

BID SPECIFICATION FOR THE SUPPLY, COMMISSIONING AND TRAINING OF GAS CHROMATOGRAPH - MASS SPECTROMETER (GC-MS) INSTRUMENTS FOR THREE YEARS AT THE FORENSIC SCIENCE LABORATORY INCLUDING SERVICE AND MAINTENANCE AGREEMENT: SECTION CHEMISTRY: GAUTENG (PRETORIA), KWAZULU-NATAL (AMANZIMTOTI), EASTERN CAPE (QOBERHA) AND WESTERN CAPE (PLATTEKLOOF)

The Bidder shall be responsible for supplying the following:		COMPLY /DO NOT COMPLY
9.16.4	It must be possible to export sequences to spreadsheets, e.g. <i>Excel</i> .	
9.17	The software must provide a comprehensive diagnostics utility including system status, all tuning voltages, RF voltages, source pressure, filament status, etc.	
9.18	The software must have a comprehensive reporting system whereby custom reports may be generated using a Windows-based program such as <i>Excel</i> . The relevant reporting software program(s) must be supplied.	
9.19	The software must incorporate a comprehensive Macro programming commands set that can be utilized for simple reporting and data analysis. An instruction manual on Macro commands and programming must be included as well as have the supplier create a Macro as per end user request.	
9.20	The software must include a comprehensive computer based training module or additional software that covers all aspects of GC-MS operation for training purposes	
9.21	The software must include a peak-purity-type algorithm whereby overlapping peaks in the chromatogram that might affect library search or quantification results can be detected. The software must be able to subtract any undesired component from the spectrum.	
9.22	The software must allow:	
9.22.1	Automatic and Standardised target tuning and mass calibration of the mass selective detector.	
9.22.2	The tuning program must include a number of specific automatic tuning programs such as for high sensitivity, high mass region, EPA method compatible tuning and user defined tuning.	
9.23	Software must be able to mass calibrate without changing the tuning parameters.	
9.24	Software must be able to save all tuning and mass calibration parameters, including creation date, in a file/files meeting the following criteria:	
9.24.1	Files must be saveable on a user-specifiable subdirectory and a user specifiable fixed drive with no limitation to the number of files and must not be overwritten / erased without user consent.	

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9.24.2	Data must be producible in report format with the creation date and time included automatically. Copying or transferring this data must not result in the date of the file/directory being changed.	
9.24.3	Files must be non-editable.	
9.25	The GC-MS must allow the downloading and implementation of tuning parameters from previously saved tuning files.	
9.26	The building of an unlimited number of separate and independent data acquisition methods (Autosampler, GC, Interface and MS parameters) must be possible.	
9.27	Mass spectra must be automatically and continuously recorded onto the hard disc during a data acquisition.	
9.28	Automated quantitative analyses must be available with the following software capabilities:	
9.28.1	Independent integration parameters for each compound.	
9.28.2	The use of multiple internal standards, with calibration curves to be fitted either through the linear, logarithmic or exponential calculations.	
9.28.3	The exclusion of data points from calibration curves in a manner that excludes specific data point from calculations, but does not omit it from the calibration report.	
9.28.4	The update of retention times and response factors when calibrating.	
9.29	The use of multiple detector-response values corresponding to a single calibration value in a multi-point calibration curve.	
9.30	The user must be able to create own reference libraries using the software.	
9.31	The mass spectrometer data system must have an integrated module (e.g. retention time-locking) for analyzing target compounds in complex matrices allowing the analyst to get the same retention times from day to day and from new and existing GC-MS instruments. The module must not electronically alter the recorded data post-analysis but must enforce pneumatic changes altering flow rate pre-analysis.	

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The Bidder shall be responsible for supplying the following:		COMPLY /DO NOT COMPLY
9.32	The software must enable library search capabilities for up to at least fifty (50) chemically significant ions per spectrum.	
9.33	The library search program must provide different searching capabilities such as for Purity, Fit and Reverse-Fit.	
9.34	The software must allow the mass spectra from all peaks or specific peaks in a chromatogram to be searched automatically. Results can then be obtained in a summary or detailed report which can include chemical structures.	
9.35	The software must allow library searches to be conducted on user-defined mass ranges of obtained mass spectral data.	
9.36	The mass spectral library database must be searchable for specific compounds on criteria such as molecular mass, compound name, CAS registry number and molecular formula without having the mass spectral data available.	
9.37	Specific library entries must be printable without exiting the library.	
9.38	The software must be designed in such a way as to ensure that <u>all</u> data files in a sequence are stored in the specified directory, even if the operator is working on a different directory or drive from the controlling system.	
9.39	The software must be able to load and analyse mass spectral and other chromatograms from detectors such as ECD and NPD simultaneously. The software must be able to align the MS and other chromatograms automatically to compensate for any time difference between the two systems. Peak detection can be optimised independently for the two different detectors.	
9.40	Complete manual sets and original software diskettes for all software must be included upon installation	
9.41	All application programs, including data management, quantification, library searching and the creation of reports in the GC-MS controlling software as well as other software packages must be available during data acquisition.	
9.42	All screens in the GC-MS controlling software must be easily printable.	
9.43	A full mass spectrum for any specific scan in the chromatogram must be displayed in less than one (1) second.	

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The Bidder shall be responsible for supplying the following:		COMPLY /DO NOT COMPLY
9.44	When a list of data files is requested to enable the selection of a specific data file, it must not take more than 2 seconds to obtain the list. If necessary, the computer hardware must be upgraded to enable this feature.	
9.45	The software must include the ability to perform retention time adjustment (e.g. retention time locking), which allows the operator to characterize and "lock" retention times for selected compounds against instrument parameters allowing automatic compensation of retention time vs. instrument parameters. This must allow retention times of known compounds to remain the same from instrument to instrument.	
9.46	The GC-MS must have integrated software control of the sampler injectors via the GC-MS data system software.	
9.47	The mass spectrometer data system must have a deconvolution and reporting software module that combines the data results with the NIST library and AMDIS software search for target compounds into a single report.	
9.48	The mass spectrometer data system must have capability to share and distribute electronic methods between instruments and/or labs easily and securely.	
9.49	The MS data system must be capable of controlling 2 complete GC-MSD systems and 2 additional GC's with one detector each simultaneously from a single PC data system.	
9.50	The following software and hardware requirements are valid:	
9.50.1	Suitable software (with licences) must be supplied to enable the following:	
9.50.1.1	Operating system (minimum Windows 10).	
9.50.1.2	Newest version of GC-MS operating software.	
9.50.1.3	One copy of latest software version mass spectral libraries included upon installation: NIST library / Wiley library/ Pfleger-Maurer-Weber library / Wiley Designer Drug Library	
9.50.2	Software shall be included which is specifically intended for the purpose of deconvolution of collected data.	

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The Bidder shall be responsible for supplying the following:		COMPLY /DO NOT COMPLY
9.50.3	Software shall be upgradeable to client server so that retention time adjusted methods can be distributed for use with all presently installed GCMS instruments.	
9.50.4	Additional software included that allows on-demand virus scan and quarantine/removal of threats for all GC-MS data systems part of the bid as well as all current systems utilized at FSL nationally	
9.50.5	Additional software included that allows locking of USB ports on all GC-MS data systems part of the bid as well as all current systems utilized at FSL nationally	
10.	Spare parts and Consumables	
10.1	All the below-mentioned, must be supplied for each of the provided systems in addition to those items specified above:	
10.1.1	A high capacity cartridge gas purifier installed in the Helium line with the relevant indicators for contamination integrated into the cartridge. An indicating trap type to indicate when the capacity of the cartridge of the Helium purifier has been exceeded	
10.1.2	Two additional column nuts and two additional interface nuts per instrument.	
11.	Analytical Options	
11.1	Autosampler trays:	
11.1.1	Autosampler trays taking larger vials (e.g. 8, 10 ml) must be available for the supplied autosampler.	
12.	General Requirements	
12.1	Included in the bid per instrument must be the creation of reporting macro programs to enable automated print-outs of specific windows and information for analysed samples, the relevant negative control and the reference standard, according to FSL QMS requirements (detail available on request) to be suitable for the GC-MS software and data analysis software.	

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Section B: Bidder Responsibilities

Note: The Bidder needs to confirm compliance to requirements contained in this section by indicating Comply/Do not comply in the relevant column. Non-compliance to Mandatory requirements will result in immediate disqualification. Failure to enter Comply/Do not comply will be interpreted as non-compliance and will be disqualified. (Also do not put a Yes/ No/ ✓ / ✗).

Table 3: Additional Responsibilities

The Bidder shall be responsible for the following:		COMPLY /DO NOT COMPLY
13.	Training	
13.1	Training should be conducted after installation and comprising of at least 5 days per group at each regional laboratory. Training group sizes will vary as per the following respective sites- Pretoria (Gauteng), Amanzimtoti (KwaZulu Natal), in Gqeberha (Eastern Cape) and Platteklouf (Western Cape).	
13.2	The first cleaning of the ion-source (after installation) must be included and must serve as additional maintenance training.	
13.3	The training must include user and maintenance training of the system with regards to aspects such as hardware, troubleshooting and software/data management operations. The bidder must indicate duration of complete training interventions and submit training plan with bid documents under.	
13.4	Comprehensive theoretical training on gas chromatography and mass spectrometry must be provided, along with practical training in the use, maintenance and troubleshooting of the specific equipment offered in the bid. This will occur once off with commissioning of the first installed instrument per region	
13.5	Training must include light refreshments (coffee/tea/juice at tea times and light finger meal at lunch) for assessors and learners.	
13.6	Theoretical training shall comprise of 3 full days, with practical training done in no less than 2 full days for each training group.	

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The Bidder shall be responsible for the following:		COMPLY /DO NOT COMPLY
13.7	All learners must be assessed theoretically and practically during training and successful learners must be presented with a certificate of competency. Unsuccessful learners must be given a short overview and allowed another opportunity for assessment.	
13.8	The bidder must provide all learning material on hardcopy and softcopy during training and shall include: <ul style="list-style-type: none"> • Learner training material, instrument and operating manuals • Facilitator guide • All electronic media presentation by facilitator • Assessment guide • Learning feedback template 	
13.9	The bidder must provide a course report indicating the assessment outcome of each learner; problems or observations made by learners on the feedback template and other aspects that the facilitator chooses to highlight.	
13.10	The Bidder shall supply all consumables required for the training of members on the relevant equipment.	
13.11	Training by the bidder must include further development of learner skills in the presenting of results in a mock court presentation.	
14.	Literature	
14.1	Full technical specifications of the equipment offered must be submitted with the bid documents.	
14.2	A comprehensive set of manuals and technical handbooks must be provided for the instrumentation and all software packages upon installation. This may be in the form of hard copies or electronic formats.	
15.	Site specification and delivery	
15.1	Site visit and inspection at each regional FSL laboratory to establish suitable area for instrument installation prior to bid submission. Regional needs will be communicated with bidders performing site inspection.	
15.2	Where temporary installation area has been identified the movement of instruments within the region to a permanent area will be done and must include performance verification at new placement.	
15.3	Transport, insurance, delivery and installation requirements which will include any necessary gas line plumbing with gas manifolds included in the bid amount. This includes gas installation for any additional movement from a temporary location.	

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The Bidder shall be responsible for the following:		COMPLY /DO NOT COMPLY
15.4	An in-line voltage stabiliser and uninterruptible power supply for the systems with two hour battery operation	
16.	Installation and Commissioning	
16.1	The system must be completely commissioned and operational after completion of full system validation in line with current FSL standard operating procedures. Installation Qualification (IQ) and Operational Qualification (OQ) of all applicable components must be performed. Complete validation reports must be provided. Certified reference material (CRM) provided by the bidder for verification/validation must be produced in line with the relevant ISO guidelines (ISO 34 / ISO 35 / ISO 80) and proof of this must be submitted with the bid documentation. Reference material on offer must be traceable to a National Metrology Institute (NMI) in terms of its indicated purity or gravimetric value indicated by certificate of analysis, provided on commissioning of system.	
16.2	Commissioning time will be dependent on specific site requirements and the supplier is required to provide a detailed timeline of how they plan to commence with each system delivery, commissioning and training from date of order placed until handing over of the system to the SAPS FSL. The total timeline may however not exceed 60 calendar days from delivery of systems.	
16.3	The project plan detailing how requirements in 16.2 will be accomplished must be submitted with bid documents. The allocation of resources must be made visible in the plan and indicate specific dates, sites and activities to roll out the deliverable.	
16.4	Proof of software validation in the form of certificate from manufacturer or otherwise issued upon commissioning of instrument.	
16.5	The commissioning must include the integration of the relevant instrument computers and data workstations by providing a solution that would enable analysts to access acquired data from the instrument and that are equipped with the relevant software for data analysis. Traceable verification standards to be provided by bidder and utilised to verify correct sample data acquisition. All measuring devices, calibrators and performance test materials must be fully traceable to an NMI and in line with ISO17025:2017.	
16.6	The bidder must provide experienced expert in the field of analytical chemistry to verify test methods to be used on the system. Samples will be supplied by the Section Chemistry and the bidder must indicate the verification study design and performance criteria, to be verified during due diligence.	

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The Bidder shall be responsible for the following:		COMPLY /DO NOT COMPLY
16.7	The commissioning and testing must occur at the relevant site and must meet the relevant working hour requirements. All work on a system by relevant technicians must be within SAPS FSL normal office hours, namely 7:30 to 16:00 on week days.	
16.8	After installation it must be demonstrated that the system complies with the specified minimum requirements. A full installation qualification/operational qualification/ performance verification with certification documents issued for each instrument in line with quality management system and ISO17025:2017.	
17.	Additional Requirements	
17.1	Total time for delivery, installation and training should not exceed the specified criteria and time frames as per bid specification. Further requirements must be adhered to as communicated by the Section: Chemistry to the successful bidder.	
17.2	Comprehensive documentation and installation support must be included. This includes validation of current FSL standard operating procedures (test material will be supplied), method development, report templates and all automated processes where applicable.	
17.3	A full original tools kit must be provided for user maintenance. A full set of manuals must be provided for the spectrometer and all accessories. All consumables utilised during training and commissioning must be provided by the bidder.	
17.4	The bidder must make expert personnel available, if required to set precedence and acceptance in South African court of law, to give expert evidence on the functioning of the equipment and relevant calibration of components.	
17.5	The Bidder shall supply information and quote separately on specialised forensic support services which can be made available to address specific requirements of the SAPS FSL for the duration of the warranty, relevant to the equipment the bidder can service. This may be expert consultative services and should focus on aspects such as advanced technical support; method development; problem resolution with regard to automated technologies, databases or electronic content management. A VAT inclusive hourly rate for such services must be quoted and submitted as part of the bid offer. Quantities are not guaranteed and procurement will occur as need arises.	

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The Bidder shall be responsible for the following:		COMPLY /DO NOT COMPLY
18.	Warranty, Service and Maintenance	
18.1	All components must meet the criteria, and especially the warranty criteria as specified in Government procurement, general conditions of contract as attached to the bid document.	
18.2	The warranty period of all the items, with applicable terms and conditions that may apply, has to be stated clearly. Bidder must provide a list of parts expected for routine replacement with VAT included and expected lifetime of parts stated.	
18.3	Full and reputable service by trained and experienced service technicians for the usage of any of the items in this document must be readily available in South Africa	
18.4	A full two (2) year extended warranty on all components for systems including yearly service and maintenance (ad-hoc corrective and preventative maintenance), OQ/PV and hardware/software updates must be provided for, additional to the stated one year warranty, priced per system. This can be indicated separately but must be included in the bid price.	
18.5	The service level agreement specified in 18.4 must include all peripherals to the instrument (e.g. data workstations, printers) as well as any consumables required in the annual calibration, service and preventative maintenance. The details of all service interventions must be submitted with the bid documents.	

19.	ITEM DESCRIPTIONS	ICN CODES
19.1	Supply, Delivery and Commissioning of GC-MS instruments	9825T05084342
19.2	Supply of firmware and software for GC-MS	9825T05085609
19.3	Supply of workstations (PC /Laptop)	9825T05085377
19.4	Supply of printer	9825T05085379
19.5	Supply of reference libraries	9825T05085378
19.6	Supply and installation of Anti-Virus protection for analytical instruments data workstations	9825T05083985

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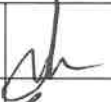
ITEM DESCRIPTIONS		ICN CODES
19.7	Supply of Certified Reference Material	9825T05085385
19.8	Supply, Delivery and Installation of Uninterruptible Power Supply (UPS)	9825T05085610
19.9	Supply and Installation of gas lines for instruments	9825T05085608
19.10	Training for GC-MS instruments	9825T05085604
19.11	Licensing fees for software	9825T05085451
19.12	Validation of software for GC-MS	9825T05085611
19.13	System validation-Installation Qualification, Operational Qualification and Performance Verification (IQ/OQ/PV)	9825T05085386
19.14	Specialised support service, validation and verification	9825T05085376
19.15	Maintenance and repairs for GC-MS instrument	9825T05085605
19.16	Service, Maintenance and repairs of instrument printer	9825T05030161
19.17	Service and maintenance of gas lines	9825T05083995
19.18	Major service with calibration for GC-MS (OQ-PV)	9825T05083987
19.19	Minor service for GC-MS instruments: Functional Verification (FV)	9825T05083988
19.20	Replacement of batteries for instrument UPS system	9825T05084011
19.21	Labour hours for specialised instrument support	9825T05083998
19.22	Labour hours for major ad-hoc maintenance of GC-MS instruments	9825T05084004
19.23	Labour hours for minor ad-hoc maintenance of GC-MS instruments	9825T05083999
19.24	Service of instrument UPS system	9825T05084010
19.25	Upgrade GC-MS firmware and software.	9825T05083976
19.26	Upgrade of GC-MS workstations (PC /Laptop)	9825T05083980
19.27	Update/upgrade of electronic reference libraries, GC-MS	9825T05084975
19.28	Licensing fees for software upgrade	9825T05083986
19.29	GC-MS tool kit	6640T05085607


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ITEM DESCRIPTIONS		ICN CODES
19.30	Additional GC-MS maintenance training (Cleaning of ion source)	9825T05085606
19.31	Two years extended warranty for GC-MS	9825T05085613
19.32	Autoinjector tower, GC-MS replacement module	9825T05040538
19.33	Column Nut 1.2mm, MSD interface, 2/pack	6640T05048794
19.34	Column Nut, GC Inlet interface, 2/pack	6640T05048795
19.35	Carrier Gas filter	6640T05082079


SPECIFICATION APPROVAL

The undersigned has reviewed and approved the specification of the supply, commissioning and training of Gas Chromatogram-Mass Spectrometer (GC-MS) equipment inclusive service and maintenance and agree with the approach it presents.

Signature:	
Print Name:	Shene Tshapo Shene
Rank:	COLONEL
Date:	2023-08-15

Signature:	
Print Name:	NG MAFATWANA
Rank:	COLONEL
Date:	2023/08/15

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Signature:	
Print Name:	T.L. MALULEKE
Rank:	LT COLONEL
Date:	2023-08-15

Signature:	
Print Name:	
Rank:	
Date:	

Annexure A

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

1. Definitions
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9. Packing
10. Delivery and documents
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18. Contract amendments
19. Assignment
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21. Delays in the supplier's performance
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24. Dumping and countervailing duties
25. Force Majeure
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27. Settlement of disputes
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32. Taxes and duties
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34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

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

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

- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection.**
- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance**
- 7.1 Within thirty (30) days of receipt of the notification of contract award,

security

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.