

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF HIGHER EDUCATION AND TRAINING							
BID NUMBER:	DHET178	CLOSING DATE:	25 FEBRUARY 2026		CLOSING TIME:	11:00	
DESCRIPTION	APPOINTMENT OF A SUITABLE PANEL OF ATTORNEYS/LAW FIRMS/ADVOCATES TO RENDER SPECIALISED LEGAL AND SECRETARIAT SERVICES TO THE NATIONAL SKILLS FUND						
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)							
The Director: Demand, Acquisition and Contract Management							
Private Bag X174							
PRETORIA							
0001							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO				TECHNICAL ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON				CONTACT PERSON			
TELEPHONE NUMBER				TELEPHONE NUMBER			
FACSIMILE NUMBER				FACSIMILE NUMBER			
E-MAIL ADDRESS	Tenders@dhet.gov.za			E-MAIL ADDRESS	Tenders@dhet.gov.za		
SUPPLIER INFORMATION							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE			NUMBER			
CELLPHONE NUMBER							
FACSIMILE NUMBER	CODE			NUMBER			
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA		
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]		
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS							
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?					<input type="checkbox"/> YES <input type="checkbox"/> NO		
DOES THE ENTITY HAVE A BRANCH IN THE RSA?					<input type="checkbox"/> YES <input type="checkbox"/> NO		
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?					<input type="checkbox"/> YES <input type="checkbox"/> NO		
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?					<input type="checkbox"/> YES <input type="checkbox"/> NO		
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?					<input type="checkbox"/> YES <input type="checkbox"/> NO		
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.							

PART B

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:

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

DATE:



higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

REQUEST FOR TENDER

TERMS OF REFERENCE FOR THE APPOINTMENT OF A SUITABLE PANEL OF ATTORNEYS/LAW FIRMS/ADVOCATES TO RENDER SPECIALISED LEGAL AND SECRETARIAT SERVICES TO THE NATIONAL SKILLS FUND

RFP NUMBER: **BID DHET178**

Date Issued: **28 JANUARY 2026**

Closing date and time: **25 FEBRUARY 2026 at 11:00**

Bid Validity Period: **240 days.**

TENDER BOX ADDRESS:

Department of Higher Education and Training

117 - 123 Francis Baard Street

Pretoria

0002

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REQUEST FOR TENDER

Terms of Reference for the appointment of a suitable panel of attorneys/law firms/advocates to render specialised legal and secretariat services to the National Skills Fund.

The National Skills Fund (“NSF”) through the Department of Higher Education and Training (the Department), is requesting potential Law Firms/Attorneys/Advocates to submit proposals for a tender to render specialised Legal and Secretariat Services to the NSF.

PART A – INFORMATION ON THE TENDER

1. BACKGROUND

- 1.1 The National Skills Fund invites suitably qualified Law Firms/Attorneys/Advocates to apply to be part of the NSF panel of Attorneys for a period of 36 (Thirty-Six) Months.
- 1.2 Please note that it is a compulsory requirement for all applicants to attach the required supporting documents/annexures to their applications/proposal.

2. PURPOSE OF THE TENDER

- 2.1 The purpose of the tender is to invite suitably qualified Law Firms/Attorneys/Advocates to render specialised Legal and Secretariat Services to the NSF.

3. SCOPE AND DEFINITION OF WORK

- 3.1 The appointed Law Firms/Attorneys/Advocates will render specialised Legal and Secretariat Services in inter alia the following fields of law:
 - 3.1.1 Administrative Law,
 - 3.1.2 Contract law
 - 3.1.3 Labour Law
 - 3.1.4 Constitutional Law
 - 3.1.5 Technology/Cyber Law

- 3.1.6 Commercial Law
- 3.1.7 Governance and Compliance
- 3.1.8 POPI Act, PAIA and PAJA
- 3.1.9 Company Secretariat Services
- 3.1.10 Risk Management
- 3.1.11 Litigation, Mediation and Arbitration
- 3.1.12 Internal Reviews and Investigations
- 3.2 Provision of Legal advice and/or opinions.

4. DELIVERABLES

- 4.1 The appointed Law Firm/Attorneys/Advocates will be responsible for providing legal and secretariat services and delivering on the aforementioned fields of law and secretariat services.

5. QUALIFICATIONS AND EXPERIENCE

- 5.1 Experience in the provision of comprehensive legal and company secretariat services.
- 5.2 Experience in providing support in project management will be an added advantage.
- 5.3 An LLB degree or equivalent law degree and a minimum of +3 years post admission experience in areas of providing legal and company secretariat services.

6. DURATION OF THE CONTRACT

- 6.1 The Panel of Attorneys and/or Advocates will be appointed to render the requisite service portfolio for a maximum period of thirty-six (36) months.
- 6.2 Contracting will commence upon issuing of a letter of appointment and work will be assigned with issuing of a purchase order.

PART B – LEGISLATIVE FRAMEWORK

1. TAX LEGISLATION

- 1.1 Bidders must be vigilant of compliance measures and requirements when submitting a proposal to the Department and remain compliant in terms of all applicable tax legislation for the entire contract period, including but not limited to the applicable parameters of the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).
- 1.2 It is a pre-condition of this bid document that the tax affairs of the successful bidder will be in order, or that satisfactory arrangements have been made with the South African Revenue Service (SARS) in meeting the bidder's pending tax obligations.
- 1.3 The relevant tax compliance status requirements are also applicable to any foreign bidders / individuals who wish to participate during the bidding process.
- 1.4 It is a requirement that bidders when submitting a bid, provide written confirmation that SARS may on an ongoing basis and for the duration of the tenure of the contract, disclose the bidder's tax compliance status. By the very act of submitting a bid, such a confirmation therefore is also deemed to have been granted by the potential bidder.
- 1.5 Bidders must be registered on the National Treasury Central Supplier Database (CSD) prior to the submission of bidding documentation and National Treasury will accordingly verify the bidder's tax compliance status through screening of the requisite information provided on the Central Supplier Database.
- 1.6 Where consortia / joint ventures and/or sub-contractors are involved in the bidding process, each party must be registered individually on the Central Supplier Database and their tax compliance status will accordingly be verified by National Treasury through the Central Supplier Database.

2. PROCUREMENT LEGISLATION

- 2.1 The Department utilises a detailed evaluation methodology premised on Treasury Regulation 16A3 promulgated phased under Section 76 of the *Public Finance Management Act, 1999 (Act, No. 1 of 1999)*, the *Preferential Procurement Policy Framework Act 2000 (Act, No.5 of 2000)*; the *Preferential*

Procurement Regulations, 2022 and the Broad-Based Black Economic Empowerment Act, 2003 (Act, No. 53 of 2003).

3. TECHNICAL LEGISLATION AND/OR STANDARDS

- 3.1 Bidder(s) should at all times be cognisant of the relevant legislation and/or standards specifically applicable to the service portfolio to be rendered in terms of this tender.

PART C – THE BIDDING PROCESS

1. TIMELINE OF THE BID PROCESS

- 1.1 The validity period and possible withdrawal of offers, subsequent to the closing date and time of this tender is 240 days. The relevant project timeframes in terms of this bid are indicated as follows:

Activity	Due Date
Advertisement of the bid via the Department e-tender portal / Department's website	28 February 2026
Compulsory briefing session	11 February 2026 Time: 10:00am Microsoft Teams meeting Join: https://teams.microsoft.com/meet/38109188028817?p=s2sPcHt68GHknyTDey Meeting ID: 381 091 880 288 17 Passcode: 7H6MK68C
Questions related to the bids received from bidder(s)	13 February 2026
Collated answers from end user published on website	18 February 2026
The bid closing date	25 February 2026 at 11:00

- 1.2 All dates and times in this bid are determined in accordance with South African standard time.

- 1.3 Any time or date reflected in this bid is subject to change at the Department's discretion. The determination of a time or date in this bid does not presuppose an obligation on the part of the Department in taking action or creating by any manner rights in terms of which bidders may demand that specific action(s) be undertaken on the date(s) accordingly reflected in this bid. The bidder therefore accepts that, in the event of the Department extending the deadline for bid submissions (the closing date) based on and influenced by whichever circumstance, the conditions and requirements attached to this bid remain unaltered and apply equally with regard to the revised deadline.

2. **COMPULSORY BRIEFING SESSION**

- 2.1 A compulsory briefing session for all prospective bidders will be held on site.
2.2 The details of the compulsory briefing session are as follows:

Date: 11 February 2026

Time: 10:00

Microsoft Teams meeting

Join:

<https://teams.microsoft.com/meet/38109188028817?p=s2sPcHt68GHknyTDey>

Meeting ID: 381 091 880 288 17

Passcode: 7H6MK68C

- 2.1 No reimbursement of expenses incurred by prospective bidders to attend the session will be possible.
2.2 Failure to attend the compulsory briefing session will result in disqualification of a proposal.

3. **CONTACT AND COMMUNICATION**

- 3.1 A nominee on behalf of the bidder may make enquiries in writing, up to and until 4pm on **13 February 2026**, to the Directorate: Supply Chain Management, via email at Tenders@dhet.gov.za . The delegated office of the Department is

entitled to communicate with Bidders whenever further clarity is sought regarding information provided in bid proposals.

- 3.2 Any communication by Bidders addressed to or with an official or person acting in an advisory capacity on behalf of the Department, in so far as it has relevance to bid proposal, during the period commencing from the bid closing date and that of awarding of the tender is strongly discouraged.
- 3.3 All communication between Bidders and the Department must be provided in writing.
- 3.4 While due care has been taken regarding the finalisation of this bid, the Department duly makes no representations or provides any warranty that the contents thereof, or any part of the information accordingly communicated or provided to Bidders during the bidding process is accurate, current and/or complete. The Department and its employees/advisors therefore will not be liable in relation to any information communicated and proves to be inaccurate, outdated and/or incomplete.
- 3.5 In the event of bidders reasonably believing there to be substantive discrepancy, ambiguity, error or inconsistency contained in this bid or any part of other information provided by the Department (excluding any minor clerical matters), bidders must promptly bring such a discrepancy, ambiguity, error or inconsistency, in writing, to the attention of the Department before the closing date with the aim of affording the Department an opportunity to consider the issue(s) and where required, take the requisite corrective action.
- 3.6 All bidders (including any other relevant persons) obtaining or receiving the bid and/or any other information in relation to the bid or the tender process are obliged to keep the entire contents of the bid and all related information confidential and may not disclose or use the information in any other manner than for the express purpose of developing a proposal in response to this bid.
- 3.7 Any actual discrepancy, ambiguity, error or inconsistency in relation to the bid or part of any other information provided by the Department will, where possible, be corrected and the revised documentation be published.

4. **LATE BIDS**

- 4.1 Bids received at the address indicated in the bid documents after the specified closing date and time, will not be accepted for consideration and where practical, will be returned unopened to the bidder(s).

5. **COUNTER CONDITIONS**

- 5.1 Bidders are advised that subsequent **amendments to any of the Bid Conditions, the proposals of any counter conditions by bidders or qualifications made in respect of the Bid Conditions shall result in the immediate disqualification of such bids**. Bidders should therefore adapt their standard conditions in line with those that are issued by the Department.

6. **FRONTING**

- 6.1 The Department supports the spirit of broad - based black economic empowerment and recognises that true empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and garnering opportunities in an honest, fair, equitable, transparent and legally compliant manner. Against this background the Department strongly condemns any form of fronting.
- 6.2 The Department, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations in determining the accuracy of the representations made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be determined during such an enquiry/investigation, the onus rests on the bidder/contractor to prove that the allegation of fronting does in fact not exist. Failure to do so within a period of 14 days and determined from the date of notification may invalidate the bid/contract and also result in the restriction of the Bidder/contractor to

conduct business with the public sector for a subsequent period of up to ten years and in addition to any other actions the Department may have at its disposal and accordingly wish to institute against such bidders/contractors.

7. SUPPLIER DUE DILIGENCE

- 7.1 The Department reserves the right to conduct rolling out due diligence on suppliers prior to final awarding of the contract, or on an occasional basis during the implementation of the mandated contract period. These actions may also include site visits and requests for the provision of additional information.

8. SUBMISSION OF PROPOSALS

- 8.1 Bid documents must be placed in the Department's tender box situated in **123/117 Francis Baard Street, Pretoria, 0001** (Opposite Pretoria Magistrate Court) on or before the closing date and time.

Closing Date: 25 February 2026

Closing Time: 11:00

- 8.2 Bid documents will only be considered if received by the Department before or on the closing date and time, regardless of the method used to send or deliver such documents to the Department.
- 8.3 Bidder(s) are required to submit 2 copies of each file, one (1) original and (1) copy. Each file must be marked correctly and sealed separately for ease of reference during the evaluation process.
- 8.4 Bidders are requested to initial the bottom right-hand corner of each page of the tender document. On pages where bidders are required to provide full signatures, initialling at the bottom of these pages is not required.

9. PHASES OF EVALUATION

- 9.1 The Department has set minimum standards that bidders need to meet as a precursor to evaluation and selection as the successful bidder.
- 9.2 The minimum standards consist of the following criteria:

The Department has set minimum standards that bidders need to meet as a precursor to evaluation and selection as the successful bidder.

The minimum standards consist of the following criteria:

Pre-qualification Criteria (Phase 0)	Technical Evaluation Criteria (Phase 1)
Bidders must submit all documents as outlined in paragraph 9.3 below. Only bidders that comply with ALL these criteria will proceed to Phase 1.	Bidders are required to achieve a minimum of 70 points out of 100 points will not be included in the panel

9.3 Phase 0: Pre-Qualification Criteria:

9.3.1 Pre-Qualification Requirements / Mandatory Requirements

- 9.3.1.1 Proof of company registration on Central Supplier Database Registration (CSD).
- 9.3.1.2 Proof of attendance for the compulsory briefing session.
- 9.3.1.3 In the case of a Joint Venture, Consortium, Trust, or Partnership, a signed teaming agreement must be submitted. The agreement must clearly set out the roles and responsibilities of the lead partner, alongside the joint venture and/or consortium.
- 9.3.1.4 For unincorporated consortia / joint ventures and/or sub-contractors, each party must be registered individually on the Central Supplier Database and their tax compliance status will accordingly be verified.
- 9.3.1.5 For incorporated consortia / joint ventures and/or sub-contractors, the bidder must be submitting proof of Central Supplier Database registration and tax compliance status will accordingly be verified.

FAILURE TO ADHERE & COMPLY WITH PAR 9.3.1. ABOVE SHALL LEAD TO DISQUALIFICATION

9.3.2 Documents required for Administrative Compliance

- 9.3.2.1. Duly completed and signed invitation to bid – SBD 1
- 9.3.2.2. Duly completed and signed declaration of interest–SBD 4

- 9.3.2.3. Duly completed and signed POPI Act form to utilise information contained in documents for procurement purpose.
- 9.3.2.4. CSD report to verify tax compliance status.

9.4 Phase 1: Technical Evaluation Criteria = 100 points:

- 9.4.1 All bidding companies are required to fully adhere to the technical evaluation criteria scorecard and compliance checklist.
- 9.4.2 Only Bidding companies that have fully met the Pre-Qualification Criteria in Phase 0 will accordingly be evaluated in Phase 1 for determination of functionality.
- 9.4.3 Bidding companies will be evaluated on an overall score of 100 points.
- 9.4.4 The Department as part of on-site reference checks for allocating points, will at its own discretion choose a site at one of the bidding company's clients for validation of the services rendered. The choice of site will remain Department's sole discretion.
- 9.4.5 Bidders are required to achieve a minimum of 70 points out of 100 points will not be included in the panel**

10. JOINT VENTURES, CONSORTIUMS AND TRUST

- 10.1 A trust, consortium, or joint venture will qualify for points on evaluation of their Specific Goals status level as a legal entity, provided that the entity submits the requisite information as stated.
- 10.2 A trust, consortium or joint venture will qualify for points on evaluation of their Specific Goals status level as an unincorporated entity, provided that the entity submits their requisite, consolidated Specific Goals documents as if they were a group structure and on condition that such a consolidated is prepared for every separate bid application.
- 10.3 Bidding agencies must submit substantive proof of the existence of joint ventures and/or consortium arrangements. The Department will accept signed agreements as satisfactory proof for the existence of a joint venture and/or consortia arrangement.
- 10.4 Joint venture and/or consortia agreements must clearly set out the roles and responsibilities of the lead partner, alongside the joint venture and/or

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

11. PROCUREMENT MODALITY

- 11.1 Only bidders on the approved list of panel members will be contracted for the services contained in this Terms of Reference over the contract period of 36 months.
- 11.2 For the procurement of legal and/or secretarial services as per this Terms of Reference, the NSF may approach at least three panel members on a rotational basis to provide quotations to appoint a service provider. Where practical and possible, all panel members may be approached for quotations for services.
- 11.3 Where specialised legal/secretarial services or in urgent/emergency cases the NSF reserves the right to approach the most appropriate panel member according to their profile (expertise, knowledge, etc.).
- 11.4 The application of the proposed procurement modalities may be influenced and dependent on amongst others the nature and circumstances of the services required, the size, diversity, knowledge and expertise, availability of resources, etc. of the approved panellists.
- 11.5 Based on the aforementioned, the NSF in the appointment and use of panel members for legal and secretarial services will be applied on an as-and-when-needed basis and does not guarantee equally distribution of work or appointment at all.

12. ENGAGEMENT MODEL: PROCURING FROM THE APPROVED PANEL

- 12.1 The department, as a minimum requirement, will develop terms of reference/request for quotations for each investigation.
- 12.2 The terms of reference will only be submitted to the approved panellist.
- 12.3 If so required, the department may call for a briefing session to provide further details on the scope to the approved service providers on the panel.

- 12.4 The advertising period for the terms of reference to be issued to the panel will be 3 - 5 working days in order for the approved panellists to compile financial response proposals. *It must be noted that the advertising period may vary depending on the nature and urgency of a deliverable.*
- 12.5 After closing date and time, proposals received will be evaluated based on either 80/20 or 90/10 preferential procurement points system where 80/90 points will be allocated to the price and 10/20 points allocated to specific goals.
- 12.6 Pricing options and specific goals qualification will accordingly be evaluated as follows: In terms of Regulation 6 of the Preferential Procurement Regulations pertaining to the *Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000)*, responsive bids will be adjudicated on the 80/20 (*up to R50 million, all applicable taxes included*) 90/10 above R50 million preference point system in terms of which points are awarded to bidders on the basis of the bid pricing or management fee per RFQ (**maximum 80/90 points**) and specific goals (**maximum 10/20 points**).
- 12.7 A service provider scoring the highest points will then be appointed as the successful service provider per request for quotation.
- 12.8 The approved **service providers** on the panel are expected to compile a financial proposal in response to requests for quotations and which must adhere to and/or include the following:
- 12.8.1 The price quoted must be a fixed price including all related costs (travel, accommodation, equipment, communication/data and deliveries to 123 Francis Baard Street in Pretoria).
- 12.8.2 The price quoted must be inclusive of all overtime and weekend work.
- 12.8.3 The price quoted must be inclusive of all department reviews subsequent to sign-off.
- 12.8.4 Details of the cost/fee breakdown for all services to be rendered must be included together with the cost for any materials and disbursements.

12.8.5 The price must include provision of in-person and online consultations/presentations that may be required in executing the deliverable.

12.8.6 Consolidated claims with the necessary supporting documents to the department.

12.8.7 Compilation of a close out report within 7 to 10 calendar days of finalising the deliverable, where required, covering, for instance, lessons learnt, challenges, recommendations for improvement and turnaround time.

12.8.8 **Phase 1: Technical Evaluation Criteria:** The bidders' information will be scored according to the points determination system.

12.9 **Phase 2: Price and specific goals Evaluation (80 + 20) or (90+10) = 100 points:**

12.9.1 Only prospective bidders that have attained the **80/90-points allocation** threshold in phase 1 will subsequently progress for evaluation in phase 2 in relation to pricing options and **specific goals** qualification criteria.

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

80/20	or	90/10
$Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$	or	$Ps = 90 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

12.9.3 **Stage 2 – Specific goals (20/10 Points):**

12.9.3.1 A maximum of 20/10 points may be awarded to a bidder for specific goals specified in the tender.

12.9.3.2 The points scored for specific goals must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.

12.9.3.3 The table below provides the specific goals, its criteria of measurement and the proof to be offered by tenderers for a tenderer to qualify for 20/10 points:

APPLICATION OF SPECIFIC GOALS IN THE WHITE PAPER ON RDP; & THE CODE OF GOOD PRACTICE IN B-BBEE: DHET PREFERENTIAL PROCUREMENT												
NO	SPECIFIC GOAL	REFER-ENCE	CRITERIA	80/20		CLAIM	90/10		CLAIM	EVIDENCE	Indicate if evidence is provided, & specify	
				Specific Goal Contribution	Points Claimed	Bidder must tick (x) next to points claimed	Specific Goal Contribution	Points Claimed	Bidder must tick (x) next to points claimed			
1	Person historically disadvantaged on the basis of race	RDP 1.4.4; 3.1.4	100% black owned	65.00	7.20		65.00	3.60		Copy of CIPC (Companies and Intellectual Property Commission) shareholder registration, copies of ID's as well as CSD (Central Supplier Database).	Y	N
			75%-99% black owned	50.00	5.54		50.00	2.77			specify	
			60%-74% black owned	40.00	4.43		40.00	2.22				
			51%-59% black owned	30.00	3.32		30.00	1.66				
			0-50% black owned	10.00	1.11		10.00	0.55				
			None	0.00	0.00		0.00	0.00				
2	Persons historically disadvantaged on the basis of gender	RDP 1.4.4; 3.1.4; 3.2.7; 7.7	100% women owned	40.00	4.43		40.00	2.22		Copy of CIPC (Companies and Intellectual Property Commission) shareholder registration, copies of ID's as well as CSD (Central Supplier Database).	Y	N
			75%-99% women owned	30.00	3.32		30.00	1.66			specify	
			60%-74% women owned	20.00	2.22		20.00	1.11				
			51%-59% women owned	10.00	1.11		10.00	0.55				
			0-50% women owned	5.00	0.55		5.00	0.28				
			None	0.00	0.00		0.00	0.00				
3	Persons historically disadvantaged on the basis of disability	RDP 7.7	100% owned by persons with disabilities	0.50	0.06		0.50	0.03		Certified medical certificate or substantive proof.	Y	N
			75%-99% owned by persons with disabilities	0.30	0.03		0.30	0.02			specify	
			60%-74% owned by persons with disabilities	0.20	0.02		0.20	0.01				
			0-59% owned by persons with disabilities	0.10	0.01		0.10	0.01				
			None	0.00	0.00		0.00	0.00				
4	Development of Youth	RDP 1.4.6; 7.7	100% youth owned	25.00	2.77		25.00	1.39		Copy of CIPC (Companies and Intellectual Property Commission) shareholder registration, copies of ID's as well as CSD (Central Supplier Database) to be 35 years and younger	Y	N
			75%-99% youth owned	15.00	1.66		15.00	0.83			specify	
			60%-74% youth owned	10.00	1.11		10.00	0.55				
			51%-59% youth owned	5.00	0.55		5.00	0.28				
			0-50% youth owned	2.50	0.28		2.50	0.14				
			None	0.00	0.00		0.00	0.00				
5	Development of SMMEs	RDP 3.10; 3.1.4	EME	50.00	5.54		50.00	2.77		BBBEE certificate or sworn affidavit for EME or QSE; Copy of CIPC (Companies and Intellectual Property Commission) shareholder registration.	Y	N
			QSE	20.00	2.22		20.00	1.11			specify	
			GEN	0.00	0.00		0.00	0.00				
			None	0.00	0.00		0.00	0.00				
		TOTAL		180.50	20.00		180.50	10				

12.9.3.4 A tenderer must submit proof or evidence for claiming points for specific goals as indicated above. **A bidder must also complete a preference form (SBD 6.1)** in detail to claim points for specific goals.

12.9.3.5 A tenderer failing to submit proof or evidence may not be disqualified but-

12.9.3.5.1 May only score 0 point out of 80/90 for price; and

12.9.3.5.2 Score 0 points out of 20/10 for specific goals.

12.9.3.6 The points scored by a tenderer for specific goals must be added to the points scored for price for total points.

12.9.3.7 The points scored must be rounded off to the nearest TWO decimal places.

PART D – SUBMISSIONS

1. SUBMISSION OF PROPOSAL

- 1.1 The two-envelope procedure must be followed for tender submissions.
- 1.2 The first envelope must clearly state TECHNICAL SUBMISSION, wherein the bidder should address all aspects of the required scope of services.
- 1.3 The second envelope must clearly state FINANCIAL SUBMISSION, wherein the bidder should include the proposed fee for the project.
- 1.4 Proposals must be submitted in hard copy format: One original and one copy.

2. CONTENT OF THE TECHNICAL SUBMISSION

The technical submission should include the following:

- 2.1 Cover Page
- 2.2 Mandatory documents
- 2.3 Introduction and Executive Summary
- 2.4 Company and contact information of the bidder, including all parties/team members to the consortium where applicable
- 2.5 **Exhibit 1:**

The proposal must be inclusive of the following:

Please ensure that documents required are linked to Section 5 in Document 1, CV, APPROPRIATE QUALIFICATIONS, EXPERIENCE, SKILLS AND KNOWLEDGE and Proof of Legal Practice Council Membership as well as your evaluation criteria in document 3.

Example:

The proposal must include all the following documents:

A short profile of the service provider, as well as the team (team leader and team members), outlining in specific:

- The level of knowledge, skills and experience working within the legal and secretariat services environment.;
- Level of project management skills and experience in managing legal and secretariat projects of this kind and magnitude;

Non-membership to Legal Practice Council or recognised legal professional oversight accounting body/authority or applicable qualification, will lead to automatic disqualification.

2.6 Exhibit 2:

Proposal outlining the detailed approach and methodology to be applied in providing legal and company secretariat services to a Public Entity. This includes, but is not limited to governance, administration, financial management (including financial reporting to the Department and project management aspects of the project (including monitoring and reporting)).

In specific this part must include:

a proposal outlining the development of monitoring evaluation framework, plan and evaluation process including specific areas to be evaluated based on project business plans.

It must contain a short description of the envisaged methodology, processes and procedures that the service provider will deploy to ensure that EACH deliverable is achieved at the required level of quality.

In specific it must contain methodology, processes, proposed activities and plan how to transfer skills to the Department.

Furthermore, it must contain an activity sheet and milestone plan showing how the service provider will complete and manage the project.

2.7 Exhibit 3:

A table containing the names of all team members, their envisaged roles and responsibilities and the time they will work on the project.

An abridged CV of the Team Leader clearly indicating relevant experience and expertise in working in the provision of legal and company secretariat services, monitoring and evaluation; and project/litigation management.

An abridged CV of the person/s that will do the work, clearly indicating relevant expertise and experience (see APPROPRIATE SKILLS AND KNOWLEDGE above).

Certified copies of the highest education qualification/s of each team member, as certified by a commissioner of oaths.

2.8 Exhibit 4:

The Bidder should provide a complete sample of pleadings/legal opinion from a previous or current matter. The sample should include the following:

Action Proceedings (Magistrates or High Court)

2.8.1 A letter of demand

2.8.2 Summons and Particulars of Claim

2.8.3 Plea

2.8.4 Replication

2.8.5 Discovery (Notices and Affidavit)

2.8.6 Pre-trial minutes

2.8.7 Judgment/Order (if available)

Motion Proceedings (Magistrates or High Court)

2.8.8 Notice of Motion and Founding/Supporting

2.8.9 Answering Affidavit

2.8.10 Replying Affidavit

2.8.11 Judgment/Order (if available).

Company Secretariat Services

2.8.12 Copy of minutes of meeting/s

2.8.13 Legal opinion on legal/company secretariat issue.

2.9 Exhibit 5

The Bidder should provide Reference letters from previous and/or current clients to confirm and validate previous/current track record of participating in a panel of attorneys and/or providing legal and company secretariat services.

ANY OTHER SUPPLEMENTARY INFORMATION.

2.10 The bidder must ensure the following in the above documents:

2.10.1 The bidder must demonstrate a thorough understanding of the NSF mandate and the skills development legislative, regulatory and policy framework.

2.10.2 The detailed approach and methodology to be applied in managing the provision of legal and secretariat services. This includes, but is not limited to governance, administration, financial management (including financial reporting to the NSF) and project management aspects of the project (including monitoring and reporting).

2.10.3 Project plan/methodology - Service providers to indicate what procedure/methodology is going to be used to execute the service or project; as well as provide a project plan with final outputs must be linked to the timeframes.

2.10.4 Demonstrate proven previous experience and knowledge.

2.10.5 A detailed structure of the bidder's organisation, how it operates and specifically how it will be able to respond with transparency and urgency to requests by the NSF.

2.10.6 A demonstration in how the bidder will relate to the internal arrangements of the NSF for the work to be performed.

2.10.7 Compulsory tender documents completed in full together with supplementary bidder documents as required. This includes tax certificates and complete SBD forms for all the bidders and consortium members, where applicable.

2.10.8 CVs of key personnel.

3. EVALUATION CRITERIA

3.1 The following table reflects the evaluation criteria that will be used in evaluating the technical submission.

No	Element	Weight
1	Knowledge, skills and experience Knowledge, skills and experience: <ul style="list-style-type: none">○ Demonstrable experience in providing legal and company secretariat services.	55

No	Element	Weight
	<p>Source: Exhibits 1, 3</p> <p>LEGAL SERVICES [30]</p> <ul style="list-style-type: none"> • Required Experience of Law firms and /or Advocate in the provision of legal services (10 Points) <ul style="list-style-type: none"> ○ Company profile which details 1 to 3 years relevant experience of law firm/advocate in proving legal services experience (3 points) ○ Company profile which details 4 to 9 years relevant experience of law firm/advocate in proving legal services experience (7 points) ○ Company profile which details more than 10 relevant experiences of law firm/advocate in proving legal services (10 points) ○ No company profile submitted or submitted profile does not cover the provision of legal services (0 points) • Required Experience for the provision of Company Secretariat services (5 Points) <ul style="list-style-type: none"> ○ Company profile which details 1 to 3 years relevant experience in proving Company Secretariat services experience (1 points) ○ Company profile which details 4 to 5 years relevant experience in proving Company Secretariat services experience (3 points) ○ Company profile which details More than 5 relevant experiences in proving Company Secretariat services (5 points) ○ No company profile submitted or submitted profile does not cover the provision of company secretariat services (0 points) <p>NB: Bidders who fail to submit company profile will be scored zero (0) points.</p> <p>Legal Services team leader minimum experience in provision of legal services (7 points)</p> <ul style="list-style-type: none"> ○ 1 to 3 years relevant experience in providing legal services (3 points) ○ 4 to 5 years relevant experience in proving legal services (5 points) ○ More than 5 years relevant experience in providing services (7 points) ○ No CV submitted or submitted CV does not cover the provision of legal services (0 points) <p>Legal Services team members minimum experience in provision of legal services (8 points)</p> <ul style="list-style-type: none"> ○ All of team members have relevant experience (8 points) ○ 75% of team members have relevant experience (6 points) ○ 50% of team members have relevant experience (4 points) ○ 30% of team members have relevant experience (2 points) ○ 0% of team members have relevant experience (0 points) <p>COMPANY SECRETARY SERVICES</p> <p>Company Secretariat team leader minimum experience in provision of Company Secretariat services (5 points)</p> <ul style="list-style-type: none"> ○ 1 to 3 years relevant experience in providing Company Secretariat services (2 points) ○ 4 to 5 years relevant experience in proving Company Secretariat services (3 points) ○ more than 5 years relevant experience in providing Company Secretariat services (5 points) ○ No CV submitted or submitted CV does not cover the provision of Company Secretariat services (0 points) <p>Company Secretariat team members minimum experience in provision of Company Secretariat services (5 points)</p> <ul style="list-style-type: none"> ○ All of team members have relevant experience (5 points) ○ 75% of team members have relevant experience (4 points) ○ 50% of team members have relevant experience (3 points) ○ 30% of team members have relevant experience (2 points) ○ 0% of team members have relevant experience (0 points) 	

No	Element	Weight
	<p>NB: Bidders who fail to submit CV's will be scored zero (0) points</p> <p>QUALIFICATIONS [15]</p> <p>Qualification(s) of team leader and team members for the provision of legal services (9 points)</p> <p>Legal Services team leader minimum qualification</p> <ul style="list-style-type: none"> Minimum relevant qualification(s) of lead i.e., LLB degree or an equivalent legal qualification at NQF level 8 qualification-- (3 points) Team leader with no minimum relevant qualifications (s) --(0 points) <p>Minimum qualifications for Legal services team members</p> <ul style="list-style-type: none"> Minimum relevant qualification(s) in Law (LLB) or an equivalent NQF level 8 qualification All of team members have relevant qualification(s)-- (6 points) 75% of team members have relevant qualification(s) --(5 points) 50% of team members have relevant qualification(s) --(3 points) 30% of team members have relevant qualifications(s) --(2 points) 0% of team members have relevant qualifications (s) -- (0 points) <p>Qualification(s) of team members for the provision of Company Secretariat services (6 points)</p> <p>Company Secretariat team leader minimum qualification</p> <ul style="list-style-type: none"> Minimum relevant qualification(s) of lead i.e., appropriate degree or an equivalent company secretariat qualification at NQF level 8 -- (2 points) Team leader with no minimum relevant qualifications (s) --(0 points) <p>Minimum qualifications for team members in Company Secretariat services</p> <ul style="list-style-type: none"> Minimum relevant qualification(s) in Company Secretariat or an equivalent NQF level 6 qualification All of team members have relevant qualification(s) -- (4 points) 75% of team members have relevant qualification(s) -- (3 points) 50% of team members have relevant qualification(s) -- (2 points) 30% of team members have relevant qualifications(s)-- (1 points) 0% of team members have relevant qualifications (s)-- (0 points) <p>NB: comprehensive CVs must be submitted with certified proof of qualifications</p>	
2	<p>METHODOLOGY</p> <p>Source: Exhibit 2</p> <p>Proposal outlining methodology and approach to be employed in the provision of legal and company secretariat services</p> <p>An understanding of the provision of legal and company secretariat services style guide assignment expressed in methodology and approach (15 points)</p> <p>LEGAL SERVICE (10 points)</p> <ul style="list-style-type: none"> Comprehensive proposal detailing methodology to be used in the provision of Legal Services (10 points) Proposal is less comprehensive and/or does not address all the requirement for the provision of Legal Services (5 points) No or proposal not addressing most of the requirements for Legal Services (0 points) 	30

No	Element	Weight
	<p>SECRETARIAL SERVICES (5 points)</p> <ul style="list-style-type: none"> Comprehensive Company secretariat proposal detailing the methodology to be used in the provision of company secretariat services (5 points) Proposal is less comprehensive and/or does not address all the requirement for the provision of Secretarial Services (2 points) No or proposal not addressing most of the requirements for Secretarial Services (0 points) <p>Project plan (including monitoring and reporting) in the provision of legal and company secretariat services from inception phase to project close (15 points)</p> <ul style="list-style-type: none"> Project plan for the provision of legal services (10 points) Project plan for the provision of company secretariat services (5 points) No project plan provided (0 points) 	
3	<p>REFERENCES</p> <p>Source: Exhibit 5</p> <p>Reference Letters from previous and/or current clients</p> <p>The bidder must provide reference letters from current and past clients outlining the legal and company secretariat services rendered by the service provider. The reference letters must bear the letterhead of the client –Bidders must provide a schedule of reference letters of previous and current clients where they provided similar services as outlined in these terms of reference. Information under the following headings must be provided:</p> <ul style="list-style-type: none"> Description of service rendered Duration of the contract Contact person Contact details (email and contact number) <p>NOTE, the schedule detailing the reference letters will not be scored but points are allocated for the number of reference letters.</p> <p>Reference letters submitted to validate previous track record of provision of legal services (10 points).</p> <ul style="list-style-type: none"> Minimum 3 reference letters submitted for Legal Services (10 points) 2 reference letters submitted for Legal Services (7 points) 1 reference letter submitted for Legal Services (3 points) No reference letter submitted, or reference does not cover the scope of this request of quotation (0 points) <p>Reference letters submitted to validate previous track record of provision of company secretariat services (5 points)</p> <ul style="list-style-type: none"> Minimum 3 reference letters submitted for company secretariat Services (5 points) 2 reference letters submitted for company secretariat Services (3 points) 1 reference letter submitted for company secretariat Services (1 points) No reference letter submitted, or reference does not cover the scope of this request of quotation (0 points) 	15
	Total	*100

Bidders that fail to achieve minimum of **70 points** out of 100 points will not be included in the panel.

PART E – CONDITIONS

1. GENERAL CONDITIONS OF CONTRACT

- 1.1 Any subsequent award/concession made to a prospective bidder in terms of this TOR is conditional on, (among others):
 - 1.1.1 The bidding party accepting the terms and conditions as contained in the General Conditions of Contract as the minimum terms and conditions on which the Department is prepared to enter into a contract with the successful Bidder.
 - 1.1.2 The bidder submitting the General Conditions of Contract to the Department together with its bid, has ensured that the document has duly been signed by an authorised representative on its behalf.

2. SPECIAL CONDITIONS OF CONTRACT

The Department reserves the right to:

- 2.1 Award this tender to any bidder that did not score the highest (cumulative total) number of points and only in accordance with section 2(1)(f) of the PPPFA (Act 5 of 2000).
- 2.2 Negotiate with one or more preferred bidders identified in the evaluation process, regarding any terms and conditions, including pricing without offering the same opportunity to any other bidder(s) who had not been awarded the status of a preferred bidder.
- 2.3 Accept any part of a tender in lieu of the whole tender.
- 2.4 Carry out at its discretion, site inspections, product evaluations or facilitate explanatory meetings in order to verify the nature and quality of the services offered by the potential bidders, either before, during or subsequent to adjudication of the Bid.
- 2.5 Correct mistakes during any stage of the tender evaluation process which may already have been apparent in the bid documents or subsequently occurred during any stage of the tender evaluation process.
- 2.6 At any stage during the evaluation of bids, cancel and/or terminate the tender process, even subsequent to the tender closing date and/or after presentations by selected bidders have been made, and/or after tenders have been evaluated

and/or after the preferred bidders have as such been notified of their status;
and

- 2.7 Award the tender to multiple bidders based either on organisational capacity, specialisation and size, as well as geographic considerations.
- 2.8 To request Bidders to provide a Legal Practice Council letter of good standing after appointment onto the panel of attorneys and advocates.

3. GOVERNING LAW

- 3.1 South African law will in its full extent govern the Application parameters of this bid and the bid response process.
- 3.2 The bidder agrees to submit to the exclusive jurisdiction of the South African court system in any dispute of any kind that may arise out of- or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

4. DECLARATION

Bidders as part of their respective technical responses, are required to declare the following and confirm that they will:

- 4.1 At all times for the duration of the tender, act honestly, fairly and with due skill, care and diligence in the best interest of the Department.
- 4.2 Manage, effectively utilise and apply the resources, procedures and appropriate technological systems to ensure the proper performance of the services for the duration of the tender.
- 4.3 Act with circumspection and treat the Department fairly in all situations where conflicting interests may become apparent.
- 4.4 Comply with all applicable statutory or common law requirements related to the conduct of its business.
- 4.5 Make adequate disclosures regarding relevant and material information, including the disclosure of actual or potential interests the company may acquire, in relation to its dealings with the Department.
- 4.6 Avoid any form or instance of fraudulent and misleading advertising, canvassing and marketing for the duration of the tender.

- 4.7 Conduct business activities transparently and consistently uphold the interests and needs of the Department as a client, before any other consideration; and
- 4.8 Ensure that for the duration of the tender no information acquired from the Department will be utilised and/or disclosed to any third party/ies unless written consent from the Department has been obtained to do so.

5. CONFLICT OF INTEREST, CORRUPTION AND FRAUD

- 5.1 The Department reserves the right to disqualify any potential bidder who either itself, or through any of its members (save for such members who hold a minority interest in the bidder through shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange), directors or members of senior management, whether in respect of the Department or any other Department organ or entity and whether from the Republic of South Africa or otherwise ("Department "):
 - 5.1.1 Engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid.
 - 5.1.2 Seeks any assistance, other than assistance officially provided by a Department, from any employee, advisor or other representative of a Department in order to obtain any unlawful advantage in relation to the procurement or services provided or to be provided to the Department;
 - 5.1.3 Makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of the Department's officers, directors, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Department.
 - 5.1.4 Accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to a Department.
 - 5.1.5 Pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or

results from, the awarding of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to the Department.

5.1.6 Has in the past engaged in any matter referred to above; or

5.1.7 Has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such a bidder, member or director's name(s) not specifically appearing on the List of Tender Defaulters kept at National Treasury.

6. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT

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

6.2 It follows therefore that misrepresentations in a tender may give rise to service termination and a claim by the Department against the bidder notwithstanding the conclusion of the Service Level Agreement between the Department and the bidder for the provision of the service(s) in question. In the event of a conflict between the bidder's proposal and the Service Level Agreement concluded between the parties, the contents of the Service Level Agreement will prevail.

7. PREPARATION COSTS

7.1 The Bidder will bear all its costs in preparing, submitting and presenting any response or tender to this bid and all other costs incurred by it throughout the bidding process.

7.2 Furthermore, no statement in this bid will be construed as placing the Department, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the bidder(s) in the preparation of their responses to this bid.

8. INDEMNITY

8.1 If a bidder breaches the conditions of this bid and as a result of that breach, the Department incurs costs or damages (including, without limitation, the cost(s)

of any investigations, procedural impairment, repetition of all- or any part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations), the bidder then indemnifies and holds the Department harmless from any and all such costs which the Department may incur and for any damages or losses the Department may suffer.

9. PRECEDENCE

- 9.1 This document will prevail over any information provided during any stage whether oral, electronically or written, unless such written information provided, expressly amends this document by reference.

10. LIMITATION OF LIABILITY

- 10.1 A bidder participates in this bid process entirely at its own risk and cost. The Department shall not be liable to compensate a bidder on any grounds whatsoever, for any costs incurred or any damages suffered as a result of the Bidder's participation in this bidding process.

11. TAX COMPLIANCE

- 11.1 No tender shall be awarded to any bidder which is not tax compliant. The Department reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award or has submitted a fraudulent Tax Clearance Certificate to the Department, or whose verification against the Central Supplier Database (CSD) proves non-compliant.
- 11.2 The Department further reserves the right to cancel a contract with a successful bidder in the event that such a bidder does not remain tax compliant for the full term of the contract.

12. TENDER DEFAULTERS AND RESTRICTED SUPPLIERS

- 12.1 No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appears on the Register of Tender Defaulters maintained by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers.

- 12.2 The Department reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another organ of state.

13. CONFIDENTIALITY

- 13.1 Except as may be required by the operation of law, by a court or by any regulatory authority having appropriate jurisdiction, no information contained in- or relating to this bid or a bidder's tender(s) will be disclosed by any bidder or other person not officially involved with the Department's examination and evaluation of a tender.
- 13.2 No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by any means, electronically, or by way of photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a tender. This bid and any other documents supplied by the Department remain proprietary to the Department and must be promptly returned to the Department upon request, together with all copies, electronic versions, excerpts or summaries thereof or work as a consequence derived there from.
- 13.3 Throughout this bid process and thereafter, bidders must secure the Department's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this bid relates; or (ii) the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

14. PROPRIETARY INFORMATION OF THE DEPARTMENT

- 14.1 Bidders will declare in their respective bid cover letters that they did not have access to any departmental proprietary information, or any other matter that may have unfairly placed that bidder in a preferential position in relation to any of the other bidder(s).

15. COPYRIGHT AND ALL OTHER INTELLECTUAL PROPERTY RIGHTS

- 15.1 **All copyright and all other intellectual property rights in respect of any documents and materials (works) developed by the service provider during this project, shall vest in the Department.**

- 15.2 The Department will have the right to release the works under an appropriate copyright license, including an open license, that will allow any individual, official, company, agency or organisation to use or modify the works for any purpose as stated in the open licence.

16. RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL

- 16.1 A bidder is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors and other representatives), its sub-contractors (if any) and personnel of its sub-contractors comply with all terms and conditions of this bid.
- 16.2 In the event that the Department allows a bidder to make use of sub-contractors, the actions and activities of such sub-contractors will at all times remain the responsibility of the bidder and the Department will not under any circumstances, be liable for any losses or damages incurred by or caused by such sub-contractors.

17. SERVICE LEVEL AGREEMENT

- 17.1 Subsequent to the Department's decision on awarding the tender the successful bidder **may be required to sign a Service Level Agreement** aimed at regulating the specific terms and conditions applicable to the services required by the Department and as far as possible.
- 17.2 The Department reserves the right to revise and amend any part of the proposed Service Level Indicators during the course of contract with a bidder.
- 17.3 The Department reserves the right to accept or reject additional service proposals, proposed by a successful bidder.

18. OTHER IMPORTANT MATTERS TO NOTE

- 18.1 The Department reserves the right to conduct background/probity check on key management of the bidder.
- 18.2 The Department reserves the right to conduct due diligence exercises as part of evaluating the implementing capacity of the bidder.
- 18.3 The shortlisted bidders may be called to present to the evaluation committee before a final selection is made.

- 18.4 The Department will not be liable to reimburse any costs incurred by the bidder during this tender process.
- 18.5 Bidders must identify and disclose any conflict or perceived conflict of interest caused by current assignments, relationships or other dealings, and indicate how such conflicts would be addressed.
- 18.6 Only one proposal per bidder can be submitted and must indicate a (period) implementation.
- 18.7 The Department reserves the right to utilise a system of Rotation of panel members in order to afford all panel members an opportunity to participate in the panel.

PART F – MONITORING AND REPORTING

1. MONITORING

- 1.1 All monitoring of the project will be conducted by the Directorate: NSF Legal Governance Risk and Compliance [LGRC].
- 1.2 A NSF LGRC Project Management Team will be established to facilitate the smooth implementation of the project and to ensure that the objectives of the project are met. The Project Management Team will comprise officials from the NSF LGRC and the service provider. Meetings will be arranged as per approved project plan.

2. REPORTING

- 2.1 The service provider will report to the Director: Adv. A. Sidimela (NSF LGRC) (or his/her delegate) and submit work-in progress reports by email to the Office of the Director: NSF LGRC by close of business every second Friday.
- 2.2 For each deliverable, as identified in Part A – Information on the Tender, paragraph 4, the service provider will submit, bi-weekly, progress reports to the Department in line with approved timeframes in the project plan. The reports should be in MS Word and submitted electronically to the Director: NSF LGRC.

3. LANGUAGE

- 3.1 All correspondence including reports must be written in English.

4. SUBMISSIONS/COMMENTS TIMING

- 4.1 The submission of the project implementation plan, and project charter shall be submitted to the Director: NSF LGRC within 10 days after the commencement of the project for approval by the Department.
- 4.2 Other reports shall be submitted as per the agreed project implementation plan.

- 4.3 The Department, shall within 15 days of receipt of deliverables, notify the service provider/Law Firm/Attorney/Advocate/team leader of the approval or not of the deliverable.
- 4.4 The Department shall, within 30 days of receipt of the final report, notify the service provider/Law Firm/Attorney/Advocate/team leader of its decision concerning the final report. If the Department does not give any comments on the final report within such time limit of 30 days, the final report shall be deemed to have been approved by the Department if they do not expressly inform the service provider/Law Firm/Attorney/Advocate /team leader of any comments or delays. New timeframes will then be negotiated between the service provider/Law Firm/Attorney/Advocate/team leader and the Director: NSF LGRC.



higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

- 2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state?

YES	NO	<i>Select (x) the correct box</i>
<input type="checkbox"/>	<input type="checkbox"/>	

- 2.1.1 If yes, 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 institution	State

- 2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the Department of Higher Education & Training?

YES	NO	<i>Select (x) the correct box</i>
<input type="checkbox"/>	<input type="checkbox"/>	

--	--

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 related² enterprise whether or not they are bidding for this contract?

Select (x) the correct box

YES	NO

The department will use CSD and CIPC to verify information

2.3.1 If so, furnish particulars (an additional schedule with the heading "Additional Declaration" may be included:

.....

.....

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 consortium³ will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

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

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

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

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF 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

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

² "related" as referred to in the Companies Act 2008, Act No 71 of 2008, section 2(1)(a)-(c). The Department reserves the right to access the Central Supplier Database (CSD), Companies Intellectual Property Commission (CIPC) or any other system to verify information

³ 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.



higher education
& training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

COMPULSORY DOCUMENT (PLEASE COMPLETE AND SIGN)

TO BE SUBMITTED WITH THE RFQ/BID RESPONSE.

PERMISSION BY BIDDER:

On behalf of:

_____ (Company name)

I, Prof/Dr/Mr/Ms _____ (duly authorized),

hereby grant permission, in terms of the **Protection of Personal Information Act, 2013 (Act 4 of 2013)**, (POPI Act), to the Department of Higher Education and Training, to utilise all information contained in the Bid documents and Quotation submitted to the Department of Higher Education and Training , for purposes of procurement.

Designation: _____

Signed: _____

Date: _____

NB: Bidder may be disqualified if completed form is not submitted with Bid Documents

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT:

GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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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
4. **Standards** 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
5. **Use of** 5.1 The supplier shall not, without the purchaser’s prior written consent, **contract** disclose the contract, or any provision thereof, or any specification, **documents** plan, drawing, pattern, sample, or information furnished by or on **and** behalf of the purchaser in connection therewith, to any person other **information;** than a person employed by the supplier in the performance of the **inspection.** 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 10.1 Delivery of the goods shall be made by the supplier in accordance with **and documents** 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 13.1 The supplier may be required to provide any or all of the following **services** 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 18.1 No variation in or modification of the terms of the contract shall be **amendments** 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 21.1 Delivery of the goods and performance of services shall be made by **supplier's** the supplier in accordance with the time schedule prescribed by the **performance** 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 23.1 The purchaser, without prejudice to any other remedy for breach of **for default** 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 antidumping 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 26.1 The purchaser may at any time terminate the contract by giving written **for insolvency** 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 28.1 Except in cases of criminal negligence or willful misconduct, and in **liability** 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 29.1 The contract shall be written in English. All correspondence and other **language** documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable 30.1 The contract shall be interpreted in accordance with South African **law** 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 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp **duties** 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, fees, etc., incurred until delivery of the contract to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax clearance certificate is not in order. Prior to the award of a bid the Department shall require the bidder to have possession of a tax clearance certificate, submitted by the bidder. The tax clearance 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.

- 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 Prohibition of**
- 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.