

## PART A INVITATION TO BID

|                                                                                                                                                                       |                                                                                                                                                                  |                                |                                                                          |                                     |                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|--------------------------------------------------------------------------|-------------------------------------|--------------------------------------------------------------------------------------------|
| <b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>                                                                      |                                                                                                                                                                  |                                |                                                                          |                                     |                                                                                            |
| BID NUMBER:                                                                                                                                                           | DPSA005/2022                                                                                                                                                     | CLOSING DATE: 18 NOVEMBER 2022 |                                                                          | CLOSING TIME: 11:00                 |                                                                                            |
| DESCRIPTION                                                                                                                                                           | APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT BUSINESS PROCESS MAPPING OF COMPLIANCE MONITORING PROCESSES OF THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION. |                                |                                                                          |                                     |                                                                                            |
| <b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>                                                                            |                                                                                                                                                                  |                                |                                                                          |                                     |                                                                                            |
| Batho Pele House,                                                                                                                                                     |                                                                                                                                                                  |                                |                                                                          |                                     |                                                                                            |
| 546 Edmond Street,                                                                                                                                                    |                                                                                                                                                                  |                                |                                                                          |                                     |                                                                                            |
| (C/O Hamilton Street),                                                                                                                                                |                                                                                                                                                                  |                                |                                                                          |                                     |                                                                                            |
| Arcadia                                                                                                                                                               |                                                                                                                                                                  |                                |                                                                          |                                     |                                                                                            |
| <b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>                                                                                                                 |                                                                                                                                                                  |                                | <b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>                           |                                     |                                                                                            |
| CONTACT PERSON                                                                                                                                                        | Lorraine Masenya / Mmapula Kotsokoane                                                                                                                            |                                | CONTACT PERSON                                                           | Mamotladi Matloga / Johannah Modiga |                                                                                            |
| TELEPHONE NUMBER                                                                                                                                                      | 012 336 1126/1389                                                                                                                                                |                                | TELEPHONE NUMBER                                                         | 012 336 1626/1125                   |                                                                                            |
| FACSIMILE NUMBER                                                                                                                                                      | N/A                                                                                                                                                              |                                | FACSIMILE NUMBER                                                         | N/A                                 |                                                                                            |
| E-MAIL ADDRESS                                                                                                                                                        |                                                                                                                                                                  |                                | E-MAIL ADDRESS                                                           | mamotladim@dpsa.gov.za              |                                                                                            |
| <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]<br><br><input type="checkbox"/> Yes <input type="checkbox"/> No                                                                             |                                | B-BBEE STATUS LEVEL SWORN AFFIDAVIT                                      |                                     | [TICK APPLICABLE BOX]<br><br><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<br><br>[IF YES ENCLOSE PROOF]                                                                           |                                | ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED? |                                     | <input type="checkbox"/> Yes <input type="checkbox"/> No<br><br>[IF YES, ANSWER PART B:3 ] |
| <b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>                                                                                                                     |                                                                                                                                                                  |                                |                                                                          |                                     |                                                                                            |

## PART B

## TERMS AND CONDITIONS FOR BIDDING

|                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. BID SUBMISSION:</b>                                                                                                                                                                                                                      |
| 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.                                                                                                                   |
| 1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b>                                                                                                   |
| 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 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 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.: DPSA005/2022

CLOSING TIME 11:00 ..... CLOSING DATE... 18/11/2022

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

**DESCRIPTION: APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT BUSINESS PROCESS MAPPING OF COMPLIANCE MONITORING PROCESSES OF THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION.**

NO ..... 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..... |

Name of Bidder: .....

\*\* "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance 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

---

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

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

2.2.1 If so, furnish particulars:

.....  
 .....

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

2.3.1 If so, furnish particulars:

.....  
 .....

### **3 DECLARATION**

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

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

---

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

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

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

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

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

|           |                |
|-----------|----------------|
| .....     | .....          |
| Signature | Date           |
| .....     | .....          |
| Position  | Name of bidder |

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 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 000 000.00 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000.00 (all applicable taxes included).

1.2

a) The value of this bid is estimated to not exceed R50 000 000.00 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable;

1.3 Points for this bid shall be awarded for:

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

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

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

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

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

## 2. DEFINITIONS

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

## 3. POINTS AWARDED FOR PRICE

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

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

**80/20**

**or**

**90/10**

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

Where

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

$P_t$  = Price of bid under consideration

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

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

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

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

## 5. BID DECLARATION

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

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

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

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

## 7. SUB-CONTRACTING

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

(*Tick applicable box*)

|     |  |    |  |
|-----|--|----|--|
| YES |  | NO |  |
|-----|--|----|--|

7.1.1 If yes, indicate:

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

(*Tick applicable box*)

|     |  |    |  |
|-----|--|----|--|
| YES |  | NO |  |
|-----|--|----|--|

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

| Designated Group: An EME or QSE which is at last 51% owned by:    | EME<br>√ | QSE<br>√ |
|-------------------------------------------------------------------|----------|----------|
| 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 .....

.....

.....



the dpsa

Department:  
Public Service and Administration  
REPUBLIC OF SOUTH AFRICA

# **Terms of Reference for the appointment of a Service Provider to conduct Business Process Mapping of compliance monitoring processes of the Department of Public Service and Administration**



the dpsa

Department:  
Public Service and Administration  
REPUBLIC OF SOUTH AFRICA

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## 1. INTRODUCTION AND BACKGROUND

The Minister for the Public Service and Administration (MPSA) is responsible for the establishment of norms and standards as per section 3 of the Public Service Act, 103 of 1994 as amended, and may prescribe minimum norms and standards as per the section 16 of the Public Administration Management Act, 2014. The Public Service Act, the Public Service Regulations, 2016, Determinations and Directives issued under the Public Service Act and the Public Administration Management Act and its Regulations provide a basis for a number of these norms and standards. However, non-compliance with these norms and standards has been identified as one of the contributing factors to service delivery deficiencies and failures.

The responsibilities of the Office of Standards and Compliance (OSC) are to foster a culture of compliance with public administration minimum norms and standards within the three spheres of government, to advise the MPSA on the enforcement thereof and to develop and implement an early warning system that would predict, detect and report on non-compliance; and assist institutions to comply.

The methodology that the OSC employs to monitor compliance includes analysis of the compliance data submitted to the Department of Public Service and Administration (DPSA) by departments, periodical reports compiled from transversal administrative data, as well as management reports issued by the Auditor-General South Africa (AGSA) as part of periodic monitoring of compliance against prescripts. The OSC also analyses reports by other oversight institutions such as the Public Service Commission, which cover human resources compliance data, amongst others. The aim is to uncover and help address the root causes of non-compliance in an effort to improve the state of compliance within the public service and ultimately, the public administration.

The AGSA audits performance, financial management as well as compliance with legislation by government institutions. Previously, the AGSA had limited powers to address non-compliance. Amendments to the Public Audit Act, 25 of 2004 confers the AGSA extended powers to ensure compliance by following up on audit recommendations



and remedial action.

The DPSA currently uses a fragmented approach to collect data. This results in data quality issues as well as a lack of integration of the different data sets. This initiative seeks to address these challenges for the different DPSA policy units and the OSC.

In response to the need to improve existing mechanisms, the DPSA requires an Automated Compliance Monitoring and Early Warning System to ensure forecasting and tracking of compliance to public administration norms and standards, implementation of intervention plans and the issuing of early warning alerts for areas deemed critical.

As the initial phase in the automation process, the DPSA needs to clearly outline and map its business processes, and properly define the functions of the various departmental units and how they interact. An “as is” analysis and proper mapping of the business processes will assist in the optimal design of an Automated Compliance Monitoring and Early Warning System.

## **2. PROBLEM STATEMENT**

The DPSA administers Acts of Parliament and issues norms and standards made through Regulations, Determinations and Directives for the Public Administration to comply with and report as prescribed. Currently the implementation and compliance to these norms and standards is monitored using fragmented approaches and methods ranging from electronic systems, e-mails, letters and MS Excel spreadsheets. This approach is cumbersome and is prone to human errors, duplications, omissions and delays in addressing the critical issues – especially since there is currently no system to provide early warning alerts where non-compliance risks are detected.

## **3. THE THEORY OF CHANGE UNDERLYING COMPLIANCE MONITORING**

Compliance to the Public Administration norms and standards is key to good performance within government. Non-compliance with legislative prescripts generally leads to weaker organisational structures, which in turn lead to increased corruption and poor



accountability.

Not only does non-compliance compromise service delivery due to misappropriation of public funds and lack of accountability, but it compromises organisational performance and service delivery. Hence, a strong case can be made for promoting a culture of compliance within the public service and public administration with the bigger picture in mind: that is, improving service delivery and therefore improving the quality of life of citizens.

#### **4. PURPOSE OF THE TERMS OF REFERENCE**

The purpose of these terms of reference is to request a service provider to address the problem statement through:

- 4.1. developing “as is” business process maps of compliance monitoring processes in the DPSA;
- 4.2. indicating inter and intra department linkages;
- 4.3. conducting a gap analysis of “as-is” mapped processes; and
- 4.4. developing a proposal (integrated “to-be” process) towards the design of an integrated automated system for compliance monitoring, with early warning capabilities.

#### **5. SCOPE OF WORK**

The scope of this project is:

- 5.1 To map the business processes of all DPSA compliance monitoring processes aligned to the DPSA mandate, under the following 16 broad categories:
  - 5.1.1 Compliance monitoring processes within the OSC;
  - 5.1.2 Functionality Audits of Skills and Capacity;
  - 5.1.3 Evaluation of the appropriateness of norms and standards;
  - 5.1.4 Organisational design;
  - 5.1.5 Employment Practices (including Recruitment and appointment processes, Job grading, training and development, transfers and secondments;)



- 5.1.6 Integrity, Ethics and Discipline Management (including Discipline Management, Disclosure of Financial Interests and Lifestyle Audits);
  - 5.1.7. Human Resources Planning;
  - 5.1.8. Strategic Planning and Reporting;
  - 5.1.9. Government Service, Access and Improvement (including Batho Pele; Service Centres; and Service Delivery Improvement);
  - 5.1.10. Measures to improve the efficiency and effectiveness of institutions: Operations Management Framework, including Organisational Functionality; Productivity Measurements;
  - 5.1.11. Performance Management;
  - 5.1.12. Labour Relations (including Dispute Management and Grievances);
  - 5.1.13. Information and Communications Technology in the Public Service;
  - 5.1.14. International Relations and donor funding;
  - 5.1.15. Delegations Management; and
  - 5.1.16. The establishment of Government Components and Specialized Service Delivery Units
- 5.2** To focus on compliance monitoring processes in the Public Service (national and provincial sphere of government, excluding local government sphere and SOEs)
- 5.3** The Service Provider is required to map these processes using the approved Business Process Management Framework and Mapping Toolkit as outlined in Chapter Two of the Operations Management Framework, obtainable from the DPSA website through the following link:  
[https://www.dpsa.gov.za/resource\\_centre/operations-management-framework-omf/](https://www.dpsa.gov.za/resource_centre/operations-management-framework-omf/)
- All processes must be mapped using Business Process Model and Notation. Process Models must be provided in interoperable formats, which can be imported and edited using Bizagi Modeler software (freeware), e.g. BPMN 2.0 and XPD (2.2)



## 6. OBLIGATIONS OF THE DPSA

The DPSA will-

- 6.1 be project sponsor and owner and will manage the engagement with the service provider;
- 6.2 ensure that the required documents and related information are provided timeously;
- 6.3 ensure that matters requiring intervention are escalated to the Project Steering Committee promptly.

## 7. OBLIGATIONS OF THE SERVICE PROVIDER

The Service Provider will-

- 7.1 report to the DPSA project manager;
- 7.2 ensure understanding of the DPSA functions and functional requirements; and
- 7.3 provide the technical resources necessary to achieve and deliver on the deliverables as indicated under section 8 below.

## 8. DELIVERABLES

- 8.1 All deliverables, such as reports, plans and other artefacts, should be delivered to DPSA for acceptance and/or approval, in order to reach the planned milestones and continuation to the next project phase.

- 8.2 The project will require the following deliverables:

| PHASES                                    | ACTIVITIES                                                 | DELIVERABLES                                | COMPLETED BY                                                                       |
|-------------------------------------------|------------------------------------------------------------|---------------------------------------------|------------------------------------------------------------------------------------|
| Phase 1:<br>Preparation<br>and activation | Project Kick Off Presentations                             | Project Inception Report                    | Within three weeks<br>from<br>commencement of<br>signed service<br>level agreement |
|                                           | Confirm mandate of DPSA in line with compliance monitoring | Mandate analysis report                     |                                                                                    |
|                                           | Conduct a stakeholder analysis                             | Stakeholder analysis report                 |                                                                                    |
|                                           | Confirm all compliance monitoring processes                | Comprehensive list of compliance monitoring |                                                                                    |



|                           |                                                                                                                                                                                           | processes                                                                  |                                                        |
|---------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|--------------------------------------------------------|
| Phase 2: "As-Is" analysis | Analyse the business strategy                                                                                                                                                             | "As Is" analytical report and mapped business processes with flow diagrams | Within two months after completion of phase 1          |
|                           | Define the business process architecture                                                                                                                                                  |                                                                            |                                                        |
|                           | Identify and consult process owners                                                                                                                                                       |                                                                            |                                                        |
|                           | Map processes                                                                                                                                                                             |                                                                            |                                                        |
|                           | Measure and analyse process performance                                                                                                                                                   |                                                                            |                                                        |
|                           | Determine a process vision                                                                                                                                                                |                                                                            |                                                        |
| Phase 3: Gap analysis     | Provide an analysis of identified gaps or challenges                                                                                                                                      | Gap Analysis report                                                        | Within one month after completion of phase 2           |
| Phase 4: To be process    | Part 1: Map redesigned business processes that will-<br>(a)Reduce bureaucracy;<br>(b)Add value;<br>(c)Eliminate duplication;<br>(d)Simplify activities; and<br>(e)Reduce turnaround times | Improved (To Be) Business process                                          | Within one month after completion of phase 3           |
|                           | Part 2: Compile a detailed report with proposals on the improved business process towards the design of an automated system for compliance monitoring                                     | Report with recommendations                                                | Within two weeks after completion of part 1 of phase 4 |
| Phase 5: Close out phase  | Compile the change management plan                                                                                                                                                        | Change management plan                                                     | Within three weeks after completion of phase 4         |
|                           | Compile a close-out report                                                                                                                                                                | Close-out report                                                           |                                                        |

## 9. GENERAL CONDITIONS

9.1 The general conditions of the contract as prescribed by the National Treasury will be applicable in all instances.



## **10. TIME FRAME**

- 10.1 The project is planned to be initiated on acceptance of the proposal and is to be completed by March 2023.

## **11. SKILLS, KNOWLEDGE AND EXPERIENCE REQUIRED**

The following skills and expertise are required in line with the DPSA Operations Management Framework:

### **11.1 Project management skills**

- The service provider needs to apply the processes, methods, skills, knowledge and experience to achieve specific project deliverables outlined in the terms of reference.

### **11.2 Research**

- Business Process Analysts must have research skills as they will be required to have an understanding of the legislative mandate of core programmes of the DPSA and how this will contribute to compliance monitoring systems.
- This skill will also be useful when conducting internal research on how any given unit of a department functions.

### **11.3 Business and Process Analysis and Mapping**

- Ability to elicit and analyse relevant information from branches, service providers, and key stakeholders. Ability to analyse business processes and use process mapping as a method of visualising ongoing process.
- Ability to perform analysis to detect inefficiencies within the scope of a given workflow and to provide solutions to address these.



#### **11.4 Communication**

- Business Process Analysts must have good communication skills as they are often required to meet the client departments, project leaders and other stakeholders.

#### **11.5 Problem-solving abilities**

Business process analysts need to have a strong understanding of business process analysis methods and skills to find ways to help clients address the problem statement to achieve their goals.

#### **11.6 Standards and Software application**

*The service provider must have the ability and skills to map and model business processes using Business Process Model and Notation and BPMN modelling tools.*

#### **11.7 Change Management**

Project managers must be able to develop a change management plan.

### **12. DPSA ADDITIONAL REQUIREMENTS**

The comprehensive proposal submission should include:

- 12.1** A detailed plan reflecting activities, project time frames, skills transfer, costing and outputs.
- 12.2** Profile of company including a description of similar work undertaken, and references in each case.
- 12.3** Number, names and resumes (abridged CVs) of the person/s assigned to the project.
- 12.4** A summary of the roles, responsibilities and time spent by each person.
- 12.5** The cost structure should be all inclusive and as detailed as possible.
- 12.6** The service provider is expected to enter into a contract (service level agreement) with the DPSA based on the proposal.



### **13. PROPRIETARY RIGHT**

- 13.1** The DPSA shall become the owner of developed work, inclusive of documents, advisory, plans, models and reports produced and same must be handed over to the DPSA after completion of the project
- 13.2** The copyrights of all documents and reports compiled by the service provider will vest in the DPSA and may not be reproduced, distributed or made available without the written consent and approval of the DPSA.
- 13.3** All information, documents, plans and reports must be regarded as confidential unless otherwise authorised by the DPSA.

### **14. REPORTING ARRANGEMENT**

- 14.1** All deliverables should be submitted to the DPSA. Any deliverable submitted and not accepted must be reworked and resubmitted at no additional cost.
- 14.2** The service provider will provide a single overall project manager.
- 14.3** A comprehensive monthly report will be submitted by the service provider.
- 14.4** The service provider must submit monthly progress reports to the DPSA.

### **15. SPECIAL CONDITIONS OF CONTRACT**

- 15.1** The DPSA will enter into a contract (service level agreement) with the service provider.
- 15.2** The DPSA reserves the right not to appoint any service provider should it deem fit to do so.
- 15.3** The DPSA will furnish the service provider with all the relevant information and available data within their possession that may be necessary for the service provider to perform duties.
- 15.4** All information, documents, and reports not currently in the public domain and used during or generated from the project must be regarded as confidential and may not be made available to any unauthorised person or institution without permission of the Accounting Officer or authorised delegate of the Department.



- 15.5** The DPSA will become the owner of all information, documents, reports and advice collected and compiled during the execution of the project.

## **16. EVALUATION PROCESS**

The evaluation process comprises of the following stages:

### **A) Phase I: Minimum Mandatory Criteria Evaluation Phase Initial Screening Process**

During this phase bid documents will be reviewed to determine compliance with the submission of the mandatory submission requirements outlined below.

**Failure to submit any of the mandatory submission requirements will lead to the disqualification of the bid during the bid evaluation process.**

- (i) Proposals must be submitted in five (5) hard copies, comprising of one (1) original, and four (4) copies.
- (ii) A Company profile;
- (iii) Abridged curricula vitae of all team members, their envisaged role and level of involvement in the project;
- (iv) Track record and experience
- (v) The service provider must submit a detailed cost breakdown for the project;
- (vi) List of clients for whom projects of a similar nature have been conducted;
- (vii) Submission of all applicable documents as indicated below:
  - a) Fully completed and signed Standard Bidding documents (SBD forms)
  - b) Proof of registration with the Treasury Central Supplier Database (CSD). A CSD Registration report with all information verified must be submitted.



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#### (viii) Financial Proposal: Pricing Schedule

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

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

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

#### **B) Phase II: Functionality Evaluation**

- (i) The Bid Evaluation Committee (BEC) will conduct the functional evaluation.
- (ii) Bids will be evaluated strictly according to the bid evaluation criteria stipulated in this section of the terms of reference. During this stage bidders' responses will be evaluated for functionality based on achieving a minimum score of 80 out of 100.
- (iii) Bidders must as part of their bid documents, submit supporting documentation for all technical requirements as indicated hereunder. The panel responsible for scoring the respective bids will evaluate and score all bids based on their submissions and the information provided.
- (iv) Bidders will not rate themselves, but need to ensure that all information is supplied as required. The BEC will evaluate and score all responsive bids and will verify all documents submitted by the bidders.
- (v) If required, the short listed service provider/s may be contacted to conduct a presentation on their bid to the BEC. The BEC shall score the presentations of the service providers based on the original criteria.
- (vi) If a need is identified, the BEC may assign a team to conduct a site visit to the offices of all short listed service providers.



(vii) The panel members will individually evaluate the responses received against the following criteria as set out below:

## 17. FUNCTIONALITY EVALUATION CRITERIA

17.1. The applicable values that will be utilised when scoring each criteria are reflected in the table below:

| 1. Proven experience and capability of the Service Provider in conducting similar projects |                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Weighting: 60%                        |
|--------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| Criteria                                                                                   |                                                                                                                                                                                                                                | Scoring Indicators                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Score                                 |
| 1.1                                                                                        | Experience, capability and capacity of organization.                                                                                                                                                                           | 9 and more years' experience in similar projects<br><br>7-8 years' experience in similar projects<br><br>5-6 years' experience in similar projects<br><br>3-4 years proven experience in similar projects<br><br>1-2 years proven experience in similar projects                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | 5<br><br>4<br><br>3<br><br>2<br><br>1 |
| 1.2                                                                                        | History of successful implementation of similar projects. Reference letters of similar projects concluded within the last five (5) years.<br><br><b>NB! Reference letters must be on company letter head, signed and dated</b> | The reference letters to be submitted as proof in support of this requirement containing the following: <ul style="list-style-type: none"> <li>Name of the project/company</li> <li>Nature of work conducted</li> <li>Date when project was undertaken</li> <li>Duration of the project</li> </ul> Five (5) or more reference letters of successful implementation of similar projects.<br><br>Four (4) reference letters of successful implementation of similar projects.<br><br>Three (3) reference letters of successful implementation of similar projects.<br><br>Two (2) reference letters of successful implementation of similar projects.<br><br>One (1) reference letter of successful implementation of similar projects. | 5<br><br>4<br><br>3<br><br>2<br><br>1 |
| 1.3                                                                                        | Ability to manage a project of this nature within the prescribed time lines in paragraph 8.                                                                                                                                    | Submit the CV of the project manager / team leader who shall have expertise in business process mapping and management of projects to provide the overall guidance to the project and shall have:<br><br>at least 10 years of project management combined with 10 years of business process experience.                                                                                                                                                                                                                                                                                                                                                                                                                               | 5                                     |



|                 |                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                              |
|-----------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
|                 |                                                                                                  | <p>at least 7 to 9 years of project management and business process mapping experience</p> <p>at least 5 to 6 years of project management and business process mapping experience.</p> <p>at least 3 to 4 years of project management and business process mapping experience.</p> <p>at least 2 years of project management and business process mapping experience.</p>                                                                                                                                                                                                                                                                                                  | <p>4</p> <p>3</p> <p>2</p> <p>1</p>          |
| 1.4             | Other relevant expertise:<br>Team leader with ability to implement large-scale change management | <p>Submit the CV of the project manager / team leader who shall have expertise in change management as per 11.7 above:</p> <p>at least 10 years of change management experience combined with 10 years of process improvement experience</p> <p>at least 7 to 9 years of change management and process improvement experience</p> <p>at least 5 to 6 years of change management and process improvement experience</p> <p>at least 3 to 4 years of change management and process improvement experience</p> <p>at least 2 years of change management and process improvement experience</p>                                                                                | <p>5</p> <p>4</p> <p>3</p> <p>2</p> <p>1</p> |
| 1.5             | Skills and experience of individual team members including comprehensive CVs of all              | <p><b>Submit the CVs of project team members demonstrating skills, knowledge and experience in the areas defined in paragraphs 11.2 to 11.6:</b></p> <p>CVs and supporting documentation demonstrating at least 9 and above years relevant experience.</p> <p>CVs and supporting documentation demonstrating at least 7 - 8 years relevant experience in the above fields.</p> <p>CVs and supporting documentation demonstrating at least 5 - 6 years in the above fields.</p> <p>CVs and supporting documentation demonstrating at least 3 - 4 years in the above fields.</p> <p>CVs and supporting documentation demonstrating at least 2 years in the above fields.</p> | <p>5</p> <p>4</p> <p>3</p> <p>2</p> <p>1</p> |
| <b>2.</b>       | <b>Understanding and conceptualization of the assignment (technical approach and procedures)</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Weighting: 40%</b>                        |
| <b>Criteria</b> |                                                                                                  | <b>Scoring Indicators</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Score</b>                                 |
| 2.1             | Appropriateness and quality of proposed work plan.                                               | A comprehensive detailed work plan describing all activities in logical sequence with clear time frames commensurate with                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 5                                            |



|                                |                                                                |                                                                                                                                                                                                                                                                           |      |
|--------------------------------|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
|                                |                                                                | the terms of reference.                                                                                                                                                                                                                                                   |      |
|                                |                                                                | Work plan describes all high-level activities, supplemented with further sub-activities in logical sequence with clear time frames commensurate with the terms of reference.                                                                                              | 4    |
|                                |                                                                | Work plan describes all high-level activities in logical sequence with clear time frames commensurate with the terms of reference.                                                                                                                                        | 3    |
|                                |                                                                | Work plan describes high-level activities with timeframes not compatible with the terms of reference.                                                                                                                                                                     | 2    |
|                                |                                                                | Work plan activities do not commensurate with the deliverables in the terms of reference.                                                                                                                                                                                 | 1    |
| 2.2                            | Proposed methodology and approach to achieve required outputs. | The methodology and approach includes a high-level exposition and motivation in support of the proposal. It includes the full scope of the deliverables (outputs) in the ToR and clearly unpacks the anticipated risks, challenges and appropriate mitigating strategies. | 5    |
|                                |                                                                | The methodology and approach includes a high-level exposition and motivation in support of the proposal. It includes the full scope of the deliverables (outputs) in the ToR and touches on anticipated risks, challenges and mitigating strategies.                      | 4    |
|                                |                                                                | The methodology and approach includes the exposition and motivation in support of the proposal.                                                                                                                                                                           | 3    |
|                                |                                                                | The methodology and approach includes the full scope of the deliverables (outputs) in the ToR and touches on anticipated risks, challenges and mitigating strategies.                                                                                                     | 2    |
|                                |                                                                | The proposed methodology and approach is a verbatim repeat of the ToR and it fails to align with the required outputs of the project.                                                                                                                                     | 1    |
| Total functionality score      |                                                                |                                                                                                                                                                                                                                                                           | 100% |
| Minimum threshold for function |                                                                |                                                                                                                                                                                                                                                                           | 80%  |

17.2. Each panel member will rate each individual criterion on a score sheet using the above scoring guideline.

17.3. The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.

17.4. This score will be converted to a percentage, and only bidders that have met



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or exceeded the minimum threshold of 80 percent for functionality will be evaluated and scored in terms of pricing and Broad Based Black Economic Empowerment Status Level Certificates provided in terms of the Preferential Procurement Policy Framework Act, Act 5 of 2000 and the Preferential Procurement Regulations of 2017.

**A proposal not meeting a minimum score of 80 percent for their technical proposal will be disqualified.**

## **18. PRICE AND B-BBEE EVALUATION CRITERIA**

### **18.1. In terms of Regulation 5 of the Preferential Procurement Regulations**

pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated by the Department on the 80/20-preference point for Broad-Based Black economic empowerment in terms of which points are awarded to bidders on the basis of:

- (a) The lowest price (maximum 80 points).
- (b) Broad-based black Economic Empowerment (maximum 20 points).

18.2. The following formula will be used to calculate the points for price in respect of bidders with a Rand value below R50 000 000:

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

Where

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

$P_t$  = Comparative price of bid under consideration

$P_{\min}$  = Comparative price of lowest acceptable bid

### **18.3. Broad-Based Black Economic Empowerment and/or subcontracting with a Broad-Based Black Economic Empowerment**

18.4. A maximum of 20 points may be awarded to a bidder who meets requirements for Broad-Based Black Economic Empowerment and/or subcontracting with a Broad-Based Black Economic Empowerment stipulated in the Preferential Procurement regulations. For this bid, the maximum number of Broad-based



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black Economic Empowerment status points that could be allocated are indicated in the table below.

| B-BBEE level of contributor | Number of points (80/20 system) |
|-----------------------------|---------------------------------|
| 1                           | 20                              |
| 2                           | 18                              |
| 3                           | 14                              |
| 4                           | 12                              |
| 5                           | 8                               |
| 6                           | 6                               |
| 7                           | 4                               |
| 8                           | 2                               |
| Non-compliant contributor   | 0                               |

- 18.4.1. Failure to capture the required status level and to submit the required BBEE status level certificates will lead to a zero (0) status level for non-compliant Service Providers.
- 18.4.2. The points scored by a bidder in respect of the points indicated above will be added to the points scored for price.
- 18.4.3. Bidders are requested to complete the various preference claim forms in order to claim preference points.
- 18.4.4. Only a bidder who has fully completed and signed the declaration part of the preference claim form will be considered for B-BBEE status with the provision of a valid B-BBEE verification certificate or Sworn Affidavit.
- 18.4.5. Supply Chain Management may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to B-BBEE status.
- 18.4.6. Points scored will be rounded off to the nearest two decimals.
- 18.4.7. In the event that two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for B-BBEE status. Should two or more bids have equal points, including equal preference



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points for B-BBEE, the bidder scoring the highest points for functionality will be awarded the bid. In the event that two or more bidders are equal in all respects, the award shall be decided by drawing of lots.

18.5. A contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points.

## **19. PROPOSAL COST**

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

19.2. Rates of remuneration will be subject to negotiation taking into consideration DPSA hourly fee rates for consultants.

## **20. LATE BIDS**

20.1. Bids received late will not be considered. Service providers are therefore strongly advised to ensure that bids are dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid.

20.2. The official Telkom time (Dial 1026) will be used to verify the exact closing time.

20.3. Bids sent via any other means other than hand delivery shall be deemed to be received on the date and time of arrival at the DPSA premises.

20.4. Bids received at the physical address after the closing date and time of the bid, shall therefore be deemed to have been received late.

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

21.1. A service provider who submits a proposal in response to the terms of reference will have the right to withdraw, modify or correct a proposal after delivery thereof provided that the request for such withdrawal, modification or correction, together with the full details of such modification or correction are received by the DPSA at the address provided before the closing date stipulated for the receipt of proposals. Failure to do so before the closing date and time as stipulated will result in the original (pre-modified) bid being considered.



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## 22. ENQUIRY AND DELIVERY DETAILS

### DELIVERY ADDRESS:

Supply Chain Management  
Department of Public Service and Administration  
Batho Pele House  
546 Edmond Street (Corner Edmond and Hamilton Street)  
Acadia  
Pretoria  
0001

### SUPPLY CHAIN ENQUIRIES:

Mr. Michael Jackson  
012- 336 1189  
[Michaelj@dpsa.gov.za](mailto:Michaelj@dpsa.gov.za)

### TECHNICAL ENQUIRIES:

Ms Mamotladi Matloga  
Director: Public Administration Norms & Standards Compliance Monitoring  
Branch: Office of Standards and Compliance  
[mamotladim@dpsa.gov.za](mailto:mamotladim@dpsa.gov.za)  
Tel: 012 336 1626

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**Republic of South Africa**



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

**July 2010**

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**NOTES**

The purpose of this document is to:

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

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

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

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## **General Conditions of Contract**

### **1. Definitions**

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

RSA.

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

obligations of the supplier covered under the contract.

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

## **2. Application**

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

## **3. General**

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

## **4. Standards**

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

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

- 5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

## **6. Patent rights**

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

**7. Performance security**

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

**8. Inspections, tests and analyses**

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

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

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

## **9. Packing**

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

## **10. Delivery and documents**

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

## **11. Insurance**

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

## **12. Transportation**

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

## **13. Incidental services**

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

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

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

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

#### **15. Warranty**

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

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

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

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

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

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

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

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

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

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

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

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

23.4 If a purchaser intends imposing a restriction on a supplier or any

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

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

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

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

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

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

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

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

may be due to him

**25. Force Majeure**

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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

|                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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|                                                              | (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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>29. Governing language</b>                                | 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>30. Applicable law</b>                                    | 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>31. Notices</b>                                           | <p>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</p> <p>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.</p>                                                                                                                                                                                                                            |
| <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 Programme (NIP)</b> | 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <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> |

- 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.