

**BID No: RSR/RFP/OCOO-SM/DSRM/22/10/07**

**REQUEST FOR PROPOSALS:  
APPOINTMENT OF A SERVICE PROVIDER TO DEVELOP A SAFETY RISK MODEL  
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: <a href="mailto:goitseonek@rsr.org.za">goitseonek@rsr.org.za</a>

Full Name of Bidding/Tendering Entity: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Tel Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Total Bid Amount (incl. VAT): R\_\_\_\_\_

**Advert Date:** 17 October 2022

**Closing Date and Time:** 11 November 2022 @ 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, 2001 (PPR), 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.

<b>DESCRIPTION</b>	Appointment of a service provider to develop a safety risk model for the Railway Safety Regulator
<b>ADVERTISEMENT DATE</b>	17 October 2022
<b>TENDER DOCUMENTS</b>	Not for sale. Copies of the bid documents are obtainable from on the e-Tender portal of the National Treasury website, <a href="http://www.etenders.gov.za">www.etenders.gov.za</a>
<b>CLOSING DATE</b>	11 November 2022 at 12:00 PM
<b>VALIDITY PERIOD</b>	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 body 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.
<b>SUBMISSION OF PROPOSALS</b>	<p>Proposals must reach the offices of the RAILWAY SAFETY REGULATOR, located at Waterfall Point Building, Cnr Woodmead Drive and Waterfall Drive, Waterfall City before <b>...12:00 PM.....</b>.</p> <p>Tender document shall be submitted as one (01) original and three (03) copies as well as one (01) scanned copy (PDF) of the original completed in a Flash Drive with the proposal and forms required:</p> <p><b>a) REQUEST FOR PROPOSAL - RAILWAY SAFETY REGULATOR:</b></p> <p><b>b) APPOINTMENT OF A SERVICE PROVIDER TO DEVELOP A SAFETY RISK MODEL FOR THE RAILWAY SAFETY REGULATOR</b></p> <p>The tender box will only be available for the depositing of proposals between 08h00 and 16h30 on weekdays (excluding public holidays).</p> <p>Please note that this RFP closes punctually at 12:00 PM on 11 November 2022. No late submissions will be considered under any circumstances.</p>

	<p>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> <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 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 (with (PIN)	X	
Schedule 4	B-BBEE certificate / B-BBEE sworn affidavit	X	
Schedule 5	Testimonials/Reference letters	X	
Schedule 6	Methodology	X	
Schedule 7	Project Plan	X	
Schedule 8	CVs and qualifications of the team lead and Members	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- <b>incomplete bids may lead to elimination</b>)</i>		<b>Submitted:</b> <i>(tick box)</i>
<b>Returnable Document Name:</b>		
SBD 1		
SBD 3.3		
SBD 4		
SBD 6.1		
General Conditions of Contract and/or Special Conditions of Contract		

## 1. ABBREVIATIONS AND DEFINITIONS

ABBREVIATION	DESCRIPTION
ASoSR	Annual State of Safety Report
HE	Hazardous Events
NIMS	National Information Monitoring System
RSR	Railway Safety Regulator
SRM	Safety Risk Model

### Definitions:

B-BBEE	Broad-Based Black Economic Empowerment is an integration programme launched by the South African government to reconcile South Africans, advance economic transformation and enhance the economic participation of black people in the South African economy by address the inequalities of apartheid. It provides a legislative framework for the transformation of South Africa through the Broad Based Black Economic Empowerment Act, [No. 53 of 2003], as amended.
Safety Risk Model (SRM)	The SRM is a model consisting of a series of fault and event trees representing a set number of hazardous events which may collectively define the overall level of risk on the railway.
Hazard log	A Hazard Log is a record keeping tool applied to tracking all hazard analysis, risk assessment and risk reduction activities for the whole-of-life of a safety-related system.
NIMS	National Information and Monitoring System (NIMS) is an electronic system used to record information regarding safe railway operations within the Republic of South Africa as per National Railway Safety Regulator Act (Act 16 of 2002 as amended)

## **2. TERMS OF REFERENCE**

### **2.1. INTRODUCTION**

- 2.1.1 The Railway Safety Regulator (RSR) was established in terms of the National Railway Safety Regulator Act, Act 16 of 2002 (“the Act”) as amended, to establish a national regulatory framework for South Africa and to monitor and enforce safety compliance within the rail sector. The RSR is an agency of the Ministry of Transport and comprises a Board, Chief Executive Officer (appointed by the Minister), Executive management, and staff.
- 2.1.2 The primary legislative mandate of the RSR is to oversee and enforce safety performance by all railway operators in South Africa including those of neighbouring States whose rail operations enter South Africa. Notwithstanding the foregoing, operators are, in terms of the Act, primarily responsible and accountable for ensuring the safety of their railway operations.
- 2.1.3 The RSR has embarked on the strategic route to facilitate the development of the Safety Risk Model (SRM) for the South African railway industry. The SRM will provide an overall framework of safety risk against which opportunities for safety improvement could be evaluated. It is a model consisting of a series of fault and event trees representing a set number of hazardous events which may collectively define the overall level of risk on the railway. The SRM also provides a structured representation of the causes and consequences of potential occurrences arising from railway operations and maintenance

### **2.2. BACKGROUND**

#### **2.2.1 RSR DATA MANAGEMENT**

- 2.2.1.1 In terms of the National Railway Safety Regulator Act (Act 16 of 2002 as amended, the Act), the Regulator must establish a National Information and Monitoring System (NIMS) regarding safe railway operations within the Republic of South Africa. This provision is emphasised under Section 39 of the Act which states that “the Regulator must establish a national railway safety information and monitoring system” hereinafter referred to as “NIMS”. The information to be captured on the system may include the following:

- 2.2.1.1.1 a register of safety permit holders,
- 2.2.1.1.2 railway occurrences and incidents,
- 2.2.1.1.3 security matters,
- 2.2.1.1.4 occupational health and safety matters, and
- 2.2.1.1.5 any other matter the Board deems necessary.

2.2.1.2 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. The ASoSR contains information on the safety of railway workers, the public and the environment associated with railway operations within South Africa. The ASoSR is used as a risk information tool by the RSR, railway operators, the industry, stakeholders, and any other party interested in safety of South African railway operations.

2.2.1.3 The ASoSR provides an analysis of harm to persons (inclusive of the public, passengers, and workforce); this harm is expressed as fatalities and weighted injuries (FWIs). This equivalent measure is calculated using the following formula: [number of fatalities] + 0.1 x [number of injuries]. That is, 10 injuries are equivalent to 1 fatality regardless of the seriousness of the injury. The contributions across the occurrence and incident categories to harm are presented in order to provide an understanding of the initiating events or sources of reported harm levels.

## 2.2.2 DEVELOPMENT OF A RAILWAY HAZARD LOG

2.2.2.1 The preliminary phase in the development of a Railway Safety Risk Model (SRM) includes problem definition, data information collection and analysis, and finally hazard identification. These are listed in a Hazard Log as precursors to hazardous Events (HE). A Hazardous Event is an incident that has the potential to be the direct cause of safety harm. Estimates of frequency (likelihood or probability) and potential harm (severity of impact) of hazardous Events will be encoded into the model to derive a risk rating.

2.2.2.2 A Hazard Log is a record keeping tool applied to tracking all hazard analysis, risk assessment and risk reduction activities for life cycle of a safety-related system. It is the single source of record for all risk management activities. The

hazard log developed through this project will only include the risk rating prior to interventions. The effectiveness of the interventions will be determined once the safety risk model has been developed and implemented and improved data collection enables the detailed analysis of the precursors.

2.2.2.3 The Hazard Log is a structured process of capturing and referencing safety risk evaluations and other information relating to a railway system, it is to be coordinated and controlled whilst maintaining an auditable record of that information. It is the principal means of tracking the status of all identified hazards, decisions made, and actions undertaken to reduce the risk.

2.2.2.4 The RSR, with the support of Railway Industry representatives, recently developed a Railway Hazard Log. Using the fault tree analysis, the Hazard log identified 63 hazards. The Hazard Log has undergone a validation. The final step involving a “methodology handshake” between the Hazard Log service provider and the SRM service provider will be concluded after the appointment of the SRM developer.

2.2.2.5 The validated hazard log and related information may be accessed in a RSR information repository under the following URL:  
<https://www.rsr.org.za/knowledge-centre/#Hazard-Log>

### 2.2.3 DEVELOPMENT OF A RAILWAY SAFETY RISK MODEL (SRM)

2.2.3.1 The SRM is a model consisting of a series of fault and event trees representing a set number of hazardous events which may collectively define the overall level of risk on the railway. It also provides a structured representation of the causes and consequences of potential occurrences arising from railway operations and maintenance.

2.2.3.2 Therefore, the RSR embarked on a project to develop a quantitative risk assessment model for railway safety risk. Similar models have been developed and tested by the United Kingdom’s Rail Safety and Standards Board (RSSB) and the Australian Rail Industry Safety and Standards Board (RISSB). Other markets including EU and Middle East, are in the process of developing/implementing some form of SRM.

2.2.3.3 The SRM will provide an overall framework of safety risk against which opportunities for safety improvement could be evaluated.



2.2.3.4 The primary objectives of the SRM are to provide:

- 2.2.3.4.1 an understanding of the nature of the current risks on the railway.
- 2.2.3.4.2 risk information and risk profiles relating to the railway network.

2.2.3.5 The SRM is developed to assist and support operators to:

- 2.2.3.5.1 reduce risks on the railway network by identifying and controlling the hazards and the precursors to hazardous events which may occur;
- 2.2.3.5.2 provide estimates of the extent of the current risks on the railway network;
- 2.2.3.5.3 enable 'as low as reasonably practicable' (ALARP) assessments and cost benefit analyses to be carried out;
- 2.2.3.5.4 assist in identifying additional control measures which would reduce risk;
- 2.2.3.5.5 develop risk-based improvement planning;
- 2.2.3.5.6 understand key risk contributors and develop mitigation strategies; and
- 2.2.3.5.7 assist in identifying and prioritising issues for audit.

## **2.3. PURPOSE**

2.3.1 The purpose of this Terms of Reference (TOR) is to appoint a service provider to develop a Safety Risk Model (SRM) together with the South African railway industry, for full implementation not later than 31 March 2026. The RSR will engage the service provider principally for the following reasons:

- 2.3.1.1 To provide specialised services for the specified periods without any obligation of permanent employment; and
- 2.3.1.2 To benefit from superior knowledge and upgrading of a knowledge base while executing the assignment.

## **2.4. SCOPE OF WORK**

2.4.1 Support Services – The appointed service provider will provide the RSR with specialist advice and support services to:

- 2.4.1.1 define the system requirements for the SRM; review the current RSR systems and software architecture; and develop suitable system requirements for the SRM, including software, database and infrastructure requirements.



- 2.4.1.2 The appointed service provider will also be required to provide user acceptance and implementation support once the RSR is ready to implement the model.
- 2.4.1.3 Develop the user requirements.
- 2.4.1.4 Facilitate and support the establishment of an Industry Working Group (IWG) which will provide inputs into the development and implementation of a Safety Risk Model (SRM). The IWG will include a fair representation of the Railway Industry.
- 2.4.1.5 Lead at least two (02) formal engagement sessions per quarter (*Quarter is period of three calendar months*) during the duration of the project, with the IWG in order to develop a **Safety Risk Model** for the South African railway industry based on the developed Hazard Log.
- 2.4.1.6 These engagements will include workshops and meetings. They exclude individual consultations, meetings with any of the project committee members, RSR management, information sharing sessions, material collections and literature searches.
- 2.4.1.7 The engagement sessions will be coordinated from the RSR and should there be any need to travel, the RSR will cover all the expenses. Should there be a need, representatives based outside Gauteng Province may participate through virtual meetings and/or workshops.
- 2.4.2 Define Regulatory requirements to support the model implementation.
- 2.4.3 Define and develop an appropriate SRM Model for the South African Rail Industry.
- 2.4.4 Provide pre-implementation awareness training to thirty-five (35) representatives comprising of 20 RSR staff and 15 railway industry representatives on how different elements of the model (if any) are to be populated or interpreted.
- 2.4.5 Provide Eight (08) post-implementation Industry training sessions after completion of the Safety Risk Model (SRM) with the RSR and IWG.
- 2.4.6 Maintenance and Support in accordance with the Service Level Agreement (SLA) – provide services for a period of 24 months after the go-live date of the SRM platform.

## 2.5. PROJECT DELIVERABLES

2.5.1 The tasks listed in Table 1 will form part of the steps leading to the development of the SRM Model.

**Table 1 - Delivery Schedule**

No.	Deliverable	Targeted Completion Date
1.	Opening meeting and project scoping	05 December 2022
2.	User requirements definition	30 January 2023
3.	Regulatory requirements definition to support SRM Model Implementation	28 February 2023
4.	System requirements definition	31 May 2023
5.	Review the current RSR systems and software architecture and develop suitable system requirements, including software, database and infrastructure requirements.	31 July 2023
6.	Facilitate and support the establishment of an Industry Working Group	31 August 2023
7.	IWG engagement sessions – Lead at least two (02) formal engagement sessions per quarter (three calendar months) during the model development period.	02 October 2023
8.	Pre-Implementation training – Lead at least eight (08) formal engagement sessions prior to the go-live date – March 2024.	November to March 2024
9.	Completed SRM Modeling	31 March 2024
10.	First SRM platform launched	31 May 2024
11.	Post Implementation Training – eight (08) post-implementation Industry training after completion of the model	June 2024 to November 2025
12.	Updated SRM platform launched	31 January 2026
13.	Maintenance and Support from first SRM completed model stage – provide services for a period of 24 months after the go-live date of the SRM platform.	31 March 2026

## **2.6. QUALIFICATION AND EXPERTISE**

- 2.6.1 The Service Provider is required to have the expertise (inclusive of the skills, qualifications, and experience) in the development or a Safety Risk Model within the transport industry. The applicable skills should include, but not limited to:
- 2.6.1.1 Experience in developing and implementing a Safety Risk Model.
  - 2.6.1.2 Experience in use of Hazard Logs in developing Safety Risk Models
  - 2.6.1.3 Expertise in management of Injuries and Fatalities data.
  - 2.6.1.4 Track record of team facilitation and support in a diverse environment.
  - 2.6.1.5 Provide evidence of having executed similar projects related to development of a Safety Risk Modelling.
  - 2.6.1.6 Key personnel should possess an acceptable mix of qualifications and experience with specialisation in Safety Risk Modelling, Hazard Log Development, Risk Management, or any relevant field linked to the required skills above. NB: RSR reserve a right to verify International Qualifications
- 2.6.2 It is the expectation of this tender that the person(s) awarded the contract must have the capabilities to address all the requirements of the scope of work

## **2.7. PROPOSAL SUBMISSION**

- 2.7.1 The bidder must provide a detailed proposal as part of the tender, addressing and including at least the following:
- 2.7.1.1 Organisation profile
  - 2.7.1.2 A Joint Venture agreement signed by all parties in case of a Joint Venture / Consortium submission
  - 2.7.1.3 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
  - 2.7.1.4 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).

- 2.7.1.5 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate.
- 2.7.1.6 Valid tax compliance status report with PIN
- 2.7.1.7 Fully completed and signed Standard Bidding Documents (SBD)
- 2.7.1.8 Proven previous experience, including testimonials from previous contracts related to development of Safety Risk Model in a transport related field (within the past 20 years). At least two valid and traceable contact details, scope of the work and standard of service. **\*RSR reserves the right to contact the references for verification of the information provided.**
- 2.7.1.9 Demonstrable capacity to deliver on all the desired services that include response to the project scope and allocated resources.
- 2.7.1.10 A Project Management plan, covering management plans, customer support, customer service, etc
- 2.7.1.11 Tender document shall be submitted as one (01) original, three (03) copies of the original and one (01) scanned copy (PDF) of the original completed in a Flash Drive with all exhibits and forms required included in the proposal length
- 2.7.1.12 The service provider should provide pricing for the design of a complete SRM tool, and all Prices must be VAT Inclusive.

## **2.8. BID EVALUATION CRITERIA OF PROPOSALS**

- 2.8.1 The proposals/BIDS will be evaluated on a five (05) phase approach consisting of:
  - 2.8.1.1 **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.
    - 2.8.1.1.1 Fully completed and duly signed SBD forms
    - 2.8.1.1.2 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.

2.8.1.1.3 Valid tax compliant status report with PIN

#### **2.8.1.2 Phase 02: Mandatory Evaluation**

2.8.1.2.1 Bidders must submit the following mandatory documents:

2.8.1.2.1.1 The structured approach/methodology

2.8.1.2.1.2 The project plan

**2.8.1.2.2 Failure to comply and to submit the above documents will lead to immediate disqualification**

#### **2.8.1.3 Phase 03: Functionality Evaluation**

The evaluation of the functional requirements is as per section 2.9 below. Bidders must attain a minimum of 70 points and above to be considered for Phase 04.

#### **2.8.1.4 Phase 04: Evaluation of Presentations**

The evaluation where service providers are invited to present and must score 70 points and above; and

#### **2.8.1.5 Phase 05: Price and BEE Evaluation**

2.9.1.1.1 Service Providers who would have met minimum of 70 points or more will be evaluation further on Phase 5. The evaluation of price and equity evaluated on PPPFA. The preference point system prescribed in the PPPFA and the Preferential Procurement Regulations of 2017 will be applicable. The Preferential Procurement Policy Framework Act will be applied, and the 80/20 B-BBEE points system will be applicable.

2.9.1.1.2 To score points for preference (B-BBEE) bidders must submit a valid B-BBEE certificate or affidavit. A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate.

### **2.9. Functionality Criteria (Phase 03)**

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

PHASE 03 - Functionality Criteria  
Table 02

No:	Elements to be evaluated	Evaluation criteria	Scoring criteria	Max points
2.9.1	Company experience on relevant projects	Contactable SRM related references within the past 20 years. <b>*RSR reserves the right to contact the references to confirm the information</b>	<ul style="list-style-type: none"> <li>• 5 References = 10 points</li> <li>• 4 Reference = 8 points</li> <li>• 3 Reference = 6 points</li> <li>• 2 Reference = 4 points</li> <li>• 1 Reference = 2 points</li> <li>• 0 Reference = 0 points</li> </ul>	<b>10</b>
2.9.2	<p>Bidder's Technical Team Qualification &amp; Experience</p> <p>Enclosure:</p> <ol style="list-style-type: none"> <li>1. CVs (as per Appendix D: CV Template)</li> <li>2. Certificates of academic qualifications</li> </ol> <p><i>The CV and certificates of individuals will be used for evaluation of each of the key personnel for this section.</i></p>	<p>Project Leader – (Max 15 points)</p> <p>Qualifications - Post graduate qualification in Transport/Project/Risk Management or any other related field</p>	<ol style="list-style-type: none"> <li>1. Qualifications: <ol style="list-style-type: none"> <li>a) Post-graduate (NQF 8) = 10 points</li> <li>b) Bachelor's degree (NQF 7) = 07 points</li> <li>c) National Diploma (NQF 6) = 03 points</li> <li>d) No qualification = 0 points</li> </ol> </li> <li>2. Years of work experience in developing and implementing SRM in the Transport industry <ol style="list-style-type: none"> <li>a) 6 years one week or more = 5 points</li> <li>b) Above 3 years one week but below 6 years = 4 points</li> <li>c) Less than 3 years = 2 points</li> </ol> </li> </ol>	<b>30</b>
2.9.3	<p><b>Scoring:</b> Each key personnel will be scored individually on the full points of 10 and 25 respectively as detailed above</p> <p><b>NB:</b> Where a bidder is both a Project Leader and a Technical Expert, they will be scored for both categories. In such cases the bidder shall submit CVs covering both positions.</p>	<p>Technical Expert – (Max 15 points)</p> <p>Qualifications - Post graduate qualification preferably in Risk Management or any other relevant field [or its equivalent]</p>	<ol style="list-style-type: none"> <li>1. Qualifications: <ol style="list-style-type: none"> <li>a) Post-graduate (Incl. Post-Grad Diploma) (NQF 8) = 10 points</li> <li>b) Bachelor Degree (NQF 7) = 07 points</li> <li>c) National Diploma (NQF6) = 03 points</li> <li>d) No qualification = 0 points</li> </ol> </li> <li>2. Years of work experience in implementing Risk Modelling in Transport Industry <ol style="list-style-type: none"> <li>a) above 6 years one week = 5 points</li> <li>b) above 3 years one week but below 6 years = 04 points</li> <li>c) Less than 3 years = 2 points</li> </ol> </li> </ol>	



2.9.4	Methodology	Structured Approach/Methodology for SRM Model development (in line with sections 2.4, 2.7.1.8 and 2.7.1.9)	<ul style="list-style-type: none"> <li>• Excellently defined approach methodology = 40 points</li> <li>• Well defined approach methodology = 20 points</li> <li>• Moderately defined approach methodology = 10 points</li> <li>• Poor/No approach methodology = 0 points</li> </ul>	<b>40</b>
2.9.5	Project plan	Project Plan covering, a detailed breakdown of costs, management of Industry Work Groups, SRM research partnership with a local University, training of RSR and Operator staff, etc.	<ul style="list-style-type: none"> <li>• Excellently defined project plan= 20points</li> <li>• Well defined project plan = 10points</li> <li>• Moderately defined project plan = 5 points</li> <li>• Poor/No project plan = 0 points</li> </ul>	<b>20</b>
<b>Total</b>				<b>100</b>

2.9.6 Only bidders that score a minimum of 70 points of the total points at the functionality phase will proceed to Phase 4, where they will be required to conduct presentations

## 2.10. PHASE 04 – PRESENTATION PHASE

2.10.1 Bidders will be required to each present a comprehensive approach and methodology on how they will guide the RSR in the achievement of the activities outlined in the areas of scope, outlining their project plans, demonstration of capabilities to deliver the services, demonstrating the past relevant experience.

2.10.2 The allocated weighting for the Phase 4 evaluation criteria of the suitability of the presentations is set out in Table 3. **Error! Reference source not found.**

**Table 3: Presentation aspect evaluation criteria**

Criterion	Points
T3-1: Structured Approach/Methodology for SRM Model development	<b>50</b>
T3-2: Flight plan to deliver within the timeline and budget	<b>10</b>
T3-3: Mastery – skillset, experience, involvement in other projects similar in nature.	<b>40</b>
<b>TOTAL</b>	<b>100</b>

The weighting of the presentation aspect evaluation will be as per criteria set out in Table 4 below:



**Table 4: Allocated weightings for the presentation suitability evaluation**

Criterion	Weightings
Excellent: (100% covering activities in the areas of scope, project plans, capability to deliver the services, demonstrating the past relevant experience)	100
Good: (Covering 70- 95% of activities in the areas of scope, project plans, capability to deliver the services, demonstrating the past relevant experience)	75
Average: (Covering more than 60% of activities in the areas of scope, project plans, capability to deliver the services, demonstrating the past relevant experience)	50
Fair: (Covering more than 40% of activities in the areas of scope, project plans, capability to deliver the services, demonstrating the past relevant experience)	25
Poor: (Covering Less than 10% of activities in the areas of scope, project plans, capability to deliver the services, demonstrating the past relevant experience)	0

- 2.10.3 Bidders that score the minimum of 70 points of the total points will proceed to Phase 05: Price and B-BBEE of the evaluation.

## **2.11. PRICE AND BBBEE EVALUATION (Phase 05)**

- 2.11.1 Only bidders who score 70 points or more in Phase 04 above will be considered for the price and points evaluation. Bids will be evaluated in accordance with the pre-scripts of the Preferential Procurement Policy Framework Act (PPPFA) and its regulations which stipulate 80/20 Preference point system [(for acquisition of goods or services for a Rand value equal to or above R30 000 and up to R50 million) (all applicable taxes included)]
- 2.11.2 To score points for preference (BBBEE) bidders must submit a valid BBBEE certificate or affidavit. A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate.

## **2.12. THE FINANCIAL PROPOSAL**

The service providers are required to submit a detailed financial proposal costing the goods and services per deliverables as set out in the scope of work. The overall figure must be VAT inclusive.

## **2.13. SUBCONTRACTING**

- 2.13.1 A bidder awarded a contract may only enter into a subcontracting arrangement with the approval of the RSR.
- 2.13.2 A bidder awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

## **2.14. JOINT VENTURES, CONSORTIUMS AND TRUSTS**

- 2.14.1 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their valid B-BBEE status level certificate.
- 2.14.2 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 2.14.3 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.
- 2.14.4 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.

## **2.15. LEGAL IMPLICATIONS**

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

## **2.16. COMMUNICATION**

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.

## **2.17. LATE BIDS**

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.

## **2.18. PROHIBITION OF RESTRICTIVE PRACTICES**

2.18.1 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:

- 2.18.1.1 directly or indirectly fixing a purchase or selling price or any other trading condition;
- 2.18.1.2 dividing markets by allocating customers, suppliers, territories or specific types of goods or services; or
- 2.18.1.3 collusive bidding.

2.18.2 If a bidder(s) or contractor(s), in the judgment of the purchaser, has/have engaged in any of the restrictive practices referred to above, the purchaser may, without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered or terminate the contract in whole or in part and refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

## **2.19. FRONTING**

2.19.1 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.

2.19.2 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 / 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.

## **2.20. RSR'S RIGHTS**

2.20.1 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.

2.20.2 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.

2.20.3 The RSR further reserves the right to reject all proposals and seek new proposals when such is considered 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.

2.20.4 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  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE RAILWAY SAFETY REGULATOR</b>					
BID NUMBER:	RSR/RFP/OCOO-SM/DSRM/22/10/07	CLOSING DATE:	11 November 2022	CLOSING TIME:	12:00
DESCRIPTION	Appointment of a service provider to develop a Safety Risk Model for the Railway Safety Regulator				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
Railway Safety Regulator Head Office					
Waterfall Point Building					
Cnr Woodmead Drive and Waterfall Drive					
Waterfall City, 1685					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
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	<a href="mailto:goitseonek@rsr.org.za">goitseonek@rsr.org.za</a>		E-MAIL ADDRESS	<a href="mailto:kennym@rsr.org.za">kennym@rsr.org.za</a>	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
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
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
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 ]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)			<input type="checkbox"/> YES <input type="checkbox"/> NO		
DOES THE ENTITY HAVE A BRANCH IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO		

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? ☐ 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.**

## PART B TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION:</b>	
1.1.	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2.	<b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b>
1.3.	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4.	<b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6	WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7	NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:.....

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

DATE: .....



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

NAME OF BIDDER: .....

BID NO.: ... RSR/RFP/OCOO-SM/DSRM/22/10/07

CLOSING TIME 12:00

CLOSING DATE: 11 November 2022

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.	R.....	
3.	PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)		
4.	PERSON AND POSITION	HOURLY RATE	DAILY RATE
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
5.	PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT		
	-----	R-----	----- days
	-----	R-----	----- days
	-----	R-----	----- days
	-----	R-----	----- days
5.1	Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.		

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

\*\* "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance 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 interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**
- 2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

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

- 2.2.1 If so, furnish particulars:

---

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

.....  
.....

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

- 2.3.1 If so, furnish particulars:

.....  
.....

### 3 DECLARATION

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

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

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

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 2017**

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

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

### **1. GENERAL CONDITIONS**

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
  - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 The value of this bid is estimated not to exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 system shall be applicable.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
  - (b) B-BBEE Status Level of Contribution.
- 1.4 The maximum points for this bid are allocated as follows:

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

- 1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

### **2. DEFINITIONS**

- (a) “**B-BBEE**” means broad-based black economic empowerment as defined in

## RAIL SAFETY ON THE RIGHT TRACK

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

### 3. POINTS AWARDED FOR PRICE

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

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

**80/20** or **90/10**

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

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

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

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



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

## 5. BID DECLARATION

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

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

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

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

## 7. SUB-CONTRACTING

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

(*Tick applicable box*)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

- 7.1.1 If yes, indicate:

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

(*Tick applicable box*)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

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

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

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

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

8.2 VAT registration number:.....

8.3 Company ..... registration  
number:.....

**8.4 TYPE OF COMPANY/ FIRM**

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

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

**8.6 COMPANY CLASSIFICATION**

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

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

DATE: .....

ADDRESS .....

.....

.....

## 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

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](http://www.treasury.gov.za)

## **4. Standards**

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

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

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

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

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

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

## **6. Patent rights**

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

## **7. Performance Security**

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

## **8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

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

## **9. Packing**

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

## **10. Delivery and documents**

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

## **11. Insurance**

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

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

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

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

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

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

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

## **16. Payment**

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

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon 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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| <b>32. Taxes and Duties</b>                                  | <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>  |
| <b>33. National Industrial Participation (NIP) Programme</b> | <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>   |
| <b>34. Prohibition of Restrictive Practices</b>              | <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> |