

SPECIFICATIONS ENQUIRIES	: Saadiqa Dangor
TEL NO.	: 021 495 4406
BID ENQUIRIES	: Kayleen Swartz
TEL NO.	: (021) 495 4405
BID NO.	: ASEZ 002 2024 CS
CLOSING DATE	: Monday, 23 September 2024 at 11:00 am
VALIDITY PERIOD	: 120-DAYS (CALCULATED FROM CLOSING DATE)

Service: INTERNAL AUDIT SERVICES FOR A PERIOD OF THREE (3) YEARS

1. Bidders are invited to submit their applications according to the attached Terms of Reference.
2. This bid is subject to the General Conditions of Contract (GCC) and, where applicable, any other special conditions of contract.
3. Kindly note that the Bid applications may be submitted in one of the following ways:
 - 3.1. **By post:**
Supply Chain Management Unit, Atlantis Special Economic Zone, Atlantis Foundries Business Park, William Gourlay Street, Atlantis Industrial, 7349
 - 3.2. **Hand delivery:**
To be deposited in the Bid box at the Atlantis Foundries Business Park , William Gourlay Street.
GPS Coordinates: -33.59880244427736, 18.4798392459809.
4. The bid should include one(1) written and one(1) electronic document (Secured pdf supplied on a memory stick) Note: "Secured Pdf" reflects the word "secured" in the title and cannot be amended by anyone other than the originating bidder including Word document format.
5. Bids forwarded by e-mail or similar process, will not be considered.
6. **A bidder who submits documentation via courier, are responsible for ensuring that the documentation is delivered in the bid box of the Atlantis Special Economic Zone before closing date and time. Failure to comply will result in the bid not to be considered.**
7. **No late bids will be accepted.**

PART A

INVITATION TO BID

ZERO-TOLERANCE TO FRAUD, THEFT AND CORRUPTION (ANTI-FRAUD, THEFT AND CORRUPTION)

THE WCG IS COMMITTED TO GOVERN ETHICALLY AND TO COMPLY FULLY WITH ANTI-FRAUD, THEFT AND CORRUPTION LAWS AND TO CONTINUOUSLY CONDUCT ITSELF WITH INTEGRITY AND WITH PROPER REGARD FOR ETHICAL PRACTICES.

THE WCG HAS A ZERO TOLERANCE APPROACH TO ACTS OF FRAUD, THEFT AND CORRUPTION BY ITS OFFICIALS AND ANY SERVICE PROVIDER CONDUCTING BUSINESS WITH THE WCG.

THE WCG EXPECTS ALL ITS OFFICIALS AND ANYONE ACTING ON ITS BEHALF TO COMPLY WITH THESE PRINCIPLES TO ACT IN THE BEST INTEREST OF THE WCG AND THE PUBLIC AT ALL TIMES.

THE WCG IS COMMITTED TO PROTECTING PUBLIC REVENUE, EXPENDITURE, ASSETS AND REPUTATION FROM ANY ATTEMPT BY ANY PERSON TO GAIN FINANCIAL OR OTHER BENEFIT IN AN UNLAWFUL, DISHONEST OR UNETHICAL MANNER.

INCIDENTS AND SUSPICIOUS ACTIVITIES WILL BE THOROUGHLY INVESTIGATED AND WHERE CRIMINAL ACTIVITY IS CONFIRMED, RESPONSIBLE PARTIES WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	ASEZ 002 2024 CS	CLOSING DATE:	Monday, 23 September 2024	CLOSING TIME:	11:00 AM
DESCRIPTION	Provision Of Internal Audit Services for a Period Of Three (3) Years				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Atlantis Foundries Business Park , William Gourlay Street. GPS Coordinates: -33.59880244427736, 18.4798392459809.					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Kayleen Swartz	CONTACT PERSON	Saadiqa Dangor		
TELEPHONE NUMBER	021 495 4404	TELEPHONE NUMBER	021 495 4406		
FACSIMILE NUMBER		FACSIMILE NUMBER			
E-MAIL ADDRESS	scm@atlantiszez.co.za	E-MAIL ADDRESS	saadiqa@atlantiszez.co.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:		CENTRAL SUPPLIER DATABASE No:	MAAA	
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]

OFFERED?			
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA			<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, 2022 THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (WCBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA .
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:

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

DATE:

TERMS OF REFERENCE

To:	The Bidder
From:	Supply Chain Management Unit

BID PARTICULARS

Project Description	Provision of internal audit services for a period of three (3) years		
Bid Enquiries	Kayleen Swartz	scm@atlantissez.co.za	
	*021 495 4405		
Specifications Enquiries	Saadiqa Dangor	saadiqa@atlantissez.co.za	
	*021 495 4406		
	<i>*please note that staff work rotationally which could result in unanswered calls</i>		
Bid Reference	ASEZ 002 2024 CS		
Bid Closing Date	Monday, 23 September 2024	Bid Closing Time	11:00 AM
Bid Briefing Session	A compulsory briefing session will be held on Friday, 6 September 2024 at 10:00 am		

1. INTRODUCTION

The Atlantis Special Economic Zone (ASEZ) is a Greentech zone, which focuses on attracting companies and investors which contribute to zero carbon emissions, resource-efficiency, and socially inclusive investment. It is building a sustainable manufacturing environment and actively explores how to also run a zero carbon, resource efficient, and socially inclusive zone. In doing so it contributes directly to the objectives of the “just transition.” The entity has ambitious goals such as building skills and enterprises in and around the Atlantis environment for application in the green economy, generating and supplying renewable energy to its future investors, being a net-zero water user, and having no waste go to landfill.

The Atlantis Special Economic Zone Company SOC Ltd (ASEZCo) is a state-owned entity as defined in the Companies Act and a provincial public entity listed under schedule 3D of the PFMA and is characterized as a government business enterprise. The shareholders are the Western Cape Government and the City of Cape Town.

The ASEZCo is a geographical area of 118 hectares in the industrial area of Atlantis. It is a Greentech SEZ with the objective of attracting Greentech manufacturers. The ASEZCo currently consists of a number of investors on privately owned land (about 25ha) as well as three separate portions of vacant and industrial zoned land owned by the City of Cape Town (+93ha). This land is in the process of being acquired from the City of Cape Town.



The ASEZCo aims to contribute to green industrial development in Atlantis and creating decent work and other economic and social benefits in the region of Atlantis, including the broadening of economic participation by promoting small, micro and medium enterprises and co-operatives, and promoting skills and technology transfer. The area will no doubt become a key platform for Greentech industrial development in the Western Cape.

2. PURPOSE

- 2.1. The ASEZCo is seeking proposals from credible independent audit firms to provide internal audit services for a period of three (3) years. The service provider will be required to add value, provide appropriate levels of assurance on risk and control effectiveness in all facets of the business on a regular basis. In doing so, the service provider will work collaboratively with the Audit, IT and Risk Committee (AIRC) and ASEZCo Management to fulfil their mandate. The service provider will ensure that all work performed conforms to the latest Standards for the Professional Practice of Internal Auditing and King IV reports.

3. BACKGROUND

- 3.1. The Internal Audit function will assist the Audit and Risk Committee of the ASEZCo through the assessment of the effectiveness of the risk management strategy, fraud prevention plan and the control and governance processes.

4. NATURE AND SCOPE OF SERVICES TO BE RENDERED

Refer to Annexure “A” – Three (3) Year Rolling Plan and Plan linked to Risk

- 4.1. The scope of services for the three (3) year period is as follows:

Planning Requirements:

- Developing a flexible rolling three-year internal audit plan (IA Plan) and annual internal audit plan (including the scope, cost, and timelines of each audit) using an appropriate risk-based methodology, including any risks and opportunities or control concerns identified by management or directed by Audit, IT and Risk Committee (AIRC) which is informed by the ASEZCo’s strategic risks and opportunities.
- Submitting the IA plan to the AIRC for review and approval as well as periodic updates throughout the year.
- Preparation of an Audit Planning Memorandum (APM) describing the audit scope for each auditable area.
- Collaborate with relevant Internal and External Service and Assurance Providers including Management to ensure proper coverage and minimal duplication of effort.

Execution Requirements:

- Implementing the annual audit plan as approved, including, as appropriate, any special tasks or projects requested by Management and the AIRC.
- Attending all AIRC meetings throughout the year and any other meeting requested by Management or the AIRC.

- Monitoring the implementation of audit findings and engagement results communicated to Management.
- Through using the risk-based approach, assure the AIRC that sufficient work has been done, not only over financial matters, but also operational, compliance, etc.
- Performing an objective assessment of the adequacy and effectiveness of risk and opportunity management and all other elements of the internal control framework. Performing reviews of the ASEZCo's governance process including ethics.
- Conduct follow-up reviews with a view to evaluating Management action plans against agreed timelines.
- Keeping the AIRC informed of emerging trends and successful practices in internal auditing.
- Analysing and evaluating business processes and associated controls in support of the achievement of divisional and ultimately the ASEZCo's strategy and objectives.
- Evaluating and assessing significant new or changing services, processes, operations, and control processes.
- Providing, with the approval of the AIRC, consulting services, beyond internal auditing's assurance services, if so required, which do not prejudice the responsibilities required of internal audit, to assist Management in meeting its objectives.
- Developing and maintaining a quality assurance and improvement program that covers all aspects of the internal audit function including internal and external quality assessments.

Reporting Requirements:

- Presenting an audit report to Management after each audit and a quarterly summary report on critical and significant matters to the AIRC related to the processes for controlling the activities of the ASEZCo, including potential improvements to those processes, and provide information concerning such issues through active and constructive resolution.
- Periodically providing information on the status and results of the annual audit plan and the sufficiency of the internal audit function's resources.
- Providing annually an objective assessment on the adequacy and effectiveness of the ASEZCo's processes, internal controls and managing its risks and opportunities set forth under the scope of work.
- Annually provide a written assessment of internal control environment, governance, and risk management to the AIRC.

4.2. Deliverables

The Successful Internal Audit Service Provider will be responsible for the following outcomes:

- Provide effective value adding Internal Audit Services that are innovative and responsive to the needs of the ASEZCo and its operating environment.
- Assist management and AIRC of the ASEZCo in the effective discharge of their responsibilities by providing assurance that management processes are adequate to identify and monitor significant

risks.

- Confirm through analysis, appraisal, recommendations, advice and insights that established systems of internal controls are adequately designed are operating effectively and efficiently.
- Review the systems of internal control to ascertain whether they are functioning as designed.
- Provide Internal Audit Services in line with the Performance and Attributes Standards endorsed by the Institute of Internal Auditors (IIS).
- Provide Services in line with the Public Finance Management Act (PFMA) and King IV Report on Corporate Governance.
- Review the accuracy, reliability, and integrity of financial and non – financial information and the means used to identify, classify, and report such information.
- Review and appraise the economic, effectiveness and efficiency with which resources are employed.
- Review specific programmes or initiatives to ascertain whether results are consistent with established objectives and goals; and whether the programmes or initiatives are being carried out as planned.
- Review systems established to ensure compliance with policies, plans, procedures, laws and regulations that could have significant impact on operations and reports and determining whether the organisation complies.
- Provide Assurance on the Cybersecurity measures taken by the ASEZCo.
- Perform Internal Audit Services in such a manner that at least moderate reliance is placed on the function of the Internal Audit by the Auditor – General of South Africa (AGSA).
- Perform annual risk assessments based on inputs from the Internal Control unit within the Finance Component, the external auditors and their evaluation of environmental factors impacting the organisation, from which internal audit plans will be developed.
- The above - mentioned coordinated approach shall be used to maximise internal audit resources and coverage and to ensure that the appointed service provider provide greatest value to the ASEZCo.

4.3. Matters to be considered in developing the Annual Audit Plans shall include:

- Significant areas of potential risk of fraud.
- The accuracy and completeness of financial statements.
- Major changes in operations, organisational structures, systems, and controls.
- Safeguarding of assets.
- Compliance with laws, regulations, contracts, policies, and procedures.
- Risk areas identified by management.
- Results of previous audits.
- Significant areas of risk related to reliability and integrity of financial and operational information or failure to deliver on the ASEZCo Mandate.

- The appropriateness of its staff mix and expertise, relative to a specific engagement.
- Develop a three – year Internal Audit Strategic Plan and an Annual Audit Operational Plan based on the risk assessment for approval by the AIRC. The plan should include costing of all the activities to be performed.
- Perform risk - based internal audits based on the approved plans.
- Coordinate with the AGSA and ensuring alignment with the external audit function processes and best practice. The internal audit function will be required to meet with the AGSA on an annual basis to discuss the internal audit plan.
- The internal audit function will be required to present their plan to increase the effectiveness of the combined assurance model to management and the AIRC.
- Attend AIRC meetings, and report periodically on the internal audit plan.
- Work in line with the combined assurance model.
- Periodically perform ad-hoc reviews as requested by exco and the AIRC.
- Maintain a functional quality assurance and improvement programme that covers all aspects of the internal audit services AND, at least once during a three-year cycle or as determined by the AIRC, be subjected to an independent quality assurance review

4.4. Expertise And Capacity

- The key criteria to be considered for the suitability of the service provider includes the following:
- Have knowledge and a comprehensive understanding of the public sector, and an understanding of the PFMA and its related Treasury Regulations.
- The service provider must be able to demonstrate the ability to conduct audits from the premises of the ASEZCo in Atlantis, as well as Century City, Cape Town, Western Cape.
- Demonstrate to the ASEZCo that the Engagement Director is directly involved in every engagement review undertaken at the Agency. The engagement director will fill the role of a Chief Audit Executive, and as such the assigned engagement directors must demonstrate qualification, competence, and experience to fulfil this role. Have a quality control department responsible for ensuring the IAS standards are appropriately applied.
- Demonstrate that they adhere to the IAS standards, particularly as they relate to:
 - The application of a risk-based approach to auditing.
 - The use of IT audit resources (including the appropriate tools)

4.5. Professional Membership

- 4.5.1. The Service Provider is expected to provide detailed information on personnel that will be part of the audit (for example relevant degree, accreditation with the IIA and any other relevant professional body (i.e., technical experience, etc.).
- 4.5.2. It is mandatory that the senior resources of the preferred service provider (i.e., Directors, Senior Managers and Managers) to have the appropriate professional qualification(s) enabling them to perform internal audit services.
- 4.5.3. The Service Provider is to maintain professional audit staff with sufficient knowledge, skills, experience, and professional certifications.

4.6. Types Of Audits:

The successful bidder will be required to perform the following types of audits:

- Risk-based audits (this includes but is not limited to, Finance, Human Resources, Procurement and Contract Management and Stakeholder Management.).
- Compliance audits.
- Performance Information audits.
- Governance audits.
- Sustainability and integrated reporting audits.
- Information, Communication and Technology (ICT) audits; Risk Management Maturity Assessment.
- Fraud Assessments.
- Ad hoc projects when required (including but not limited to the effectiveness of the Board performance and the assessment of the significance/materiality framework)

4.7. Cost Proposal

Bidders must submit pricing for all requested items in conjunction with the WCDB 3.3. Failure to submit pricing for all requested items will result in bid disqualification. **The bidder must complete the below ALL pricing tables.**

Pricing methodology used should include the average rate per hour across all areas of the audit, that is planning, execution and reporting. The bidder is required to provide the proposed internal audit fees for the full scope of the audit over the three (3) year period.

The total estimated internal audit billable hours for the three years is categorised as follows:

No	Task	Allocated hours	Average rate used	Year 1	Year 2	Year 3
Strategic Reviews						
1	Risk Workshop			✓	✓	✓
2	Review of the ASEZ Internal Audit Charter				✓	
3	Risk Management Process Review			✓		
Financial Review						
4	Supply Chain Management			✓	✓	✓
5	Fixed Assets			✓		
6	Internal Financial Control Review			✓		✓
Information Technology Reviews						
7	Information Technology Security and Governance Review			✓		✓
Compliance Reviews						
8	ESG Reporting Review				✓	
9	POPI Act Questionnaire				✓	
10	Organisational Policy Review			✓		
Operational Reviews						
11	Review of Lease Agreement (template)					✓
12	Audit Performance Information (Pre-determined Objectives)			✓		✓
13	HSE Review				✓	
14	HR Review (including session planning)				✓	
15	Payroll Review			✓		
16	Corporate Governance Review					✓
17	Lease Audit					✓
18	Control Self-Assessment Development				✓	
19	Community Forum Assistance			✓		
20	Contracts Management Review				✓	
21	Revenue Generation Efficiency Review			✓		
Annual / Quarterly Reviews						
22	Review of the AFS			✓	✓	✓
23	Quarterly Follow Ups on Audit Findings			✓	✓	✓
24	Attendance and Audit Committee Meetings			✓	✓	✓
Ad-Hoc Services						
	Ad hoc services (including but not limited to the effectiveness of the Board performance and			✓	✓	✓

	the assessment of the significance/materiality framework)					
				<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
Sub-total						
VAT @ 15%						
Total internal audit fees for (all inclusive)						

Please append an official quotation on your company letterhead as well.

Price validity period from date of bid closure: One Hundred and Twenty (120) days

5. COMPLIANCE REQUIREMENTS FOR A VALID BID

- 5.1. Bidders that fail to adhere to any of the following, will be rendered non-responsive and will not be further evaluated
 - 5.1.1. Bidders must submit proposals including the cost proposal (WCBD 3.3 & section 4.7) inclusive of VAT before the bid closing date.
 - 5.1.2. A valid Tax Clearance Certificate must be accompanied as a supporting document.
 - 5.1.3. A bank confirmation letter must be accompanied as a supporting document
 - 5.1.4. Bidders must be registered on Central Supplier Database (CSD) and have active status on or before the closing date and time of the bid. A valid CSD report must be accompanied as a supporting document.
 - 5.1.5. Bidders must submit a duly completed and signed WCBD 1 and WCBD 4
 - 5.1.6. The Bidding company is required to appoint an SMME as a JV partner as part of SMME development, a minimum of 30% of the work must be identified for the SMME partner. Partnership agreement must be submitted.
 - 5.1.7. Each party participating in a Joint Venture or Consortium must be tax compliant and must provide a WCBD 4.
 - 5.1.8. The Bidder must be operationally and financially sound. Latest signed Annual Financial Statements to be provided.
 - 5.1.9. Proof of bidders' base of operations: CIPC registration must be accompanied

6. SERVICE PROVIDERS PROPOSAL

- 6.1. The bidder must provide a detailed and comprehensive proposal that demonstrates thorough understanding of the above deliverable criteria. The bidder must clearly demonstrate the company's capability and experience to execute the work. A detailed proposal submitted should include but not limited to:

- 6.1.1. Cost proposal (WCBD 3.3 & Section 4.7) inclusive of VAT
- 6.1.2. Bidder to provide a company profile detailing the company's experience where work similar to the specifications are provided. The bidder is expected to provide detailed CV's of personnel that will be part of the audit team, including relevant degree, accreditation with the relevant professional body and total years of experience within the scope of work.

It is mandatory that the team leader of the preferred service provider (i.e., Directors, Senior Managers and Managers) to be a Qualified Auditor registered with IIA / IRBA, enabling them to perform internal audit services. The Service Provider is to maintain professional audit staff with sufficient knowledge, skills, experience, and professional certifications.

6.1.3. A detailed Project Implementation plan and Methodology clearly indicating the scope of the work, deliverables, list of services and the planned resources allocation.

The bidder is to present an audit plan for the ASEZCo as a public entity and how it will benefit ASEZCo in preparation for the external audit, identifying, alerting and preventing fraud, wasteful, fruitless and irregular expenditure. Ensure ASEZCo is up to date with the latest accounting and other related information and legislation on audit processes. This also include a risk assessment presentation.

6.1.4. Provide three (3) contactable references for similar projects conducted within the past 5 years for a client of comparable size and complexity.

NB: The reference letters must be on the letterheads from contactable institutions, and must clearly indicate the scope of the work completed.

6.1.5. Bidders base of operations: CIPC registration must be accompanied. The service provider must be able to demonstrate the ability to conduct audits from the premises of the ASEZCo in Atlantis, Cape Town, Western Cape.

7. EVALUATION METHODOLOGY

7.1. Bids shall be evaluated in terms of the following phases:

7.1.1. Phase 1 - Compliance Checking

Evaluation of documents cited in section 5. Documents must be submitted, duly completed and signed where required.

7.1.2. Phase 2 - Functionality Criteria

Compliant bids will, thereafter, be evaluated against the criteria and weights for functionality depicted in the following table.

Functionality And Capability Requirements

A minimum threshold of 75 points will apply to qualify to the next stage of Price and BBBEE. Failure to reach the minimum threshold will lead to disqualification.

NO	CRITERIA	WEIGHT	REFERENCE
1	COMPANY PROFILE	40	
1.1	<p>Experience and Qualifications of Team Leader</p> <p>Minimum Qualified Auditor registered with IIA / IRBA</p> <p>Indicate knowledge and experience in internal audits of public sector. Special units with reference to; SCM, project management, annual performance audits, risk assessments and guidance on managing the risk register and financial audits in line with the regulations and relevant acts based on the AG audit program</p> <ul style="list-style-type: none"> • 5+ years' experience = 20 points • 3 -4 years' experience = 15 points • Less than 3 years' experience = 10 points 	20	Par 6.1.2
1.2	<p>Experience and Qualifications of proposed audit team (minimum 3 members)</p> <p>Minimum Auditing degree or equivalent</p> <p>Indicate knowledge and experience in internal audits of public sector. Special units with reference to; SCM, project management, annual performance audits, risk assessments and guidance on managing the risk register and financial audits in line with the regulations</p> <ul style="list-style-type: none"> • 3+ years' experience = 20 points • 1-2 years' experience = 15 points • Less than 1 years' experience = 1 point 	20	
2	PROJECT PLAN AND METHODOLOGY	20	
2.1	<p>A detailed Project implementation plan and Methodology should clearly indicate the following:</p> <p>Scope of the work, deliverables, list of services, the planned resources allocation, an audit plan and a risk assessment presentation as identified in the detailed specification section.</p> <ul style="list-style-type: none"> • Excellent – project scope is comprehensively covered = 20 points • Good – meets some project scope requirements = 10 points • Unsatisfactory – not in alignment with the required project scope = 1 point 		Par 6.1.3

3	CONTACTABLE REFERENCES	30	
	Bidder's experience on similar scale projects (Public Entity Audits) with respect to specific aspects of the project / comparable projects		Par 6.1.4
	<p>Bidder to provide 3 relevant references on past projects completed of which each relevant project reference will count 10 points up to a maximum of 30 points</p> <ul style="list-style-type: none"> • 3 or more reference letters on a letter head accompanied from contactable institution = 30 points • 2 reference letters on a letter head accompanied from contactable institution = 20 point • 1 reference letter on a letter head accompanied from contactable institution = 10 points • Reference(s) provided but not in alignment with above= 1 point 		
6	LOCATION	10	
	<p>The bidders local base of operations to service the work for which they are bidding in the ASEZCo</p> <ul style="list-style-type: none"> • Atlantis based (Atlantis, Pella, Witsand and Mamre) = 10 points • City of Cape Town = 4 points • Western Cape = 2 points • National = 1 points 		Par 6.1.5

7.1.3. Phase 3: 80/20 Preference Points System

Only Bidders that have met the requirements in Phase 2 evaluated in terms of the 80/20 preference points system, where the 80 points will be used for price and the 20 points are awarded to the bidder for attaining B-BBEE status level contributor in accordance with their BEE Certificate or affidavit.

B-BBEE points may be allocated to bidders on submission of the following documentation or evidence:

- A duly completed Preference Point Claim Form: Standard Bidding Document (WCBD 6.1); and
- B-BBEE Certificate / Affidavit

The bid will be awarded to the bidder with the highest score unless other objective criteria allow in accordance with section 2(1)(f) of the PPPFA and regulations 4 of PPR 2022 are applicable.

7.1.4. APPLICABLE OBJECTIVE CRITERIA

- 7.1.4.1. Service providers that have a local presence or have a significant impact on employment

and local economic development of the Atlantis area in alignment to the objectives of the ASEZCo's SMME policy.

- 7.1.4.2. Promote the achievement of the ASEZCo strategic objective of having significant **social impact** in the region and in Atlantis through Greentech and green economy opportunities, not only because it is democratic and just, but because it is consistent with the vision of ASEZCo and a key to supporting regional economic development.
- 7.1.4.3. Promote increased participation by, and market opportunities in the regional Greentech value chains.
- 7.1.4.4. Promote partnerships between ASEZCo and the public and private sectors in respect of the development and support to particularly local SMMEs.

8. BRIEFING SESSION

- 8.1. A compulsory briefing session will be held on **Friday, 6 September 2024** on 10:00 am at Atlantis Foundries Business Park , William Gourlay Street. GPS Coordinates: -33.59880244427736, 18.4798392459809 and **only bids from bidders or their duly authorized representatives that attended the compulsory session will be accepted.**

Aswell as online on MS Teams, Meeting ID: 368 623 581 898, Password: b4izfF

Service providers that intend to attend the briefing session will be required to register their interest to scm@atlantissez.co.za

9. DURATION OF CONTRACT

- 9.1. The contract period is for three (3) years, from date of appointment.

10. REPORTING AND MONITORING

- 10.1. The service provider will be expected to provide the AZSEZ with the below:

- 10.1.1. Presenting an audit report to Management after each audit and a quarterly summary report on critical and significant matters to the AIRC related to the processes for controlling the activities of the ASEZCo, including potential improvements to those processes, and provide information concerning such issues through active and constructive resolution.
- 10.1.2. Periodically providing information on the status and results of the annual audit plan and the sufficiency of the internal audit function's resources.
- 10.1.3. Providing annually an objective assessment on the adequacy and effectiveness of the ASEZCo's processes, internal controls and managing its risks and opportunities set forth under the scope of work.
- 10.1.4. Annually provide a written assessment of internal control environment, governance, and risk management to the AIRCs

11. BID VALIDITY

Any TOR submitted shall remain valid, irrevocable, and open for written acceptance by ASEZCo for a period of 120 days. An RFP submitted shall further be deemed to remain valid after the expiry of the above mentioned 120-day period until formal acceptance by ASEZCo, unless ASEZCo is notified in writing by the bidder of anything to the contrary (including any further conditions the TOR may introduce). Any further conditions that the bidder may introduce will be considered at the sole discretion of ASEZCo.

12. RETURNABLE DOCUMENTS

12.1. Bidders must submit the documents listed in the table below. All documents must be completed and signed by the duly authorised representative of the prospective bidder(s). The bidders' proposal may be disqualified for non-submission of any of the documents.

12.2. All bids must be submitted on the official forms provided (not to be re-typed) or in the manner prescribed in the bid document.

Document to be submitted	Disqualification	Description / Instruction
Business Profile	Yes	Bidder's proposal highlighting the bidders core business in relation to this request.
WCBD 1	Yes	Invitation to Bid 1) Authorised representative to sign bid. 2) Complete and sign.
WCBD 3.3	Yes	Pricing Schedule (Professional Services) including cost proposal under section 4.7)
WCBD 4	Yes	Declaration of Interest, Declaration of Bidder's Past Supply Chain Management Practices and Certificate of Independent Bid Determination 1) Complete and sign.
WCBD 6.1	No	Preference Points Claim Form 1) Non-submission will lead to zero (0) score for B-BBEE points. 2) Only the B-BBEE status stated on the completed WCBD 6.1 will apply to the evaluation of this bid and not the B-BBEE status on the CSD. 3) Complete and sign.
Audited Financial Statements	Yes	Company must be operationally and financially sound. Latest signed Annual Financial Statements.

Joint Venture/ Consortium Agreement	Yes	Bidders are mandated to form a JV/ Consortium with a SMME.
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13. LATE BID SUBMISSIONS

13.1. Late submissions of Bids will **NOT** be considered for evaluation.

13.2. A submission will be considered late if it arrives one second after 11:00 AM or any time thereafter. Bids arriving late will not be accepted under any circumstances. Bidders are therefore strongly advised to ensure that bids be dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid

14. APPEALS

14.1. The appeal period will be open for a period of 14 calendar days subsequent to the awarding of the tender to the successful bidder

15. JOINT VENTURE / CONSORTIUM / TRUST

15.1. A joint venture, consortium or trust will qualify for points on evaluation of their B-BBEE status level as a legal entity, provided that the entity submits the requisite B-BBEE status level certificate.

15.2. Bidders must submit substantive proof of the existence of joint ventures and/or consortium arrangements. The ASEZCo will accept signed agreements as satisfactory proof for the existence of a joint venture and/or consortium arrangement.

15.3. Joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the lead partner. The agreement must also clearly identify the lead partner that is accordingly provided with a power of attorney to bind the other co-parties in all matters pertaining to the joint venture and/or consortium arrangement.

16. REGISTRATION ON SUPPLIER DATABASES

16.1. Prospective bidders must be registered on the CSD at the time of bid closure.

16.2. All prospective bidding agencies that are not registered on the CSD are requested to self- register on www.csd.gov.za.

16.3. Registration on databases and compliance of tax status will be verified at the time of the award.

16.4. Where a bidder is not tax compliant, the ASEZCo will notify the bidder in writing of their non-compliant status and the bidder will be requested to submit written proof from SARS of their tax compliance status or proof that they have made an arrangement to meet their outstanding tax obligations within 7-working days.

17. CONTRACTUAL ASPECTS

17.1. The contents of this document shall be deemed to constitute the Special Conditions of Contract applicable to this bid and shall be read together with the General Conditions of Contract issued in

accordance with Chapter 16A of the Treasury Regulations.

- 17.2. Where, however, the Special Conditions of Contract are in conflict with the General Conditions of Contract, the Special Conditions of Contract shall prevail.
- 17.3. The bid document, together with the specifications contained in this document, shall constitute part of the Contract.
- 17.4. Bidders shall not perform any work or render any services in terms of the Contract unless in receipt of a written instruction to this effect by the ASEZCo.
- 17.5. The successful bidder may not assign its obligations.
- 17.6. The successful bidder must advise the CFO of ASEZCo immediately when unforeseeable circumstances will adversely affect the execution of the contract. Full particulars of such circumstances as well as the period of delay must be furnished.

18. LOCAL LABOUR / EMPLOYMENT

- 18.1. Awarded bidders will be required to utilise local labour for employment (as appropriate)
- 18.2. The following to be actively considered/requested at time of project scoping:
 - The provision of opportunities for Small, Medium and Micro- Business Enterprises (SMMEs).
 - The provision of work opportunities for local labour in the Atlantis and surrounding areas, including consideration for internships, job shadowing and work experience.

19. PERFORMANCE VERIFICATION

- 19.1. The ASEZCo's appointed contract manager or agent verifies that the performance of this contract in terms of services, delivery service, goods, labour and any other element specified in this contract is at the contracted performance level and/or the goods meet the contracted specifications with the represented of the contracted provider. Both parties verify this through signing the verification documentation. Both parties, at this time, agree on quantity, unit cost and total value on the same signed document.

20. DISCLAIMER

- 20.1. The ASEZCo has produced this document in good faith. The ASEZCo, its agents, and its employees and associates do not warrant its accuracy or completeness; make no representation, warranty, assurance, guarantee or endorsements to any third parties concerning the document. The ASEZCo has no liability towards the bidders in connection therewith.
- 20.2. Bidders must make and rely on their own investigations and satisfy themselves as to the correctness of all aspects of the bid. The ASEZCo will not be liable for any incorrect or potentially misleading information in relation to any part of this document and any accompanying bid documents.
- 20.3. The ASEZCo reserves the right not to appoint any contracted partner who does not comply with the conditions of this bid or if information is obtained by the ASEZCo about a bidder that could put the ASEZCo at risk.
- 20.4. The ASEZCo reserves the right to cancel this bid should the budget not be available at the time of award to cover the full quote of this tender or if the need does not exist anymore or the specification

has changed.

20.5. It must be noted that the Atlantis Special Economic Zone reserves its right to:

- a) Award the tender to a bidder other than the highest scoring bidder where objective criteria allow.
- b) To reject the lowest acceptable tender received; and/or
- c) Cancel this tender.

21. ABSENCE OF OBLIGATION

21.1. No legal or other obligation shall arise between bidders and the ASEZCo unless and until the formal appointment documentation has been signed. The ASEZCo is not obliged to proceed with any proposals of any bidder. The ASEZCo also reserves the right to request changes to any proposed consortium.

22. COMMUNICATION

22.1. The contracted parties communicate in writing through mail, delivery, or email. The contracted party states the contract number and purchase order number, if the latter is applicable, on communication documentation. The contract party does not act upon any communication without the contract number or must verify such communication with the assigned ASEZCo's contract manager prior to acting upon it.

23. CONTRACTED PARTY DUE DILIGENCE

23.1. The ASEZCo has the right to conduct supply chain due diligence including site visits and inspections at any time during the contract period.

24. TERMINATION OF CONTRACT DUE TO NON-PERFORMANCE

24.1. In the event of non-performance as per the agreed contract, the ASEZCo will appoint an alternative at the cost of the appointed third party. The defaulting third party is obliged to settle the damages/additional costs that the ASEZCo has incurred as result of the non-performance of the appointed bidder.

25. INDEMNITY

25.1. The successful bidder will indemnify, protect, defend and hold harmless the ASEZCo from and against any and all claims, demands, actions and proceedings whatsoever including all fees, costs and expenses incurred in respect thereof arising out of:

- a) Any claim of any taxes payable by the bidder.
- b) Any claim for Workmen's Compensation Insurance or for any loss for which the bidder is liable.
- c) Any claim by a third party including any employees of the ASEZCo or of the bidder for any loss resulting from any bodily injury and or damages to property by any act or omission of the bidder

or any of its employees, servants or agents.

26. OCCUPATIONAL HEALTH AND SAFETY WHEN WORKING ON THE ASEZCO'S SITES:

26.1. All personnel performing work on the ASEZCo's site/s as part of this contract are responsible to obtain safety induction.

Over and above the obligations provided by the Act, the contracted party meets with all relevant health and safety instructions as given to them by site safety personnel, where relevant. Personal protection equipment as per ASEZCo of Health's specification, closed safety shoes, hard hats, height safety equipment, and high visibility vests are worn at all times while on the work site. All personnel are to obey the relevant instructions, including signage, related to restricted access and speed limits on all sites.

26.2. The contracted party is responsible for itself, its employees, and those people affected by its operations in terms of the Occupational Health and Safety Act the regulations promulgated in terms thereof (OHS Act No 85 of 1993 and its Regulations, known as 'The Act'). The contracted party performs all the work and uses equipment on site complying with the provisions of the Occupational Health and Safety Act.

26.3. The contracted party maintains a health and safety plan complying with the requirements of The Act at the work site during the period that contracted work takes place on the site.

26.4. The ASEZCo manages the contracted party in its capacity for the execution of this contract to meet the provisions of the said Act and the regulations promulgated in terms thereof. The contracted party accepts liability for any contraventions of the Act. Each member of the contracted party's team (including sub-contracted personnel), submits a signed indemnity form prior to entering the work site and kept in the contracted party's health and safety file.

27. FRONTING

27.1. The ASEZCo supports the spirit of broad based black economic empowerment and recognises that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and garnering opportunities in an honest, fair, equitable, transparent, and legally compliant manner. Against this background the ASEZCo strongly condemns any form of fronting.

27.2. The ASEZCo, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct, or initiate the necessary enquiries / investigations in determining the accuracy of the representations made in bid documents / proposals. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade Industry and Competition ("DTIC"), be determined during such enquiry / investigation, the onus will be on the bidder to prove that the allegation of fronting does not exist. Failure to do so within a period of 14-days from date of notification may invalidate the bid / contract and may also result in the restriction of the bidder to conduct business with the public sector for a period not exceeding 10-years, in addition to any other remedies the ASEZCo may have at its disposal and accordingly wish to institute against such bidder concerned.

28. CONFLICT OF INTEREST, CORRUPTION AND FRAUD

28.1. The ASEZCo reserves the right to disqualify any potential bidding agency who either itself, or through any of its members (save for such members who hold a minority interest in the bidding agency through shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange), directors or members of senior management, whether in respect of the ASEZCo or any other organ or entity and whether from the Republic of South Africa or otherwise:

- a) Engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid.
- b) Seeks any assistance, other than assistance officially provided by an ASEZCo, from any employee, advisor or other representative of a ASEZCo in order to obtain any unlawful advantage in relation to the procurement or services provided or to be provided to the ASEZCo employees, advisors or other representatives.
- c) Makes or offers any gift, gratuity, anything of any value or other inducement, to any ASEZCo, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to an entity
- d) Accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to an entity.
- e) Pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift, or any other consideration, that is contingent upon or results from, the awarding of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to an entity.
- f) Has in the past engaged in any matter referred to above.
- g) Has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such a bidding agency, member or director's name(s) not specifically appearing on the List of Tender Defaulters kept at National Treasury.

29. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT

29.1. The bidding agency should note that the terms of its tender will be incorporated in the proposed contract by reference and that the ASEZCo relies upon the bidder's tender as a material representation in making an award to a successful bidding agency and in concluding an agreement with said bidding agency.

29.2. It follows therefore that misrepresentations in a tender may give rise to service termination and a claim by the ASEZCo against the bidder notwithstanding the conclusion of the SLA between the ASEZCo

and the bidding agency for the provision of the service(s) in question. In the event of a conflict between the bidder's proposal and the SLA concluded between the parties, the contents of the SLA will prevail.

30. COPYRIGHT AND INTELLECTUAL PROPERTY

- 30.1. Intellectual property refers to creation of the mind, such as inventions; literary and artistic works; designs; and symbols, names, images used in commerce; and includes copyright (a legal term describing the rights that creators have over their literary and artistic works including books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings); trademark (a legal term describing a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises); and patents (a legal terms describing an exclusive right granted for an invention providing the patent owner with the right to decide how - or whether - the invention can be used by others).
- 30.2. Background intellectual property is defined as the intellectual property pertaining to this contract, created and owned by any of the contracted parties to this contract prior to the effective date of this contract.
- 30.3. Contract intellectual property is defined as intellectual property created by the parties to this contract for and in the execution of the contract.
- 30.4. All background intellectual property (existing prior to this contract) invests in and remains the sole property of the contracted parties to this contract. Both parties disclose openly such intellectual property ownership to the parties in writing at the commencement of this contract.
- 30.5. The contracted party grants the ASEZCo a fully paid up, irrevocable, and non-exclusive license to use its background intellectual property for the exploitation of this contract to enable the ASEZCo to obtain the full benefit of the contracted deliverables for this contract.
- 30.6. The parties agree that all right, title, and interest in contract intellectual property created during the execution of this contract invests with the ASEZCo unless where agreed in writing to a different allocation of the ownership of the contract intellectual property with such allocation being appended to this contract.
- 30.7. Both parties to this contract shall keep the intellectual property created during this contract confidential and shall fulfil its confidentiality obligations as set out in this document.
- 30.8. The contracted party agrees to assist the ASEZCo in obtaining statutory protection for the contract intellectual property at the expense of the ASEZCo wherever the ASEZCo may choose to obtain such statutory protection.
- 30.9. The contracted party shall procure where necessary the signatures of its personnel for the assignment of its respective contract intellectual property to the ASEZCo or as the ASEZCo may direct, and to support the ASEZCo or its nominee, in the prosecution and enforcement thereof in any country in the world.
- 30.10. The contracted party irrevocably appoints the ASEZCo to be its true and lawful agent in its own name, to do such acts, deeds, and things and to execute deeds, documents, and forms that the ASEZCo, in its discretion, requires in order to give effect to the terms of this clause.
- 30.11. The third party hereby gives the ASEZCo permission, in terms of the Protection of Private Information Act 4 of 2013, to process, collect, receive, record, organise, collate, store, update, modify, retrieve,

alter, consult, use, disseminate, distribute, merge, link, erase or destroy personal information received. By submitting a bid, the third party gives its voluntary explicit consent to the terms of this special condition

31. CONFIDENTIALITY

31.1. The recipient of confidential information shall be careful and diligent as not to cause any unauthorised disclosure or use of the confidential information, in particular, during its involvement with the ASEZCo and after termination of its involvement with the ASEZCo, the recipient shall not:

- a) Disclose the confidential information, directly or indirectly, to any person or entity, without the ASEZCo's prior written consent.
- b) Use, exploit or in any other manner whatsoever apply the confidential information for any other purpose whatsoever, other than for the execution of the contract and the delivery of the deliverables or
- c) Copy, reproduce, or otherwise publish confidential information except as strictly required for the execution of the contract.

31.2. The recipient shall ensure that any employees, agents, directors, contractors, service providers, and associates which may gain access to the confidential information are bound by agreement with the recipient both during the term of their associations with the recipient and after termination of their respective associations with the recipient, not to

- a) Disclose the confidential information to any third party, or
- b) Use the confidential information otherwise than as may be strictly necessary for the execution of the contract,
- c) The recipient shall take all such steps as may be reasonably necessary to prevent the confidential information from falling into the hands of any unauthorised third party.

31.3. The undertakings set out in this clause shall not apply to confidential information, which the recipient is able to prove:

- a) Was independently developed by the recipient prior to its involvement with the ASEZCo or in the possession of the recipient prior to its involvement with the ASEZCo;
- b) Is now or hereafter comes into the public domain other than by breach of this contract by the recipient;
- c) Was lawfully received by the recipient from a third party acting in good faith having a right of further disclosure and who do not derive the same directly or indirectly from the ASEZCo, or
- d) Required by law to be disclosed by the recipient, but only to the extent of such order and the recipient shall inform the ASEZCo of such requirement prior to any disclosure.

- 31.4. The recipient shall within one (1) month of receipt of a written request from the ASEZCo to do so, return to the ASEZCo all material embodiments, whether in documentary or electronic form, of the confidential information including but not limited to:
- a) All written disclosures received from the ASEZCo;
 - b) All written transcripts of confidential information disclosed verbally by the ASEZCo; and
 - c) All material embodiments of the contract intellectual property.
- 31.5. The recipient acknowledges that the confidential information made available solely for the execution of the contract and for no other purpose whatsoever and that the confidential information would not have been made available to the recipient, but for the obligations of confidentiality agreed to herein
- 31.6. Except as expressly herein provided, this contract shall not be construed as granting or confirming, either expressly or impliedly any rights, licenses or relationships by furnishing of confidential information by either party pursuant to this contract.
- 31.7. The recipient acknowledges that the unauthorised disclosure of confidential information may cause harm to the ASEZCo. The recipient agrees that, in the event of a breach or threatened breach of confidentiality, the ASEZCo is entitled to seek injunctive relief or specific performance, in order to obtain immediate remedies. Any such remedy shall be in addition to and not in lieu of any other remedies available at law, including monetary damages.

32. FORCE MAJEURE

- 32.1. "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.
- 32.2. Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, 12 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.
- 32.3. 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.

End.

PRICING SCHEDULE
(Professional Services)

NOTE: Offer to be valid for 120 days from the closing date of bid.

Name of Bidder: _____	Bid Number: ASEZ 002 2024 CS
Closing Time: 11:00	Closing Date: 23 September 2024

ITEM NO.	DESCRIPTION	BID PRICE IN RSA CURRENCY <small>*(ALL APPLICABLE TAXES INCLUDED)</small>	
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 _____	_____
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:** _____

- 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.

_____	_____	_____	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
[DELETE IF NOT APPLICABLE]

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.

SINATURE OF BIDDER

: _____

NAME OF BIDDER (PRINT)

: _____

DATE

: _____

CAPACITY UNDER WHICH THE BID IS SIGNED

: _____

TOTAL BID PRICE

: *R _____

ANY ENQUIRIES REGARDING THE BIDDING PROCEDURES MAY BE DIRECTED TO:

Department : Economic Development and Tourism

Contact Person : Kayleen Swartz

Tel : (021) 495 4404

E-mail Address : scm@atlantiszez.co.za

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Contact Person : Saadiqa Dangor

Tel : (021) 495 4406

E-mail Address : saadiqa@atlantiszez.co.za

***BID PRICE IN RSA CURRENCY** and **"ALL APPLICABLE TAXES"** includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies

DECLARATION OF INTERESTS, BIDDERS PAST SCM PRACTICES AND INDEPENDENT BID DETERMINATION

1. To give effect to the requirements of the Western Cape Provincial Treasury Instructions, 2019: Supply Chain Management (Goods and Services), Public Finance Management Act (PFMA) Supply Chain Management (SCM) Instruction No. 3 of 2021/2022 - SBD 4 Declaration of Interest, Section 4 (1)(b)(iii) of the Competition Act No. 89 of 1998 as amended together with its associated regulations, the Prevention and Combating of Corrupt Activities Act No 12 of 2004 and regulations pertaining to the tender defaulters register, Paragraph 16A9 of the National Treasury Regulations and/or any other applicable legislation.
2. 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.
3. All prospective bidders intending to do business with the Institution must be registered on the Central Supplier Database (CSD) and the Western Cape Supplier Evidence Bank (WCSEB) if they wish to do business with the Western Cape Government (WCG) via the electronic Procurement Solution (ePS).
4. The status of enterprises and persons listed on the National Treasury's Register for Tender Defaulters will be housed on the ePS. Institutions may not under any circumstances procure from enterprises and persons listed on the Database of Tender Defaulters.
5. The status of suppliers listed on the National Treasury's Database of Restricted Suppliers will be housed on the ePS; however, it remains incumbent on institutions to check the National Treasury Database of Restricted Suppliers before the conclusion of any procurement process. For suppliers listed as restricted, institutions must apply due diligence and risk assessment before deciding to proceed with procurement from any such supplier.

6. Definitions

"bid" means a bidder's response to an institution's invitation to participate in a procurement process which may include a bid, price quotation or proposal;

"Bid rigging (or collusive bidding)" occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and/or services through a bidding process. Bid rigging is, therefore, an agreement between competitors;

If you know of any corrupt, fraudulent or collusive actions in the Institution, please report it by calling the National Hotline 0800 701 701

This form must be completed annually. Should the information herein declared change in the course of the year or before the next renewal or in relation to any bid, quotation or contract, it is the entity's responsibility to advise the Institution in writing of the change in such details.

“business interest” means -

- (a) a right or entitlement to share in profits, revenue or assets of an entity;
- (b) a real or personal right in property;
- (c) a right to remuneration or any other private gain or benefit, or
- (d) includes any interest contemplated in paragraphs (a), (b) or (c) acquired through an intermediary and any potential interest in terms of any of those paragraphs;

“Consortium or Joint Venture” 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;

“Controlling interest” means, 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;

“Corruption”- General offences of corruption are defined in the Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) as:

Any person who directly or indirectly –

- (a) accepts or agrees or offers to accept an! gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person., in order to act personally or by influencing another person so to act, in a manner—
 - (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course of the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
 - (ii) that amounts to-
 - (aa) the abuse of a position of authority; (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or 45 not to do anything. of the, is guilty of the offence of corruption.

“CSD” means the Central Supplier Database maintained by National Treasury;

“employee”, in relation to –

- (a) a department, means a person contemplated in section 8 of the Public Service Act, 1994 but excludes a person appointed in terms of section 12A of that Act; and
- (b) a public entity, means a person employed by the public entity;

“entity” means any -

- (a) association of persons, whether or not incorporated or registered in terms of any law, including a company, corporation, trust, partnership, close corporation, joint venture or consortium; or
- (b) sole proprietorship;

“entity conducting business with the Institution” means an entity that contracts or applies or tenders for the sale, lease or supply of goods or services to the Province;

“Family member” means a person's -

- (a) spouse; or
- (b) child, parent, brother, sister, whether such a relationship results from birth, marriage or adoption or some other legal arrangement (as the case may be);

“intermediary” means a person through whom an interest is acquired, and includes a representative or agent or any other person who has been granted authority to act on behalf of another person;

“Institution” means –

a provincial department or provincial public entity listed in Schedule 3C of the Act;

“Provincial Government Western Cape (PGWC)” means

- (a) the Institution of the Western Cape, and
- (b) a provincial public entity;

“RWOEE” means -

Remunerative Work Outside of the Employee's Employment

“spouse” means a person's –

- (a) partner in marriage or civil union according to legislation;
- (b) partner in a customary union according to indigenous law; or
- (c) partner with whom he or she cohabits and who is publicly acknowledged by the person as his or her life partner or permanent companion.

7. Regulation 13(c) of the Public Service Regulations (PSR) 2016, effective 1 February 2017, prohibits any employee from conducting business with an organ of state, or holding a directorship in a public or private company doing business with an organ of state unless the employee is a director (in an official capacity) of a company listed in schedules 2 and 3 of the Public Finance Management Act.
- a) Therefore, by 31 January 2017 all employees who are conducting business with an organ of state should either have:
- (i) resigned as an employee of the government institution or;
 - (ii) cease conducting business with an organ of state or;
 - (iii) resign as a director/shareholder/owner/member of an entity that conducts business with an organ of state.
8. Any legal person, or their family members, may make an offer or offers in terms of this invitation to bid. In view of potential conflict of interest, in the event that the resulting bid, or part thereof, be awarded to family members of persons employed by an organ of state, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where the bidder is employed by the Institution.
9. The bid of any bidder may be disregarded if that bidder or any of its directors abused the institution's supply chain management system; committed fraud or any other improper conduct in relation to such system; disclosure is found not to be true and complete; or failed to perform on any previous contract.
10. Section 4(1)(b)(iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging). Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds.
11. Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorises accounting officers and accounting authorities to:
- a) disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b) cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
12. Communication between partners in a joint venture or consortium will not be construed as collusive bidding.

13. 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.

SECTION A DETAILS OF THE ENTITY	
CSD Registration Number	MAAA
Name of the Entity	
Entity registration Number (where applicable)	
Entity Type	
Tax Reference Number	
Full details of directors, shareholder, member, partner, trustee, sole proprietor or any persons having a controlling interest with a right or entitlement to share in profits, revenue or assets of the entity should be disclosed in the Table A below	

TABLE A

FULL NAME	DESIGNATION (Where a director is a shareholder, both should be confirmed)	IDENTITY NUMBER	PERSONAL TAX REFERENCE NO.	PERCENTAGE INTEREST IN THE ENTITY

SECTION B: DECLARATION OF THE BIDDER'S INTEREST

The supply chain management system of an institution must, irrespective of the procurement process followed, prohibit any award to an employee of the state, who either individually or as a director of a public or private company or a member of a close corporation, seek to conduct business with the WCG, unless such employee is in an official capacity a director of a company listed in Schedule 2 or 3 of the PFMA as prescribed by the Public Service Regulation 13(c).

Furthermore, an employee employed by an organ of state conducting remunerative work outside of the employee's employment should first obtain the necessary approval by the delegated authority (RWOEE), failure to submit proof of such authority, where applicable, may result in disciplinary action.

B1.	Are any persons listed in Table A identified on the CSD as employees of an organ of state? (If yes, refer to Public Service Circular EIM 1/2016 to exercise the listed actions)	NO	YES
B2.	Are any employees of the entity also employees of an organ of state? (If yes complete Table B and attach their approved "RWOEE")	NO	YES
B3.	Are any family members of the persons listed in Table A employees of an organ of state? (If yes complete Table B)	NO	YES

TABLE B

Details of persons (family members) connected to or employees of an organ of state should be disclosed in Table B below.

FULL NAME OF EMPLOYEE	IDENTITY NUMBER	DEPARTMENT/ ENTITY OF EMPLOYMENT	DESIGNATION/ RELATIONSHIP TO BIDDER**	INSTITUTION EMPLOYEE NO./ PERSAL NO. (Indicate if not known)

SECTION C: PERFORMANCE MANAGEMENT AND BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

To enable the prospective bidder to provide evidence of past and current performance.

C1.	Did the entity conduct business with an organ of state in the last twelve months? (If yes complete Table C)	NO	YES
------------	--	----	-----

C2. TABLE C

Complete the below table to the maximum of the last 5 contracts.

NAME OF CONTRACTOR	PROVINCIAL DEPARTMENT OR PROVINCIAL ENTITY	TYPE OF SERVICES OR COMMODITY	CONTRACT/ ORDER NUMBER	PERIOD OF CONTRACT	VALUE OF CONTRACT
C3. Is the entity or its principals listed on the National Database as companies or persons prohibited from doing business with the public sector?					NO YES
C4. Is the entity or its principals listed on the National Treasury Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)?					NO YES
<i>(To access this Register enter the National Treasury's website, www.treasury.gov.za, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 326 5445.)</i>					
C5. If yes to C3 or C4, were you informed in writing about the listing on the database of restricted suppliers or Register for Tender Defaulters by National Treasury?				NO	YES N/A
C6. Was the entity or persons listed in Table A convicted for fraud or corruption during the past five years in a court of law (including a court outside the Republic of South Africa)?					NO YES
C7. Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?					NO YES

D: DULY AUTHORISED REPRESENTATIVE TO DEPOSE TO AFFIDAVIT

This form must be signed by a duly authorised representative of the entity in the presence of a commissioner of oaths.

I, hereby swear/affirm;

- i that the information disclosed above is true and accurate;
- ii that I have read understand the content of the document;
- iii that I have arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor.
- iv that the entity undertakes to independently arrive at any offer at any time to the Institution without any consultation, communication, agreement or arrangement with any competitor. In addition, that there will be no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specification, 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;
- v that the entity or its representative are aware of and undertakes not to disclose the terms of any bid, formal or informal, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract; and
- i that there have been no consultations, communications, agreements or arrangements made with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and that my entity was not involved in the drafting of the specifications or terms of reference for this bid.

.....

DULY AUTHORISED REPRESENTATIVE'S SIGNATURE

I certify that before administering the oath/affirmation I asked the deponent the following questions and wrote down his/her answers in his/her presence:

- 1.1 Do you know and understand the contents of the declaration? ANSWER:
- 1.2 Do you have any objection to taking the prescribed oath? ANSWER:
- 1.3 Do you consider the prescribed oath to be binding on your conscience? ANSWER:.....
- 1.4 Do you want to make an affirmation? ANSWER:

2. I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration, which was sworn to/affirmed and the deponent's signature/thumbprint/mark was place thereon in my presence.

.....

SIGNATURE FULL NAMES Commissioner of Oaths

Designation (rank) ex officio: Republic of South Africa

Date: Place

.....

Business Address:.....

.....

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 AND IN TERMS OF THE WESTERN CAPE GOVERNMENTS INTERIM STRATEGY AS IT RELATES TO PREFERENCE POINTS

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 (TENDERERS) MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER, PREFERENTIAL PROCUREMENT REGULATIONS, 2022 AND THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT AND THE CODES OF GOOD PRACTICE

1. DEFINITIONS

- 1.1. **“acceptable tender”** means any tender which, in all respects, complies with the specifications and conditions of tender as set out in the tender document.
- 1.2. **“affidavit”** is a type of verified statement or showing, or in other words, it contains a verification, meaning it is under oath or penalty of perjury, and this serves as evidence to its veracity and is required for court proceedings.
- 1.3. **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 1.4. **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 1.5. **“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;
- 1.6. **“bid”** means a written offer on the official bid documents or invitation of price quotations and **“tender”** is the act of bidding /tendering;
- 1.7. **“Code of Good Practice”** means the generic codes or the sector codes as the case may be;
- 1.8. **“consortium or joint venture”** 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;
- 1.9. **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;

- 1.10. **"EME"** is an Exempted Micro Enterprise with an annual total revenue of R10 million or less.
- 1.11. **"Firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 1.12. **"Large Enterprise"** is any enterprise with an annual total revenue above R50 million;
- 1.13. **"non-firm prices"** means all prices other than "firm" prices;
- 1.14. **"person"** includes a juristic person;
- 1.15. **"price"** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- 1.16. **"proof of B-BBEE status level contributor"** means-
- (a) The B-BBEE status level certificate issued by an authorized body or person;
 - (b) A sworn affidavit as prescribed in terms of the B-BBEE Codes of Good Practice; or
 - (c) Any other requirement prescribed in terms of the Broad- Based Black Economic Empowerment Act.
- 1.17. **QSE** is a Qualifying Small Enterprise with an annual total revenue between R10 million and R50 million;
- 1.18. **1.18 "rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- 1.19. **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract.
- 1.20. **"tender"** means a written offer in the form determined by an organ of state in response to an invitation to provide or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- 1.21. **"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;
- 1.22. **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000);
- 1.23. **"the Regulations"** means the Preferential Procurement Regulations, 2022;

- 1.24. **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the Government Gazette on 11 October 2013;
- 1.25. **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 1.26. **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

2. GENERAL CONDITIONS

- 2.1. The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 2.2. Preference point system for this bid:
- (a) The value of this bid is estimated to exceed/not exceed R50 000 000 (all applicable taxes included) and therefore the preference point system shall be applicable; or
 - (b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (delete whichever is not applicable for this tender).
- 2.3. Preference points for this bid (even in the case of a tender for income-generating contracts) shall be awarded for:
- (a) Price; and
 - (b) B-BBEE Status Level of Contribution.
- 2.4. The maximum points for this bid are allocated as follows:

	POINTS
PRICE	
B-BEE STATUS LEVEL OF CONTRIBUTOR	
Total Points for Price and B-BBEE must not exceed	100

- 2.5. Failure on the part of a bidder to fill in, sign this form and submit in the circumstances prescribed in the Codes of Good Practice either a B-BBEE Verification Certificate issued by a Verification Agency accredited by the South African Accreditation System (SANAS) or an affidavit confirming annual total revenue and level of black ownership together with the bid or an affidavit issued by Companies Intellectual Property Commission, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 2.6. The organ of state 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 organ of state.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1. Subject to Section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the **bidder obtaining the highest number of total points** will be awarded the contract.
- 3.2. A tenderer must submit proof of its B-BBEE status level of contributor in order to claim points for B- BBEE.
- 3.3. A tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE will not be disqualified but will only score:
- (a) points out of 80 for price; and
 - (b) 0 points out of 20 for B-BBEE
- 3.4. Points scored must be rounded off to the nearest 2 decimal places.
- 3.5. In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.6. As per section 2 (1) (f) of the Preferential Procurement Policy Framework Act, 2000, the contract may be awarded to a bidder other than the one scoring the highest number of total points based on objective criteria in addition to those contemplated in paragraph (d) and (e) of the Act that justifies the award to another tenderer provided that it has been stipulated upfront in the tendering conditions.
- 3.7. Should two or more bids be equal in all respects; the award shall be decided by the drawing of lots.

4. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

4.1. POINTS AWARDED FOR PRICE

4.1.1. THE 80/20 OR 90/10 PREFERENCE POINT SYSTEM

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

80/20	or	90/10	
$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	or	$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	90/10

P_s = Points scored for price of bid under consideration

P_t = Price of tender under consideration

P_{\min} = Price of lowest acceptable tender

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

5.1. POINTS AWARDED FOR PRICE

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

80/20

or

90/10

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of tender under consideration

P_{max} = Price of highest acceptable tender

6. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 6.1. In terms of WCG interim strategy, 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

- 6.2. An **EME** must submit a valid, originally certified affidavit confirming annual turnover and level of black ownership or an affidavit issued by Companies Intellectual Property Commission
- 6.3. A **QSE that is less than 51 per cent (50% or less) black owned** must be verified in terms of the QSE scorecard issued via Government Gazette and submit a valid, original or a legible certified copy of a B-BBEE Verification Certificate issued by SANAS.
- 6.4. A **QSE that is at least 51 per cent black owned (51% or higher)** must submit a valid, originally certified affidavit confirming turnover and level of black ownership as well as declare its empowering status or an affidavit issued by Companies Intellectual Property Commission.

- 6.5. A **large enterprise** must submit a valid, original or originally certified copy of a B-BBEE Verification Certificate issued by a verification agency accredited by SANAS.
- 6.6. A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 6.7. A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE status level verification certificate for every separate tender.
- 6.8. Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

7. BID DECLARATION

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

8. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPH 6

- 8.1. B-BBEE Status Level of Contribution..... =..... (maximum of 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 6.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or an affidavit confirming annual total revenue and level of black ownership in terms of the relevant sector code applicable to the tender.)

9. SUB-CONTRACTING

- 9.1. Will any portion of the contract be sub-contracted? **YES/NO** (delete which is not applicable)
- 9.1.1. If yes, indicate:
 - (i) what percentage of the contract will be subcontracted?%
 - (ii) the name of the sub-contractor?
 - (iii) the B-BBEE status level of the sub-contractor?
 - (iv) whether the sub-contractor is an EME or QSE? **YES/NO** (delete which is not applicable)
- 9.1.2. Sub-contracting relates to a **particular** contract and if sub-contracting is applicable, the bidder to state in their response to a particular RFQ that a portion of that contract will be subcontracted.

10. DECLARATION WITH REGARD TO COMPANY/FIRM

10.1. Name of company/ entity:

10.2. VAT registration number:

10.3. Company Registration number:

10.4. 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

[SELECT APPLICABLE ONE]

10.5. 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-BBEE status level of contribution indicated in paragraph 7 above, qualifies the company/ firm for the preference(s) shown and I/we acknowledge that:

(a) The Western Cape Government reserves the right to audit the B-BBEE status claim submitted by the bidder.

(b) As set out in Section 13O of the B-BBEE Act as amended, any misrepresentation constitutes a criminal offence. A person commits an offence if that person knowingly:

(i) misrepresents or attempts to misrepresent the B-BBEE status of an enterprise;

(ii) provides false information or misrepresents information to a B-BBEE Verification Professional in order to secure a particular B-BBEE status or any benefit associated with compliance to the B-BBEE Act;

(iii) provides false information or misrepresents information relevant to assessing the B-BBEE status of an enterprise to any organ of state or public entity; or

(iv) engages in a fronting practice.

(c) If a B-BBEE verification professional or any procurement officer or other official of an organ of state or public entity becomes aware of the commission of, or any attempt to commit any offence referred to in paragraph 10.5 (a) above will be reported to an appropriate law enforcement agency for investigation.

- (d) Any person convicted of an offence by a court is liable in the case of contravention of 10.5 (b) to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person to a fine not exceeding 10 per cent of its annual turnover.
- (e) The purchaser may, if it becomes aware that a bidder may have obtained its B-BBEE status level of contribution on a fraudulent basis, investigate the matter. Should the investigation warrant a restriction be imposed, this will be referred to the National Treasury for investigation, processing and imposing the restriction on the National Treasury's List of Restricted Suppliers. The bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, may 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.
- (f) The purchaser may, in addition to any other remedy it may have –
- (i) disqualify the person from the bidding process;
 - (ii) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (iii) 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; and
 - (iv) forward the matter for criminal prosecution.
- (g) The information furnished is true and correct.
- (h) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 2 of this form.

SIGNATURE(S) OF THE BIDDER(S):

DATE:

ADDRESS:

.....

WITNESSES:

1.

2.

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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

General Conditions of Contract

1. Definitions

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

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

- 10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

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

12. Transportation

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

13. Incidental services

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

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

16. Payment

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

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

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

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without 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

		(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
29. Governing language	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
30. Applicable law	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
31. Notices	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
	31.2	The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
32. Taxes and duties	32.1	A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
	32.2	A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
	32.3	No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
33. National Industrial Participation Programme (NIP)	33.1	The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
34 Prohibition of Restrictive practices	34.1	In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
	34.2	If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js General Conditions of Contract (revised July 2010)