



The Department of Justice and Constitutional Development invites all interested suppliers who are accredited in terms of the SITA TRANSVERSAL CONTRACT RFB 740/2020 to submit proposals for requirements stipulated below:

**ANNEXURE A – INVITATION TO RFQ**

<b>REQUEST DATE:</b>	15 November 2023	
<b>RFQ NUMBER:</b>	RFQ 02 2023 – SITA RFB 740 2020	
<b>DESCRIPTION OF GOODS/SERVICES:</b>	REQUEST FOR SERVICE PROVIDER TO SUBMIT QUOTATIONS FOR THE PROCUREMENT OF 600 SCANNERS INCLUDING 1 YEAR WARRANTY WITH MAINTENANCE AND SUPPORT OF THE SCANNING EQUIPMENT AND ENVIRONMENT FOR A PERIOD OF 3 YEARS.	
<b>CLOSING DATE:</b>	06 December 2023 ( <i>RFQs proposals/offers received after closing date and time as stipulated will not be accepted</i> )	
<b>PROVINCES BIDDING FOR AS PER YOUR ACCREDITATION ON SITA RFB 740 TRANSVERSAL CONTRACT:</b> <i>(Indicate by a tick)</i>	GAUTENG	
	LIMPOPO	
	NORTHWEST	
	MPUMALANGA	
	NORTERN CAPE	
	WESTERN CAPE	
	EASTERN CAPE	
	FREE-STATE	
	KWA-ZULU NATAL	
<b>RFQ VALIDITY PERIOD:</b>	120 Days (from RFQ closing date).	
<b>TECHNICAL &amp; BIDDING ENQUIRIES:</b>	<a href="mailto:Sourcing@Justice.gov.za">Sourcing@Justice.gov.za</a>  Deadline for Questions: 23 November 2023 Doj&cd Responses: 27 November 2023	
<b>RESPONSES TO THIS RFQ MUST BE HAND DELIVERED TO:</b>	DOJ&CD TENDER / BID BOX SITUATED AT, MOMENTUM BUILDING, 329 PRETORIUS STREET, DEPARTMENT) PRETORIA CENTRAL  ( <i>No emails will be accepted</i> )	

DOJ&CD requests your quotation on the goods and/or services listed hereunder and/or on the available RFQ forms. Please furnish all information as requested and return your quotation on or before the date stipulated. Late and incomplete / missing documentations will invalidate the quotation submitted. DOJ&CD is not obliged to accept the lowest or any submission received. DOJ&CD reserves the right to accept the whole or any portion of a quotation.

15 November 2023

**Table of Contents**

<b>1. PART A - INVITATION TO BID - SBD 1:.....</b>	<b>6</b>
<b>2. RFQ Terms and Conditions.....</b>	<b>9</b>
2.1 General rules and instructions .....	9
2.1.1 News and press releases .....	9
2.1.2 Precedence of documents.....	9
2.1.3 Preferential procurement reform .....	9
2.1.4 National Industrial Participation Programme .....	9
2.1.5 Language .....	10
2.1.6 Gender.....	10
2.1.7 Headings .....	10
2.1.8 RFQ Clarification.....	10
2.1.9 Cancellation of RFQ .....	10
2.1.10 RFQ Validity period.....	10
2.1.11 Occupational Injuries and Diseases Act 13 of 1993.....	10
2.1.12 Processing of the bidder's Personal Information .....	10
2.1.13 Formal contract .....	11
2.1.14 Failure to agree before contract conclusion.....	11
2.1.15 Withdrawal of proposal after award.....	12
2.1.16 Oral presentations.....	12
2.1.17 Objection to brand specific requirements.....	12
2.2 RFQ Returnable .....	12
2.2.1 Administrative Returnable Documents .....	12
2.2.2 Mandatory Returnable Documents .....	12
2.2.3 Evaluation Returnable Documents .....	12
<b>3. Bidder's disclosure (SBD 4).....</b>	<b>13</b>
<b>4. Government Procurement: General Conditions of Contract (GCC).....</b>	<b>21</b>
4.1 Purpose .....	21
4.2 Application.....	21
4.3 General.....	21
4.4 Standards .....	21
4.5 Use of contract documents, information and inspection .....	21
4.6 Patent rights.....	22
4.7 Performance security.....	22
4.8 Inspections, tests and analyses.....	22
4.9 Packing .....	23
4.10 Delivery and documents .....	23
4.11 Insurance.....	23
4.12 Transportation .....	23
4.13 Incidental services .....	23
4.14 Spare parts .....	24
4.15 Warranty .....	24
4.16 Payment .....	24
4.17 Prices .....	25
4.18 Contract amendments .....	25
4.19 Assignment .....	25
4.20 Subcontracts.....	25
4.21 Delays in the supplier's performance.....	25
4.22 Penalties.....	26
4.23 Termination for default .....	26

4.24	Anti-dumping and countervailing duties and rights.....	27
4.25	Force majeure .....	27
4.26	Termination for insolvency.....	27
4.27	Settlement of disputes.....	27
4.28	Limitation of liability.....	28
4.29	Governing language .....	28
4.30	Applicable law.....	28
4.31	Notices.....	28
4.32	Taxes and duties.....	28
4.33	National Industrial Participation (NIPP) Programme .....	28
4.34	Prohibition of restrictive practices.....	28
<b>5.</b>	<b>National Industrial Participation Programme (SBD 5) .....</b>	<b>30</b>
5.1	Introduction .....	30
5.2	Pillars of the programme.....	30
5.3	Requirements of the Department of Trade, Industry and Competition.....	30
5.4	RFQ submission and contract reporting requirements of bidders and successful bidders (contractors) .....	31
5.5	Process to satisfy the NIPP obligation.....	31
<b>Annex A: Abbreviations, Terms and Definitions .....</b>	<b>32</b>	
A.1	Abbreviations and Acronyms .....	32
A.2	Terms and Definitions .....	33

## SCM PRE-QUALIFICATION CRITERIA – DOCUMENTS THAT MUST BE SUBMITTED FOR SCM COMPLIANCE

All documents must be completed and signed by the duly authorized representative of the prospective bidder(s). During this phase bidders' response will be evaluated based on compliance with the listed administration bid requirements.

DOCUMENT THAT MUST BE SUBMITTED	DOCUMENTATION TO BE FULLY COMPLETED, ADHERED AND SUBMITTED BY THE BIDDER
<b>PACKAGING OF BID DOCUMENTS</b>	The envelope or packaging with the bid document must be marked properly using the information (bid number, name of the company and description of the tender).
<b>TWO ENVELOPE SYSTEM</b>	Prospective bidders <b>MUST</b> package separate submissions in respect of the technical and financial proposals (Annexure 5.1 and the financial envelope must be properly sealed, failure to do so it will be regarded as non-compliance and lead to disqualification
<b>INVITATION TO BID – SBD 1</b>	Complete and sign the supplied pro forma document
<b>BIDDER'S DISCLOSURE – SBD 4</b>	Complete and sign the supplied pro forma document
<b>SBD 6.1 PREFERENTIAL PROCUREMENT PREFERENCE POINTS</b>	Complete and sign the supplied pro forma document
<b>ACCREDITATION ON SITA TRANSVERSAL FRAMEWORK CONTRACT 740 – 2020.</b>	<p>Only service providers accredited in terms of SITA RFB 740 - 2020 will be considered.</p> <p>Service Provider approved in a specific province/s cannot be used to provide a service in province/s where they are not accredited for.</p> <p>The Department has standardized on the two brands (<b>Kodak and Fujitsu</b>) for procurement of scanners therefore, bidders are requested to provide quotes based on these brands.</p> <p>Furthermore, a service provider/bidder shall not be appointed to provide a service/brand which they are not accredited on SITA RFB 740 - 2020 Transversal Contract and shall be disqualified.</p>

<b>DOCUMENT THAT MUST BE SUBMITTED</b>	<b>DOCUMENTATION TO BE FULLY COMPLETED, ADHERED AND SUBMITTED BY THE BIDDER</b>
	Suppliers must ensure that the quoted and procured products are SITA-certified. Suppliers must provide the relevant product certificates as part of their quotation response.
<b>ORIGINAL EQUIPMENT MANUFACTURER (OEM) ACCREDITATION</b>	<p>The bidder must be accredited with the OEM/OSM for the product, they are proposing to DOJ&amp;CD.</p> <p>Bidders must supply an official letter from any of the above OEMs stating that they are accredited and authorized to supply equipment and warranty for the brand being supplied.</p>
<b>GOOD STANDING ON TAX AFFAIRS</b>	<p>The bidder (including the sub-contractor where applicable) must be in good standing with SARS in respect of any relevant legislative tax commitments and must provide together with the bid response a SARS pin number for verification purposes.</p>

## 1. PART A - INVITATION TO BID - SBD 1:

Table 1: Supplier Information

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT					
BID NUMBER:	RFQ 02 2023 - SITA RFB 740/2020	CLOSING DATE:	06 December 2023	CLOSING TIME:	11:00 am
DESCRIPTION	REQUEST FOR SERVICE PROVIDER TO SUBMIT QUOTATIONS FOR THE PROCUREMENT OF 600 SCANNERS INCLUDING 1 YEAR WARRANTY WITH MAINTENANCE AND SUPPORT OF THE SCANNING EQUIPMENT AND ENVIRONMENT FOR A PERIOD OF 3 YEARS.				
BID RESPONSE DOCUMENTS MUST BE DEPOSITED IN THE BID BOX SITUATED AT 329 Pretorius Street, c/o Sisulu & Pretorius Street, Pretoria, 0001 (Reception / Entry Point of DOJ&CD entrance)					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Supply Management	Chain	CONTACT PERSON	Supply Management	Chain
TELEPHONE NUMBER	N/a		TELEPHONE NUMBER	N/a	
FACSIMILE NUMBER	N/a		FACSIMILE NUMBER	N/a	
E-MAIL ADDRESS	<a href="mailto:Sourcing@Justice.gov.za">Sourcing@Justice.gov.za</a>		E-MAIL ADDRESS	<a href="mailto:Sourcing@Justice.gov.za">Sourcing@Justice.gov.za</a>	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					

<b>ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No		<b>ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</b>  <input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES ENCLOSE PROOF]
	[IF YES ENCLOSE PROOF]		
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO			
DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO			
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <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			
<b>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.</b>			

## PART B TERMS AND CONDITIONS FOR BIDDING

### 1. BID SUBMISSION:

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

### 2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE [WWW.SARS.GOV.ZA](http://WWW.SARS.GOV.ZA).
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORCIA / 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: .....

## 2. RFQ Terms and Conditions

The Department of Justice and Constitutional Development [hereinafter referred to as DOJ&CD] is a National Government Department.

### 2.1 General rules and instructions

#### 2.1.1 News and press releases

- (a) Bidders or their agents shall not make any news releases concerning this RFQ or the awarding of the same or any resulting agreement(s) without the consent of and then only in collaboration with DOJ&CD.

#### 2.1.2 Precedence of documents

- (a) This RFQ also incorporates Annexures/Schedules. Where there is a contradiction in terms between the clauses, phrases, words, stipulations or terms and herein referred to generally as stipulations in this RFQ and the stipulations in any other document attached hereto or the proposal submitted in response thereto, the relevant stipulations in this RFQ shall take precedence.
- (b) Where this RFQ is silent on any matter, the relevant stipulations addressing such matter shall take precedence to the extent that they do not contradict any applicable law, policy or standard. Bidders shall refrain from incorporating any additional stipulations or making amendments to the RFQ document in their proposals submitted in response to this RFQ document. Where any additions or amendments are proposed they should be clearly marked on a separate letter and DOJ&CD will exercise its discretion whether to accept the proposal or not.
- (c) Any amendment or change of any nature made to this document shall only be of force and effect if it is in writing, signed by the delegated DOJ&CD signatory and added to this document as an addendum
- (d) Should the bidder change any wording or phrase in this document without compliance to 2.1.2 (b) and (c) above, the RFQ shall be evaluated as though no change has been made and the original wording or phrases shall be used.
- (e) By submitting a proposal in response to this RFQ, the Bidders hereby accepts all the terms and conditions contained in this document.
- (f) This RFQ is subject to the General Conditions of Contract referred to in this RFQ document which are only negotiable at DOJ&CD's discretion.

#### 2.1.3 Preferential procurement reform

- (a) DOJ&CD supports B-BBEE as an essential ingredient of its business. In accordance with government policy, DOJ&CD insists that Bidders demonstrate their commitment and performance against B-BBEE in the areas of ownership (shareholding), skills transfer, employment equity and procurement practices (SMME Development), *et cetera*.

#### 2.1.4 National Industrial Participation Programme

- (a) The National Industrial Participation policy, which was endorsed by Cabinet on 30 April 1997, is applicable to contracts that have an imported content. The NIPP is obligatory and therefore must be complied with. Bidders are required to sign and submit the Standard bidding Document (SBD) 5 in this regard.

### 2.1.5 Language

- (a) RFQs shall be prepared in English.

### 2.1.6 Gender

- (b) Any word implying any gender shall be interpreted to imply all other genders.

### 2.1.7 Headings

- (a) Headings are incorporated into this RFQ document for ease of reference only and shall not be used for the purposes of interpreting any aspect of this RFQ document.

### 2.1.8 RFQ Clarification

- (a) DOJ&CD SCM may request written clarification regarding any aspect of this RFQ and RFQs in response to the RFQ. The Bidders must supply the requested information in writing within the specified time frames after the request has been made, otherwise the proposal shall be disqualified. The supplied information shall not change the material aspects of the submission, i.e. RFQ price, the firmness of the price and technical/functionality, *et cetera*.

### 2.1.9 Cancellation of RFQ

- (a) DOJ&CD reserves the right to cancel this RFQ, reject any proposal and to not award the contract to the lowest Bidders or to award parts of the proposal to different Bidders.

### 2.1.10 RFQ Validity period

- (a) DOJ&CD has discretion to extend the validity period should the evaluation of this RFQ not be completed within the stipulated validity period. Any Bidders that refuses to extend its validity period without any justifiable reasons will be disqualified
- (b) Upon receipt of the request to extend the validity period of the RFQ, the Bidders must respond within the required time frames and in writing on whether or not it agrees to hold his original RFQ response valid under the same terms and conditions for a further period.

### 2.1.11 Occupational Injuries and Diseases Act 13 of 1993

- (a) The Bidders warrants that all its employees (including the employees of any subcontractor that may be appointed) are covered in terms of the Compensation for Occupational Injuries and Diseases Act 13 of 1993 and that the cover shall remain in force for the duration of the adjudication of this RFQ and/ or subsequent agreement. DOJ&CD reserves the right to request the Bidders to submit documentary proof of the bidder's registration and "good standing" with the Compensation Fund, or similar proof acceptable to DOJ&CD.

### 2.1.12 Processing of the bidder's Personal Information

- (a) All personal information of the bidder, its employees, representatives, associates, and sub-contractors ("Bidder's Personal Information") required under this RFQ is collected and processed for the purpose of assessing the strength and competitiveness of the proposal. The evaluation and award of the contract shall be conducted in accordance with applicable legislation, policies and standards. The bidder is advised that bidder Personal Information may be passed on to third-parties to whom DOJ&CD is compelled by law to provide such information. For example, where appropriate, DOJ&CD is compelled to submit information to National Treasury's Database of Restricted Suppliers.

- (b) All Personal Information collected will be processed in accordance with POPIA and the DOJ&CD Data Privacy Policy.
- (c) The following persons will have access to the Personal Information that has been collected:
  - (i) DOJ&CD personnel participating in procurement/award procedures; and
  - (ii) Members of the public: within seven working days from the time the RFQ is awarded, the following information will have to be made available on National Treasury's e-Tender portal:
    - (1) contract description and RFQ number
    - (2) names of the successful bidder(s) and preference points claimed
    - (3) the contract price(s) (if possible)
    - (4) contract period
    - (5) names of directors; and
    - (6) date of completion/award.
- (d) DOJ&CD will ensure that the rights of the bidder and of its employees or representatives (i.e. the right of access and the right to rectify) are effectively guaranteed in accordance with the procedures as specified in the DOJ&CD PAIA manual.
- (e) In signing this document, the bidder consents to the use of its Personal Information for the purposes as specified in par. 2.1.12 above.

#### **2.1.13 Formal contract**

- (a) This RFQ, all the appended documentation and the proposal in response thereto read together, form the basis for a formal contract to be negotiated and finalised between DOJ&CD and/or its clients and the enterprise(s) to whom DOJ&CD awards the RFQ in whole or in part.
- (b) Any offer and/or acceptance entered into verbally between DOJ&CD and any bidder will neither constitute a contract nor be binding on the parties.
- (c) This RFQ is subject to Government Procurement: General Contract Conditions, Special Contract Conditions and any other conditions to be finalised during the contracting stage. These conditions are only negotiable at the DOJ&CD's discretion.
- (d) The laws of the RSA shall govern this RFQ and the bidders hereby accept that the courts of the Republic of South Africa shall have jurisdiction over any dispute arising from this RFQ document or the award of a contract in relation to it.
- (e) The RFQ will be awarded to the Prime Contractor and/or bidder who shall be responsible for the management of the awarded contract. No separate contract shall be entered into between DOJ&CD and any subcontractors
- (f) The bidders' response to this RFQ or parts of the response, shall be included as a whole or by reference in the final contract to the extent that it is acceptable to DOJ&CD

#### **2.1.14 Failure to agree before contract conclusion**

- (a) Should the parties at any time before and/or after the communication of the award but prior to the conclusion of the contract fail to agree on any significant product price or service price adjustments, change in technical specification and/or change in services, *et cetera*, DOJ&CD shall be entitled within 14 (fourteen) days of such failure to agree, to recall the letter of award after giving the Bidder not less than 14 (fourteen) days written notice of such cancellation, in which event all fees on which the parties failed to agree increases or decreases shall, for the duration of such notice period, remain fixed on those fee/price applicable prior to the cancellation.
- (b) Such cancellation shall mean that DOJ&CD reserves the right to award the same proposal to next best Bidders as it deems fit.

### **2.1.15 Withdrawal of proposal after award**

- (a) Should a bidder withdraw its proposal after accepting the award, DOJ&CD reserves the right to recover any additional expenses incurred by DOJ&CD for having to accept any less favourable proposal or the additional expenditure incurred by DOJ&CD in the preparation of a new RFQ

### **2.1.16 Oral presentations**

- (a) Bidders who submit RFQs in response to this RFQ may be required to give an oral presentation, which may include, but is not limited to, an equipment/service demonstration of their proposal to DOJ&CD. This provides an opportunity for the bidder to clarify or elaborate on the proposal. This is a fact finding and explanation session only which will not include negotiations. DOJ&CD shall schedule the time and location of these presentations. Oral presentations will be held at DOJ&CD's discretion.

### **2.1.17 Objection to brand specific requirements**

- (a) Any bidder who has reasons to believe that the RFQ specification is based on a specific brand must inform DOJ&CD within five (5) days from the date of the publication of this RFQ document. Failure to notify DOJ&CD within the stipulated timeframes may result in DOJ&CD not considering the concern.

## **2.2 RFQ Returnable**

**NB:** Prospective bidders MUST package separate submissions in respect of the technical and financial proposals (Annexure A5.1) and the financial envelope must be properly sealed.

### **2.2.1 Administrative Returnable Documents – must be fully completed and signed**

- (a) SBD 1 – Invitation to RFQ
- (b) SBD 4 – Bidder's Disclosure
- (c) SBD 6.1- Preferential Procurement Claim form
- (d) Central Supplier Database report
- (e) Government Procurement General Conditions of Contract.
- (f) Special Conditions of Contract.
- (g) Annexure A and Annexure B (fully completed)

### **2.2.2 Mandatory Returnable Documents**

- (a) Cover letter (Provide an overview of the operating structure and geographical locations of the firm at the national, regional, and local levels, a brief profile of the bidder, a summary of the bidder's proposal and contact person and details for this RFQ).
- (b) Technical / Functionality response/OEM or OSM accreditation letter
- (c) Pricing / Costing
- (d) SBD 5 – National Industrial Participation form (for requests that have an imported content of more than US\$10 million).

### **2.2.3 Evaluation Returnable Documents**

- (a) See attached RFQ specification for evaluation Returnable Documents

### 3. Bidder's disclosure (SBD 4)

#### 1. PURPOSE OF THE FORM

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

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

#### 2. BIDDER'S DECLARATION

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**

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

**Table 4**

Full Name	Identity Number	Name of State institution

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

2.2.1 If so, furnish particulars:

.....

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

2.3.1 If so, furnish particulars:

.....

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

### 3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

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

RESTRICTED

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

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

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

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

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### **1. GENERAL CONDITIONS**

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

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

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

a) The applicable preference point system for this tender is the **80/20** preference point system.

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

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

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

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	80
<b>SPECIFIC GOALS</b>	20
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

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

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

## 2. DEFINITIONS

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

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

#### 3.1.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

$$\text{Ps} = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

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

**3.2.1. POINTS AWARDED FOR PRICE**

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

**80/20**

$$Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right) \text{ or}$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

**4. POINTS AWARDED FOR SPECIFIC GOALS**

4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Historically Disadvantaged individual (HDI)		
Enterprises with ownership of 51% or more by person/s who are black person/s.	10	
Enterprises with ownership of 51% or more by person/s who are women	5	
Enterprises with ownership of 51% or more by person/s who are youth	3	
Enterprise with ownership of 51% or more by person/s with disability	2	

### **DECLARATION WITH REGARD TO COMPANY/FIRM**

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

4.4. Company registration number: .....

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole proprietor
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited

Non-Profit Company  
 State Owned Company  
 [TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

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

.....  
**SIGNATURE(S) OF TENDERER(S)**

**SURNAME AND NAME:** .....

**DATE:** .....

**ADDRESS:** .....

## 4. Government Procurement: General Conditions of Contract (GCC)

### 4.1 Purpose

- (a) The purpose of this document is to:
  - (i) Draw special attention to certain general conditions (clauses) applicable to government RFQs, contracts and orders; and
  - (ii) To ensure that clients are familiar with regard to the rights and obligations of all parties involved in doing business with government.
- (b) 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.
- (c) The GCC will form part of all RFQ documents and may not be amended
- (d) Conditions of contract relevant to this RFQ, will be compiled separately (if applicable) and will supplement the GCC. Whenever there is a conflict, the provisions in the contract shall prevail

### 4.2 Application

- (a) These general conditions are applicable to all RFQs, contracts and orders including RFQs 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.
- (b) Where applicable, contractual provisions will be drafted to cover specific supplies, services or works.

### 4.3 General

- (a) Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a RFQ. Where applicable a non-refundable fee for documents may be charged.

### 4.4 Standards

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

### 4.5 Use of contract documents, information and inspection

- (a) 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.
- (b) The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.5(a) except for purposes of performing the contract.
- (c) Any document, other than the contract itself mentioned in GCC clause 5.5(a) 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.

- (d) 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.

#### 4.6 Patent rights

- (a) 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.

#### 4.7 Performance security

- (a) 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 the contract.
- (b) 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.
- (c) 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:
  - (i) 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
  - (ii) a cashier's or certified cheque
- (d) 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 the contract.

#### 4.8 Inspections, tests and analyses

- (a) All pre-bidding testing will be for the account of the bidder.
- (b) If it is a RFQ 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 organisation acting on behalf of the Department.
- (c) 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.
- (d) If the inspections, tests and analyses referred to in GCC clauses 5.8(b) and 5.8(c) 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.
- (e) Where the supplies or services referred to in GCC clauses 5.8(b) and 5.8(c) 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.
- (f) Supplies and services which are referred to in GCC clauses 5.8(b) and 5.8(c) and which do not comply with the contract requirements may be rejected.
- (g) Any contract supplies may on or after delivery be inspected, tested or analysed 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.

- (h) The provisions of GCC clauses 5.8(d) to 5.8(g) 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 5.23 of the GCC.

#### 4.9 Packing

- (a) 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.
- (b) 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 the contract, and in any subsequent instructions ordered by the purchaser.

#### 4.10 Delivery and documents

- (a) 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 the contract.
- (b) Documents to be submitted by the supplier are specified in the contract.

#### 4.11 Insurance

- (a) 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 contract.

#### 4.12 Transportation

- (a) Should a price other than an all-inclusive delivered price be required, this shall be specified in the contract.

#### 4.13 Incidental services

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

- (iv) 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.
- (b) 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.

#### 4.14 Spare parts

- (a) As specified in the contract, 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:
  - (i) 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
  - (ii) in the event of termination of production of the spare parts:
    - (1) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - (2) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### 4.15 Warranty

- (a) 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.
- (b) 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 the contract.
- (c) The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- (d) Upon receipt of such notice, the supplier shall, within the period specified in the contract and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- (e) If the supplier, having been notified, fails to remedy the defect(s) within the period specified in the contract, 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.

#### 4.16 Payment

- (a) The method and conditions of payment to be made to the supplier under this contract shall be specified in the contract.
- (b) The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- (c) Payments shall be made promptly by the purchaser in accordance with the terms and conditions of contract.

- (d) Payment will be made in South African Rand (ZAR) unless otherwise stipulated in the contract.

#### **4.17 Prices**

- (a) 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 RFQ, with the exception of any price adjustments authorised in the contract or in the purchaser's Request for Quotation validity extension, as the case may be.

#### **4.18 Contract amendments**

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

#### **4.19 Assignment**

- (a) 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.

#### **4.20 Subcontracts**

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

#### **4.21 Delays in the supplier's performance**

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.
- (e) Except as provided under GCC clause 5.25, 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 5.22, unless an extension of time is agreed upon pursuant to GCC clause 5.21(b) without the application of penalties.
- (f) Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

#### 4.22 Penalties

(a) Subject to GCC clause 5.25, 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 5.23.

#### 4.23 Termination for default

(a) 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:

- (i) 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 5.21(b)
- (ii) if the Supplier fails to perform any other obligation(s) under the contract; or
- (iii) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

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

(h) 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.

#### **4.24 Anti-dumping and countervailing duties and rights**

- (a) When, after the date of RFQ, 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.

#### **4.25 Force majeure**

- (a) Notwithstanding the provisions of GCC clauses 5.22 and 5.23, 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.
- (b) 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.

#### **4.26 Termination for insolvency**

- (a) 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.

#### **4.27 Settlement of disputes**

- (a) 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.
- (b) 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.
- (c) Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- (d) Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the contract.
- (e) Notwithstanding any reference to mediation and/or court proceedings herein:
  - (i) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (ii) the purchaser shall pay the supplier any monies due to the supplier.

#### **4.28 Limitation of liability**

- (a) Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to GCC clause 5.6:
  - (i) 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
  - (ii) 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.

#### **4.29 Governing language**

- (a) 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.

#### **4.30 Applicable law**

- (a) The contract shall be interpreted in accordance with South African laws, unless otherwise specified in the contract.

#### **4.31 Notices**

- (a) The written acceptance of a RFQ will be forwarded to the supplier through a formal written letter of award.
- (b) The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be communicated on the letter.

#### **4.32 Taxes and duties**

- (a) A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- (b) A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- (c) No contract shall be concluded with any Bidder whose tax matters are not in order. Prior to the award of a RFQ the Department must be in possession of a tax clearance certificate, submitted by the Bidder. This certificate must be an original issued by the SARS.

#### **4.33 National Industrial Participation (NIPP) Programme**

- (a) The NIPP Programme administered by the DTIC shall be applicable to all contracts that are subject to the NIPP obligation.

#### **4.34 Prohibition of restrictive practices**

- (a) 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 RFQ rigging).
- (b) 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.
- (c) 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 RFQ(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.

The above General Conditions of Contract are accepted by:

**Name and Surname** \_\_\_\_\_ **Designation** \_\_\_\_\_

**Bidder:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## 5. National Industrial Participation Programme (SBD 5)

### 5.1 Introduction

- (a) The National Industrial Participation (NIPP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIPP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all State and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIPP requirements. NIPP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade, Industry and Competition (DTIC) is charged with the responsibility of administering the programme.

### 5.2 Pillars of the programme

- (a) The NIPP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million shall have an NIPP obligation. This threshold of US\$ 10 million can be reached as follows:
  - (i) Any single contract with imported content exceeding US\$10 million; or
  - (ii) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2-year period which in total exceeds US\$10 million; or
  - (iii) A contract with a renewable option clause, where should the option be exercised the total value of the imported content shall exceed US\$10 million; or
  - (iv) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.
- (b) The NIPP obligation applicable to suppliers in respect of sub-paragraph 6.2(a) shall amount to 30 % of the imported content whilst suppliers in respect of paragraph 6.2(a) (iv) shall incur 30% of the total NIPP obligation on a pro-rata basis.
- (c) To satisfy the NIPP obligation, the DTIC would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.
- (d) A period of seven years has been identified as the time frame within which to discharge the obligation.

### 5.3 Requirements of the Department of Trade, Industry and Competition

- (a) In order to ensure effective implementation of the programme, successful Bidders (contractors) are required to, immediately after the award of a contract that is in excess of R10 million (ten million rand), submit details of such a contract to the DTIC for reporting purposes.
- (b) The purpose for reporting details of contracts in excess of the amount of R10 million (ten million rand) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 6.2 (a) above.

#### **5.4 RFQ submission and contract reporting requirements of bidders and successful bidders (contractors)**

- (a) Bidders are required to sign and submit this Standard bidding Document (SBD 5) together with the RFQ on the closing date and time.
- (b) In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraph 6.2(a) (ii) to (iv).
- (c) To enable the DTIC in determining the NIPP obligation, successful Bidders (contractors) are required, immediately after being officially notified about any successful RFQ with a value in excess of R10 million (ten million rand), to contact and furnish the DTIC with the following information:
  - (i) RFQ or contract number
  - (ii) description of the goods, works or services
  - (iii) date on which the contract was accepted
  - (iv) name, address and contact details of the government institution
  - (v) value of the contract
  - (vi) imported content of the contract, if possible
- (d) The information required in paragraph 4.4 (c) above must be sent to the DTIC, Private Bag X 84, Pretoria, 0001 within five (5) working days after award of the contract, at e-mail/s Ynematswerani@thedtic.gov.za and Amohlahlo@thedtic.gov.za.

#### **5.5 Process to satisfy the NIPP obligation**

- (a) Once the successful Bidder (contractor) has contacted and furnished the DTIC with the information required, the following steps shall be followed:
  - (i) the contractor and the DTIC shall determine the NIPP obligation;
  - (ii) the contractor and the DTIC shall sign the NIPP obligation agreement;
  - (iii) the contractor shall submit a performance guarantee to the DTIC
  - (iv) the contractor shall submit a business concept for consideration and approval by the DTIC
  - (v) upon approval of the business concept by the DTIC, the contractor shall submit detailed business plans outlining the business concepts
  - (vi) the contractor shall implement the business plans; and
  - (vii) the contractor shall submit bi-annual progress reports on approved plans to the DTIC.
- (b) The NIPP obligation agreement is between the DTIC and the successful Bidder (contractor) and, therefore, does not involve the purchasing institution.

**RFQ Number:** \_\_\_\_\_

**Closing Date:** \_\_\_\_\_

**Name and Surname of Bidder:** \_\_\_\_\_

**Postal Address:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Annex A: Abbreviations, Terms and Definitions

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### A.1 Abbreviations and Acronyms

AA	Accounting Authority
AO	Accounting Officer
B-BBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
CPI	Consumer Price Index
CSD	Central Supplier Database
DOJ&CD	Department of Justice and Constitutional Development
DTIC	Department of Trade, Industry and Competition
EME	Exempted Micro Enterprise
EOI	Expression of Interest
GCC	General Conditions of Contract
ICT	Information and Communication Technology
IS	Information Systems
ISO	International Standards Organisation
IT	Information Technology
ITC	Information Technology Committee
JV	Joint Venture
NIPP	National Industrial Participation Programme
PIN	Personal Identification Number
OEM	Original Equipment Manufacturer
OSM	Original Software Manufacturer
PAIA	Promotion of Access to Information Act, 2 of 2000
POPIA	Protection of Personal Information Act, 4 of 2013
QSE	Qualifying Small Enterprise
RFA	Request for Accreditation
RFB	Request for RFQ
RFI	Request for Information
RFP	Request for Proposal
RFQ	Request for Quotation
RSA	Republic of South Africa
SARB	South African Reserve Bank
SARS	South African Revenue Service
SBD	Standard RFQ Document
SITA	State Information Technology Agency
SLA	Service Level Agreement
SSA	State Security Agency
TCS	Tax Compliance Status

URS	User Requirement Specification
VAT	Value Added Tax

## A.2 Terms and Definitions

**Acceptable RFQ** - any RFQ which in all respects materially complies with the specifications and conditions set out in this RFQ document.

**B-BBEE** - Broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act.

**B-BBEE contributor status level of contributor** - the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice or Sector Code on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.

**RFQ** - a written offer in a prescribed or stipulated form in response to an invitation from DOJ&CD for the provision of services, works or goods through price quotations, advertised bidding processes or proposals.

**RFQ price** - price offered by the bidder, excluding value added tax (VAT)

**Bidder** - any juristic/natural person, enterprise, Consortium, partnership, Joint Venture ("JV") or firm that submits a RFQ in response to this RFQ invitation.

**Broad-Based Black Economic Empowerment Act** - the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

**Closing time** means the date and hour specified in the bidding documents for the receipt of RFQs.

**Comparative Price** - the price which includes all applicable taxes calculated after the addition or deduction of variable costs and conditional/unconditional discounts, *et cetera*.

**Consortium** - two or more entities joining forces as an umbrella entity to gain a strategic collaborative advantage by combining their expertise, capital, efforts, skills and knowledge for the purpose of delivering the requisite goods, works or services.

**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.

**Contractor Agent** - any person mandated by a Prime Contractor or consortium/joint venture to do business for and on behalf of, or to represent in a business transaction, the Prime Contractor and thereby acquire rights for the Prime Contractor or consortium/joint venture against DOJ&CD or an organ of state and incur obligations binding the Prime Contractor or consortium/joint venture in favour of DOJ&CD or an organ of state.

**Contract price** means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations

**Co-operative** - an autonomous association of persons united voluntarily to meet their common economic and social needs and aspirations through jointly owned and democratically controlled enterprise organised and operated on co-operative principles.

**Corrupt practice** means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution

**Countervailing duties** are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally

**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

**Day** means calendar day

**Delivery** means delivery in compliance of the conditions of the contract or order

**Delivery ex stock** means immediate delivery directly from stock actually on hand.

**Delivery into consignee's 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.

**Designated Group** means:

- a) Black designated groups;
- b) Black people;
- c) Exempted Micro Enterprises ("EME");
- d) Women;
- e) People with disabilities;
- f) Small enterprises as defined in sections 1 of the National Small Enterprise Act, 1996 (Act No. 102 of 1996);
- g) Qualifying Small Enterprises ("QSE"); and/or
- h) Youth.

**Designated Sector** - a sector, sub-sector or industry that has been designated by the Department of Trade, Industry and Competition in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;

**Duly sign** - a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual)

**Dumping** occurs when a private enterprise abroad markets 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

**Et cetera** – means And so forth

**Exempted Micro Enterprise (EME)** – An entity with an annual turnover of R 10 (ten) million or less.

**Firm Price** - 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 a law or regulation is binding on the contractor and demonstrably has influence on the price of any supplies or the rendering cost of any service, for the execution of a contract.

**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

**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 RFQ submission) designed to establish RFQ prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

**Goods** – any work, equipment, machinery, tools, materials or anything of whatever nature to be rendered to DOJ&CD or DOJ&CD's delegate by the Successful bidder in terms of this RFQ.

**Imported Content** - that portion of the tender price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its 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 port of entry.

**Joint Venture** - two or more entities/persons joining together under a contractual agreement to conduct a specific business enterprise with both parties sharing profit and losses. The venture is for one specific project only, rather than for a continuing business relationship as in a strategic alliance. It is about sharing risk with others and providing one or more missing and needed assets and competencies.

**Local content** - that portion of the tender price which is not included in the imported content, provided that local manufacturing does take place;

**Manufacture** means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities

**Military Veterans** - has the meaning assigned to it in section 1 of the Military Veterans Act, 2011 (Act No. 18 of 2011).

**Non-firm Price(s)** - all price(s) other than "firm" price(s).

**Order** means an official written order issued for the supply of goods or works or the rendering of a service

**Organ of State** – means Organ of the State as defined in terms of section 239 of the Constitution of the Republic of South Africa Act 108 Of 1996 (as amended).

**People with disabilities** - people who have a long term or recurring physical or mental impairment which substantially limits their prospects of entry into or advancement in employment or any other economic activity.

**Person(s)** - a natural and/or juristic person(s).

**Personal Information** means personal information as defined in section 1 of the Protection of Personal Information Act, 4 of 2013.

**Price** – includes all applicable taxes less all unconditional discounts.

**Prime Contractor** –any person (natural or juristic) who forwards an acceptable proposal in response to this RFQ with the intention of being the main contractor should the proposal be awarded to him/her.

**Project site** where applicable, means the place indicated in bidding documents

**Proof of B-BBEE contributor status level** means:

- the B-BBEE status level certificate issued by an authorised body or person in terms of the B-BBEE legislation;
- a sworn affidavit as prescribed by the B-BBEE Code of Good Practice; or
- any other requirement prescribed in terms of the Broad-Based Black Economic Empowerment Act.

**Purchaser** means the organisation purchasing the goods

**Rand Value** - the total estimated value of a contract in Rand, calculated at the time RFQs are invited and includes all applicable taxes as well as excise duties.

**RFQ** - Collective name for any type of procurement request, including RFB, RFQ, RFA, RFI, EOI etc

**Rural area** – means

- a) a sparsely populated area in which people farm or depend on natural resources, including villages and small towns that are dispersed through the area; or
- b) an area including a large settlement which depends on migratory labour and remittances and governmental social grants for survival and may have a traditional land tenure system.

**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

**SMME** - bears the same meaning as assigned to this expression in the National Small Business Act, 1996 (Act No. 102 of 1996).

**Stipulated minimum threshold** - that portion of local production and content as determined by the Department of Trade, Industry and Competition

**Sub-contract** - the Prime Contractor's and/or Bidder assigning, leasing, making out work to, or employing, another person to support such Prime contractor and/or bidder in the execution of a part of the contractual obligations for the provision of goods, works or services.

**Subcontractor** - any person (natural or juristic) who is subcontracted a portion of an existing contract by a Prime Contractor. The Subcontractor is not a bidder.

**Successful bidder** - the organisation or person with whom the order is placed and who is contracted to execute the work as detailed in the RFQ response.

**Technical/functionality** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.

**Township** - an urban living area that any time from late 19<sup>th</sup> century until 27 April 1994, was reserved for black people, including areas developed for historically disadvantaged individuals post 27 April 1994.

**Written or in writing** means handwritten in ink or any form of electronic or mechanical writing.

**Youth** - Persons between the ages of 18 and 35 as defined in the National Youth Commission Act 19 of 1996.