



transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA

Private bag x 193, PRETORIA, 0001, Forum Building, Cnr Struben and Bosman Street, PRETORIA.

Ref: CSS 5/11/1

Enq: Mr Skosana or Mrs. L Nzimande

Tel Number: (012) 309-3035/3255

Dear Sir / Madam

BID NUMBER: SCM/01/2023/RLT

1. The Department of Transport requires the service as described per attached bid invitation and you are requested to complete the bidding documents and to submit it in accordance with the under mentioned stipulations:
 - The bid must be submitted in a sealed envelope with the name and address of the bidder with the number and closing date indicated on the envelope. The envelope must not contain documents relating to any bid other than that shown on the cover of the envelope;
 - Bids must be submitted in the bid/tender box on or before the closing date and time, couriered bid documents must be received before the closing date and time, failure to do so may invalidate the bid.
 - The attached forms, if completed in detail and returned, will form part of your bid; and
 - Prices must be VAT inclusive and all other expenses/disbursements, and be valid for a period of at least **120 days** from closing date.
 - Briefing session on 19 April 2023 at 10:00 AM.
 - Link: <https://dot-gov-za.zoom.us/j/92399303314?pwd=cnluT0pyMTU1a2d6K2hyWVFqcDM3dz09>
 - Closing date for submitting bids is 15 May 2023 at 11:00 AM
2. You are advised to acquaint yourself with the contents of the attached general conditions of contract and the checklist.
3. It will be expected of the successful bidder to sign a formal contract at this office within seven (7) days after receiving a letter of acceptance.
4. **NB. Kindly note that this is a Two envelope system (for financial proposal submit One (1) original hard copy and One (1) scanned USB/CD PDF: Annexure B, and for Technical Proposal submit One (1) original hard copy and Four (4) scanned USB/CD's PDF : Annexure A. No hard copies except for both originals**

Kind Regards

For DIRECTOR GENERAL: TRANSPORT

DATE: 12/04/2023



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Department:
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REPUBLIC OF SOUTH AFRICA



DEPARTMENT OF TRANSPORT

Directorate: Supply Chain Management

Private Bag X193, PRETORIA, 0001; TEL: (012) 309 3248

**TERMS OF REFERENCE FOR THE APPOINTMENT OF A
SERVICE PROVIDER/CONSULTANT TO DETERMINE THE
SCOPE OF ECONOMIC REGULATION FOR THE RAIL SECTOR
FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF
EIGHT MONTHS**

SCM/01/2023/RLT

CONTACT DETAILS

Administrative Contact	Technical Contact
Quotation's Office	Project Manager
Name: Thabo Skosana	Name: Mala Somaru
Directorate: Supply Chain Management	Directorate: Rail Economic Regulation
Tell: 012 309 3035	Tell: 012 309 3925
E-mail: SkosanaT@dot.gov.za	E-mail: SomaruM@dot.gov.za

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1 BACKGROUND

- 1.1 The Minister of Transport and Minister of Public Enterprises entered into a Memorandum of Understanding to establish Interim Rail Economic Regulatory Capacity (IRERC). The main objectives of the IRERC are to develop skills and capacity in the area of rail economic regulation, to collect data on the structure and performance of the rail industry, and to research and make concrete recommendations on the future scope and design of economic regulation in the rail transport sector.

In March 2022, the White Paper on Rail Transport Policy (Rail Policy) was approved by Cabinet. The Rail Policy provides a holistic view on the trajectory of the development of the South African rail system. In addressing the challenges in the sector, a key intervention of the policy will be the enabling of investment in rail infrastructure, while introducing secondary interventions to promote on-rail competition. This will facilitate the entry of new operators and the introduction of on-rail competition with the resulting benefits of increased operational efficiency that is needed to improve the service quality and competitive pricing in the freight sector.

Furthermore, the Rail Policy recognises that the existing monopoly within the rail sector needs to be addressed, and a revitalised rail sector will have a complex array of service providers, actors and stakeholders. Balancing their different interests will require economic regulation to ensure a level playing field for all service providers and long-term sustainability of the sector. The Rail Policy acknowledges that price regulation may moderate monopoly profits but can do little to increase productive output to the level that a competitive market would achieve with the appropriate technology base. Introducing regulated on-rail competition is essential to determine the true demand for freight rail services which may also be used to design and define the required investment interventions.

Several enabling interventions are identified to realise the objectives of the Rail Policy, one of which is economic regulation. To manage the different interests of the array of stakeholders that will form part of the sector, economic regulation will be required. This will ensure a level playing field for all service providers and the long-term sustainability of the

sector. An Interim Rail Economic Regulatory Capacity (IRERC) has been established as an interim arrangement for economic regulation until the establishment of the Transport Economic Regulator (TER) in terms of the Economic Regulation of Transport Bill (ERT Bill). In fulfilling its mandate, the IRERC must undertake to perform the regulatory functions for the sector.

1.2 In terms of the scope of the ERT Bill, not all transport facilities and services will be regulated, and rail is not regulated in the scope of the ERT Bill. In particular, the Bill provides that:

(1) The Act applies to any market, entity or facility in the transport sector that was, immediately before the effective date, subject to economic regulation by the Minister.

(2) The Minister, in consultation with the Regulator, may declare that the Act applies to any market, or any entity or facility, irrespective whether privately or state owned, within the transport sector, if the Minister has determined that either of the following circumstances apply—

(a) a single operator controls more than 70% of the market concerned; or

(b) the preconditions for efficiency and cost-effectiveness do not exist in the market concerned.

(3) The extent of regulation introduced must be proportionate to the competition problems in the market.

(4) When making a determination in terms of subsection (2)(b), the Regulator must have found that—

(a) at least one firm operating in the market has market power; or

(b) a facility or resource in the market is an essential facility, after having received and considered—

(i) an opinion from the Competition Commission after conducting a market inquiry in terms of chapter 4A of the Competition Act; or on the basis of the Competition Tribunal finding that anti-competitive abuses have occurred within the relevant market; or

(ii) a report from the market inquiry, conducted by the Regulator.

The interpretation of the scope of the proposed TER legislation and its practical application is understood to mean that any market, entity or facility in the transport sector that is currently not regulated will first be subjected to a market inquiry process either in terms of the Competition Commission Act or the ERT Bill and must satisfy the requirements listed before it can be regulated. It is yet to be understood how or which markets and facilities in the rail sector will be identified or given priority to be subjected to a market inquiry or determined as an essential facility.

It is against this background that the IRERC is seeking to establish the scope of economic regulation for the rail sector, so as to define the boundaries of intervention in the interim and for such a time as when the TER assumes its role. Therefore, the purpose of this project is to provide an opinion on the scope of economic regulation in the rail sector. This should be determined in line with applications of the ERT Bill (outlined above) and provide for sectors/relevant markets which will be subject to economic intervention. This project aligns to IRERC's Workstream focused on determining priority areas in the rail sector for market inquiry.

2 SCOPE OF WORK

2.1 GOAL

The ERT Bill provides guidance on determining the scope of economic regulation for the transport sector. The IRERC, as an interim arrangement for the economic regulation of the rail sector is required to understand and regulate within the boundaries of markets as contemplated in the ERT Bill. The goal of the project will be to identify the markets within the rail sector that are a priority for regulation and assist in guiding the regulatory process forward.

2.2 OBJECTIVES

2.2.1 The objective of the project is to understand the interpretation of the application of the ERT Bill and identify the markets in the rail sector for which economic regulation should apply. These markets will then be prioritised for market inquiry and the findings of which will guide the IRERC on the competition issues in the market and guide the proportionality of the regulation required to address the identified issues in such markets.

2.2.2 In addition, the project seeks to clarify the following issues, amongst others:

- a. Interpretation of the scope of the ERT Bill;
- b. The prioritization of the unregulated sectors in the market inquiry process;
- c. The determination of essential facilities and the 70 percent market share in the rail sector;
- d. The preparatory work required from IRERC to assist in defining the scope of economic regulation for the rail sector; and
- e. The issues related to concurrent jurisdiction with the Competition Commission regarding the threshold for controlling the market.

2.3 DELIVERABLES

The service provider will be expected to render the following services and deliverables:

2.3.1 Inception phase: Inception Report

An Inception Report needs to be produced at the outset to clarify project implementation issues and develop a mutual understanding of the project between the Service Provider, DoT and key stakeholders. These issues relate to clarification of the interpretation of the Terms of Reference, detailed tasks, time frames and execution of the project. The Inception Report must contain a work plan which indicates the tasks, the timeframe, resources and key deliverables outlined below. A work process flow chart must be included to communicate and keep track of the progress of the project.

2.3.2 Phase 1: Stakeholder Engagement Report

The project will be undertaken in two phases. In the first phase the service provider will engage with the ERT Bill project team and related stakeholders such as the Competition Commission and relevant stakeholders as identified by project team.

Feedback will be provided to IRERC in the form of a report. The report will contain a summary of the outcomes of the engagements with the identified stakeholders and interpretation of the ERT Bill in respect of the scope of economic regulation of the rail sector.

This report will form the basis for the second phase of the project which is discussed in the following section.

2.3.3 Phase 2: Report on the scope of economic regulation in the rail sector

The report should outline the outcomes of the study into the scope of economic regulation in the rail sector. In undertaking the study, the service provider/consultant will be required to *define relevant markets within the rail sector for economic regulation*, guided by the interpretation of the ERT Bill. These markets will be subjected to market inquiries, in line with the interpretation of the ERT Bill. The report will be required to contain among other things:

- a. A high-level opinion on the interpretation of the application of the ERT Bill in respect of the economic regulation and the requirement for market inquiries for non-regulated entities or facilities (Phase 1 report);
- b. The methodology for determining relevant markets for economic regulation within the rail sector;
- c. The definition of the relevant markets within the rail sector according to the methodology developed in item b;
- d. The market shares of participants/operators within the defined relevant markets including the approach to be followed in determining market shares in the different markets and the interpretation and application of the 70% market share threshold;

- e. The approach to the assessment of whether the markets in the rail sector have the preconditions for efficiency and cost-effectiveness;
- f. The assessment of whether the defined relevant markets within the rail sector have the preconditions for efficiency and cost-effectiveness; and
- g. The methodology on the determination of essential facilities within the rail sector including (i) how essential facilities are determined in the rural environment and (ii) identification (in terms of this methodology) of the rail infrastructure facilities that can be identified as essential facilities.

2.3.4 Report on issues relating to conducting market inquiries that need to be included in Draft Regulations for the Economic Regulation of Transport Bill.

2.3.5 Skills transfer Plan

A skills transfer plan should be developed to transfer knowledge to staff involved with the IRERC to enable such staff to sustain and apply such knowledge in economic regulation and conducting market inquiries in future. The plan should amongst others identify the areas to be included in the skills transfer, the competencies/skills to be gained, the implementation rollout, timeframes and evaluation of the skills transfer. The skills transfer may occur through presentations or seminars provided to the IRERC and IRERC secretariat.

Linked to the Scope of Work in paragraph 2.3 above, the deliverables of the project and timeframes are as follows:

Item No	Deliverables	Timeframe (from signing of contract)
1	Inception phase: Inception Report	2 weeks
2	Phase 1: Report of Stakeholder engagement	Within 6 weeks
3	Phase 2: Report on the scope of economic regulation in the rail sector	Month 5
4	Skills transfer plan	2 weeks
5	Project close off report	Month 8

3 EVALUATION

3.1 STAGE 1: MANDATORY REQUIREMENTS

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

3.2 STAGE 2: FUNCTIONAL EVALUATION CRITERIA

- 3.2.1 Only bidders who have complied with mandatory requirements will be evaluated for functionality. Bidders must, as part of their bid documents, submit supportive documentation for all functional requirements as indicated hereunder. The Bid Evaluation Committee (BEC) responsible for scoring the respective bids will evaluate and score all bids based on their submissions and the information provided.
- 3.2.2 The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- 3.2.3 Functionality will be evaluated on the basis of the supporting documentation supplied by the bidders in accordance with the below functionality criteria and values.



- 3.2.4 The evaluation of the functionality will be evaluated individually by Members of Bid Evaluation Committee in accordance with the below functionality criteria and values.
- 3.2.5 The applicable values that will be utilized when scoring each criteria ranges from: **1 being Poor, 2 = Average 3 = Good, 4 = Very Good & 5 = Excellent**
- 3.2.6 The Bids that fail to achieve a minimum of **60** points out of **100** points for functionality will be disqualified. This means that such bids will not be evaluated on the Preference Points System stage.

EXAMPLE OF EVALUATION CRITERIA – TO BE CUSTOMISED PER PROJECT

EVALUATION CRITERIA	GUIDELINES FOR CRITERIA APPLICATION	WEIGHT
ABILITY AND CAPABILITY	<p>Service provider experience: Experience of the service provider in competition and/or regulatory economics. The service provider must have skill(s)/ experience/ qualification(s) relating to <i>competition economics, compliance and/or litigation services; and conducting market inquiries</i>.</p> <p>Experience in the South African rail sector will be an added advantage.</p> <p>(Reference letter under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was completed successfully.</p>	30

DEMONSTRATE KNOWLEDGE, SKILLS AND COMPETENCY BY TEAM MEMBERS IN AREAS SPECIFIED	<p>A multi-disciplinary team that will be utilized in the execution of the contract with appropriate skills and experience to deliver on the Scope of Work. The Bidder must attach personnel CVs with skill(s)/ experience/ qualifications relating to the Scope of Work.</p> <p>Individual Team members must be subject matter experts on competition, regulatory economics & commercial/legal contracts.</p> <p>Team members should also have relevant experience in South Africa or other African countries.</p> <p>The service provider to be utilized in the execution of the contract– please attach personnel CVs</p>	30
METHODOLOGY	<p>Bidders should provide comprehensive project execution plan covering the entire scope of work including maintenance and support plan as well as proposed work schedule/ training, duty sheet/ work plan with clear deliverables and timeframes for each task to be completed. The application should be concise and related to the scope of the project.</p>	25
TRAINING, SKILLS DEVELOPMENT PLAN AND TRANSFER OF SKILLS	<p>A skills transfer plan indicating the training and development initiatives to be provided to the officials associated with the IRERC involved in the project relevant to the Scope of Work.</p>	15
TOTAL POINTS ON FUNCTIONALITY MUST ADD TO 100		100
EVALUATION CRITERIA	GUIDELINES FOR CRITERIA APPLICATION	WEIGHT

Scoring Criterion	1 Poor	2 Average	3 Good	4 Very Good	5 Excellent
Service provider experience: Experience of the service provider in competition and/or regulatory economics. (5)	0 to 2 year of similar knowledge and experience in competition /regulatory economics	3 to 4 years of similar knowledge and experience in competition /regulatory economics	5 to 6 years of similar knowledge and experience in competition /regulatory economics	Over 7 to 9 years of similar knowledge and experience in competition /regulatory economics	Over 10 years of similar knowledge and experience in competition /regulatory economics
The service provider must have skill(s)/ experience/ qualification(s) relating to compliance and/or litigation services; (5)	0 to 2 year of similar knowledge and experience in litigation services	3 to 4 years of similar knowledge and experience in litigation services	5 to 6 years of similar knowledge and experience in litigation service	Over 7 to 9 years of similar knowledge and experience in litigation services	Over 10 years of similar knowledge and experience in litigation services
Experience in conducting market inquiries. (10)	0 to 2 years of similar knowledge and experience in conducting market inquiries	3 to 4 years of similar knowledge and experience in conducting market inquiries	5 to 6 years of similar knowledge and experience in conducting market inquiries	7 to 9 years of similar knowledge and experience in conducting market inquiries	Over 10 years of similar knowledge and experience in conducting market inquiries
Experience in the South African rail sector will be an added advantage. (5)	0 to 2 years experience in the South African rail sector	3 to 4 years experience in the South African rail sector	5 to 6 years experience in the South African rail sector	7 to 9 years experience in the South African rail sector	Over 10 years experience in the South African rail sector

<p>(Reference letter under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was completed successfully.(5)</p> <p>TOTAL 30</p>	<p>One (1) completion certificate or reference letter provided on client's letterhead on successfully completed project</p>	<p>Two (2) completion certificate or reference letter provided on client's letterhead on successfully completed project</p>	<p>Three (3) completion certificate or reference letter provided on client's letterhead on successfully completed project</p>	<p>Four (4) completion certificate or reference letter provided on client's letterhead on successfully completed project</p>	<p>Five (5) completion certificate or reference letter provided on client's letterhead on successfully completed project</p>
<p>DEMONSTRATE KNOWLEDGE, SKILLS AND COMPETENCY BY TEAM MEMBERS IN AREAS SPECIFIED</p> <p>A multi-disciplinary team that will be utilized in the execution of the contract with appropriate skills and experience to deliver on the Scope of Work. The Bidder must attach personnel CVs with skill(s)/ experience/ qualifications relating to the Scope of Work.</p> <p>The multidisciplinary Team must comprise of experts in (i) competition issues, (ii) regulatory economic, (iii) compliance/litigation services (iv) conducting market inquiries (20)</p> <p>Experience in the South African rail environment will be an added advantage (10)</p>	<p>Team with 1 stated discipline</p> <p>0 to 2 year experience</p>	<p>Team with 2 stated discipline</p> <p>3 to 4 years experience</p>	<p>Team with 3 stated discipline</p> <p>5 to 6 years experience</p>	<p>Team with 4 stated discipline</p> <p>Over 7 to 9 years experience</p>	<p>Team with more than 4 relevant disciplines</p> <p>Over 10 years experience</p>

TOTAL 30					
Detailed proposed methodology of how the project will be executed that covers the proposed scope of work, proposed work schedule, proposed systems to be used, proposed resources and proposed time frames. TOTAL 25	This proposal is not comprehensive and the project plan is responding poorly to the scope of work.	This proposal is not comprehensive and the project plan is only responding to some of the scope of work.	Comprehensive proposal with a project execution plan covering most of the scope of work, deliverables and timeframes for each task to be completed and the responsible team member.	Comprehensive proposal with a project execution plan covering the entire scope of work, clear deliverables including timeframes, key tasks, sub tasks, distribution of resources, with project duration and clear completion date.	Comprehensive proposal with a project execution plan covering the entire scope of work including timeframes, key tasks, sub tasks, distribution of resources, with project duration and clear completion date. The proposal undertakes to add value beyond the scope of work.
Training, skills development plan and transfer of skills TOTAL 15	No plan or plan is irrelevant	Training and skills development plan covering less than 2 area of training	Realistic Training and skills development plan covering 3 areas of training	Training and skills plan covering 4 areas of training	Training and skills programme covering beyond 4 areas of training

3.3 STAGE 3: EVALUATION IN TERMS OF 80/20 PREFERENCE POINTS SYSTEM

3.3.1 Only bids that achieve the minimum qualifying score for functionality will be evaluated further in accordance with the 80/20 preference points system.

3.3.2 **Price:** The following schedule must be utilised for submission of pricing proposals.

3.3.3 Calculating preference points

See attached Annexure **A: PREFERENCE POINTS SCORECARD IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS.**

3.3.4 Bidders are required to complete the preference claim form (SBD 6.1), and submit the required supporting documents at the closing date and time of the bid in order to claim the points indicated in Annexure A. The points scored by a bidder in respect of preference will be added to the points scored for price.

3.3.5 Only bidders who have completed and signed the declaration part of the preference claim form and who have submitted the required supporting documents together with the bid will be considered for preference points.

3.3.6 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated score card and supporting documents for every separate tender.

3.3.7 Failure on the part of the bidder to comply with paragraphs 3.3.4, 3.3.5 and 3.3.6 above will be deemed that preference points are not claimed and will therefore be allocated a zero (0).

3.3.8 The Department of Transport may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to preference.

3.3.9 The points scored will be rounded off to the nearest 2 decimals.

In the event that two or more bids have scored equal total points, the award will be done in terms of the Preferential Procurement Regulations 2022, **Section 8: Criteria for breaking deadlock in scoring.**

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

4 RULES OF BIDDING

4.1 NON-COMPULSORY INFORMATION SESSION

4.1.1 A non-compulsory briefing and online session will be held as detailed in the Advert. The non-compulsory briefing session will provide bidders with an opportunity to

clarify aspects of the process as set out in this document and to address any substantive issues that bidders may wish to raise. Any Briefing Notes which may be issued by the Department to the Service Providers should be considered as part of this project.

- 4.1.2 Firms may ask for clarification on this TOR or any of its Annexures up to close of business forty-eight (48) hours before the deadline for the submission of bids. Any request for clarification must be submitted by email to the Bid Office. Copies of questions and answers will be emailed to all firms that register at the briefing session.

4.2 FORMAT AND SUBMISSION OF BIDS

- 4.2.1 Bidders must submit their bids on the stipulated closing date and time. Late bids will not be considered. All late bids must be collected within seven (7) days failing which the DOT will discard of such late proposals.
- 4.2.2 Bids must be submitted in two (2) envelopes, one (1) with the technical proposal and the other pricing. Supporting documents required for compliance including all the SDB documents except for SBD 1 and SBD 3.3, must be submitted together with the technical proposal.
- 4.2.3 Format of submission of proposals:
- a. Envelopes must be clearly marked with Company name, DOT Nr and whether it is the technical or financial response;
 - b. Proposals must be submitted as one (1) original and four protected soft copies. Soft copies must be exact copies of the original document, including all supporting documents, and should be labelled properly.
- 4.2.4 In order to evaluate and adjudicate bids effectively, it is imperative that bidders submit responsive bids. To ensure a bid will be regarded as responsive it is essential to comply with all conditions pertaining to mandatory requirements.
- 4.2.5 Each bidder must attach all applicable documents in support of its bid in accordance with the requirements set out in this bid as well as any other relevant materials, photographs and/or attachments.
- 4.2.6 Each bid, once submitted, constitutes a binding and irrevocable offer to provide the Services on the terms set out in the bid, which offer cannot be amended after its date of submission.
- 4.2.7 Department of Transport (DOT) reserves the right to accept or consider any bid in full or in part or any responses or submissions in relation thereto.



- 4.2.8 DOT reserves the right to appoint more than one bidder whose bid most successfully conforms to the Criteria and the Requirements in accordance with the terms and conditions described in the TOR.
- 4.2.9 DOT reserves the right to request any additional information that it may require or deem necessary. All such requests shall be in writing.
- 4.2.10 After careful consideration and thorough examination of the proposals, DOT shall select the successful Bidder whose proposal most closely satisfies the criteria and the requirements. The lowest price (management fee where applicable) offered will not necessarily be a decisive factor in choosing between Proposals.
- 4.2.11 The Department published the results of the outcome of a tender process, including the details of the successful bidder in the same media that was used to advertise the bid.

4.3 SUB-CONTRACTING, PARTNERSHIP/CONSORTIUM/JOINT VENTURE AND COMPANY REQUIREMENTS

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

5 CONFIDENTIALITY OF INFORMATION & INTELLECTUAL PROPERTY RIGHTS

5.1 CONFIDENTIAL INFORMATION

- 5.1.1 **Confidentiality obligation.** Each Party ("the receiving Party") must treat and hold as confidential all information which they may receive from the other Party ("the disclosing Party") or which becomes known to them concerning the disclosing Party during the duration of this Contract.
- 5.1.2 **Nature of the confidential information.** The confidential information of the disclosing Party shall, without limitation, include:
- a. all software and associated material and Documentation, including information contained therein;
 - b. all information relating to:
 - i. the disclosing Party's past, present and future research and development;
 - ii. the disclosing Party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;
 - iii. the terms and conditions of this Contract; and
 - iv. the Department's data.
- 5.1.3 The Parties shall, except as permitted by the Contract, not disclose or publish any confidential information in any manner, for any reason or purpose whatsoever without the prior written consent of the disclosing Party and in the event of the confidential information relating to a third party, it shall also be incumbent on the receiving Party to obtain the consent of such third party.
- 5.1.4 **Receiving Party's obligations with regard to confidential information.** The receiving Party agrees that in order to protect the proprietary interests of the disclosing Party in its confidential information:
- a. it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Contract;
 - b. it will initiate internal security procedures reasonably acceptable to the disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof;
 - c. subject to the right to make the confidential information available to their Personnel under clause 15.4.1 above, they will not at any time, whether during this Contract or thereafter, either use any confidential information of the disclosing Party or directly or indirectly disclose any confidential information of the disclosing Party to third parties;
 - d. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the disclosing Party which have or will come into the possession of the receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of such Party and shall be promptly handed over to such Party when no longer required for the purposes of this Contract.



- 5.1.5 **Obligations in respect of confidential information upon termination.** Upon termination or expiry of this Contract, the receiving Party will deliver to the disclosing Party or at the disclosing Party's option, destroy all originals and copies of the disclosing Party's confidential information in its possession.
- 5.1.6 The aforementioned obligations shall not apply to any information which:
- a. is lawfully in the public domain at the time of disclosure;
 - b. subsequently and lawfully becomes part of the public domain by publication or otherwise;
 - c. subsequently becomes available to the receiving Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or
 - d. is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
- 5.1.7 **Disclosure to professional advisors.** Nothing in this clause shall preclude the Parties from disclosing the confidential information to their professional advisors in the *bona fide* course of seeking business and professional advice.
- 5.1.8 **Severability.** The provisions of this clause 15 are severable from the rest of the provisions of this Contract and shall survive its termination and continue to be of full force and effect for a period of ten (10) years after the date of termination.

5.2 INTELLECTUAL PROPERTY RIGHTS

- 5.2.1 **Ownership in Services vests in Department.** All rights of ownership and copyright in the Services to be provided by the Contractor to the Department shall vest solely with the Department, and the Contractor will not make such information available to any other party without the written consent of the Department on such terms and conditions as may be stipulated by the Department at that time. ‘
- 5.2.2 **No aspect of the Services to infringe 3rd Party intellectual property rights.** The Contractor warrants that no aspect of the Services provided in terms hereof will infringe any patent, design, copyright, trade secret or other proprietary right of any third party ("third party proprietary rights"), and the Contractor shall, at its own cost, defend the Department against any claim that the Services infringe any such third party proprietary rights, provided that the Department gives prompt notice to the Contractor of such claim and the Contractor controls the defence thereof.
- 5.2.3 The Contractor further indemnifies the Department against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the Department in any action which is attributable to such claim and will reimburse the



Department with all costs reasonably incurred by the Department in connection with any such action.

- 5.2.4 **Process in the event of a claim.** Should any person make any claim against the Department in terms of clause 16.2, the Department shall give the Contractor notice thereof within ten (10) days of becoming aware of such claim to enable the Contractor to take steps to contest it.
- 5.2.5 **Infringement of 3rd Party rights.** Should any third party succeed in its claim for the infringement of any third party proprietary rights, the Contractor shall, at its discretion and within thirty (30) days of the Services having been found to infringe:
- a. obtain for the Department the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or
 - b. replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe, and which is materially similar to the subject of infringement; or
 - c. alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
 - d. withdraw the subject of infringement.
- 5.2.6 **Ownership.** Ownership of all Departmental data, whether under its control or not, shall continue to vest in the Department and the Contractor shall not obtain any proprietary rights of such data.
- 5.2.7 **Data may only be used in performance of the Services.** The Department's data in the possession of the Contractor, or to which the Contractor may have access during the currency of this Contract, may not be used by the Contractor for any purposes whatsoever other than as may be specifically required to enable the Contractor to comply with its obligations in terms of this Contract.
- 5.2.8 **Preservation of integrity of data.** Both Parties shall take reasonable precautions (having regard to the nature of their obligations in terms of this Contract), to preserve the integrity of the Department's data and to prevent any unauthorised access, corruption, or loss of such data.

6 TERMS AND CONDITIONS

6.1 GENERAL

- 6.1.1 The Department reserves the right to amend, modify or withdraw this Terms of Reference (TOR) document or amend, modify or terminate any of the procedures

or requirements set out herein at any time and from time to time, without prior notice except where required by law, and without liability to compensate or reimburse any Service Provider.

- 6.1.2 Neither the Department, nor any of its respective, officers, or employees may make any representation or warranty, expressed or implied in this TOR document, and nothing contained herein is, or shall be relied upon as, a promise or representation, whether as to the past or the future.
- 6.1.3 The costs of preparing proposals and of negotiating the Contract will not be reimbursed.
- 6.1.4 The Department also reserves the right to call interviews, site visits and/or call for demo's of the product or solution, with short-listed Service Providers before final selection, and to negotiate price with the Preferred Service Providers.
- 6.1.5 Firms may not contact the Department on any matter pertaining to their bid from the time when bids are submitted to the time the Contract is awarded. Any effort by a Service Provider to influence bid evaluation, bid comparisons or award decisions in any manner, may result in rejection of the bid concerned.
- 6.1.6 Bid submission requirements must be completed in sections and appendices provided in the bid document.
- 6.1.7 **ALL BIDDERS MUST BE REGISTERED ON THE CENTRAL SUPPLIER DATABASE AT NATIONAL TREASURY.** More information in this regards is available on www.ocpo.treasury.gov.za. Proof of registration must be submitted together with the technical proposal.
- 6.1.8 Bidders may provide any additional information deemed important for the DOT to consider.
- 6.1.9 Prospective Bidders must at all times comply with the Department's Supply Chain rules and processes with regard to all projects and payments.

6.2 ORDER OF PRECEDENCE.

- 6.2.1 In the event of any conflict between any provisions of the SCC, GCC, Proposal and any other document accompanying the Bid, the following order of precedence shall prevail—
 - a. Standard Bidding Documents;
 - b. Standard Condition of Contract (SCC) if applicable
 - c. General Condition of Contract (GCC);
 - d. Terms of Reference (TOR);

- e. Service Level Agreement (SLA) if applicable; and
- f. Proposal.

6.3 DURATION

- 6.3.1 The project is expected to be for a period of eight months.
- 6.3.2 The Contract shall commence on the Effective Date and, subject to the rights of termination stipulated herein, terminate on the Completion Date as specified in the Contract.

6.4 CONTRACT AMENDMENTS

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

6.5 SUBCONTRACTS

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



Contractor indemnifies the Department against any such claims and costs so incurred."

6.6 CONTRACTOR'S PERSONNEL

- 6.6.1 **Project Team.** The Contractor shall make available the skills and expertise of the Project Team referred to in the Bid who shall be involved in the Contract or the Services, unless otherwise agreed to by the Department, which agreement shall not be unreasonably withheld.
- 6.6.2 **Exceptions.** Notwithstanding the provisions of clause 6.6.1, where, due to circumstances beyond the control of the Contractor, a member of the Project Team cannot act in accordance with the provisions of this clause due to their dismissal, resignation or incapacity, the Contractor shall, to the extent possible, implement an appropriate succession plan to minimise the effect of the unavailability of such member.
- 6.6.3 **Suitably qualified Personnel.** The Contractor shall employ suitably qualified, experienced and trained Personnel to provide the Services, provided that the Contractor shall be entitled in its discretion, to allocate Personnel resources in accordance with the technical or other skills and knowledge required, which discretion shall not have a negative impact on the provision of the Services.
- 6.6.4 The Contractor's Personnel providing the Services may be absent for short periods of time for reasons including annual leave and training. The Contractor undertakes to avoid any disruption of the Services due to such circumstances.
- 6.6.5 **Contractor to adhere to security procedures of the Department.** The Contractor's Personnel including the Project Team shall at all times when on the Department's premises, adhere to the standard health, safety and security procedures and guidelines applicable to the Department's Personnel, as varied and conveyed by the Department to the Contractor from time to time.
- 6.6.6 Should the Department at any time have reason to believe that any of the Contractor's Personnel is failing to comply with such standard health, safety and security procedures and guidelines, the Department may deny such person access to any or all of the Department's premises or systems and require the Contractor to replace such person without delay.



6.7 PAYMENT

6.7.1 Invoice.

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

6.7.2 Detailed Pricing.

Service Providers must complete the required SBD Pricing documents and ensure that Prices are:

- a. Firm and inclusive of all costs, including disbursements. Firm prices mandate that any escalations/estimated escalations be included in the final ceiling amount.
- b. Inclusive of VAT, if applicable;
- c. Correctly calculated and identical to the financial proposal.
- d. A detailed pricing schedule should be attached to the SBD documents providing a proper cost breakdown, in line with deliverables, and indicating the proposed time frames. If this TOR prescribed a set template for submission of the cost breakdown/pricing, bidders must submit such in the required format.
- e. The Department uses a two-envelope system. **NO PRICES MUST REFLECT IN THE TECHNICAL PROPOSAL.**

6.7.3 Fees

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

6.7.4 Rates

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

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

- c. Based on the body regulating the profession of the Consultant.

6.7.5 Payment information

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

6.7.6 Total Contract Price.

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

6.7.7 Price all-inclusive.

All prices are inclusive of any Value Added Tax, import, and all other duties. Any risk associated with an omission or miscalculation in pricing proposals, are carried by the bidder.

6.8 DELIVERY AND DOCUMENTS

- 6.8.1 **Reports.** The Contractor shall provide the Department with detailed Documentation and Reports as set out in the Contract and Project Plan or when required in writing by the Department in both electronic format and hard copy.
- 6.8.2 Reports shall contain accurate information as to enable the Department to monitor and manage the Contractor's performance in terms of this Contract.
- 6.8.3 All Documentation and Reports shall be in English.

6.9 PENALTY REGIME

- 6.9.1 Poor performance will result in penalties that include withholding of a minimum 30% of the total invoice of each affected phase / milestone until it is fixed before the final product is submitted. In the case where the performance has not been improved to the satisfaction of the Department and the final product is handed over, the original

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

- 6.9.2 The project milestones / phases are expected to be adhered to. Any deviation must be approved by the Department prior to any commencement of the changes. Failure to do so will result in a 5% non-payment of that particular and/or affected phase(s).
- 6.9.3 Notwithstanding item 6.9.2 above, failure to meet the deadline as stipulated in paragraph 2.3 will result in 30% of the total outstanding payments for the project as whole not being paid over to the Service Provider if the poor performance is attributed to the Service Provider unless there is undisputed evidence that the fault lies with the Department."

6.10 TERMINATION

- 6.10.1 Should either Party fail to comply with any provision of this Contract the aggrieved Party may send a letter of demand to the defaulting Party, demanding compliance with such provision and should the defaulting Party, after a period of fourteen (14) days (or such longer periods as may under the circumstances be reasonably necessary) of the date of receipt of such written notice, remain in default, the aggrieved Party shall be entitled, without prejudice to any other rights it may have :
- a. to claim specific performance from the defaulting Party and to claim such damages as it may have suffered; or
 - b. to discharge and execute the defaulting Party's obligations on its behalf and to recover the costs and disbursements incurred in respect thereof from that Party; or
 - c. to terminate this Contract and claim such damages as the aggrieved Party may have suffered from the defaulting Party."
- 6.10.2 The Department may, without prejudice to any other rights it may have, terminate this Contract by written notice to the Contractor, upon the occurrence of the following events, namely if:
- a. the Contractor fails to adhere to set timeframes, service levels or service standards as determined in the TOR, SLA and/or Project Plan;
 - b. the Contractor, in the opinion of the Department, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract;

- c. judicial execution is levied on the Contractor's goods and which remains unpaid for 14 days after attachment;
- d. there has been a material defect, error or failure by the Contractor to comply with applicable laws or rules in the Bid or in the awarding of this Contract which is incapable of rectification and that requires this Contract to be terminated;
- e. the Contractor, when advised that its Proposal has been accepted, has given notice of inability to sign or execute the Contract;
- f. the Contractor has abandoned its obligations in terms of this Contract;
- g. the Contractor has deliberately furnished inaccurate information in its Bid with regard to its previous experience relating to the Services, or with regard to any other material information; or
- h. the Contractor ceases to carry on business as the Contractor of the Service.

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

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

6.10.5 The Preferred Service Provider may be required to enter into a Service Level Agreement (SLA) prior to appointment.

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

6.10.7 The Department reserves the right to terminate the Agreement in the event that no consensus can be reached on the terms and conditions of a subsequent Service Level Agreement."



PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	SCM/01/2023/RLT	CLOSING DATE:	15 May 2023	CLOSING TIME:	11:00 AM
DESCRIPTION					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Thabo Skosana		CONTACT PERSON	Mala Somaru	
TELEPHONE NUMBER	012 309 3035		TELEPHONE NUMBER	012 309 3925	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	SkosanaT@dot.gov.za		E-MAIL ADDRESS	SomaruM@dot.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

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

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 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.:

CLOSING TIME 11:00

CLOSING DATE:.....

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

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

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

Bid No.:

Name of Bidder:

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

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

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

***[DELETE IF NOT APPLICABLE]**

Any enquiries regarding bidding procedures may be directed to the –
 (INSERT NAME AND ADDRESS OF DEPARTMENT/ENTITY)

Tel:

Or for technical information –

(INSERT NAME OF CONTACT PERSON)

Tel:

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

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

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

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship

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

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 consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

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

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

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

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

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

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

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

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

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

1.2 **To be completed by the organ of state**

(delete whichever is not applicable for this tender).

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

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

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

1.4 **To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

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

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

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

2. DEFINITIONS

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

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \mathbf{Ps} = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right) & \mathbf{or} & \mathbf{Ps} = 90 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right) \end{array}$$

Where

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

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

3.2.1. POINTS AWARDED FOR PRICE

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

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

Where

- P_s = Points scored for price of tender under consideration
 P_t = Price of tender under consideration
 P_{max} = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

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

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
BLACK OWNED		10		
WOMEN OWNED		6		
BLACK DESIGNATED GROUP		4		

DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium

One-person business/sole propriety

Close corporation

Public Company

Personal Liability Company

(Pty) Limited

Non-Profit Company

State Owned Company

[TICK APPLICABLE BOX]

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

.....	
SIGNATURE(S) OF TENDERER(S)	
SURNAME AND NAME:	.....
DATE:	.....
ADDRESS:	..... ..... ..... .....

2.2 Specific goals and points allocation

- a. The following table will be utilised in evaluating preference:

(NOTE THAT THIS MUST BE ADJUSTED PER RFQ/TOR)

GOAL	Points out of 20 (80/20)	Required Proof	Points Claimed	Proof Attached Y/N
BLACK OWNED (BO)	MAX 10	B-BBEE Status level certificate issued by an authorized body or person; or A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice		
EME/QSE/LE 100%BO	10			
EME/QSE=>51%BO	6			
WOMEN OWNED (WO)	MAX 6	B-BBEE Status level certificate issued by an authorized body or person; or A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice		
EME/QSE/LE 100%WO	6			
EME/QSE=>51%WO	4			
BLACK DESIGNATED GROUP (BDG)*	MAX 4	B-BBEE Status level certificate issued by an authorized body or person; or A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice		
EME/QSE/LE 100%BDG	4			
EME/QSE=>51%BDG	2			
MAXIMUM POINTS	20			