



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

REQUEST FOR PROPOSALS

RFP Ref. No:	DPE 1/2023-2024
Description	THE DEPARTMENT OF PUBLIC ENTERPRISES INVITES SERVICE PROVIDERS TO SUBMIT A PROPOSAL FOR THE APPOINTMENT OF A MERGERS AND ACQUISITION LAW FIRM TO PROVIDE ADVISORY SERVICES IN CONCLUDING AN AGREEMENT BETWEEN SOUTH AFRICAN AIRWAYS (SAA) AND ITS PREFERRED STRATEGIC EQUITY PARTNER (SEP)
Publication date	12 MAY 2023
RFP Closing Details	Date: 31 MAY 2023 Time: 11:00 A.M (SOUTH AFRICAN TIME) Place: Department of Public Enterprises Street: 80 Hamilton Street Arcadia: Pretoria
Deadline for enquiries	Date: 26 May 2023
Public Opening of RFP Responses	Date: 31 May 2023 Time: 11:00 A.M (SOUTH AFRICAN TIME) Place: Department of Public Enterprises Street: 80 Hamilton Street Arcadia: Pretoria
RFP VALIDITY PERIOD	120 days

PROSPECTIVE BIDDERS MUST REGISTER ON NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE PRIOR TO SUBMITTING BIDS.

CHECK LIST FOR BID DOCUMENTATION

TAKE NOTE: SHOULD ANY OF THE MENTIONED BID DOCUMENTS NOT BE DULY COMPLETED AND SIGNED YOUR BID MAY BE DISQUALIFIED

FORM	DESCRIPTION	CHECK BOX
SBD 1	INVITATION TO BID	
SBD 3.3	PRICING SCHEDULE (PROFESSIONAL SERVICES)	
TOR	TERMS OF REFERENCE FOR SERVICE	
SBD 4	DECLARATION OF INTEREST	
SBD 6.1	PREFERENCE POINTS CLAIM FORM: VALID B-BBEE CERTIFICATE/ SWORN AFFIDAVIT TO BE SUBMITTED	
GCC	GOVERNMENT PROCURMENT: GENERAL CONDITIONS OF CONTRACT	
REGISTRATION ON CENTRAL SUPPLIER DATABASE	<u>CENTRAL SUPPLIER DATABASE</u> Effective from 1ST September 2015 all prospective suppliers have to self-register once on the central supplier database website https://secure.csd.gov.za. In order to do business with all spheres of government. As soon as supplier's information has been verified with external data sources (e.g sars and cipc) a unique supplier nr and security code will be allocated and communicated to all suppliers. The supplier can use this information to update and maintain his profile. <u>NB A copy of your company registration report must be submitted with your bid/price quotation. Failure thereof may disqualify your proposal.</u>	
NB: FIRST ENVELOPE WITH ONE ORIGINAL FINANCIAL PROPOSAL THAT INCLUDES ALL VALID B-BBEE CERTIFICATE OR AFFIDAVIT AND BID DOCUMENTS REQUIRED BY THE DEPARTMENT. SECOND ENVELOPE WITH ONE ORIGINAL TECHNICAL/FUNCTIONAL PROPOSAL		

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	BID DPE1/2023-2024	CLOSING DATE:	31 MAY 2023	CLOSING TIME:	11:00
DESCRIPTION	THE DEPARTMENT OF PUBLIC ENTERPRISES INVITES SERVICES PROVIDERS TO SUBMIT A PROPOSAL FOR THE APPOINTMENT OF MERGERS AND ACQUISITION LAW FIRM TO PROVIDE ADVISORY SERVICE IN CONCLUDING AN AGREEMENT BETWEEN SOUTH AFRICAN AIRWAYS (SAA) AND ITS PREFERRED STRATEGIC EQUITY PARTNER (SEP)				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
DEPARTMENT OF PUBLIC ENTERPRISES, GROUND FLOOR SECURITY					
80 HAMILTON STREET, ARCADIA, 0083					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Abel Makhafola		CONTACT PERSON	Abel Makhafola	
TELEPHONE NUMBER	012 431-1005		TELEPHONE NUMBER	012 431-1005	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	abel.makhafola@dpe.gov.za		E-MAIL ADDRESS	abel.makhafola@dpe.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
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] ☐ Yes ☐ No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				☐ YES ☐ NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				☐ YES ☐ NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				☐ YES ☐ 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, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA .
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:

.....

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:

BID NO.: DPE 1/2023-2024

CLOSING TIME 11:00

CLOSING DATE 31 MAY 2023

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
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The Department of Public Enterprises invites service providers to submit a proposal for the appointment of a mergers and acquisition law firm to provide advisory services in concluding and agreement/s between South African Airways (SAA) and its preferred Strategic Equity Partner (SEP)

1. The accompanying information must be used for the formulation of proposals.

2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.

R.....
(TOTAL 1 & 2)

3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

4. PERSON AND POSITION

HOURLY RATE

DAILY RATE

.....	R-----	-----
.....	R-----	-----
.....	R-----	-----

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

-----	R-----	----- days
-----	R-----	----- days
-----	R-----	----- days

- 5.1 Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
-----			R.....
-----			R.....
-----			R.....

TOTAL (1): R.....

All applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

Name of Bidder:

- 5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....			R.....
.....			R.....
.....			R.....
.....			R.....
TOTAL (2): R.....			

6. Period required for commencement with project after acceptance of bid
 7. Estimated man-days for completion of project
 8. Are the rates quoted firm for the full period of contract? *YES/NO
 9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.

***[DELETE IF NOT APPLICABLE]**

Any enquiries regarding bidding procedures and tender documents may be directed to: or technical information may be directed to–

Abel Makhafola
 Tel: (012) 431-1005
 Email: abel.makhafola@dpe.gov.za

Enquiries regarding the technical requirement may be directed to:

Edwin Besa
 Tel: 012 431 -1123
 Email: edwin.besa@dpe.gov.za



public enterprises

**Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0028 80 Hamilton Street, Arcadia, 0083
Tel: 012 431 1118/1150 Fax: 012 431 1039 Private Bag X9079, Cape Town, 8000 Fax: 021 465 2381

TERMS OF REFERENCE (“TOR”)

FOR THE APPOINTMENT OF A MERGERS AND ACQUISITION LAW FIRM

TO

PROVIDE ADVISORY SERVICES IN CONCLUDING AN AGREEMENT/S BETWEEN SOUTH AFRICAN AIRWAYS (SAA) AND ITS PREFERRED STRATEGIC EQUITY PARTNER (SEP)

**Department of Public Enterprises
 (“Department”)**

1. DISCLAIMER

- 1.1. The TOR is issued by the Department of Public Enterprises. The sole purpose of this document is to guide the Bidder in deciding whether to submit a proposal in response to the TOR.
- 1.2. The Bidder agrees and undertakes that it will procure and ensure that its directors, officers, employees, agents, representatives, and advisors use the TOR only to prepare and submit a proposal for the purposes contemplated in the TOR, and for no other purpose.
- 1.3. The Bidder further undertakes not to divulge the contents of or distribute any copies of the TOR to any other party without the prior written consent of the Department and shall return all copies of the TOR to the Department promptly upon request.
- 1.4. The Department reserves the right to amend, modify or withdraw the TOR or to amend, modify or terminate any of the procedures or requirements set out herein at any time and from time to time, without notice to the Bidder but without liability to compensate or reimburse any party.
- 1.5. The information contained in the TOR is obtained from the Department and other sources. Neither Government, the Department nor any of their respective directors, officers, employees, agents, representatives or advisors make any representation or warranty or give any undertaking, express or implied, or accept any responsibility or liability whatsoever as to the content, accuracy or completeness of the information contained in the TOR or any other written, electronic or verbal information made available in connection with the Project, and nothing contained herein is, or shall be relied upon, as an offer capable of acceptance, a promise or representation, whether as to the past or the future. A Bidder shall accordingly only be entitled to rely on those representations and warranties set forth in the final Project Documents when, and if, such final Project Documents are ultimately agreed and executed, and subject to such limitations and restrictions as may be contained therein.
- 1.6. The TOR does not contain all of the information that may be required by a Bidder in considering whether to submit a proposal and/or a bid and is merely issued for information purposes to enable a Bidder to formulate a proposal. Neither Government, the Department nor any of their respective officers, employees, agents, representatives or advisors have independently verified any of the information contained in the TOR nor are they obliged to update or otherwise revise the TOR or other material supplied herewith nor do they accept any obligation to provide recipients with access to any additional information or to correct any inaccuracies which may become apparent in the TOR or in

any other information which may be made available concerning the Project.

- 1.7. The TOR is not intended to form the basis of a decision to enter into any transaction or any other agreement and does not constitute an offer, invitation or recommendation to enter into any such transaction, or an intention to enter into any legal relationship with any party.
- 1.8. The information contained in the TOR has been compiled to enable a Bidder to consider whether to submit a proposal. The Bidder should be aware that this information has been prepared by Department and involves elements of subjective judgement and analysis. This information is subject to change between the date of issue of the TOR and the issuing of more detailed information during the ensuing phase/s of the Project due to the passage of time and the changes in circumstances relating to the Project, and the verification of such information.
- 1.9. Any Bidder considering submitting a proposal and/or submitting a bid and/or entering into the Project is advised to seek its own independent legal, tax, financial and other advice. The costs of engaging advisors shall be solely for the account of the Bidder concerned.
- 1.10. The issue of the TOR should not be regarded as any form of commitment on the part of the Department to proceed with the Project. Receipt of this TOR does not confer any right on any party. The Department reserves the right in its sole and absolute discretion to terminate any party's participation in the Project on notice to the Bidder concerned without liability whatsoever.
- 1.11. No written, electronic or verbal communication shall be made with the Department or any of its respective directors, officers or employees, either directly or indirectly, with respect to any information contained in the TOR or with respect to any possible transaction concerning an SOC and any communication must be directed to the contact persons referred to in section 17 of the TOR or such other person/s appointed by the Department for such purpose.

2. GLOSSARY OF TERMS

In the TOR, unless the context otherwise indicates -

- 2.1. "AGSA" means Auditor General of South Africa;
- 2.2. "B-BBEE" means Broad Based Black Economic Empowerment;
- 2.3. "B-BBEE status level of contributor" means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good practice on Black Economic Empowerment, issued in terms of section 9 (1) of the Broad Based Black Economic Empowerment Amendment Act of 2013;
- 2.4. "Bidder" means a party that submits a proposal in response to the TOR;
- 2.5. "Consortium or joint venture" means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 2.6. "Department" means the Department of Public Enterprises;
- 2.7. "Functionality" means the measurement according to predetermined norms of a service or commodity designed to be practical and useful, working or operating, taking into account quality, reliability, viability and durability of a service or commodity;
- 2.8. "Government" means the Government of the Republic of South Africa represented by the Minister for purposes of this Project;

"IATA" means International Air Transport Association;

- 2.9.
- 2.10. "MOI" means Memorandum of Incorporation;
- 2.11. "Minister" means the Minister of Public Enterprises;
- 2.12. "Person" means a natural or juristic person;
- 2.13. "Proposal" means the document(s) delivered, by a Bidder in accordance with the TOR, expressing interest in the Project;
- 2.14. "Project Documents" means a mandate and all other agreements necessary to give effect to the Project;
- 2.15. "Project" means the provision of advisory services with respect to concluding the agreement between the preferred SEP, SAA and/or Government;
- 2.16. "SAA" means South African Airways SOC Limited, the company established in terms of the South African Airways Act, No. 5 of 2007;
- 2.17. "SEP" means a Strategic Equity Partner;
- 2.18. "SHA" means Shareholders Agreement;
- 2.19. "Shareholding Minister" means the Minister of Public Enterprises;
- 2.20. "SLA" means Service Level Agreement between the Department and a mergers and

acquisitions law firm;

- 2.21. "SOC" means State-Owned Company as defined in the Companies Act No 71 of 2008;
- 2.22. "SPA" means Share Purchase Agreement;
- 2.23. "TRP" means Takeover Regulation Panel;
- 2.24. "TOR" means this Terms of Reference together with all its attachments;
- 2.25. "WCFA" means Working Capital Facility Agreement to be provided by the SEP.

3. INTERPRETATION

- 3.1. Any reference to the singular includes the plural and vice versa;
- 3.2. Any reference to natural persons includes legal persons and vice versa;
- 3.3. Any reference to gender includes the other gender; and
- 3.4. Headings have been inserted for convenience only and shall not be taken into account in the interpretation of the TOR.

4. BACKGROUND

- 4.1. The Department of Public Enterprises is the shareholder representative on behalf of the South African Government with oversight responsibility over six State Owned Companies (SOC), namely: Eskom, Transnet, South African Airways (SAA), Denel, South African Forestry Company Limited (SAFCOL) and Alexkor.
- 4.2. The vision of the Department of Public Enterprises (DPE), articulated in 2011, “is to drive investment, productivity and transformation in the Department’s portfolio of State-Owned Companies (SOC), their customers and suppliers so as to unlock growth, drive industrialisation, create jobs and develop skills”.
- 4.3. The Department sees the SOCs for which it is responsible as essential in driving economic growth. The Department therefore provides direction to the SOCs in order to ensure that their activities, operations and investment programmes support the objectives of the Medium-Term Strategic Framework (MTSF), as well as programmes set out in the National Development Plan (NDP).
- 4.4. The Minister has the legislative mandate to oversee SAA as the Executive Authority or Shareholding Minister on behalf of the State.
- 4.5. SAA has been facing significant financial and operational challenges over the last several financial years. The airline was put under business rescue process on 6 December 2019. While the airline was under business rescue, the Department received Expression of Interests (“EOI”) for the acquisition of shares in SAA. The EOI were evaluated in 2020 and 2021 and an SEPs was appointed in June 2021.

5. PROJECT OBJECTIVES

- 5.1. The Department seeks to open up the bidding process to appoint a mergers and acquisition law firm to advise and conclude the remaining part of the transaction between the SEP, SAA and/or Government as Government sells part of its shares in SAA to the preferred SEP. This is after the initial mergers and acquisition law firm assisted the Department in carrying out

the transaction however, it could not be taken to its conclusion as the transaction took longer than was initially envisaged. For that reason, the tender had to be advertised for the remaining part of the transaction. The successful service provider (mergers and acquisition Law Firm) will be required to perform some or all of the proposed services as outlined below and have the capacity to run various separate transactions simultaneously.

6. SCOPE

- 6.1. The Department requires a mergers and acquisition Law Firm that will assist the Department in relation to Government concluding the selling of its share to a Strategic Equity Partner. The work that remains to be carried out to conclude the transaction is:
 - 6.1.1. Conduct an assessment of legal and regulatory impediments that may impact the conclusion of the sale of shares and to assist in securing all regulatory approvals for the transaction;
 - 6.1.2. Review of the aviation regulatory authority approvals;
 - 6.1.3. Assist with the negotiation and execution of all agreements and other potential transaction documents;
 - 6.1.4. Finalise regulatory filings and approvals;
 - 6.1.5. Providing support relative to the supplemental due diligence and assisting with general virtual data room queries. The service provider will not be required to upload or review any supplemental due diligence request lists, gap analysis or documents provided but instead provide a support and administrative function.
 - 6.1.6. Drafting, negotiating, and settling the subscription agreement.
 - 6.1.7. Reviewing and commenting on the clean-up steps memorandum drafted and engaging with SAA, SEP Lawyers and drafters of the memorandum regarding any comments which they have on the memo.
 - 6.1.8. Reviewing and commenting on the draft term sheet setting out the salient terms of the SHA, reviewing the draft SHA to be drafted by SEP Lawyers, commenting on the draft SHA, attending to negotiations of the SHA with SEP Lawyers and attending to support with the finalisation and execution of the SHA.
 - 6.1.9. Reviewing the draft Post-Closing SAA MOI prepared by SEP Lawyers, commenting on the same, attending to negotiations and attending to support with the finalisation of the Post-Closing SAA MOI.
 - 6.1.10. Reviewing and commenting on the Escrow Agreement prepared by the Escrow Agent from a fatal flaw perspective to confirm compliance with the terms of the

- SPA and attending to support with the finalisation and execution of the Escrow Agreement.
- 6.1.11. Reviewing and commenting on the operational plan prepared by SEP from a fatal flaw perspective to confirm compliance with the terms of the SPA and attending to support with the finalisation and execution of the Operational Plan from a legal perspective.
 - 6.1.12. Attending negotiations regarding the list of relevant material contracts and reviewing any material contracts from a fatal flaw perspective.
 - 6.1.13. Drafting, negotiating and settling template change of control consent letter.
 - 6.1.14. Reviewing and commenting on the terms of the WCFA, negotiating the terms of the WCFA, reviewing the draft WCFA prepared by the SEP lawyers, attending to negotiations of the WCFA with SEP Lawyers and attending to support with the finalisation of the WCFA.
 - 6.1.15. Reviewing and commenting on TRP application and supporting the finalisation of the TRP application and engaging with the TRP, where necessary reviewing and commenting on aviation regulatory authority approval documents prepared by SEP Lawyers from a fatal flaw perspective and assisting with finalising the aviation regulatory authority approvals.
 - 6.1.16. Attending to negotiations regarding the tax ruling.
 - 6.1.17. Reviewing and commenting on Legal Proceedings confirmation letter drafted by SAA.
 - 6.1.18. Reviewing and commenting on Employee confirmation letter drafted by SAA.
 - 6.1.19. Reviewing and commenting on the SEP authorising resolution.
 - 6.1.20. Reviewing and commenting on the Harith authorising resolution.
 - 6.1.21. Reviewing details provided by DPE and SAA regarding SAA Voyager programme as required in terms of the SPA.
 - 6.1.22. Reviewing and commenting on confirmation of government guarantees letter to be issued by DPE.
 - 6.1.23. Reviewing and commenting on IATA confirmation letter.
 - 6.1.24. Reviewing and commenting on working capital confirmation letter.
 - 6.1.25. Service provider's input will be limited to an oversight role to monitor that this is fulfilled by the set due date.
 - 6.1.26. Reviewing, commenting and settling on written certificates.
 - 6.1.27. Reviewing and negotiating flow of funds agreement prepared by SEP Lawyers and be in attendance to support with the finalisation of the flow of funds agreement.

- 6.1.28. Reviewing and negotiating implementation agreement prepared by SEP Lawyers and attending to support with the finalisation of the implementation agreement.
- 6.1.29. Correspondence with DPE and SAA regarding AGSA letter and attending to subsequent queries and discussions with SEP and SEP Lawyers regarding the status of the audit.
- 6.1.30. Provision for Virtual Data Room.
- 6.1.31. Final close out report;
- 6.1.32. Any other matters related to the transaction that the DPE may require;
- 6.1.33. Weekly progress reports to assure the Department that the performance is in line with the expected standards in line with the service level agreement.
- 6.1.34. Review of draft pre-closing SAA memorandum of incorporation;
- 6.1.35. Provide support in relation to supplemental due diligence;
- 6.1.36. Review of SEP prepared operational plan from a legal perspective;
- 6.1.37. Draft, negotiate and settle template change of control letter;
- 6.1.38. Draft, negotiate and settle template events of default letter to lenders;
- 6.1.39. Review and comment on the terms of the working capital facility between SEP and SAA;
- 6.1.40. Review and commenting on the merger notification documents;
- 6.1.41. Negotiations regarding whether a tax ruling is to be requested in advance of restructuring steps being implemented; and
- 6.1.42. Reviewing and commenting on various confirmations, resolutions and approvals.

7. DELIVERABLES

- 7.1. The appointed mergers and acquisition Law Firm is expected to provide:
 - 7.1.1. Weekly progress reports to assure the Department that the performance is in line with the expected standards in line with the service level agreement;
 - 7.1.2. Project plan for implementing the transaction being considered and any necessary mitigating actions;
 - 7.1.3. Assist that Department to conclude the agreements with the preferred SEP;
 - 7.1.4. A final close out report.

8. PROJECT MANAGEMENT

- 8.1. The DPE will take responsibility for the management of the project.
- 8.2. The mergers and acquisition law firm is expected to:

- 8.2.1. Successfully complete the project's milestones within agreed timelines;
- 8.2.2. Develop a project plan with clear milestones, responsibilities and timelines while also setting out assumptions made, risks related to the delivery of the project and mitigation of the risk;
- 8.2.3. Provide weekly progress reports to assure the Department that performance is in line with expected standards in line with the service level agreement;
- 8.2.4. Conduct quality assurance on deliverables considered final (in line with project milestones) prior to them being submitted to the Department;
- 8.2.5. At the most have ten (10) working days to incorporate DPE's comments on any deliverable submitted;
- 8.2.6. Be available to present the final deliverables to approving authorities and other relevant structures within five working days of communication of the request;
- 8.2.7. Continuously find ways to minimise project costs; and
- 8.2.8. Bear project cost overruns that materialise as result of the mergers and acquisition law firm's own doing;

9. ACCESS TO RESOURCES

- 9.1. The DPE will facilitate all engagements, meetings and workshops with stakeholders and provide the mergers and acquisition law firm with reasonable support to access the following resources for successful implementation of the project:
 - 9.1.1. key stakeholders; and
 - 9.1.2. relevant documentation and company information.

10. ISSUE, RISK AND/ OR OPPORTUNITY

- 10.1. The mergers and acquisition law firm must identify any issues, risks and/ or opportunities associated with the project and ensure that these are documented, communicated, prioritised and resolved within a reasonable timeframe.

11. SCOPE CONTROL

- 11.1. The scope will be defined based on a signed SLA.
- 11.2. The DPE will introduce scope control to this project through the implementation of five key processes, namely the:
 - 11.2.1. submission and receipt of scope change requests;
 - 11.2.2. review and logging of scope change requests;

- 11.2.3. determination of the feasibility of scope change requests;
- 11.2.4. the approval of scope change requests; and
- 11.2.5. the implementation and closure of the scope change requests.

12. REPORTING

- 12.1. The mergers and acquisition Law Firm must provide weekly status reports that give the overall summary of activities;
- 12.2. The mergers and acquisition Law Firm must conduct meetings to discuss the project's progress and feedback from DPE; and
- 12.3. The mergers and acquisition law firm must provide a final close out report to the Department on completion of the project.

13. ACCEPTANCE PROCESS

- 13.1. The acceptance process will ensure deliverables produced are reviewed and accepted by the DPE. One of several approaches may be taken by the DPE to accept project deliverables:
 - 13.1.1. each deliverable may be reviewed and presented individually to DPE for sign-off; and
 - 13.1.2. sets of deliverables may be reviewed and presented to DPE for sign-off at the same time.

14. DURATION

- 14.1. It is envisaged that this assessment will be undertaken and completed by 31 March 2024 over a 10 months period. Performance will be assessed on a fortnight basis and reviewed on a monthly basis.

15. CONDITIONS OF APPOINTMENT

- 15.1. The successful Bidder will:
 - 15.1.1. Conclude the relevant Project Documents (including entering into a service level agreement (SLA)) with the Department prior to commencing with the services required; and
 - 15.1.2. Be required to sign confidentiality and indemnity agreements
- 15.2. The mergers and acquisition law firm will only be paid for acceptable work done as defined in the scope for the Project.

16. KEY EXPERTISE REQUIRED

16.1. The Department is looking for an entity to provide end to end mergers and acquisition advisory services that has the following expertise and/or experience:

16.1.1. Due diligence and contracting

16.1.2. Mergers and acquisitions

16.1.3. Corporate Governance

16.1.4. Accounting;

16.1.5. Company and business valuations

16.1.6. Corporate finance

16.1.7. Aviation sector, specifically knowledge of the airline business operations and the global airline industry

17.2 The successful bidder will need to demonstrate;

17.2.1 Relevant experience in successfully executing similar transactions

17.2.2 Capacity to provide end to end mergers and acquisition advisory services;

17.2.3 Commitment to Broad-based Black Economic Empowerment (BBBEE) and transformation;

17. CONTACT DETAILS

For information on bidding and tender documents:

Name: Abel Makhafola

Supply Chain Management

Phone: 012 431 1005

Fax: 086 615 5711

Email: Abel.Makhafola@dpe.gov.za

For information regarding the technical requirements

Edwin Besa

Financial Assessment and Investment Support

Phone: 012 431-1123

Edwin.besa@dpe.gov.za

James Dlamini

18. CONTENT OF PROPOSALS

- 18.1. The address of the Bidder, together with the contact details (telephone numbers, telefax numbers and emails addresses) of the principal contact of the interested parties, must be provided.
- 18.2. Full details of the Bidder, including full details of its ownership, shareholding structure, B-BBEE credentials, Directors and management, and their experience and credentials must be provided.
- 18.3. In the case of a Consortium, any agreement evidencing the relationship between the consortium partners and the composition, structure and operation of the consortium must be provided.
- 18.4. The technical/functionality proposal shall include the following information and documents:
 - 18.4.1. The names and recent Curriculum Vitae of all the personnel that will form the project team. CVs and qualifications of key personnel must be submitted together with the proposal;
 - 18.4.2. The proposed approach to the Project and work plan of the interested party, including the proposed project team;
 - 18.4.3. Curriculum Vitae (CVs) of the proposed project team to assist the Department, highlighting past relevant experience. The project team should include an experienced team leader (normally a partner or director) who will be the lead advisor to the Department and other senior members;
 - 18.4.4. Client references from similar previous projects (where available); The references in the form of a letter must contain the following information;
 - 18.4.4.1. Name of the mergers and acquisition law firm , contact details, address, and details of the project leader;
 - 18.4.4.2. Title of the project that was rendered;
 - 18.4.4.3. Value of the contract;
 - 18.4.4.4. Duration of the contract; and
 - 18.4.4.5. Reference letter/s should not be more than five years old.
 - 18.4.5. Skills development plan for the transfer of skills to employees of the Department involved in this project.

- 18.5. Pricing/cost, which must be submitted separately, should include:
- 18.5.1. A breakdown of anticipated disbursement (travel expenses, accommodation and document reproduction) if applicable; and
 - 18.5.2. Budget breakdown according to the work plan (inclusive of VAT).
- 18.6. The following information relating to the Bidder should be provided (as applicable):
- 18.6.1. A statement declaring if any, a conflict or a potential conflict of interests and, in the event of such conflict or potential conflict, an explanation as how the conflict or potential conflict will be managed;
 - 18.6.2. A statement regarding the tax status of the interested party and, if an existing South African entity, a valid original tax clearance certificate issued by the South African Revenue Services;
 - 18.6.3. Central Supplier Database (CDB) report tax compliant status; and
 - 18.6.4. Valid B-BBEE certificate with emblem of South African National Accreditation Systems ("SANAS") or copy of B-BBEE certificate signed by commissioner of oath or sworn affidavits.

19. EVALUATION OF PROPOSALS

- 19.1. The evaluation of proposals will be done in four stages as follows:
- a) **First stage-** the proposal will be evaluated on Administrative Compliance.
 - b) **Second stage-** the proposals will be evaluated on the mandatory requirements. Any bidder who does not meet this requirement will be disqualified.
 - c) **Third stage- Technical Evaluation-** Proposals will be evaluated by an evaluation committee comprised of officials from the Department.
 - d) **Fourth stage-** 80/20 preference points system for Price and B-BBEE as per the PPR 2023.
- 19.2. It is the responsibility of the bidder to understand the scoring system and factor that system into the organisation and content of its tender documents. The top and final shortlisted bidders will be evaluated and ranked using a weighted average scoring system for functionality.
- 19.3. It should be noted that the technical evaluation will be carried out in three separate criteria. Bidders will be evaluated per category to measure their capacity, capability and experience in that particular category in order to facilitate a transparent and fair selection process that will allow equal opportunities to all bidders.

19.4. The technical evaluation of bidders will be carried out as follows:

- 19.4.1. Bidders will be evaluated in terms of the prevailing supply chain policy applicable to DPE. A minimum threshold of 350 points or 70% on technical capability (functionality) will be the cut off to qualify for further evaluation.

Those who qualify will be assessed using the 80/20 preference points system for Price and B-BBEE as per the PPR 2023.

a) First stage- Administrative compliance

NO.	DESCRIPTION	YES	NO
1.	Completion of all SBD Forms (Declaration Forms)		
4.	Valid B-BBEE Level of contribution or Sworn affidavit Certificate (Failure to attach certificate will lead to non- allocation of points)		
5.	Signed General Conditions of Contract (GCC)		
6.	Registration with CSD (Central Suppliers Database)		
7.	Submission of a tender document in the form of an original printed hard copy.		

b) Second Stage-Mandatory Requirements

Any bidder who does not meet this requirement will be disqualified and will not be evaluated further to technical evaluation.

NO.	DESCRIPTION	YES	NO
1.	Formal written proposal		
2.	Bidder(s) must provide a valid Certificate of Good Standing from the appropriate Legal Practice Council in respect of each Attorney. Please furnish copies of certificate(s) of Attorney(s).		
3.	Bidders must have a project leader with a minimum qualification of LLB and must have led in a merger and acquisition transaction with a traceable reference (written confirmation of experience: Copy of qualification to be submitted).		
4.	Bidders and employees thereof must have no Conflicting or potentially conflicting interests due to services they (bidders) are currently providing or have provided to DPE, SEP or SAA		

c) Third Stage: Technical Evaluation

Bidders will be evaluated in terms of the prevailing supply chain policy applicable to **DPE**. A minimum threshold of **350** points or 70% on technical capability (functionality) will be the cut off points to qualify for further **evaluation**.

Functionality	Score according to the score value's	Weight	Total Weight Points	Maximum Points 500
Content and methodology- - Proposal should demonstrate a solid understanding of executing mergers and acquisition transactions in either public or private companies in line with the Scope of work. - Demonstrate a rigorous work plan, project plan to deliver all outcomes in the required level of detail. - The bidder is appropriately resourced to deliver these outcomes within the required timeframes.			10	50
	Excellent	5		
	Very Good	4		
	Good	3		
	Fair	2		
	Poor	1		
	No information	0		
Individuals experience requirements: (a) The project leader, who will be assigned to this project must have five-year experience advising on concluding a sell of shares transaction in public or private sector company including experience with the legal requirements for disposing off shares in public or private sector. (b) At least one team member should have advised on a merger and acquisition transaction of at least R1 billion (c) At least one team member must have experience in the airline industry with traceable references to assist the Department with obtaining Licencing Council Regulatory approvals. (d) The team should at least have one team member who appreciates legislation affecting state owned companies by providing traceable references for advisory services carried out in SOCs. Bidder must attach concise CVs/ Biography of key personnel with verifiable reference.			45	225
	Bidder meets the experiences requirements (a) to (d)	5		
	Bidder meets experiences requirements (a) to (c) excluding (d)	4		
	Bidder meets experiences requirements (a) & (b) but not (c) or (d)	3		
	Bidder meets experiences requirements (a) & (c) or (d) or both but not (b)	2		
	Bidder meets only experiences requirements (a)	1		
	Bidder does not meet (a) to (d)	0		
Company Experience: Company should demonstrate experience executing mergers and acquisition transactions in either public or private companies by providing minimum of five (5) projects undertaken. Provide reference letters on a company letter head or testimonial for each project undertaken which are not more than five (5) years old as per criteria in paragraph 19.5 below.			45	225
	Average of 5 projects or more	5		
	Average of above 4 and up to 5 projects	4		
	Average of above 3 and up to 4 projects	3		
	Average of above 2 and up to 3 projects	2		
	Average of above 1 and up to 2 projects	1		
	Below 1 or no information	0		

Value: 0 = no information provided, 1 = Poor, 2 = Fair, 3 = Good, 4 = Very Good and 5 = Excellent

19.5. References should be in a form of letter/s containing the following information:

- Name of the Mergers and acquisition law firm, contact details, address, and details of the project leader
- Title of the project that was rendered
- Value of the contract
- Duration of the contract
- Reference letter/s should not be more than five years old.

19.6. **A proposal will be disqualified at this stage if it fails to meet the minimum threshold of 350 points (70%) for technical evaluation as per criteria above.**

19.7. A Bidder who meets the requirements in the first stage will then be evaluated in the second stage where price and B-BBEE status level contribution will be considered:

Price:	80 points
B-BBEE	20 points
Total	100 points

B-BBEE points will be allocated according to the following table only if a valid B-BBEE Status Level Verification Certificate or sworn affidavits by the commissioner of oaths

80/20 principle

B-BBEE status level of Contributor	Number of points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
No information	0

19.8. **Bid documents to be submitted:**

19.8.1. One envelope with one original proposal that includes all bid documents required by the

Department (Please ensure that all Bid documents are appropriately completed and signed to prevent early disqualification).

- 19.8.2. One or more envelopes with four copies of the technical and/or functionality proposal.
- 19.8.3. The Department reserves the right not to accept the lowest price, the Bidder that qualifies according to the first stage will be evaluated for price and B-BBEE and the one with the highest points will be appointed.

20. RESERVATION OF RIGHTS

Without limiting any other rights of the Department (whether otherwise reserved in the TOR or under any law) –

- 20.1. The Department reserves the right to amend, modify or terminate any of the procedures or requirements set out in this TOR at any time or from time to time without prior notice to the Bidder. The Department further reserves the right not to accept any Proposal or bid;
- 20.2. The Project described in the TOR may be cancelled at any time, at no cost and with no liability being incurred to the Department or Government, if the Department so determines in its sole and absolute discretion;
- 20.3. The Bidder agrees and undertake to hold harmless, Government, the Department and their respective directors, officers, agents, representatives from and against any and all such claims, actions and legal proceedings and any and all liabilities, damages, loss, costs and expenses (including all legal costs and expenses) of whatever nature in connection with or arising from the Project and/or the process outlined in this TOR;
- 20.4. No Proposal will be deemed accepted and no agreement will be deemed to be reached with any Bidder or successful party if all the parties have not executed the Project Documents thereto. Accordingly, unless and until such time as the Project Documents have been executed as aforesaid, no Bidder or successful party will have any rights, claims or entitlement with respect to the Project, as a result of its participation in the process outlined in the TOR;
- 20.5. The Department, Government, and their respective directors, officers, agents, representatives expressly disclaim any and all liability for representations, warranties or statements contained in any written material furnished or information verbally transmitted to or received by a Bidder. The Department will make only those particular representations and warranties set forth in the final Project Documents when, and if, such Project Documents are ultimately agreed upon and executed, and subject to such limitations and restrictions as may be contained therein;
- 20.6. It is the Department's prerogative to award the project to one individual/successful party

as a single project. However, the Department reserves the right in its sole and absolute discretion to award the mandate in parts to different individuals/successful parties or any entity the Department deems suitable.

21. CLOSING DATE

- 21.1. The submission/delivery of proposals will be published on the Bid documents with prior notice for the closing date. Any proposal arriving after this time will not be considered.

Proposals should be submitted into the Departmental Bidding box at:
Department of Public Enterprises
Ground Floor Security
80 Hamilton Street
Arcadia
Pretoria

- 21.2. It is the responsibility of the Bidder to ensure that its proposal and any correspondence in response to the TOR is received:
- 21.2.1. By the Department or such other person/appointed for such purpose, and
- 21.2.2. On or before the closing time and date.

22. REFERENCES

An interested party must also furnish the Department with recent, service – comparable references, including contact details and an overview of the service provided. Personal interviews may be conducted with references where required.

23. VALUE-ADDED SERVICES

Should Bidder wish to provide the Department with additional services not outlined herein, but which would add value to the Project, it is welcome to do however, these will be at no additional cost. A Bidder should first meet the minimum service requirements/scope of work outlined herein.

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**

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

Full Name	Identity Number	Name of institution	State

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

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.

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

2.2.1 If so, furnish particulars:

.....

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

2.3.1 If so, furnish particulars:

.....

3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² 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

² 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.

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

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

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

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

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

1.2

- a) The value of this bid is estimated to ~~exceed~~/not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or
- b) Either the 80/20 or ~~90/10~~ preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

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

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

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

80/20

or

90/10

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

$P_{\min}$ = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

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

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES		NO	
-----	--	----	--

7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

(Tick applicable box)

YES		NO	
-----	--	----	--

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		

Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

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

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
 ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
 iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
 iv) If the B-BBEE status level of contributor has been claimed or obtained on a

fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

WITNESSES

- 1.
- 2.

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

DATE:

ADDRESS

.....

.....

Annexure G: Government Procurement: General Conditions of Contract – July 2011

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 GCC 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 GCC. Whenever there is a conflict, the provisions in the SCC shall prevail.

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment

- 20. Subcontracts
- 21. Delays in the supplier's performance
- 22. Penalties
- 23. Termination for default
- 24. Dumping and countervailing duties
- 25. Force Majeure
- 26. Termination for insolvency
- 27. Settlement of disputes
- 28. Limitation of liability
- 29. Governing language
- 30. Applicable law
- 31. Notices
- 32. Taxes and duties
- 33. National Industrial Participation Programme (NIPP)
- 34. Prohibition of restrictive practices

General conditions of contract

1 Definitions

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 anything 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 organisation purchasing the goods.
- 1.22 "Republic" means the RSA.
- 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, SCC are also laid down to cover specific supplies, services or works.
- 2.3 Where such SCC 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.

3 Use of contract documents and information; inspection

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection

therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6 Patent rights

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

7 Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
 - 7.3.1 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
- 7.3.2 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 SIU or an organisation acting on behalf of the SIU.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

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

9 Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10 Delivery and documents

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

11 Insurance

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

12 Transportation

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

13 Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- 13.1.1 performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- 13.1.2 furnishing of tools required for assembly and/or maintenance of the supplied goods;

- 13.1.3 furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- 13.1.4 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
- 13.1.5 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:
 - 14.1.1 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
 - 14.1.2 in the event of termination of production of the spare parts:
 - 14.1.2.1 Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - 14.1.2.2 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 fulfilment 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 authorised in SCC or in the purchaser's request for bid validity extension, as the case may be.

18 Contract amendments

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

19 Assignment

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

20 Subcontracts

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

21 Delays in the supplier's performance

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 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.
- 21.4 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.
- 21.5 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22 Penalties

- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of

the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23 Termination for default

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
 - 23.1.1 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;
 - 23.1.2 if the Supplier fails to perform any other obligation(s) under the contract; or
 - 23.1.3 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:

23.6.1 the name and address of the supplier and / or person restricted by the purchaser;

23.6.2 the date of commencement of the restriction

23.6.3 the period of restriction; and

23.6.4 the reasons for the restriction.

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

23.8 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

24 **Anti-dumping and countervailing duties and rights**

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

25 ***Force majeure***

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26 Termination for insolvency

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27 Settlement of disputes

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

27.5.1 the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

27.5.2 the purchaser shall pay the supplier any monies due the supplier.

28 Limitation of liability

28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;

28.1.1 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

28.1.2 the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29 **Governing language**

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30 **Applicable law**

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

31 **Notices**

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32 **Taxes and duties**

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the SARSs.

33 **National Industrial Participation (NIP) Programme**

33.1 The NIP Programme administered by the DTI shall be applicable to all contracts that are subject to the NIP obligation.

34 **Prohibition of restrictive practices**

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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

The above General Conditions of Contract (GCC) are accepted by:

Name:	
Designation:	
Bidder:	
Signature:	
Date:	