

BID No: RSR/RFP/OCOO/DASOSR/24/03/02

REQUEST FOR PROPOSALS:

**APPOINTMENT OF A SERVICE PROVIDER TO DEVELOP THREE (03) ANNUAL
STATE OF SAFETY REPORTS FOR THE RAILWAY SAFETY REGULATOR**

Issued by: Railway Safety Regulator: Supply Chain Department Waterfall Point Building Cnr Woodmead Drive and Waterfall Drive WATERFALL CITY 1685 Contact Person: Goitseone Kgwadibana Tel: 087 284 6666 Email: goitseonek@rsr.org.za

Full Name of Bidding/Tendering Entity: _____

Contact Person: _____

Tel Number: _____

Email Address: _____

Total Bid Amount (incl. VAT): R_____

Advert Date: 18 March 2024

Closing Date and Time: 12 April 2024 @ 12:00

Bidder's Authorised Signatory:

Initials and Surname : _____

Signature : _____

A. NOTICE TO TENDERERS

This tender is issued in terms of the Public Finance Management Act 1 of 1999 (PFMA), the Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA), the Preferential Procurement Regulations, (PPR 2022), Supply Chain Management Regulations issued by the National Treasury and BBBEE Act.

Parties that wish to submit proposals are required to indicate that they are willing to accept the General Conditions and Procedures of the RAILWAY SAFETY REGULATOR.

DESCRIPTION	Appointment of a service provider to develop three (03) annual state of safety reports for the Railway Safety Regulator
ADVERTISEMENT DATE	18 March 2024
TENDER DOCUMENTS	Not for sale. Copies of the bid documents are obtainable from on the e-Tender portal of the National Treasury website, www.etenders.gov.za and the Railway Safety Regulator website, www.rsr.org.za/procurement/
CLOSING DATE	12 April 2024 at 12:00 PM
VALIDITY PERIOD	90 Business Working Days from Closing Date. Tenderers are to note that they may be requested to extend the validity period of their tender, at the same terms and conditions, if the internal evaluation process has not been finalized within the validity period. However, once the adjudication committee has approved the process and award of the business to the successful Tenderer(s), the validity of the successful Tenderer(s)' bid will be deemed to remain valid until a final contract has been concluded.
SUBMISSION OF PROPOSALS	Proposals must reach the offices of the RAILWAY SAFETY REGULATOR, located at Waterfall Point Building, Cnr Woodmead Drive and Waterfall Drive, Waterfall City before ...12:00 PM..... . Tender document shall be submitted as one (01) original and one (01) scanned copy (PDF) of the original completed in a Flash Drive with the proposal and forms required: a) REQUEST FOR PROPOSAL - RAILWAY SAFETY REGULATOR: b) APPOINTMENT OF A SERVICE PROVIDER TO DEVELOP THREE (03) ANNUAL STATE OF SAFETY REPORTS FOR THE RAILWAY SAFETY REGULATOR The tender box will only be available for the depositing of proposals between 08h00 and 16h30 on weekdays (excluding public holidays). Please note that this RFP closes punctually at 12:00 PM on 12 April 2024 . No late submissions will be considered under any circumstances. The RAILWAY SAFETY REGULATOR shall not disclose any details pertaining to the responses received, to any other participant(s), as this is regarded as confidential information.

	<p>Envelopes must not contain documents relating to any RFP other than the one referred to in this RFP.</p> <p>The responses to the RFP will be opened as soon as it is practical after the expiry of the time advertised for receiving them.</p> <p>Only the participants that are short-listed after the evaluation process will be informed of the results of their submission.</p>
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B. BID DOCUMENTS CHECKLIST:

The contents of the bid/tender document must be as follows, and numbered as per the numbering below, with each schedule punched, placed in a file and separated from the next schedule with a file divider.

Please complete the checklist below to verify your submission of the relevant documents:

Schedules	Description	COMPULSORY	Submitted – Indicate YES or NO
Schedule 1	Fully completed and duly signed SBD forms	X	
Schedule 2	Central Suppliers database (CSD) Registration	X	
Schedule 3	Tax compliant status report (with (PIN)	X	
Schedule 4	Valid B-BBEE certificate / B-BBEE sworn affidavit	X	
Schedule 5	Valid company registration documentation that are issued by Companies & Intellectual Property Commission (CIPC)	X	
Schedule 6	Reference letters	X	
Schedule 7	Report sample(s)	X	
Schedule 8	Project Implementation Plan	X	
Schedule 9	CVs and qualifications of the proposed resources	X	

C. THE BIDDER MUST COMPLETE THE FOLLOWING RETURNABLE DOCUMENTS:

<i>(Bidders must tick the “Returnable Document” column to confirm documents have been completed and returned by inserting tick- incomplete bids may lead to elimination)</i>	Submitted: <i>(tick box)</i>
Returnable Document Name:	
SBD 1	
SBD 3.3	
SBD 4	
SBD 6.1	
General Conditions of Contract and/or Special Conditions of Contract	

1. ABBREVIATIONS AND ACRONYMS DESCRIPTIONS

Table 1- Abbreviations and Acronyms Definitions

ACCRONYMS	DEFINITIONS
ASoSR	Annual State of Safety Report
PMO	Project Management Office
RSR	Railway Safety Regulator
SMS	Safety Management System
SMSR	Safety Management System Report
SOP	Standard Operations Procedure
SRM	Safety Risk Model

2. TERMS OF REFERENCE

2.1. INTRODUCTION

- 2.1.1 The Railway Safety Regulator (RSR) is a schedule 3A public entity established in terms of section 4 of the National Railway Safety Regulator Act, Act 16 of 2002 (“the Act”) as amended, to establish a national framework for South Africa and to monitor and enforce safety compliance in the rail sector.
- 2.1.2 In terms of the Act, railway operators are primarily responsible and accountable for ensuring the safety of their railway operations.
- 2.1.3 In line with our legislative mandate, the mandate of the RSR is to oversee and enforce safety performance by all railway operators including those of neighbouring States whose rail operations enter South Africa.
- 2.1.4 As such, the RSR is obliged to compile and submit for tabling to the National Parliament, an Annual State of Safety report (ASoSR) on the operational safety and security-related incidents within the South African Rail environment, including the safety of employees, passengers and members of the public as well as the impact of occurrences and incidents on the environment and economy.

2.2. BACKGROUND

- 2.2.1 In compliance with Section 20 of the Act, the RSR is obliged to compile and submit for tabling to the National Parliament, an Annual State of Safety report (ASoSR).
- 2.2.2 The ASoSR provides an analysis of the safety and security within the South African Railway environment. In addition, provides an analysis on the safety of employees, passengers and members of the public as determined by the Act notwithstanding the impact of occurrences and incidents on the environment and economy.
- 2.2.3 The ASoSR is used as a risk information tool by the RSR, railway operators, railway industry, stakeholders, academics and any other interested or affected parties in safety of South African railway operations.
- 2.2.4 In compliance to Section 39 of the Act, the RSR has established a National Information and Monitoring System (NIMS) regarding safe railway operations within the Republic RSR Act 16 of 2002 (as amended).
- 2.2.5 The railway occurrence and incidents data captured on NIMS is used in analysing the risk of South African railway operations. It is also used in the development of an Annual State of Safety Report (ASoSR) in compliance with Section 20 of the Act.
- 2.2.6 There is a widely accepted and held view that safety and security matters are interconnected; therefore, the RSR Act mandates the RSR with a primary role for operational safety matters and to play a supporting role for security-related issues.

2.3. PURPOSE

- 2.3.1 The purpose of these Terms of Reference (TOR) is to appoint suitably qualified and experienced transport economists and data analysis specialists (service provider) to provide professional services to develop three (3) Annual State of Safety Reports for 2023/24, 2024/25 and 2025/26 reporting periods

2.4. SCOPE OF WORK

- 2.4.1 The broad scope of work for the development of the Annual State of Safety Report (ASoSR) includes:
 - 2.4.1.1 Data analysis and trend identification on historic data on the recorded railway operational occurrences and security-related incidents,

- 2.4.1.2 Risk profiling for freight, commuter and passenger operations in South Africa (per operator RSR Safety Permit Classification, province, industry segment, Regulations on Notifiable Railway Occurrences categories, etc.)
- 2.4.1.3 Graphic presentation (graphs, tables and figures) of results and analysis using modern tools which can be rendered on the RSR website,
- 2.4.1.4 Provide recommendations on methods and/or interventions to reduce railway occurrences in line with the RSRs mandate.
- 2.4.1.5 Geographical Mapping and display of corridor analysis results.
- 2.4.2 The RSR shall provide the service provider with accurate and verified occurrence data.
- 2.4.3 The amendments to the occurrence and incidents database shall be agreed to in writing between the RSR and the service provider.
- 2.4.4 The RSR shall provide the format of the Annual State of Safety Report (As attached in Annexure A).
- 2.4.5 The service provider shall populate the sections of the ASoSR as guided by the RSR in Annexure A. Innovative sections shall first be discussed with the RSR before inclusion in the report.
- 2.4.6 The service provider is responsible to provide the RSR with an edited report containing graphical displays.
- 2.4.7 The service provider shall submit the source data used in compiling the report, all analysed data, tables and graphs when submitting the final report.
- 2.4.8 The service provider shall not engage the operators directly on matters related to the veracity of the data without a written consent and approval from the RSR.
- 2.4.9 All data used in compiling the ASoSR remains the property of the RSR and it may not be published without a written approval of the RSR.

2.5. CRITICAL FACTORS FOR CONSIDERATION

- 2.5.1 The following factors have been identified as the success criteria of this project:
 - 2.5.1.1 Completion of the data verification and signoff by the RSR and railway operators in time as to avoid delaying the drafting.
 - 2.5.1.2 The report should be an improvement of previously published RSR reports and be comparable to the international railway standards.

2.5.1.3 The report must be delivered within the agreed timelines and budget between the RSR and the service provider.

2.5.1.4 Accessibility of the service provider to the RSR data team and vice versa at any given time during the drafting process

2.6. KEY PROJECT DELIVERABLE TIMELINES

2.6.1 The service provider shall use the detail contained in section 11 to submit their pricing/costing per deliverable.

2.7.1 The RSR shall advise the service provider of any changes to the timelines for the compilation of the report.

2.7.2 The RSR EXCO and the Board of Directors shall have the authority to make amendments to the proposed report production timelines.

Deliverable	Timeline
2023/24 ASoSR Confirmation of Design	24 May 2024
2023/24 Analysis of Data	04 June 2024
ASoSR 2023/24 Final report	02 July 2024
2024/25 Analysis of Data	02 June 2025
ASoSR 2024/25 Final report	04 July 2025
2025/26 Analysis of Data	05 June 2026
ASoSR 2025/26 Final report	01 July 2026

Table 2- Project Deliverable Timelines

2.7. APPROACH

2.7.1 The Development of the Annual State of Safety Report Project will be implemented in line with the approved RSR Project Management Policy and Project Management Office (PMO) Standard Operations Procedure (SOP).

2.8. REPORT SUBMISSIONS

2.8.1 All reports and data shall be shared electronically and receipt of any communication shall be acknowledged by the receiving party.

2.8.2 The service provider shall ensure that the report follows a layout agreed upon with the RSR, uses graphs and data tables to present the data as well as a narrative to explain the data suggested by the graphs and data tables.

- 2.8.3 The RSR shall assign a representative to co-ordinate the provision of the services and act as a single point of contact.
- 2.8.4 The service provider shall appoint a project manager who shall have overall responsibility for managing and coordinating the performance of the service provider's obligations and act as a single point of contact.
- 2.8.5 The parties shall strive to achieve for timely and quality submissions of items as per the project deliverables.

2.9. PROPOSAL SUBMISSION

- 2.9.1 The bidder must provide a detailed proposal as part of the tender, addressing and including at least the following:
- 2.9.1.1 Organisation profile
 - 2.9.1.2 A Joint Venture agreement signed by all parties in case of a Joint Venture / Consortium submission (if applicable).
 - 2.9.1.3 Central Supplier database CSD Registration. Bidders (including each member of joint venture or consortium or partnership agreement) must submit proof of registration with the National Treasury's Central Supplier Database (CSD). Bidders must ensure that they are registered on the CSD before submitting the bid.
 - 2.9.1.4 Valid B-BBEE certificate / B-BBEE sworn affidavit. A valid B-BBEE certificate or sworn affidavit (the sworn affidavit must indicate the full date i.e., day, month, and year of the financial year period e.g., 31 March 2021).
 - 2.9.1.5 Valid tax compliance status report with tax PIN
 - 2.9.1.6 Valid company registration documentation that are issued by Companies & Intellectual Property Commission (CIPC)
 - 2.9.1.7 A Copy of the identity document of the company owner(s)
 - 2.9.1.8 Valid Medical Certificate (Where applicable)
 - 2.9.1.9 Valid South African Social Security Agency (SASSA) registration (Where applicable)
 - 2.9.1.10 Valid National Council for Persons with Physical Disability in South Africa registration (NCPDSA)
 - 2.9.1.11 Fully completed and duly signed Standard Bidding Documents (SBD) Forms documents supplied with these Terms of Reference.

- 2.9.1.12 Proven previous experience, including testimonials/references letters from previous successful completed projects, within the past five (05) years. The reference letter should be on a client's official letterhead with valid contact details. ***RSR reserves the right to contact the references to confirm the validity of information of the letters provided.** No points shall be awarded for letters which the RSR cannot verify/validate.
- 2.9.1.13 The service provider shall demonstrate analytical skills and tools as well as the technical know-how on the production of technical reports, ability to analyse and make inferences on the recorded fatalities and injuries to the statistical data. Expertise in presenting statistical data in graphs and figures through interactive dashboards. Expertise in presenting statistical data narratively. The bidder shall provide at least five (5) reports demonstrating these aspects
- 2.9.1.14 A pricing proposal/schedule inclusive of all deliverables as per the project scope.
- 2.9.1.15 A pricing schedule should be submitted on a separate sheet from the technical proposal for ease of evaluation.
- 2.9.1.16 Tender documents shall be submitted as one (01) original copy. Bidders must also submit and one (01) scanned copy (PDF) of the original completed in a USB.
- 2.9.1.17 All Prices must be VAT Inclusive

2.10. BID EVALUATION CRITERIA OF PROPOSALS

2.10.1 The proposals/BIDS will be evaluated on a three (03) phase approach consisting of:

2.10.1.1 Phase 01: Submission of all administrative compliance documentation.

The evaluation of the administrative compliance requirements is indicated below. Failure to comply, may lead to disqualification.

- 2.10.1.1.1 Fully completed and duly signed SBD forms
- 2.10.1.1.2 A Joint Venture agreement signed by all parties in case of a Joint Venture / Consortium submission (if applicable).
- 2.10.1.1.3 Central Supplier database (CSD) Registration. Bidders (including each member of joint venture or consortium or partnership agreement) must

submit proof of registration with the National Treasury’s Central Supplier Database (CSD). Bidders must ensure that they are registered on the CSD before submitting the bid.

2.10.1.1.4 Valid tax compliant status report with PIN

2.10.1.2 Phase 02: Functionality Evaluation

The evaluation of the functional requirements as per Section 2.11 below. Bidders must attain a minimum of 70 points to be considered for the Preference Point System evaluation (Phase 03).

2.10.1.3 Phase 03: Price and BEE Evaluation

2.10.1.3.1 The price quotations will be evaluated in accordance with the pre-scripts of the Preferential Procurement Policy Framework Act (PPPFA) and its regulations, in particular Preference Procurement Regulation 2022 which stipulate 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million (inclusive of all applicable tax).

2.10.1.3.2 A maximum of 80 points for price and 20 points for the specific goal specified on the request for proposal may be awarded to a Service Provider.

2.10.1.3.3 For Points to be awarded for the specific goals the proof for the claim for such goal must be submitted.

2.11. Functionality Criteria Evaluation (Phase 02)

2.11.1 Only bidders that score a minimum of 70 points of the total points at the functionality evaluation (Phase 02) will proceed to the Preference Point System evaluation (Phase 03).

2.11.2 The suitable service provider must demonstrate capacity and capability to execute this project by complying with the functionality criteria Table below

Table 3- Functional Evaluation Criteria

No.	EVALUATION CRITERIA	Weight	Scoring criteria
2.11.3	<p>BIDDERS REFERENCE LETTERS</p> <p>Bidder must submit letters of recent completed projects, not older than 5 years, on the referee’s letterhead with traceable contact details. Appointment letters will not be considered.</p> <p>The reference letter/s should at a minimum state the following:</p>	15	<ul style="list-style-type: none"> • Provided five (5) or more reference letters: 15 Points • Provided four (4) reference letters: 12 Points • Provided three (3) reference letters: 9 Points • Provided two (2) reference letters: 6 Points.

	<ul style="list-style-type: none"> The precise role the bidder played Contract duration Contract outcomes Contactable references <p>*RSR reserves the right to contact the references to confirm the validity of the information</p>		<ul style="list-style-type: none"> Provided one (1) reference letter or no letter or invalid letter: 3 Points Provided no letter or invalid letter: 0 Points
2.11.4	BIDDER'S TECHNICAL TEAM QUALIFICATION & EXPERIENCE (MAX 40 POINTS)		
	<p>Enclosure:</p> <ol style="list-style-type: none"> Copies of CVs. Clearly indicating number of years' experience with a specific employer working on relevant or similar project). Bidders are advised to use the CV template, Annexure B: CV Template, attached with the tender document Certified copies of Certificates of academic qualifications <p><i>The CV and certificates of individuals will be used for evaluation of the each of the key personnel for this section.</i></p> <p>The scoring of the key personnel will be as below:</p>		
2.11.4.1	Project Leader – (Max 20 points)	10	<ol style="list-style-type: none"> Post-graduate (NQF 8) = 10 points Bachelor's degree (NQF 7) = 7 points National Diploma (NQF 6) = 3 points No qualification = 0 point
	Qualifications - Post graduate (NQF 8) qualification in Data Analysis/Statistician or any other relevant field [or its International Qualification equivalent as verified by South African Qualification Authority (SAQA) . It is the responsibility of the bidder to secure the verification]		
2.11.4.2	Years of work experience as Statistician preferably in Rail Industry	10	<ol style="list-style-type: none"> 10 years or more = 10 points 8 or more years but below 10 years = 7 points Less than 8 years = 3 points
2.11.4.3	Technical Expert – (Max 20 points)	10	<ol style="list-style-type: none"> Post-graduate (NQF 8) = 10 points Bachelor's degree (NQF 7) = 7 points National Diploma (NQF 6) = 3 points No qualification = 0 points
	Qualifications - Post graduate (NQF 8) qualification preferably in Statistics, Data Analysis or any other relevant field [or its International Qualification equivalent as verified by SAQA]		
2.11.4.4	Years of work experience in implementing Data Analysis preferably in Rail Industry	10	<ol style="list-style-type: none"> 10 years or more = 10 points 5 or more years but below 10 years = 7 points Less than 5 years = 3 points

2.11.5	Demonstrable understanding of data analysis aligned to section 2.9.1.13	30	<ul style="list-style-type: none"> a) 5 reports demonstrating ability to produce technical reports, analyse statistical data, present statistical data narratively = 30 points b) 4 reports demonstrating ability to produce technical reports, analyse statistical data, present statistical data narratively = 25 points c) 3 reports demonstrating ability to produce technical reports, analyse statistical data, present statistical data narratively = 20 points d) 2 reports demonstrating ability to produce technical reports, analyse statistical data, present statistical data narratively = 15 points e) 1 or less reports demonstrating ability to produce technical reports, analyse statistical data, present statistical data narratively = 0 points
2.11.6	Detailed Project Plan aligned to Section 2.6 Project plan must be in line with project scope of work	15	<ul style="list-style-type: none"> a) Project Implementation Plan addressing the deliverables according to the project Scope of work = 15 points b) Incoherent or No plan = 0 points
	TOTAL	100	

2.11.7 Bidders that scored a minimum of **70 points** and above of the total points at the functionality phase will proceed to Phase 03, Price and BBEE.

2.12. PRICE AND BBEE EVALUATION (Phase 03)

2.12.1 Only bidders who scored 70 points and above in phase 03 will be considered for the preference point system evaluation.

2.12.2 The price quotations will be evaluated in accordance with the prescripts of the Preferential Procurement Policy Framework Act (PPPFA) and its regulations, in particular Preference Procurement Regulation 2022 which stipulate 80/20 preference point system for acquisition of goods or services with Rand value equal to or below R50 million (inclusive of all applicable tax).

2.12.3 A maximum of 80 points for price and 20 points for the specific goal specified on the request for proposal may be awarded to a Service Provider.

2.12.4 Points for the specific goal will be awarded as specified on the table below:

Table 4- Specific goals

NO	SPECIFIC GOALS	PREFERENCE POINT (OUT OF 20)	PROOF OF CLAIM
1	An Exempt Micro Enterprises (EME) or Qualifying Small Enterprise (QSE) which is at least 51% owned by black people	10	<ul style="list-style-type: none"> • Copy of the identity document of the owner(s) • A valid SANAS accredited BBBEE certificate or a valid BBEEE sworn affidavit (whichever is applicable) • Central Supplier Database (CSD) report • Valid company registration documentation that are issued by Companies & Intellectual Property Commission (CIPC)
2	An Exempt Micro Enterprises (EME) or Qualifying Small Enterprise (QSE) which is at least 51% owned by black women	5	<ul style="list-style-type: none"> • Copy of the identity document of the owner(s) • A valid SANAS accredited BBBEE certificate or a valid BBEEE sworn affidavit (whichever is applicable) • Central Supplier Database (CSD) report • Valid company registration documentation that are issued by Companies & Intellectual Property Commission (CIPC)
3	An Exempt Micro Enterprises (EME) or Qualifying Small Enterprise (QSE) which is at least 51% owned by youth	3	<ul style="list-style-type: none"> • Copy of the identity document of the owner(s) • A valid SANAS accredited BBBEE certificate or a valid BBEEE sworn affidavit (whichever is applicable) • Central Supplier Database (CSD) report • Valid company registration documentation that are issued by Companies & Intellectual Property Commission (CIPC)
4	An Exempt Micro Enterprises (EME) or Qualifying Small Enterprise (QSE) which is at least 51% owned by person(s) with disabilities	2	<ul style="list-style-type: none"> • Copy of the identity document of the owner(s) • A valid SANAS accredited BBBEE certificate or a valid BBEEE sworn affidavit (whichever is applicable) • Central Supplier Database (CSD) report • Valid company registration documentation that are issued by Companies & Intellectual Property Commission (CIPC) • Valid Medical Certificate • Valid South African Social Security Agency (SASSA) registration (where applicable) • Valid National Council for Persons with Physical Disability in South Africa registration (NCPDSA)

2.13. THE FINANCIAL PROPOSAL

2.13.1 The service providers are required to submit a detailed financial proposal costing the services per deliverable as set out in the scope of work. The overall figure must be (VAT inclusive) over a three-year period.

2.14. SUBCONTRACTING

2.14.1 A bidder awarded a contract may only enter into a subcontracting arrangement with the approval of the RSR.

2.15. JOINT VENTURES, CONSORTIUMS AND TRUSTS

2.15.1 Bidders must submit concrete proof of the existence of joint ventures and/or consortium arrangements. RSR will accept signed agreements as acceptable proof of the existence of a joint venture and/or consortium arrangement.

2.15.2 The joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the Lead Partner and the joint venture and/or consortium party. The agreement must also clearly identify the Lead Partner, with the power of attorney/resolution letter to bind the other party/parties in respect of matters pertaining to the joint venture and/or consortium arrangement.

2.16. LEGAL IMPLICATIONS

2.16.1 It is a requirement that the successful bidder will enter into a service level agreement (SLA) with the RSR.

2.17. COMMUNICATION

2.17.1 The communication between RSR and bidders is permitted prior to the closing date of the tender, such communication is limited to instances where bid clarity is sought, to obtain information or to extend the validity period. Any communication either by letter or electronic mail or any other form of correspondence to any government official, department or representative of a testing institution or a person acting in an advisory capacity for the RSR in respect of this bid between the closing date and the award of the bid by the bidder is prohibited.

2.18. LATE BIDS

2.18.1 Bids received at the address indicated in the bid documents, after the closing date and time will not be accepted and where applicable, be returned unopened to the bidder.

2.19. PROHIBITION OF RESTRICTIVE PRACTICES

2.19.1 In terms of section 4(1) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder(s) is/ are or a contractor(s) was/were involved in:

- 2.19.1.1 directly or indirectly fixing a purchase or selling price or any other trading condition;
- 2.19.1.2 dividing markets by allocating customers, suppliers, territories or specific types of goods or services; or collusive bidding.
- 2.19.1.3 If a bidder(s) or contractor(s), in the judgment of the purchaser, has/have engaged in any of the restrictive practices referred to above, the purchaser may, without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered or terminate the contract in whole or in part and refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

2.20. FRONTING

2.20.1 The RSR supports the spirit of broad based black economic empowerment (B-BBEE) and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. It is therefore against this background the RSR condemns any form of fronting.

2.20.2 The RSR, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the

Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry be established during such enquiry/investigation, the onus will be on the bidder I contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the bid/contract and may also result in the restriction of the bidder/contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the RSR may have against the bidder/contractor concerned.

2.21. RSR'S RIGHTS

2.21.1 RSR reserves the right to cancel this solicitation in whole or in part, at its sole discretion, at any time before the Agreement is fully executed. This RFP does not commit RSR to award an Agreement, to pay any costs incurred by bidders in the preparation of their proposals submitted in response to this RFP, or to procure or contract for services.

2.21.2 The RSR reserves the right to modify or cancel in whole or in part this RFP; to reject any and all proposals; to accept the proposal it considers most favourable to the RSR's interests and at its sole discretion to waive irregularities or informalities in any proposal or the proposal's procedures.

2.21.3 The RSR further reserves the right to reject all proposals and seek new proposals when such is considers to be in the best interest of RSR. If there is any evidence indicating that two or more bidders are in collusion to restrict competition or are otherwise engaged in anti-competitive practices, the proposals of all such bidders shall be rejected, and such evidence may be a cause for disqualification of the participants in any future solicitations issued by the RSR.

2.21.4 The RSR reserves the right to hold discussions and/or negotiations with any individual or qualified company, to interview or not, to request additional information or revise the proposal, or to request the best and final offers if it is in the best interest of the RSR to do so. However, the RSR may make an award without conducting any interview or negotiations; therefore, proposers/bidders are encouraged to submit their best proposal at the outset.

PART A

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE RAILWAY SAFETY REGULATOR					
BID NUMBER:	RSR/RFP/OCOO/DASOSR/24/03/02	CLOSING DATE:	12 April 2024	CLOSING TIME:	12:00
DESCRIPTION	Appointment of a service provider to develop three (03) annual state of safety reports for the Railway Safety Regulator				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Railway Safety Regulator Head Office					
Waterfall Point Office Park, Building 4					
Cnr Woodmead Drive and Waterfall Drive					
Waterfall City, Midrand, 1685					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Goitseone Kgwadibana		CONTACT PERSON	Kenny Makgati	
TELEPHONE NUMBER	087 284 6666		TELEPHONE NUMBER	087 284 6666	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	goitseonek@rsr.org.za		E-MAIL ADDRESS	Kennym@rsr.org.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:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
[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 THE QUESTIONNAIRE BELOW]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)	<input type="checkbox"/> YES <input type="checkbox"/> NO				
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO				
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO				
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO				
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO				

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

INVITATION TO BID

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED- (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (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.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE.”

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

SIGNATURE OF BIDDER:.....

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

DATE:

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: BID NO.: ... Appointment of a service provider to develop three (03) annual state of safety reports for the Railway Safety Regulator CLOSING TIME 12:00 CLOSING DATE: 12 April 2024
--

OFFER TO BE VALID FOR ...90.....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.
3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

R.....

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 fund contributions and skills development levies.

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

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

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

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....

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

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

2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the

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

Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....
Signature	Date
.....
Position	Name of bidder

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

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

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

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 To be completed by the organ of state

(delete whichever is not applicable for this tender).

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

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

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

1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

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

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

2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

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

Where

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

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

3.2.1. POINTS AWARDED FOR PRICE

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

$$Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right) \quad \text{or} \quad Ps = 90 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

Where

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

4. POINTS AWARDED FOR SPECIFIC GOALS

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

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
An Exempt Micro Enterprises (EME) or Qualifying Small Enterprise (QSE) which is at least 51% owned by black people	N/A	10		
An Exempt Micro Enterprises (EME) or Qualifying Small Enterprise (QSE) which is at least 51% owned by black women	N/A	5		
An Exempt Micro Enterprises (EME) or Qualifying Small Enterprise (QSE) which is at least 51% owned by youth	N/A	3		
An Exempt Micro Enterprises (EME) or Qualifying Small Enterprise (QSE) which is at least 51% owned by person(s) with disabilities	N/A	2		

DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary.

.....
SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME:

DATE:

ADDRESS:
.....
.....
.....

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.

GOVERNMENT PROCUREMENT

TABLE OF CLAUSES

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 2. Application
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 6. Patent rights
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 34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

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

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

installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

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

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

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

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

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

6. Patent rights

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

7. Performance Security

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
- (b) a cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

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

10. Delivery and documents

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

11. Insurance

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

- 12. Transportation** 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 13. Incidental Services** 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts** 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. Warranty** 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that

may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

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

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

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

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

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract amendments

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in

the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

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

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

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

**25. Force
Majeure**

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination
for insolvency**

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

of action or remedy which has accrued or will accrue thereafter to the purchaser.

**27. Settlement
Disputes**

of 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 wilful 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

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.

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| 32. Taxes and Duties | <p>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.</p> <p>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.</p> <p>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.</p> |
| 33. National Industrial Participation (NIP) Programme | <p>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.</p> |
| 34. Prohibition of Restrictive Practices | <p>34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).</p> <p>34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.</p> <p>34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.</p> |