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# MPUMALANGA PROVINCIAL GOVERNMENT



## DEPARTMENT OF HUMAN SETTLEMENT

### BID NUMBER: DHS/236/24/MP B

**APPOINTMENT OF SERVICE(S) INTO A PANEL OF CREDIBLE CONTRACTORS FOR TARGET GROUPS OF PEOPLE (WOMEN, YOUTH, PEOPLE LIVING WITH DISABILITIES AND MILITARY VETERANS), WITH CIDB GRADING FROM 6GB TO 9GB FOR THE CONSTRUCTION OF LOW COST GOVERNMENT SUBSIDIZED HOUSING TOP STRUCTURES (RDP) IN NKANGALA DISTRICT OF MPUMALANGA PROVINCE FOR A PERIOD OF THREE (03) YEARS**

ISSUED BY:

Department of Human Settlement  
Private Bag X11246  
Mbombela  
1200

**NAME OF BIDDER:** .....

**TOTAL BID PRICE (all inclusive) :** .....

**(Also in words):** .....

.....

**PART A  
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF HUMAN SETTLEMENTS					
BID NUMBER:	<b>DHS/236/24/MP B</b>	CLOSING DATE:	<b>16 August 2024</b>	CLOSING TIME:	<b>12H00</b>
DESCRIPTION	<b>APPOINTMENT OF SERVICE(S) INTO A PANEL OF CREDIBLE CONTRACTORS FOR TARGET GROUPS OF PEOPLE (WOMEN, YOUTH, PEOPLE LIVING WITH DISABILITIES AND MILITARY VETERANS), WITH CIDB GRADING FROM 6GB TO 9GB FOR THE CONSTRUCTION OF LOW COST GOVERNMENT SUBSIDIZED HOUSING TOP STRUCTURES (RDP) IN NKANGALA DISTRICT OF MPUMALANGA PROVINCE FOR A PERIOD OF THREE (03) YEARS</b>				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
<b>MBOMBELA</b> , Riverside Government Complex, Building No 9, Government Boulevard, Mbombela, 1200, <b>PIET RETIEF</b> , No. 11 Measroch Street, Piet Retief Office, <b>KWAMHLANGA</b> , KwaMhlanga Government Complex, Department of Finance, Building No. 12, Computer Centre <b>EVANDER</b> , 10 Cornell Road (previously occupied by Evander Home Affairs Offices), Evander, 2280, <b>BUSHBUCKRIDGE</b> , Bushbuckridge Advice Centre, Department of Finance, Protea building (old Telkom building), <b>MIDDELBURG</b> , Department of Public Works, Cnr. Lillian Ngoyi and Dr Beyers Naudé Streets – Old TPA Building, Upper ground floor, Office numbers A20, 21 and 25, <b>MALELANE</b> , 24 Air Street, Malelane, <b>ELUKWATINI</b> , Elukwatini Sub Regional offices, Office numbers A49 and A50 (opposite Elukwatini Community Hall) Stand number 12 Extension A, Elukwatini, <b>SIYABUSWA</b> Old Parliament Building, Building No. 1, Job Skhosana Street, Siyabuswa.					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	Ms. R.S Motsilanyana		CONTACT PERSON	Mr. U Okon	
TELEPHONE NUMBER	013 766 6426		TELEPHONE NUMBER	013 766 6346	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	rsmotsilanyana@mpg.gov.za		E-MAIL ADDRESS	writeuno@gmail.com	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<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]	
<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**

<p><b>1. BID SUBMISSION:</b></p> <p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b></p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p> <p>1.4. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b></p>
<p><b>2. TAX COMPLIANCE REQUIREMENTS</b></p> <p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>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.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>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.</p> <p>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."</p>

**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: .....

**INVITATION FOR THE SUBMISSION OF PROPOSALS FOR APPOINTMENT OF SERVICE(S) INTO A PANEL OF CREDIBLE CONTRACTORS FOR TARGET GROUPS OF PEOPLE (WOMEN, YOUTH, PEOPLE LIVING WITH DISABILITIES AND MILITARY VETERANS), WITH CIDB GRADING FROM 6GB TO 9GB FOR THE CONSTRUCTION OF LOW COST GOVERNMENT SUBSIDIZED HOUSING TOP STRUCTURES (RDP) IN NKANGALA DISTRICT OF MPUMALANGA PROVINCE FOR A PERIOD OF THREE (03) YEARS**

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The Mpumalanga Department of Human Settlements in its endeavour to promote and develop sustainable and integrated human settlements in the province is in a process of developing a Panel of Contractors in **Nkangala** District that will be used for the construction of low-cost housing top structures using different housing instruments as provided by the National Housing Code.

The Department hereby invites bidders to be part of the panel of contractors to build low cost housing top structures (RDP houses).

It is imperative that bidders read the tender document carefully, complete it in full and sign it off.

The top ten **(10) per district** who meet all the stipulated requirements will form part of the panel of service providers to construct RDP houses. The Department will only be engaged in business with the service providers that are accredited through the Departmental Supply Chain Management Processes.

The panel of contractors will be utilised for a period of **three (3) years**. The appointments will be based on an “**as and when required**” basis issued as an Instruction to Perform Works (IPW). The names of the successful bidders on the panel will be published on the Provincial Government Bid Bulletin.

**It is important for prospective contractors to note the following objective criteria which could be applied by the department:-**

- Bidders will not be appointed in more than one district for the duration of three years. The districts referred to are Ehlanzeni District, Gert Sibande District and Nkangala District.
- In each district, the Department will appoint **10 bidders with a (CIDB grading 6-9GB)** who will form a panel of contractors to build low-cost houses. **In each region the panel will comprise of the following ( 2 Women,2 Youth,3 Military Veterans and 3 people living with disabilities)**
- Where feasible, these 10 bidders will be required to sub-contract some of the work in line with Preferential Procurement Regulation, 2022.(**after the award of tender**)
- To promote the Social Enterprise Development Programme as approved by Mpumalanga Provincial Government.
- The work allocation as per the IPW shall be based on the ranking of the final scores i.e., from the highest to the lowest score. First preference shall be given to the bidder with highest score. The total number of housing units allocated to a successful bidder on the panel shall be determined by their CIDB grading.
- Allocation preferences shall be given to the designated groups as defined in Section 2 (1) (d) of PPPFA
- Bidders who form the panel as indicated above, shall be allocated work during the period of the panel (three years).
- If the Bidder has bid for all the three (3) Districts and is successful, the Department will apply its discretion to determine the District where the Bidder will work.
- Where necessary the Accounting Officer can apply his/her discretion in allocating work from the panel of contractors, the Accounting Officer will approve this allocation

Telegraphic, telephonic, telex, facsimile, or e-mail, usage of correction fluid or markers and late submissions will **NOT** be accepted.

**RETURNABLE DOCUMENTS**

- Valid company registration certificate CK (for all parties in a Joint Venture or Consortium or bidding entity)
- CSD registration number (for all parties in a Joint Venture or Consortium or bidding entity).
- The tender shall be properly received in sealed envelope clearly indicating the description of the service and the Tender number for which the tender is submitted.

- An original, valid tax clearance certificate, or a tax compliance status PIN issued by SARS (for all parties in a Joint Venture or Consortium or bidding entity).
- COIDA Certificate
- Bank rating
- Proof of residence
- The tender shall be deposited in the relevant Tender box as indicated on the notice of the Tender on or before the closing date and time of the Tender.

## **COMPULSORY RETURNABLE DOCUMENTS**

The following returnable documents **must** be submitted with the company profile in order for the submission to be considered responsive:

- All **SBD forms** shall be completed in full and each page initialled.
- Valid company NHBC registration-certificate. Each joint venture/partnership/consortium partner must be registered with NHBC as applicable. Application letter for renewal will not be accepted.
- An original, valid tax clearance certificate, or a tax compliance status PIN issued by SARS (for all parties in a Joint Venture or Consortium or bidding entity).
- Certified copies of company directors' identification documents, not more than 3 months.
- Joint Venture / Consortium Agreement and Certificate of authority for signatory in case of joint ventures
- Valid CIDB (GB) certificate.
- Proof of medical certificate issued by a professional medical practitioner (GP) if a contractor/bidder is disabled.
- **Any person above the age of 35, does not qualify to bid in this tender except Military Veterans and people living with disabilities**

Note the following: **Failure to adhere to any of the above conditions on returnable documents will result in your bid being disqualified.**

- No copies from certified copies of documents or scanned documents will be accepted. Only certified copies showing original certification stamp and signature of certifying official, not more than **three (3) months** old for financial documents and not more than **twelve (12) months** old for other documents, will be accepted.

**The Department is not obliged to appoint any company, nor will it be liable for any costs incurred while preparing responses to this invitation.**

**It should be further noted that if service providers are not registered with CSD they will not be appointed.**

## **Evaluation of tender**

All tenders received shall be evaluated in terms of the Preferential Procurement Regulations 2022 Mpumalanga Department of Human Settlements' Supply Chain Management Policy, the current Preferential Procurement Policy Framework Act, Treasury Regulations, and other applicable legislations at the time of tender.

The Department reserves the right to accept all, some, or none of the tenders submitted – either wholly or in part – and it is not obliged to accept the lowest tender.

**By submitting this tender, the tenderer authorises the Department or its delegate(s) to carry out any investigation deemed necessary to verify the correctness of the statements and documents submitted and that such documents reasonably reflect the ability of the Tenderer to provide the services required by the Department.**

The Department fully endorses and supports the Governments' Broad Based Black Economic Empowerment Programme. The Department believes that all business enterprises, and specifically those providing services to the Department, have an obligation to redress the imbalances of the past.

Preferential procurement will also be applied during the evaluation of bids. The principles contained in Preferential Procurement Policy Framework Act, 2000 will be strictly adhered to – with specific reference to the stipulations of the Preferential Procurement Regulations, 2022.

**Procurement Variables:**

The evaluation and adjudication during the bidding process will be as follows:-

- **Evaluation for Administrative Compliance / Responsiveness**  
Tenders shall be evaluated to establish administrative compliance or responsiveness, all those that are not responsive or compliant as per the responsiveness criteria shall be disqualified and not evaluated further.
- **Functionality: Technical and financial capabilities (for which a minimum score of 70 Points should be achieved before the next stage of evaluation).**  
Only tenderers who receive 70 points or more shall be evaluated further.
- **Price evaluation.**  
All tenderers shall receive the same points for price because the price is fixed as a subsidy quantum per unit of work, e.g. R185 257 per housing unit.
- **Preference Points**  
Tenders shall be evaluated on proof of specific goals HDI status.  
**General:** The first 10 tenderers with the highest scores compared to others, shall be recommended for appointment according to their score ranking.

**Should the tenderers be tied on the final score?**

- The tenderer with a superior specific goals score shall be preferred but
- Should they have the same specific goals score, the tenderer with the highest Functionality score shall be preferred. If the tenderers are tied on functionality score during this latter process,
- The tied tenderers' names shall be placed in a container then a name(s) shall be picked, the first to be picked shall be preferred.

The bid falls within the 90/10 evaluation criteria where 90 points will be allocated for price and 10 points for HDI (specific goals) points in line with PPPFA (see attached scoring criteria) <sup>1</sup>

<b>Specific Goals</b>	<b>Number of points</b>
1. Military Veterans	3
2. Enterprise owned by Women	2
3. Enterprise Owned by Youth	2
4. Enterprise owned by People living with disabilities	3

The total points as per the evaluation criteria is 100 points (90 for price and 10 for specific goals). Prospective bidders must score at least 70 points out of 100 allocated for functionality to qualify for the second stage (90/10) of evaluation.

**Evaluation Criteria in respect of Functionality**

No.	Criteria	Description	Total score
1	<p><b>Bidder's (Company) Experience</b></p> <p>A company's experience in the construction of government subsidised low-cost houses with the following proof and contactable references: -</p> <ul style="list-style-type: none"> <li>▪ Appointment letters;</li> <li>▪ Completion certificates or copy of contract; and</li> <li>▪ Copy of NHBRC enrolment certificates.</li> </ul>	<p>The points will be allocated as follows:</p> <ol style="list-style-type: none"> <li>1. Above 6 years –30 pts</li> <li>2. 3 to 6 years –20 pts</li> <li>3. 1 to 2 years –10 pts</li> <li>4. Less than 1 year – 5 pts</li> </ol>	<b>30</b>
2	<p><b>Value of previous work undertaken</b></p> <p>The value of project(s) completed mainly government subsidized low-cost houses, residential building works and other general building works.</p> <p>The following proof is required: -</p> <ul style="list-style-type: none"> <li>▪ Proof of appointment letters indicating the value of the project;</li> <li>▪ Completion certificate;</li> <li>▪ Copy of contract; and</li> <li>▪ NHBRC enrolment certificate.</li> </ul>	<p>The points will be allocated as follows (per project):</p> <p><b>1. For low-cost subsidized houses;</b></p> <ol style="list-style-type: none"> <li>A. Above R50m – 25 pts</li> <li>B. R20m to R50m – 20 pts</li> <li>C. R5m to less than R20m – 15pts</li> <li>D. Less than R5m – 10 pts</li> </ol> <p><b>2. For other home building works;</b></p> <ol style="list-style-type: none"> <li>A. Above R50m –15 pts</li> <li>B. R10m to R50m –10 pts</li> <li>C. Less than R10m –8 pts</li> </ol> <p><b>3. For general building works other than home building;</b></p> <ol style="list-style-type: none"> <li>A. Above R50m – 10pts</li> <li>B. R10m to R50m – 8pts</li> <li>C. Less than R10m – 5pts</li> </ol>	<b>25</b>
3	<p><b>Key staff and their relevant skills</b></p> <p>The following <b>key staff</b> should form part of the bidder's core team:-</p> <ul style="list-style-type: none"> <li>▪ Site Manager</li> <li>▪ Safety Officer</li> <li>▪ Artisans (mainly masonry)</li> </ul> <p>Attach proof of curriculum vitae (CVs), qualifications and registration with statutory professional bodies (if applicable).</p> <p>Points are scored on copies supplied of qualifications of Key staff</p>	<p>The points will be allocated as follows:</p> <ol style="list-style-type: none"> <li>1.Relevant CVs and professional qualifications within the build environment (<b>ALL 3 key staff</b>) -15 pts</li> <li>2.Relevant CVs and professional qualifications within the build environment (<b>2 key staff only</b>) -10 pts</li> <li>3. Relevant CVs and professional qualifications within the build environment (<b>1 key staff only</b>) - 5 pts</li> </ol>	<b>15</b>
4	<p><b>Bank Rating</b></p> <p>Issued <b>with a stamp</b> from a reputable bank (bank recognised by RSA government.)</p>	<p>The points will be allocated as follows:</p> <ol style="list-style-type: none"> <li>1. A &amp; B grading – 10 pts</li> <li>2. C grading – 8 pts</li> <li>3. D grading – 5 pts</li> <li>4. E grading and below – 0 pts</li> </ol>	<b>10</b>
5	<p><b>Access to Material, Plant and Equipment</b></p> <p>Access to home building material support and availability of plant and equipment.</p> <p>The tenderers should submit confirmation letters for access to building material support and availability of plant and equipment.</p>	<p>Concrete, bricks, cement, electrical, plumbing, roof, steel works (windows and door frames), Tib's, excavators, concrete mixer, tipper trucks, compactors, level control point</p> <p>Confirmation for all the above or more is 10 points. Less than what is mentioned is 0 points</p>	<b>10</b>
6	<p><b>Locality</b></p> <p>This is in respect to the area where the company's head office or main address is located,e.g. local municipality within a District</p>	<ol style="list-style-type: none"> <li>1. District – 10 points</li> <li>2. Mpumalanga Province – 6 points</li> <li>3. National (RSA) – 3 points</li> </ol>	<b>10</b>
<b>Grand Total</b>			<b>100</b>

**Queries may be addressed to: Technical Enquiries:**

Mr U. Okon

Chief Director: Project and Program Management

Tel (013) 766 6892

Email address: [UMokon@mpg.gov.za](mailto:UMokon@mpg.gov.za) or [writeuno@gmail.com](mailto:writeuno@gmail.com)

**Supply Chain Management Enquiries:**

Mr Thabo Mashile

Director: Supply Chain Management

Tel (013) 766-6449

Email address:



### Application for a Tax Clearance Certificate

**Purpose**

Select the applicable option .....Tenders  Good standing

If "Good standing", please state the purpose of this application


**Particulars of applicant**

Name/Legal name (Initials & Surname or registered name)												
Trading name (if applicable)												
ID/Passport no					Company/Close Corp. registered no							
Income Tax ref no					PAYE ref no	7						
VAT registration no	4				SDL ref no	L						
Customs code					UIF ref no	U						
Telephone no					Fax no							
E-mail address												
Physical address												
Postal address												

**Particulars of representative (Public Officer/Trustee/Partner)**

Surname												
First names												
ID/Passport no					Income Tax ref no							
Telephone no					Fax no							
E-mail address												
Physical address												

**Particulars of tender** (If applicable)

Tender number

Estimated Tender amount R

Expected duration of the tender  year(s)

Particulars of the 3 largest contracts previously awarded

Date started	Date finalised	Principal	Contact person	Telephone number	Amount
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**Audit**

Are you currently aware of any Audit investigation against you/the company?  YES  NO  
 If "YES" provide details

**Appointment of representative/agent (Power of Attorney)**

I the undersigned confirm that I require a Tax Clearance Certificate in respect of  Tenders  or  Goodstanding.

I hereby authorise and instruct  to apply to and receive from SARS the applicable Tax Clearance Certificate on my/our behalf.

Signature of representative/agent

-  -

Date

Name of representative/agent

**Declaration**

I declare that the information furnished in this application as well as any supporting documents is true and correct in every respect.

Signature of applicant/Public Officer

-  -

Date

Name of applicant/Public Officer

**Notes:**

1. It is a serious offence to make a false declaration.
2. Section 75 of the Income Tax Act, 1962, states: Any person who
  - (a) fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
  - (b) without just cause shown by him, refuses or neglects to-
    - (i) furnish, produce or make available any information, documents or things;
    - (ii) reply to or answer truly and fully, any questions put to him ...
 As and when required in terms of this Act ... shall be guilty of an offence ...
3. **SARS will, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.**
4. Your Tax Clearance Certificate will only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.

## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

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

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

### 2. Bidder's declaration

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

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

Full Name	Identity Number	Name of State institution

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

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

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

2.2.1 If so, furnish particulars:

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

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

2.3.1 If so, furnish particulars:

.....  
.....

**3 DECLARATION**

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

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

<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.

- 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.

.....  
.....  
Signature

Date

.....  
.....  
Position

.....  
.....  
Name of bidder

## SPECIFIC GOALS

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

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS AND DEFINITIONS**

### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

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

1.21.2

- a) The value of this bid is estimated to exceed R50 000 000 (all applicable taxes included) and therefore the .....preference point system shall be applicable; or
- b) Either the **90/10** preference point system will be applicable to this tender.

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
<b>PRICE</b>	90
<b>SPECIFIC GOALS</b>	10
<b>Total points for Price and Specific goals must not exceed</b>	<b>100</b>

1.5 Failure on the part of a bidder to submit the required documents to substantiate the points claimed with the bid, will be interpreted to mean that points for specific goals are not claimed.

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

### 2. DEFINITIONS

(a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act.

(b) **“Specific goals”** means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development



Where

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

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

#### 3.2.1 POINTS AWARDED FOR PRICE

A maximum of 80 or 90 points is allocated for price on the following basis:  
**80/20** or **90/10**

$$Ps = 80 \left( 1 + \frac{Pt - Pmax}{Pmax} \right) \text{ or } Ps = 90 \left( 1 + \frac{Pt - Pmax}{Pmax} \right)$$

Where

- Ps = Points scored for price of bid under consideration  
 Pt = Price of bid under consideration  
 Pmax = Price of highest acceptable bid

### 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1 In terms of Regulation 3 (1) an organ of state must, in the tender documents, stipulate the specific goal in the invitation to submit the tender for which a point may be awarded, and the number of points that will be awarded to each goal, and proof of the claim for such goal.

SPECIFIC GOAL	NUMBER OF POINTS (90/10 PREFERENCE SYSTEM)
1. Enterprise owned by Military Veterans	3
2. Enterprise owned by Women	2
3. Enterprise owned by Youth	2
4. Enterprise owned by People living with Disabilities	3

**5. BID DECLARATION**

5.1 Bidders who claim points in respect of specific goals must complete the following:

SPECIFIC GOAL	NUMBER OF POINTS (90/10 PREFERENCE SYSTEM)
1. Enterprise owned by Military Veterans	3
2. Enterprise owned by Women	2
3. Enterprise owned by Youth	2
4. Enterprise owned by People living with Disabilities	3

**6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 3.1**

6.1 Specific goals: = ..... (maximum of 10 or 20 points)

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 3.1 and must be substantiated by submitting the required documents.

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

7.1 Name ..... of company/firm:.....

7.2 VAT ..... registration number:.....

7.3 Company ..... registration number:.....

**7.4 TYPE OF COMPANY/ FIRM**

- Partnership/Joint Venture / Consortium
  - One person business/sole propriety
  - Close corporation
  - Company
  - (Pty) Limited
- [TICK APPLICABLE BOX]

**7.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....

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

7.6 COMPANY CLASSIFICATION

- Y Manufacturer
  - Y Supplier
  - Y Professional service provider
  - Y Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

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

7.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals indicated in paragraphs 1.4 and 5.1 of the foregoing certificates, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 5.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct.
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

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

DATE: .....

ADDRESS .....

.....

.....

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **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.

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## General Conditions of Contract

### 1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

**2. Application**

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

**3. General**

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

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

**4. Standards**

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

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

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

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

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

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

**6. Patent rights**

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

**7. Performance security**

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

**8. Inspections, tests and analyses**

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

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

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

**9. Packing**

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

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

**10. Delivery and documents**

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

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

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

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

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

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

#### **15. Warranty**

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

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

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

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

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

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

- 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)