



AgriCentre Building Cnr. Dr. James
Moroka and Stadium Rd
Private Bag X2039,
Mmabatho
2735

CHIEF DIRECTORATE: FINANCIAL MANAGEMENT
DIRECTORATE: SUPPLY CHAIN MANAGEMENT

Tel: +27 (18) 389 5297/5151
Fax: +27(18) 384 4571
Email: Mmatshaka@nwpg.gov.za

INVITATION TO BID

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEY'S FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS

You are invited to submit a bid for the service as indicated in the attached bid documents.

1. The conditions contained in the General Conditions of Contract (GCC), and the attached bid forms, as well as any other conditions accompanying this invitation, are applicable.
2. The work procedure, the bidder proposes to follow in order to obtain the required result must be clearly outlined and its terms may not conflict with those contained in the General Conditions of Contract (GCC).
3. Kindly receive attached the following bid documents:
 - 3.1. SBD 1- Invitation to Bid Form
 - 3.2. SBD 4- Declaration of Interest
 - 3.3. SBD 6.1—Preferential Points

Bidders are expected to complete the ALL the SBD forms with truthful and accurate information.

 - 3.4. General conditions of contract (GCC)

4. All the documents accompanying this invitation to bid must be completed in detail, be sealed in an envelope and be deposited in the bid box before the closing date and time as follows:

Location of bid box: Department of Agriculture and Rural Development, AgriCentre Building

Physical address: Cnr. Dr James Moroka Drive and Stadium Road, Mmabatho, 2735

Identification details: Establishment of a list of Attorney's Firms in Provisioning of Professional Legal Services in Diverse fields of Law, Department of Agriculture and Rural Development for period of 36 months.

Closing date and time: The closing date and time for submission of bid offers is: **12 September 2023 at 11H00.**

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

Briefing Session:

There will be no Briefing session for this bid

5. No Telephonic, telegraphic, telex, facsimile, electronic or e-mailed bids will be considered.
6. The Department of Agriculture and Rural Development reserves the right to accept any bid in whole or in part and does not bind itself to accept the lowest or any bid.
7. For more information you may contact the following:

Department : Department of Agriculture and Rural Development

Contact Person : Mr. S. Mothibi - 018 389 5053

smothibi@nwpg.gov.za

Technical Person : Ms Adrejet De Bruin – 018 389 5569

adebruin@nwpg.gov.za

8. BID REQUIREMENTS

- 8.1 Late bids will not be considered. Please note that bids are late if they are received at the address given in the bid document after the bid closing date and time.
- 8.2 Bids will be valid for a period of 90 days.
- 8.3 All the relevant forms attached to this bid document must be completed and signed in ink where applicable by a duly authorised official.

NB: - Failure to declare any connection with person/s employed by NW-DARD (SBD 4 paragraph 2.2); as well as any other interest in any other related enterprise whether bidding or not for this contract (SBD 4 paragraph 2.3) would imply misrepresentation of facts then lead to elimination of the bid.

9. MANDATORY DOCUMENTATION

The prospective bidders are required to provide the following documentation which will be used for **phase 1 of the evaluation on Mandatory Documentation:**

9.1 Standard Bidding Documents (Original, fully completed and signed where applicable)

9.2 Proof of registration on the **Central Supplier Database (CSD)**

9.3 SARS Tax Pin

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

Let's Join Forces. Work Together.

10. EVALUATION METHODOLOGY:

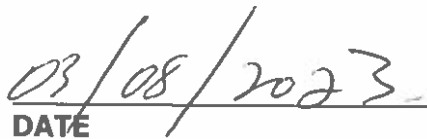
10.1 The Evaluation Processes will entail the following phases:

10.1.1 **Phase 1-** Evaluation of Mandatory Documentation as stated in 9 above, including but not limited to Section 10.5; Section 11.5 and Section 12 of this bid document.

10.1.2 **Phase 2-** Technical/ functional Requirements and bidders who obtain **60%** or more will be added to the list of preferred suppliers and will be engaged and when required basis.



MR T Z MOKHATLA



DATE

HEAD OF DEPARTMENT

TERMS OF REFERENCE

ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW, DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT FOR 36 MONTHS.

1. INTRODUCTION

- 1.1 Department of Agriculture and Rural Development in the North-West Province is a government institution, established in terms of the Constitution of the Republic of South Africa, (Act 108 of 1996).
- 1.2 The North-West Department of Agriculture and Rural Development (NW DARD) is a Provincial Department with certain key mandates, enshrined in section 27(b) of the Constitution and other Legislative prescripts.
- 1.3 The state must take reasonable legislative and other measures, in provisioning of sufficient food within its available resources to achieve the progressive realization of this right.
- 1.4 The Constitution further provides that all spheres of government and all organs of state must ensure mutual trust, good faith in public dealings, ensure public administration that is transparent as a mutual corporate citizen.
- 1.5 NW DARD key mandates incorporate but is not limited to:
 - 1.5.1 Integrated Food Security Strategy (2002)
 - 1.5.2 Land Distribution Policy for Agricultural Development
 - 1.5.3 Integrated and Sustainable Rural Development Programme
 - 1.5.4 Comprehensive Rural Development Strategy, 2009
 - 1.5.5 Provincial Growth and Development Strategy, 2004

2. OBJECTIVE

- 2.1 The purpose of appointing the panel of attorney's is to establish a database of expert firms of attorneys to provide legal services to the Department of Agriculture and Rural Development as and when required, for a period of 36 months in a diversity of legal aspects.

3. SCOPE OF WORK

- 3.1 The panel will be required to render legal services to the Department of Agriculture and Rural Development in the diversity of legal aspects.

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

4. SKILLS TRANSFER

- 4.1 The appointed firm of attorneys will be required to ensure transfer of skills, including but not limited to execution of in-house training of relevant officials of the Department.

5. SPECIAL CONDITIONS FOR THE PANEL

The following are the special conditions applicable to this request for proposals:

- 5.1. The respective firm of attorneys will be required to sign confidentiality and indemnity agreements for every instruction or appointment with the Department as the need arise.
- 5.2. The Department reserves the right to interview the firm of attorneys and review their suitability for the assignment on specific work requirements that requires a complexity of skill, experience, and competency.
- 5.3. The department does not provide any guarantees, or warrant any work during the term of this bid (36 months) as the sole intention is only to establish a panel or database for legal firms as suppliers on a need basis and the general terms and conditions of the bid documents does not constitute a valid Service Level Agreement with the department, as it intend is only to form part of the bid requirements and procedures of the Supply Chain Procurement regulations.
- 5.4. The successful panel or firm of expert admitted attorneys, may be allocated work as and when required, and as per the type of assignment required or as such need arise.
- 5.5. The appointment or contract awarded to any of the successful firm of attorneys by the Department, shall not be exclusive as it does not constitute a binding guaranteed assignment. The Department retains the full rights to itself and may elect to appoint the state attorney or to perform any of the legal work or interventions necessary that the Department can itself execute.
- 5.6. All copyrights and intellectual property rights that may result as consequences of the work to be performed, will become the property of the Department.
- 5.7. Immediately after completion of an assignment, the relevant firm of attorneys shall hand over all documents and information in any format, including copies thereof, that it received from the Department or that it had access to during the assignment.
- 5.8. The firm of attorneys must declare any form of conflict of interest it has in an instruction upfront, in pursued of the appointed instruction, if it may prejudice the Department.
- 5.9. In the event any form of conflict of interest is not declared, the Department reserve the right to cancel any instruction, assignment, or contractual obligation with the particular firm.

- 5.10. The panel of expert admitted firm of attorneys assigned, shall appoint the necessary senior counsel, cost consultants or any alternative expert required for the relevant instruction, as per need and regulations prescribed for the registered profession.
- 5.11. The profile of expert attorneys, as per the type of diversity and complexity of the legal instruction required to be performed, shall be indicated by the firm as the selected team profile, as per RFQ when quotations are submitted.
- 5.12. The Department does not bind itself to accept the lowest or any bid, either wholly or in part, or give any reason for such action.
- 5.13. The successful firm of attorneys must ensure to maintain their license regulations as required.
- 5.14. The legal authority of Attorney Firms must sign the bid application documents (SBD 7.2) and enter into contractual obligations with the Department.
- 5.15. Senior Attorneys in the firm will be required to oversee the quality of work upon an assignment.
- 5.16. The formal official language of correspondence is English, for all legal matters, instructions, court documents etc., for the duration of the 36-month period, any interpretation and translation cost, will be for the requesting firm's own cost if such is required.

6. RELATIONSHIPS

- 6.1 The relevant firm of attorney's shall keep adequate record of all dealings with the Department for recording including but not limited to invoicing in sequence of activities.
- 6.2 The successful firm of attorneys shall report directly to the Head of Department, or any person delegated by the Accounting Officer being the Departmental legal team, in respect of any engagements and for the receipt and handling of all forms of reports and administration pertaining to any instruction.
- 6.3 The successful firm of attorneys shall provide, written reports or memorandums that clearly and fully sets out the latest progress and status of each matter of an assigned instruction, within the timelines given by the Department.

7. INVITATION REQUIREMENT

- 7.1. Each Bid application must be competed to reflect the specialised field of law by the attorney firm, indicating the expertise in one or more than one field of the law, to demonstrate experience, skills, expertise, and competency in the specified areas marked by the bidder.

8. FURTHER PARTICULARS ON THE SCOPE OF WORK

The successful panel of attorneys, will be required to render legal services in addition to the scope of work explained above to the Department of Agriculture and Rural Development in the following specified areas:

- 8.1 To provide legal opinions / legal advice on matters that may have legal implications for the Department.
- 8.2 To represent the Department in litigation proceedings.
- 8.3 To represent the Department in disciplinary proceedings and Labour matters.
- 8.4 To vet various contracts and agreements that the Department enters, with other stakeholders.
- 8.5 To draft contractual obligations with stakeholders and or collaboration agreements.
- 8.6 Provision of debt collection services.
- 8.7 Assist with arbitration and mediation proceedings or alternative dispute resolutions.
- 8.8 Assist in the execution of Eviction orders, Writ of Execution or Court Interdicts.
- 8.9 Assist in the auction and disposal of Departmental assets.
- 8.10 Legislative interpretation
- 8.11 Any other Legal or litigation services as may be instructed by the Department.
- 8.12 Training and Skills Transfer should lay a foundation for a uniform approach in dealing with legal corporate governance and its legal oversight role of the executive, over its public entities and isolate areas that require attention for proper legal accountability and or legal improvement in the Department.
- 8.13 The Department will use opinions, advice, recommendations, and guidance from the firm of Attorneys as experts to inform any potential legal policy, current legal position or any legal guidance or guidelines for decision making procedures in the Department.

9. PRICING SCHEDULE AS PER RFQ (REQUEST FOR QUOTATIONS)

- 9.1. Prices will be assessed based on instruction as per need and per request (RFQ).
- 9.2. Services as and when required will be as per RFQ basis.
- 9.3. Prices quoted must be in South African Rand Value currency.
- 9.4. All prices must include value added tax.
- 9.5. Evaluation of the prices will be executed during the RFQ proceedings.

- 9.6. The Department reserve the right to compensate only actual cost for disbursement expenses.
- 9.7. During the RFQ process, Attorney Firms will be required to consider the legal instructions before rendering price quotations as follows:
 - 9.7.1. The diversity, technicality, competency, and complexity of skill that is required to execute the legal instruction.
 - 9.7.2. The selected team profile required to render the service as per the legal instruction.
- 9.8. During the RFQ process, it is the right of the Department to use its discretion to invite Attorney Firms as per its area of specialization and the scope of work of the legal instruction that is required.

10. SPECIFIC CONDITION OF THE BID

- 10.1. The bid is awarded on an "as and when needed basis".
- 10.2. The appointment of a particular practitioner to attend to specific instructions will be confirmed by an instruction letter from the Accounting Officer and the legal team.
- 10.3. No work will commence by any bidder without a formal quotation, award letter and an instruction letter of the Accounting Officer as well as service level agreement formally entered between the Department and the Attorney Firm selected.
- 10.4. Bidders must note that the appointment of advocates at senior counsel requirement, cost consultants and other service providers required on the type of instruction, must only be as per the required need, based on the extend of difficulty of the litigious matter as and when assigned.
- 10.5. Screening of all Attorney Firms will be executed in terms of the Provincial Circular Ref No 2/14/1, issued on 26 July 2022, which require compliance with the National Strategic Intelligence Act (Act 39 of 1994) as amended by (Act 67 of 2002), the State Security Agency (SSA) is mandated to conduct security clearances of Departmental service providers, this is required as the panel will be provided access to Departmental premises (Control of Access to Public Premises and Vehicle Act) (Act 53 of 1985), including but not limited to company access to designated areas as National Key Points, National Key Point Act, 1980 (Act 102 of 1980).
- 10.6. **If an Attorney Firm does not meet the necessary security clearance in terms of Section 10.5 above, it would be a ground for immediate disqualification.**

11. AWARD OF METHODOLOGY:

- 11.1. The Department will assess a particular matter and determine, in its own discretion, in which criteria the litigious matter falls.
- 11.2. The panel member will be afforded a period specified in the SLA or instruction based on urgency and relevance for the firm to accept or decline.
- 11.3. In respect of very urgent legal matters the firm will be required to respond on a shorter time-period to cater for the nature of its urgency.
- 11.4. The Department expressly reserves the right to reduce response times where the circumstances of the matter warrant such a reduction.
- 11.5. The Department can also use discretion in the appointment of a particular firm were the previous instruction provided, were not properly executed, or being still executed, and the next instruction may hamper the finalization or quality of the work assigned or in the event of the firm not having the necessary expertise or relevant year of required experience, poor performance, a breach of the contractual agreement, and or non-adherence to any conditions or requirements of this bid.

12. BID EVALUATION CRITERIA

- 12.1. The Bid evaluation process consists of several stages that are applicable according to the nature of the bid specified below:

STAGE	DESCRIPTION	APPLICABLE FOR THIS BID
Stage 1	Administrative pre-qualification verification [Section 13]	YES
Stage 2 A	Administrative pre-qualification evaluation [Section 14]	YES
Stage 2 B	Administrative pre-qualification evaluation [Section 15]	YES
Stage 3	Administrative pre-qualification evaluation Bid Specific Documents [Section 16]	YES
Stage 4	Technical mandatory requirements evaluation [Section 17]	YES
Stage 5	Bid functionality evaluation [Section 18]	YES
Stage 6	Special Condition of the Bid evaluation [Section 10.5] and [Section 11.5] and otherwise indicated.	YES
Stage 7	Price will be evaluated during RFQ [Section 8]	NO

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

12.2. **The bidder must qualify for each stage of the evaluation process to proceed to the next stage of evaluation as outlined in Section 12 above.**

13. ADMINISTRATIVE PRE-QUALIFICATION VERIFICATION [STAGE 1]

13.1. The Bidder **must comply with ALL** the Bid Pre-Qualification requirements for the bid to be accepted for evaluation.

13.2. If the Bidder failed to comply with any of the administrative pre-qualification requirements, or if the Department is unable to verify whether the pre-qualification requirements are met, then the Department reserve the right to:

13.2.1. Reject the bid and not evaluate it.

14. ADMINISTRATIVE PRE-QUALIFICATION EVALUATION PART 1 [STAGE 2 A]

14.1. **Submission of the bid response:** the bidder has submitted a bid response documentation pack –

14.1.1. That was delivered at the correct physical or postal address.

14.1.2. Within the stipulated date and time as specified in the “Invitation to Bid” cover page; and

14.1.3. In the correct format as an original document properly certified by a commissioner of oath.

14.1.4. All certified documents by a commissioner of oath must not be older than six (6) months.

14.1.5. Each page of the bid document signed and initialled by the Attorney Firm as required.

14.1.6. All Bid specification documents (SBD) and alternative requirements must be completed and submitted as a comprehensive package.

14.1.7. **Registered Supplier.** The bidder is, in terms of the National Treasury Instruction Note 3 of 2016/2017, registered as a Supplier on the National Treasury Central Supplier Database (CSD).

15. ADMINISTRATIVE PRE-QUALIFICATION EVALUATION PART 2 [STAGE 2 B]

15.1. The Bidder must provide proof of office premises as follows:

15.1.1. Proof of ownership (Title Deed) where the Attorney Firm is conducting its business.

15.1.2. Proof of leased premises (Lease Agreement) where the Attorney Firm is conducting its business.

(The Bidder must have furniture, equipment (ICT equipment, Telephone, Frontline personnel) during operating working hours).

16. ADMINISTRATIVE PRE-QUALIFICATION EVALUATION BID SPECIFIC DOCUMENTS [STAGE 3]

16.1. The Bidder must provide proof of the following certified documents as follows:

16.1.1. A valid Attorney Fidelity Fund Certificate.

16.1.2. A valid Certificate of Good Standing from the Legal Practice Council (LPC).

16.1.3. A valid Certificate of registration with the Legal Practice Counsel (Act 28 of 2014).

16.1.4. A valid registration Certificate to Practice as a Legal Firm / Valid Business Registration as an Attorney Firm

16.1.5. A SARS Tax pin for the Legal Firm.

16.1.6. A valid admission certificate as practicing attorneys for the Legal Firm.

16.1.7. Provision of three months bank statements to proof sound financial standing.

16.1.8. Proof or certified confirmation that the firm is not under liquidation, sequestration, administration of any sought, or investigated for professional conduct.

16.2. Failure to submit any of these bid specific documents as per section 16 of the bid, will lead to immediate disqualification.

17. TECHNICAL MANDATORY REQUIREMENT EVALUATION [STAGE 4]

17.1. Each bid application must be completed to reflect the specialist fields of law by the Attorney Firm.

17.2. Bidders are expected to indicate the area of expertise, in at least a minimum of five areas of the specialisation fields of law, in demonstrating their experience, skills, competency and years of experience in the diversity of the law.

17.3. The bidder **must comply with ALL** the requirements as per section 10.5; section 11.5; section 12 to section 17 of the bid, to continue to the next stage of the bid functionality process, failing thereof, will be regarded as a "NON-RESPONSIVE" bid and immediate disqualification.

17.4. The bidder must mark the field of its Firms specialization below:

NO	AREA OF SPECIALISATION	MARK BY THE BIDDER	
1	Contract Law	YES	NO
2	Litigation	YES	NO
3	Legal Opinions / Legal Advice	YES	NO
4	Administrative Justice	YES	NO
5	Labour Law	YES	NO
6	Arbitration and alternative resolutions	YES	NO

7	Debt Collection	YES	NO
----------	-----------------	-----	----

17.5 In order to establish the availability of the Attorney Firm, the criteria below will assess the size or capacity of the Attorney Firm by submission of proof on all employees on the permanent payroll of the firm, example outlined in the table below as more or less.

17.6 In order to establish the quality of the Attorney Firm, the criteria below will assess the list of Directors / Senior Associates / Partners or Lead Attorneys Qualifications and Curriculum Vitae, example outlined in the table below.

17.7 The bidder must provide Certified ID Copies of the listed Directors / Senior Associates / Partners or Lead Attorney's of the Firm, example in the table below.

No	Criteria	Evidence required	Profile reference
1	The bidder must specify the general size of the law firm on permanent payroll.	1. List the total Firm size of personnel and capacity of the Law firm. [NB: Payroll]	Attached proof of evidence with reference to this bid application 17. 5
		MICRO 0 10	
		SMALL 11 15	
		MEDIUM 51 250	
		LARGE 250 + More	
2	The bidder must list the senior personnel of the law firm.	2.1 (a)List of names, email addresses and contact details of the Directors / Senior Associates / Partners / Lead Attorneys of the Law firm	Attached proof of evidence with reference to this bid application 17. 6 2(a)
		2.2 (b)The Directors / Senior Associates / Partners / Lead Attorneys of the Law firm must at least poses one or more of the following Qualifications:	And 17.6 2(b)
		Examples of qualifications: - • Baccalaureus Procuratoris – BProc Degree or Equivalent Degree • Baccalaureus Legum – LLB Degree • Magister Legum – LLM Degree • Doctor Legum – LLD Degree • Other qualifications etc.	And 17.6.2(c)
3	Bidder Certification / affiliation requirements	2. 3 (c) Curriculum vitae's of each indicated above 2(b)	
		3. Certified ID Documents of all Directors / Senior Associates / Partners / Lead Attorneys of the Law Firm	Attached proof of evidence with reference to this bid

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

17.8 Bidders who are complying up until this stage of the bid will continue to the Bid Functionality Stage, failing which will render the bid non-responsive or non-compliant as an immediate ground of disqualification.

18. BID FUNCTIONALITY [STAGE 5]

18.1. This is the meaning of the ability of firms of attorneys providing, good quality and satisfactory legal services specified in the relevant bid documents, or alternative documents such as an instruction etc.

18.2. Bidders must achieve a minimum qualifying score of 60% on functionality of the bid.

18.3. All bids that fail to achieve the minimum score shall be deemed as non-responsive.

No	Criteria	Maximum score
1	1.1. Firms Past experience	30
	1. Firms are to submit a list or description of legal matters / instructions attended to in general on behalf of clients for the last 5 years in the application of the specialised diversity of the law. • 5 Certified appointment letters of legal matters from clients = 15 points; • 5 Certified letters of work completed from the client = 15 points; • 3 to 4 Certified appointment letters of legal matters from clients = 10 points; • 3 to 4 Certified letters of work completed from the client = 10 points; • Less than 3 Certified appointment letters of legal matter from clients = 5 Points; • Less than 3 Certified letters of work completed from the client = 5 points or • Non - Submission = 0 points. NB: Bidders must submit letters from clients' appointments and a certification by the client of work completed [proof of certified letters]	
2	2.1. Legal Experience	30
	All bidders must indicate the years of experience practicing as a registered law firm, by providing active consecutive registration as a practicing Law Firm. • 5 Years and more in business = 30 points; • 3 to 4 years in business = 20 points; • Less than 3 years in business = 10 Points; or • Non - Submission = 0 points.	

	NB: Proof of a registered business as a law firm																																	
3	3.1 Public Sector Experience [For or Against an "Organ of State"]	30																																
	All bidders must indicate the years of Legal experience within the Public Sector. 1. Bidders must indicate the years applicable "for an organ of state." 2. Bidders must indicate the years applicable "against an organ of state." The Bidders must provide proof of the case number and the parties involved as outlined above. • 10 and more cases = 30 points; • 5 to 9 cases = 20 points; • Less than 5 cases = 10 Points; or • Non - Submission = 0 points. NB: Proof of case numbers for and against an organ of state and the parties involved																																	
4	4.1 Methodology on the Area of Expertise	10																																
	The firm should demonstrate Understanding of the regulatory framework applicable to the related area(s) of specialisation and experience of providing legal services to organs of state or other entities / clients in the private sector. All Bidders must at least comply with a minimum of 5 specialisation areas outlined below. In the event a Bidder does not have the minimum of experience in 5 of these specialisation areas outlined below, it will be a ground for disqualification. The proposal should be aligned to the scope of work provided in the bid. • Submission of Methodology = 10 points; or • Non-submission of methodology = 0 points. <table><tr><th>NO</th><th>Specialisation Field</th><th colspan="2">CRITERIA</th></tr><tr><td>1</td><td>Litigation</td><td>YES</td><td>NO</td></tr><tr><td>2</td><td>Contract law</td><td>YES</td><td>NO</td></tr><tr><td>3</td><td>Legal opinions / Advice</td><td>YES</td><td>NO</td></tr><tr><td>4</td><td>Administrative Justice</td><td>YES</td><td>NO</td></tr><tr><td>5</td><td>Labour Law</td><td>YES</td><td>NO</td></tr><tr><td>6</td><td>Arbitration or alternative dispute resolution</td><td>YES</td><td>NO</td></tr><tr><td>7</td><td>Debt collection</td><td>YES</td><td>NO</td></tr></table>	NO	Specialisation Field	CRITERIA		1	Litigation	YES	NO	2	Contract law	YES	NO	3	Legal opinions / Advice	YES	NO	4	Administrative Justice	YES	NO	5	Labour Law	YES	NO	6	Arbitration or alternative dispute resolution	YES	NO	7	Debt collection	YES	NO	
NO	Specialisation Field	CRITERIA																																
1	Litigation	YES	NO																															
2	Contract law	YES	NO																															
3	Legal opinions / Advice	YES	NO																															
4	Administrative Justice	YES	NO																															
5	Labour Law	YES	NO																															
6	Arbitration or alternative dispute resolution	YES	NO																															
7	Debt collection	YES	NO																															

	NB: A detailed proposal should be provided reflecting the work executed in the areas outlined in the table above	
Maximum score for functionality (Total Score)		100

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF (DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT)					
BID NUMBER:	13 DARD 04/2023	CLOSING DATE:	12 SEPTEMBER 2023	CLOSING TIME:	11H00
DESCRIPTION	ESTABLISHMENT OF A LIST OF ATTORNEYS' FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT FOR 36 MONTHS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Department of Agriculture and Rural Development					
Agricentre Building					
Corner Dr. James Moroka and Stadium Road Mmabatho					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Mr L Mothibi		CONTACT PERSON	Ms Adrejet De Bruin	
TELEPHONE NUMBER	018 389 5053		TELEPHONE NUMBER	018 389 5569	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	smothibi@nwpa.gov.za		E-MAIL ADDRESS	Adebruin@nwpa.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:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	TICK APPLICABLE BOX] ☐ Yes ☐ 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?	☐ Yes ☐ No (IF YES ENCLOSE PROOF)		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No (IF YES, ANSWER PART B:3]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?			☐ YES ☐ NO		
DOES THE ENTITY HAVE A BRANCH IN THE RSA?			☐ YES ☐ NO		
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?			☐ YES ☐ 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.					

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

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 ONLINE 1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION. 1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION. 1.5. 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 LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.								
2. TAX COMPLIANCE REQUIREMENTS								
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS. 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS. 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA. 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID. 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / 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.								
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS								
<table style="width: 100%; border: none;"> <tr> <td style="width: 70%;">3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?</td> <td style="width: 30%; text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> <tr> <td>3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?</td> <td style="text-align: right;">☐ YES ☐ NO</td> </tr> </table> IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.	3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ YES ☐ NO	3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO	3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO	3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO
3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	☐ YES ☐ NO							
3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?	☐ YES ☐ NO							
3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	☐ YES ☐ NO							
3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?	☐ YES ☐ NO							

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

NB: FAILURE TO PROVIDE 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:.....

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of 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

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.

2.2 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:
.....
.....

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, (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.

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.

- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....

Signature

Date

.....

.....

Position

Name of bidder

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 **90/10** preference point system.
- b) The applicable preference point system for this tender is the **80/20** preference point system.
- c) Either the **90/10 or 80/20 preference point system** will be applicable in this tender. The lowest/highest acceptable tender will be used to determine the accurate system once tenders are received.

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

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

"Let's grow North West together"

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:

80/20 or 90/10

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

Where

P_s = Points scored for price of tender under consideration

P_t = Price of tender under consideration

P_{min} = Price of lowest acceptable tender

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

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

“Let's grow North West together”

3.2.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc} 80/20 & \text{or} & 90/10 \\ P_s = 80 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right) & \text{or} & P_s = 90 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right) \end{array}$$

Where

P_s = Points scored for price of tender under consideration

P_t = Price of tender under consideration

P_{max} = 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))
Black People	-	5	-	
Women	-	5	-	
Youth	-	5	-	
People with disability (PWD)	-	5	-	

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]

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

“Let’s grow North West together”

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:

.....

.....

.....

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT:

GENERAL CONDITIONS OF CONTRACT

July 2010

13 DARD 04/2023: ESTABLISHMENT OF A LIST OF ATTORNEYS FIRMS FOR PROFESSIONAL LEGAL SERVICES IN DIVERSE FIELDS OF LAW FOR A PERIOD OF 36 MONTHS.

"Let's grow North West together"

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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

GENERAL CONDITIONS OF CONTRACT

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of 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:

7.3.1 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

7.3.2 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:

13.1.1 performance or supervision of on-site assembly and/or commissioning of the supplied goods;

13.1.2 furnishing of tools required for assembly and/or maintenance of the supplied goods;

13.1.3 furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

13.1.4 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

13.1.5 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:

14.1.1 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

14.1.2 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:
- 23.1.1 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;
- 23.1.1 if the Supplier fails to perform any other obligation(s) under the contract; or
- 23.1.1 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.

25. Force Majeure	25.1	Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
	25.2	If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.
26. Termination for insolvency	26.1	The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
27. Settlement of Disputes	27.1	If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
	27.2	If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
	27.3	Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
	27.4	Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
	27.5	Notwithstanding any reference to mediation and/or court proceedings herein,
	27.5.1	the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
	27.5.2	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.
	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 (NIP) Programme	33.1	The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
34 Prohibition of Restrictive practices	34.1	In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.