to 9 years of similar knowledge and experience</p> <p>Post Graduate. Degree</p>	<p>10+ years of similar knowledge and experience</p> <p>Masters/Accreditation CIA/CA/CISA</p>
<p><b>Audit Project Team members: to be utilized in the execution of the contract – please attach personnel CVs with skill(s)/experience / qualification/s relevant to Finance/Accounting, Internal Auditing and Supply Chain Management The individual team members must each provide valid proof of registration with IIA as a member.</b></p>	<p>0 to 2 year of similar knowledge and experience</p> <p>Matric Certificate.</p>	<p>3 to 4 years of similar knowledge and experience</p> <p>National Diploma.</p>	<p>5 to 6 years of similar knowledge and experience</p> <p>Bachelors Degree in Internal Auditing</p>	<p>7+ to 8 years of similar knowledge and experience</p> <p>Honours Degree and/or Post Graduate Diploma</p>	<p>9+ years of similar knowledge and experience</p> <p>Masters/Accreditation CIA/CA/CISA</p>

<b>Bidders should provide a comprehensive project execution plan</b> indicating the methods and Tools that will be employed to get the work done. The methodology must be aligned to the IIA standards.	Irrelevant plan	Plan not addressing some of the requirements	Plan indicating time frames	Plan indicating timeframes and resources allocations	Plan indicating timeframes, resources allocations and comprehensive approach to probity.
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## 7 RULES OF BIDDING

### 7.1 COMPULSORY INFORMATION SESSION

- 7.1.1 A compulsory Briefing will be held at the Department of Transport as detailed in the Advert. This briefing session provides bidders with an opportunity to clarify aspects of the process as set out in this document and to address any substantive issues that bidders may wish to raise. Any Briefing Notes which may be issued by the Department to the Service Providers should be considered as part of this project.
- 7.1.2 Firms may ask for clarification on this TOR or any of its Annexures up to close of business forty-eight (48) hours before the deadline for the submission of bids. Any request for clarification must be submitted by email to the Bid Office. Copies of questions and answers will be emailed afterwards to all firms that attended the virtual briefing session.

### 7.2 FORMAT AND SUBMISSION OF BIDS

- 7.2.1 Bidders must submit their bids on the stipulated closing date and time. Late bids will not be considered. All late bids must be collected within seven (7) days failing which the DOT will discard of such late proposals.
- 7.2.2 Bids must be submitted in one (1) envelope which is technical proposal with Supporting documents required for compliance including all the SDB documents and SBD 1 must be submitted together with the technical proposal.
- 7.2.3 Format of submission of proposals:
- Envelope must be clearly marked with Company name, DOT Nr and technical response.

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- b. Proposals must be submitted as one (1) original and four protected soft copies. Soft copies must be exact copies of the original document, and should be labelled properly.

- 7.2.4 In order to evaluate and adjudicate bids effectively, it is imperative that bidders submit responsive bids. To ensure a bid will be regarded as responsive it is essential to comply with all conditions pertaining to mandatory requirements.
- 7.2.5 Each bidder must attach all applicable documents in support of its bid in accordance with the requirements set out in this bid as well as any other relevant materials, photographs and/or attachments.
- 7.2.6 Each bid, once submitted, constitutes a binding and irrevocable offer to provide the Services on the terms set out in the bid, which offer cannot be amended after its date of submission.
- 7.2.7 Department of Transport (DOT) reserves the right to accept or consider any bid in full or in part or any responses or submissions in relation thereto.
- 7.2.8 DOT reserves the right to appoint more than one bidder whose bid most successfully conforms to the Criteria and the Requirements in accordance with the terms and conditions described in the TOR.
- 7.2.9 DOT reserves the right to request any additional information that it may require or deem necessary. All such requests shall be in writing.
- 7.2.10 After careful consideration and thorough examination of the proposals, DOT shall select the successful Bidder whose proposal most closely satisfies the criteria and the requirements. The lowest price (management fee where applicable) offered will not necessarily be a decisive factor in choosing between Proposals.
- 7.2.11 The Department published the results of the outcome of a tender process, including the details of the successful bidder in the same media that was used to advertise the bid.

### **7.3 SUB-CONTRACTING, PARTNERSHIP/CONSORTIUM/JOINT VENTURE AND COMPANY REQUIREMENTS**

- 7.3.1 A proposal submitted by a company, close corporation or other legal person must be accompanied by a resolution or agreement of the directors or members and be signed by a duly authorized person.

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- 7.3.2 A proposal submitted by a partnership must be accompanied by a written partnership agreement
- 7.3.3 A proposal submitted by a consortium or joint venture of two or more parties must be accompanied by a signed memorandum of understanding between the parties to such consortium indicating:
- a. the conditions under which the consortium will function;
  - b. its period of duration;
  - c. the persons authorized to represent it;
  - d. the participation of the several parties forming the consortium;
  - e. the benefits that will accrue to each party;
  - f. any other information necessary to permit a full appraisal of its functioning.

## 8 CONFIDENTIALITY OF INFORMATION & INTELLECTUAL PROPERTY RIGHTS

### 8.1 CONFIDENTIAL INFORMATION

- 8.1.1 **Confidentiality obligation.** Each Party ("the receiving Party") must treat and hold as confidential all information which they may receive from the other Party ("the disclosing Party ") or which becomes known to them concerning the disclosing Party during the duration of this Contract.
- 8.1.2 **Nature of the confidential information.** The confidential information of the disclosing Party shall, without limitation, include:
- a. all software and associated material and Documentation, including information contained therein;
  - b. all information relating to :
  - c. the disclosing Party's past, present and future research and development;
  - d. the disclosing Party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;
  - e. the terms and conditions of this Contract; and
  - f. the Department's data.
- 8.1.3 The Parties shall, except as permitted by the Contract, not disclose or publish any confidential information in any manner, for any reason or purpose whatsoever without the prior written consent of the disclosing Party and in the event of the confidential information relating to a third party, it shall also be incumbent on the receiving Party to obtain the consent of such third party.
- 8.1.4 **Receiving Party's obligations with regard to confidential information.** The receiving Party agrees that in order to protect the proprietary interests of the disclosing Party in its confidential information:

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- a. it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Contract;
- b. it will initiate internal security procedures reasonably acceptable to the disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof;
- c. subject to the right to make the confidential information available to their Personnel under clause 15.4.1 above, they will not at any time, whether during this Contract or thereafter, either use any confidential information of the disclosing Party or directly or indirectly disclose any confidential information of the disclosing Party to third parties;
- d. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the disclosing Party which have or will come into the possession of the receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of such Party and shall be promptly handed over to such Party when no longer required for the purposes of this Contract.

**8.1.5 Obligations in respect of confidential information upon termination.** Upon termination or expiry of this Contract, the receiving Party will deliver to the disclosing Party or at the disclosing Party's option, destroy all originals and copies of the disclosing Party's confidential information in its possession.

**8.1.6** The aforementioned obligations shall not apply to any information which:

- a. is lawfully in the public domain at the time of disclosure;
- b. subsequently and lawfully becomes part of the public domain by publication or otherwise;
- c. subsequently becomes available to the receiving Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or
- d. is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

**8.1.7 Disclosure to professional advisors.** Nothing in this clause shall preclude the Parties from disclosing the confidential information to their professional advisors in the *bona fide* course of seeking business and professional advice.

**8.1.8 Severability.** The provisions of this clause 15 are severable from the rest of the provisions of this Contract and shall survive its termination and continue to be of full force and effect for a period of ten (10) years after the date of termination.

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## 8.2 INTELLECTUAL PROPERTY RIGHTS

**8.2.1 Ownership in Services vests in Department.** All rights of ownership and copyright in the Services to be provided by the Contractor to the Department shall vest solely with the Department, and the Contractor will not make such information available to any other party without the written consent of the Department on such terms and conditions as may be stipulated by the Department at that time. '

**8.2.2 No aspect of the Services to infringe 3<sup>rd</sup> Party intellectual property rights.** The Contractor warrants that no aspect of the Services provided in terms hereof will infringe any patent, design, copyright, trade secret or other proprietary right of any third party ("third party proprietary rights"), and the Contractor shall, at its own cost, defend the Department against any claim that the Services infringe any such third party proprietary rights, provided that the Department gives prompt notice to the Contractor of such claim and the Contractor controls the defence thereof.

**8.2.3** The Contractor further indemnifies the Department against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the Department in any action which is attributable to such claim and will reimburse the Department with all costs reasonably incurred by the Department in connection with any such action.

**8.2.4 Process in the event of a claim.** Should any person make any claim against the Department in terms of clause 16.2, the Department shall give the Contractor notice thereof within ten (10) days of becoming aware of such claim to enable the Contractor to take steps to contest it.

**8.2.5 Infringement of 3<sup>rd</sup> Party rights.** Should any third party succeed in its claim for the infringement of any third party proprietary rights, the Contractor shall, at its discretion and within thirty (30) days of the Services having been found to infringe:

- a. obtain for the Department the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or
- b. replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or
- c. alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
- d. withdraw the subject of infringement.

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**8.2.6 Ownership.** Ownership of all Departmental data, whether under its control or not, shall continue to vest in the Department and the Contractor shall not obtain any proprietary rights of such data.

**8.2.7 Data may only be used in performance of the Services.** The Department's data in the possession of the Contractor, or to which the Contractor may have access during the currency of this Contract, may not be used by the Contractor for any purposes whatsoever other than as may be specifically required to enable the Contractor to comply with its obligations in terms of this Contract.

**8.2.8 Preservation of integrity of data.** Both Parties shall take reasonable precautions (having regard to the nature of their obligations in terms of this Contract), to preserve the integrity of the Department's data and to prevent any unauthorised access, corruption, or loss of such data.

## **9 TERMS AND CONDITIONS**

### **9.1 GENERAL**

- 9.1.1 The Department reserves the right to amend, modify or withdraw this Terms of Reference (TOR) document or amend, modify or terminate any of the procedures or requirements set out herein at any time and from time to time, without prior notice except where required by law, and without liability to compensate or reimburse any Service Provider.
- 9.1.2 Neither the Department, nor any of its respective, officers, or employees may make any representation or warranty, expressed or implied in this TOR document, and nothing contained herein is, or shall be relied upon as, a promise or representation, whether as to the past or the future.
- 9.1.3 The costs of preparing proposals and of negotiating the Contract will not be reimbursed.
- 9.1.4 The Department also reserves the right to call interviews with short-listed Service Providers before final selection, and to negotiate price with the Preferred Service Providers.
- 9.1.5 Firms may not contact the Department on any matter pertaining to their bid from the time when bids are submitted to the time the Contract is awarded. Any effort by a Service Provider to influence bid evaluation, bid comparisons or award decisions in any manner, may result in rejection of the bid concerned.

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9.1.6 Bid submission requirements must be completed in sections and appendices provided in the bid document.

9.1.7 **ALL BIDDERS MUST BE REGISTERED ON THE CENTRAL SUPPLIER DATABASE AT NATIONAL TREASURY.** More information in this regards is available on [www.ocpo.treasury.gov.za](http://www.ocpo.treasury.gov.za). Proof of registration must be submitted together with the technical proposal.

9.1.8 Bidders may provide any additional information deemed important for the DOT to consider.

9.1.9 Prospective Bidders must at all times comply with the Department's Supply Chain rules and processes with regard to all projects and payments.

## **9.2 ORDER OF PRECEDENCE.**

9.2.1 In the event of any conflict between any provisions of the SCC, GCC, Proposal and any other document accompanying the Bid, the following order of precedence shall prevail—

- a. Standard Bidding Documents;
- b. SCC;
- c. GCC;
- d. TOR;
- e. SLA; and
- f. Proposal.

## **9.3 DURATION**

9.3.1 The project is expected to be for a period of 5 years.

9.3.2 The Contract shall commence on the Effective Date and, subject to the rights of termination stipulated herein, terminate on the Completion Date as specified in the Contract.

## **9.4 CONTRACT AMENDMENTS**

9.4.1 No addition to, or variation, consensual cancellation, or novation of the Contract, and no waiver of any rights arising from the Contract, including this clause, shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of each of the Parties.



## 9.5 SUBCONTRACTS

- 9.5.1 The Contractor shall notify the Department in writing of all sub-contracts awarded under the Contract, before the commencement of the Contract, as well as at any time during the Contract.
- 9.5.2 The right to sub-contract. The Contractor may, with the prior written consent of the Department, sub-contract any of its obligations in terms of this Contract, or any part thereof, to a third party, provided that:
- a. such sub-contracting shall not absolve the Contractor from any responsibility for complying with its obligations in terms of this Contract and the Contractor hereby indemnifies and holds the Department harmless against any loss, harm or damage which the Department may suffer as a result of such sub-contracting;
  - b. the Contractor shall at all times remain the sole point of contact for the Department in respect of the Services by the Contractor.
- 9.5.3 **Department may withdraw consent.** The Department shall have the right at any time, and upon such good cause shown to withdraw such consent for a sub-contractor on thirty (30) days notice to the Contractor and in that event no claim against the Department by the Contractor or any other person on the grounds of the granting of such consent or the withdrawal thereof shall be entertained, and the Contractor indemnifies the Department against any such claims and costs so incurred."

## 9.6 CONTRACTOR'S PERSONNEL

- 9.6.1 **Project Team.** The Contractor shall make available the skills and expertise of the Project Team referred to in the Bid who shall be involved in the Contract or the Services, unless otherwise agreed to by the Department, which agreement shall not be unreasonably withheld.
- 9.6.2 **Exceptions.** Notwithstanding the provisions of clause 6.6.1, where, due to circumstances beyond the control of the Contractor, a member of the Project Team cannot act in accordance with the provisions of this clause due to their dismissal, resignation or incapacity, the Contractor shall, to the extent possible, implement an appropriate succession plan to minimise the effect of the unavailability of such member.

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- 9.6.3 **Suitably qualified Personnel.** The Service Provider shall employ suitably qualified, experienced and trained Personnel to provide the Services, provided that the Contractor shall be entitled in its discretion, to allocate Personnel resources in accordance with the technical or other skills and knowledge required, which discretion shall not have a negative impact on the provision of the Services.
- 9.6.4 The Service Provider's Personnel providing the Services may be absent for short periods of time for reasons including annual leave and training. The Contractor undertakes to avoid any disruption of the Services due to such circumstances.
- 9.6.5 **Contractor to adhere to security procedures of the Department.** The Contractor's Personnel including the Project Team shall at all times when on the Department's premises, adhere to the standard health, safety and security procedures and guidelines applicable to the Department's Personnel, as varied and conveyed by the Department to the Contractor from time to time.
- 9.6.6 Should the Department at any time have reason to believe that any of the Contractor's Personnel is failing to comply with such standard health, safety and security procedures and guidelines, the Department may deny such person access to any or all of the Department's premises or systems and require the Contractor to replace such person without delay.

## 9.7 **PAYMENT**

### 9.7.1 Invoice.

The Contractor's Project Manager shall at the end of each deliverable submit a consolidated invoice, certified as correct by the Contractor's Project Manager, showing the actual work performed, hours worked, and manpower inputs for the task and associated costs accompanied by all supporting documents.

- a. The Department uses a one envelope system. **NO PRICES MUST REFLECT IN THE TECHNICAL PROPOSAL.**

### 9.7.2 Fees

Domestic hotel accommodation may not exceed R1440, inclusive of VAT per night per person. (incl. dinner, breakfast and parking), air travel must be restricted to economy class, and travel claims per kilometre may not exceed the rates approved by the Automobile Association of South Africa.

### 9.7.3 Rates

According to the 23 October 2013 Cabinet Resolution as defined in the National Treasury Instruction 01 of 2013/14: Cost Containment Measures sub-paragraph 4.2; the Consultants (or Service Provider) will only be remunerated on the following rates regime:

- a. The "Guidelines for fees" issued by the South African Institute of Chartered Accountants (SAICA);
- b. The "Guide on Hourly Fee Rates for Consultants", by the Department of Public Service and Administration (DPSA); or
- c. Based on the body regulating the profession of the Consultant.

#### 9.7.4 **Payment information**

- a. An invoice only becomes due and payable:
  - i. When the Project Manager signs-off on the specific deliverable and submits the invoice for payment;
  - ii. When the invoice is correct with regards to calculations, information contained, banking details and supporting documents.
- b. It is important to ensure that invoices are correctly submitted and reference the project name, DOT number and Order Number.
- c. Non-compliance will delay the payment process.

#### 9.7.5 **Total Contract Price.**

The Contract Price payable to the Contractor for the Services **shall not** exceed the ceiling price as set out in the Contract/quotation/invoice.

#### 9.7.6 **Price all-inclusive.**

All prices are inclusive of any Value Added Tax and all other duties.

### 9.8 **DELIVERY AND DOCUMENTS**

9.8.1 **Reports.** The Contractor/Service Provider shall provide the Department with detailed Documentation, working papers and Reports as set out in the Contract and Project Plan or when required in writing by the Department in both electronic format and hard copy.

9.8.2 Reports shall contain accurate information as to enable the Department to monitor and manage the Contractor's performance in terms of this Contract.

9.8.3 All Documentation and Reports shall be in English.

### 9.9 **PENALTY REGIME**

9.9.1 Poor performance will result in penalties that include withholding of a minimum 30% of the total invoice of each affected phase / milestone until it is fixed before the final product is submitted. In the case where the performance

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has not been improved to the satisfaction of the Department and the final product is handed over, the original amount held back will not be paid over to the Service Provider under any circumstances. On the other hand an improved quality and/or performance, at the satisfaction of the Department, will require the outstanding part of the held back invoice to be paid to the Service Provider in full but with no additional interest.

9.9.2 The project milestones / phases are expected to be adhered to. Any deviation must be approved by the Department prior to any commencement of the changes. Failure to do so will result in a 5% non-payment of that particular and/or affected phase(s).

9.9.3 Notwithstanding item 6.9.2 above, failure to meet the deadline as stipulated in item 8 will result in 30% of the total outstanding payments for the project as whole not being paid over to the Service Provider if the poor performance is attributed to the Service Provider unless there is undisputed evidence that the fault lies with the Department."

## **9.10 TERMINATION**

9.10.1 Should either Party fail to comply with any provision of this Contract the aggrieved Party may send a letter of demand to the defaulting Party, demanding compliance with such provision and should the defaulting Party, after a period of fourteen (14) days (or such longer periods as may under the circumstances be reasonably necessary) of the date of receipt of such written notice, remain in default, the aggrieved Party shall be entitled, without prejudice to any other rights it may have :

- a. to claim specific performance from the defaulting Party and to claim such damages as it may have suffered; or
- b. to discharge and execute the defaulting Party's obligations on its behalf and to recover the costs and disbursements incurred in respect thereof from that Party; or
- c. to terminate this Contract and claim such damages as the aggrieved Party may have suffered from the defaulting Party."

9.10.2 The Department may, without prejudice to any other rights it may have, terminate this Contract by written notice to the Contractor, upon the occurrence of the following events, namely if:

- a. the Contractor fails to adhere to set timeframes, service levels or service standards as determined in the TOR, SLA and/or Project Plan;
- b. the Contractor, in the opinion of the Department, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract;

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- c. there has been a material defect, error or failure by the Contractor to comply with applicable laws or rules in the Bid or in the awarding of this Contract which is incapable of rectification and that requires this Contract to be terminated;
- d. the Contractor, when advised that its Proposal has been accepted, has given notice of inability to sign or execute the Contract;
- e. the Contractor has abandoned its obligations in terms of this Contract;
- f. the Contractor has deliberately furnished inaccurate information in its Bid with regard to its previous experience relating to the Services, or with regard to any other material information; or
- g. the Contractor ceases to carry on business as the Contractor of the Service.

9.10.3 In the event that negotiations between the Department and the Preferred Service Provider/s fail with regard to the conclusion of a Contract, the Department reserves its right not to appoint the Preferred Service Provider/s without incurring any liability to compensate or reimburse the Preferred Service Provider/s.

9.10.4 In the event that the Contractor does not complete Services in terms of this Contract by the Completion Date, the Department may view this as a material breach of this Contract and claim specific performance, and/or damages.

9.10.5 The individuals proposed for professional work on the project shall remain on the project unless the Department grants prior permission to change the team composition. Such permission will not be withheld unreasonably.

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## **Annexure A**

### **GOVERNMENT PROCUREMENT**

### **GENERAL CONDITIONS OF CONTRACT**

#### **NOTES**

The purpose of this document is to:

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

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

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

## **TABLE OF CLAUSES**

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
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13. Incidental services
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15. Warranty
16. Payment
17. Prices
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22. Penalties
23. Termination for default
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27. Settlement of disputes
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30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)

## **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.

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| <b>2. Application</b>  | <p>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.</p> <p>2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.</p> <p>2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.</p>   |
| <b>3. General</b>  | <p>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.</p> <p>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 <a href="http://www.treasury.gov.za">www.treasury.gov.za</a></p>  |
| <b>4. Standards</b>  | <p>4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.</p>  |
| <b>5. Use of contract documents and information; inspection.</b> | <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> |
| <b>6. Patent rights</b>  | <p>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.</p>   |
| <b>7. Performance security</b>                                   | <p>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.</p>   |

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

**8. Inspections,  
tests and  
analyses**

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

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

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

## **9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental services**

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

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

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

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

#### **15. Warranty**

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

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

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

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

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

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

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

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.

# **ANNEXURE B**

## **FINANCIAL**

## **PROPOSALS**

**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: ..... BID NO.: DOT/18/2023/ODG.

CLOSING TIME 11:00

CLOSING DATE 12 September 2023

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)	
1.	The accompanying information must be used for the formulation of proposals.		
2.	Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.	R.....	
3.	PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)		
4.	PERSON AND POSITION	HOURLY RATE	DAILY RATE
	.....	R.....	.....
	.....	R.....	.....
	.....	R.....	.....
	.....	R.....	.....
	.....	R.....	.....
5.	PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT		
	.....	R.....	..... days
	.....	R.....	..... days
	.....	R.....	..... days
	.....	R.....	..... days
5.1	Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.		
	DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY AMOUNT
	.....	.....	R.....
	.....	.....	R.....
	.....	.....	R.....
	.....	.....	R.....
		TOTAL: R.....	

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

Name of Bidder: .....

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

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

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

\*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

DEPARTMENT OF TRANSPORT  
 Mr. Tyron Mkhari/ John Mashinini  
 Supply Chain Management  
 Tel: 012 309-3011/3045

Or for technical information –

DEPARTMRNT OF TRANSPORT  
 Ms. Bongzi Mnqwazi  
 Tel: 012 309 9155/3220  
 E-mail: MnqwaziB@dot.gov.za