

SCMU5-23/24-0002

BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE IMPLEMENTATION OF A CYBER RESILIENCE FOR EMAILS SOLUTION AS PER SPECIFICATION

Name of bidder _____

Bidder's CSD registration no. _____

Closing date and time: 18 April 2023 at 11:00 am

Bid Validity Period: 120 days

ENQUIRIES:

SUPPLY CHAIN MANAGEMENT

EASTERN CAPE DEPARTMENT OF PUBLIC WORKS & INFRASTRUCTURE
QHASANA BUILDING
PRIVATE BAG X 0022
BHISHO

SCM RELATED ENQUIRIES

Tel No: 040-602 4563/4000

Email Address: supply.chain@ecdpw.gov.za

TECHNICAL ENQUIRES

Enquires: Mr Ntsikelelo Mazinyo Tell no:

040 602 4188

Cell No: 060 993 6587 during office hours

Email Address:

ntsikelelo.mazinyo@ecdpw.gov.za

Fraud, Complaints & Tender Abuse Hotline
0800 701 701 (toll free number)



**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF PUBLIC WORKS & INFRASTRUCTURE

BID NUMBER:	SCMU5-23/24-0002	CLOSING DATE:	18 April 2023	CLOSING TIME:	11H00
DESCRIPTION	BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE IMPLEMENTATION OF A CYBER RESILIENCE FOR EMAILS SOLUTION AS PER SPECIFICATION				

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT

TENDER BOX, GROUND FLOOR, QHASANA BUILDING, INDEPENDENCE AVENUE, BHISHO

BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO		TECHNICAL ENQUIRIES MAY BE DIRECTED TO:	
CONTACT PERSON		CONTACT PERSON	Mr. N. Mazinyo
TELEPHONE NUMBER		TELEPHONE NUMBER	060 993 6587
FACSIMILE NUMBER		FACSIMILE NUMBER	
E-MAIL ADDRESS	supply.chain@ecdpcw.gov.za	E-MAIL ADDRESS	ntsikelelo.mazinyo@ecdpcw.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 <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		TICK APPLICABLE BOX <input type="checkbox"/> Yes <input type="checkbox"/> 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?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
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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.	

- 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 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."

For ease of reference, Bidders shall enter their Price in the space provided below:

SERVICE REQUIRED	GRAND TOTAL (amount in figures)	GRAND TOTAL (amount in words)
BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE IMPLEMENTATION OF A CYBER RESILIENCE FOR EMAILS SOLUTION AS PER SPECIFICATION	R..... (Carried over from page 20) (Carried over from page 20)

(1) If the Bid Sum (amount in words) differ from the Bid Sum (amount in figures), the Bid Sum (amount in words) will govern.

SIGNATURE OF BIDDER:

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

DATE:

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

BID NOTICE
SCMU5-23/24-0002

**BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE
IMPLEMENTATION OF A CYBER RESILIENCE FOR EMAILS SOLUTION AS PER
SPECIFICATION**

Tender documents are downloadable for free of charge from National Treasury's eTender Portal: (<https://www.etenders.gov.za/>) or from the Department of Public Works and Infrastructure website (www.ecdpw.gov.za/tenders) from **10 March 2023**.

A non-compulsory pre-tender briefing meeting will be held on the **23 March 2023** at **10h00, MS Teams**. Join on your computer, mobile app or room device [Click here to join the meeting](#)

Completed bid documents in a sealed envelope endorsed with the relevant bid number, bid description and the closing date, must be deposited in the bid box not later than **11h00** on the **18 April 2023**.

Physical Address of Bid Box: Department of Public Works, Qhasana Building, Ground floor, Bhisho

Bidders must ensure that bids submitted via courier services are deposited by the courier service in the Departmental bid box prior to the closing date and that it is not delivered to Departmental officials. The Department will not accept responsibility if bids received by officials are not timely deposited in the Bid Box

A. BID EVALUATION

This bid will be evaluated in three (3) phases as follows:

Phase One: Compliance, responsiveness to the bid rules and conditions, thereafter

Phase Two: Bidders passing phase one above will thereafter be evaluated on functionality

Phase Three: Bidders passing phase one above will thereafter be evaluated on PPPFA

Functionality Evaluation

A minimum total score of **70 points** must be scored for functionality to qualify for further evaluation.

Only those bidders who achieved at least the minimum of functionality evaluation points will be eligible to have their tenders further evaluated.

The applicable functionality criteria are as follows:

CRITERIA	WEIGHT
Tenders experience in terms of completed projects	100
Total points on functionality	100

PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT (PPPFA) POINTS WILL BE APPLIED AS FOLLOWS:

Maximum points on price	-	80 points
Specific goals	-	20 points
Maximum points	-	100 points

1. BIDDERS SHALL TAKE NOTE OF THE FOLLOWING BID CONDITIONS:

1. The Department intends to award this to the highest point scorer as whole, unless circumstances justifies otherwise.
2. SBD4 must be duly completed and signed. 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, such interest must be disclosed on question 2.3.1.

3. Only Only SITA Accredited Service Providers on SITA Contract 1183 with IT services such as INFORMATION SECURITY SERVICES (ICN: 811120111-0029 to 8111-20111-0031) OR SPECIALIZED SECURITY SERVICES (ICN: 8111- 20111-0032 to 8111-20111-0037) from the Eastern Cape Province are invited to respond or in the event you are not on SITA contract list provide proof that you have been accepted. The bidder might've applied to be on the SITA contract after the publishing of the Transversal Contracts, hence the bidder needs to submit proof should the bidder not appear on the list provided by the contracts
4. Provide contactable positive references not older than ten (10) years from current and or previous clients where similar projects were executed in an organization with a minimum of 1000 users: The references must indicate the following:
 - a. Name of client,
 - b. Contact person indicating position and contact details,
 - c. Brief synopsis of work performed, indicating whether the quality of work was satisfactory or not and
 - d. Dates of engagement.
5. The data centres hosting the ECDPWI data must be located within the boundaries of the Republic of South Africa. (service provider to attach Municipal account, electricity bill or lease agreement as proof).
6. The service provider must provide a copy of a valid certificate or letter from Original Software Manufacturer (OSM) indicating: (a) the bidder name, (b) the bidder is a OSM or a OSM partner to implement/support the solution (c) date the partnership was established
7. The service providers must provide proof that the OSM to which the solution will be sourced is ISO/IEC 27001:2013 compliant (to attach a copy of a valid ISO/IEC 27001:2013 Certificate from the OSM)
8. The successful bidder must be subjected to a security screening or vetting.
9. The bid will be valid for a period of 120 days after the closing date.

B. TENDER SUBMISSIONS:

Bids must be submitted in sealed envelopes clearly marked “**SCMU5-23/24-0002: BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE IMPLEMENTATION OF A CYBER RESILIENCE FOR EMAILS SOLUTION AS PER SPECIFICATION**”

C. ENQUIRIES WITH REGARD TO THIS ADVERT MAY BE DIRECTED TO:

SCM SPECIFIC ENQUIRIES:

Email Address: supply.chain@ecdpw.gov.za.

TECHNICAL /PROJECT SPECIFIC ENQUIRIES

Enquires: Mr Ntsikelelo Mazinyo and Ms. Yavela Sofika

Tell no: 040 602 4188

Cell No: 060 993 6587 or 072 199 2309 during office hours

Email Address: ntsikelelo.mazinyo@ecdpw.gov.za and Yavela.sofika@ecdpw.gov.za

Fraud, Complaints & Tender Abuse Hotline
0800 701 701 (toll free number)

SPECIAL CONDITIONS OF BID

1. INTERPRETATION

The word "Bidder" in these conditions shall mean and include any firm of Contractors or any company or body incorporated or unincorporated.

The word "Department" in these conditions shall mean the EASTERN CAPE DEPARTMENT OF PUBLIC WORKS & INFRASTRUCTURE.

2. EXTENT OF BID

This contract is for the **APPOINTMENT OF SERVICE PROVIDER FOR THE IMPLEMENTATION OF A CYBER RESILIENCE FOR EMAILS SOLUTION AS PER SPECIFICATION**

3. CONTRACT TO BE BINDING

The formal acceptance of this Bid by the Department will constitute a contract binding on both parties, and the Department may require sureties to its satisfaction from the contractor, for the due fulfilment of this contract.

4. MODE OF BID

All Bids shall be completed and signed: All forms, annexures, addendums and specifications shall be signed and returned with the Bid document as a whole. ***The lowest or any bid will not necessarily be accepted.***

The Department wishes to deal on a prime contractual basis with the successful Bidder being responsible and accountable for all aspects of the entire solution or service offered.

5. QUALITY

Should the specifications and / or descriptions not address any aspects of quality as specified, this should be clarified with the Department prior to the submission of a Bid.

6. INSURANCE CLAIMS, ETC.

The Department shall not be liable in any manner in respect of any claims, damages, accidents and injuries to persons, property or rights or any other courses of civil or criminal action that may arise from the carrying out of this contract.

The contractor shall insure his / her / their personnel and any plant, machinery or other mechanical or electronic equipment involved in the fulfilment of this contract and shall indemnify The Department against all risks or claims which may arise.

7. PERIOD OF VALIDITY FOR BIDS AND WITHDRAWAL OF BID AFTER CLOSING DATE

All Bids must remain valid for a period of **120 days** from the closing date as stipulated in the bid document.

8. PENALTY PROVISION

8.1 Should the successful Bidder:

- [a] Withdraw the Bid during the afore-mentioned period of validity; or
- [b] Advise the Department of his / her / their inability to fulfil the contract; or
- [c] Fail or refuse to fulfil the contract; or
- [d] Fail or refuse to sign the agreement or provide any surety if required to do so;

Then, the Bidder will be held responsible for and is obligated to pay to the Department:

- [a] All expenses incurred by the Department to advertise for or invite and deliberate upon new Bids, should this be necessary.
- [b] The difference between the original accepted Bid price (inclusive of escalation) and:

- [i] A less favourable (for the Department) Bid price (inclusive of escalation) accepted as an alternative by the Department from the Bids originally submitted; or
- [ii] A new Bid price (inclusive of escalation).

8.2 Should the successful Bidder fail to deliver, provisions of the General Conditions of Contract will apply.

8.3 Disputes between the Department and a bidder (if any) will be dealt with in the form of litigation.

9. BRAND NAMES

Wherever a brand name is specified in this bid/quotation document (i.e. in the specifications, pricing schedule or bill of quantities or anywhere in this document), the department's requirement is not limited to the specified brand name, but requires an item similar/equivalent or better than specified.

10. VALUE ADDED TAX

In calculating the cost of the supply and delivery of services and / or material, the supplier will issue a "Tax Invoice" for all services rendered and / or materials supplied, which will reflect the exclusive cost of such services, goods or materials with the relevant Value Added Tax being added to the total.

11. CONTRACTUAL PRICE ADJUSTMENTS

Bidders are required to submit their proposal based on the current Rate of Exchange (ROE). negotiations will be made with the awarded bidder to adjust their pricing to align with the exchange rate on time of award.

12. AUTHORITY TO SIGN BID DOCUMENTS

- a) In the case of a Bid being submitted on behalf of a company, close corporation or partnership, evidence must be submitted to the Department at the time of submission of the Bid that the Bid has been signed by persons properly authorised thereto by resolution of the directors or under the articles of the entity. Furthermore, in the case of a joint venture or consortium at least one directors/ members of each party to the joint venture or consortium must give consent to give authorisation for signatory to this bid.
- b) In the event that a resolution to sign is not completed by all directors/ members of the enterprise, the signature of any one of the directors or members to this bid will bind all the directors/ members of the enterprise and will therefore render the bid valid.
- c) No authority to sign is required from a company or close corporation or partnership which has only one director or member.
- d) In the event that a non-member/ non-director to the enterprise sign this declaration, and no authority is granted, it will automatically invalidate the bid.
- e) If the document is signed by one of the directors, Resolution to sign is not required to be completed.

13. CONTRACT PERIOD

- a) The expected contract period is **thirty-six (36 months)** from the contract start date as would be agreed.
- b) The Department reserves the right to consider the extension of the contract or portions thereof, in consultation with the successful bidder for a further period, without going to an open bidding process.
- c) The Department of Public Works & Infrastructure may accept or reject any bid offer and may cancel the bid process or reject all bid offers at any time before the formation of a contract.
- d) The Department of Public Works & Infrastructure also reserves the right to accept the bid as a whole or a part of the bid, or any item or part of any item.

- e) The Department shall not accept or incur any liability to a supplier for such cancellation or rejection or acceptance, but will give written reasons for such action upon receiving a written request to do so.
- f) the department will sign a crepitate agreement (between the service provider and the distributor which will remain valid for the warranty period. The agreement must be signed together with the acceptance of the award.

14. DELIVERY PERIODS

The project which is the renewal will be for all regional offices of the department.

15. DISPUTES OR LIABILITIES

In the event that disputes/ liabilities cannot be resolved by internal systems, the disputes will be settled by litigation.

This paragraph replaces paragraph 29 in the General Conditions of Contract.

16. CLOSING DATE / SUBMITTING OF BIDS

16.1 Bids must be submitted in sealed envelopes clearly marked: **SCMU5-23/24-0002**

BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE IMPLEMENTATION OF A CYBER RESILENCE FOR EMAILS SOLUTION AS PER SPECIFICATION

Completed bid documents in a sealed envelope endorsed with the relevant bid number, bid description and the closing, must be deposited in the bid box, Department of Public Works & Infrastructure, Qhasana Building, Ground floor, Bhisho not later than **11h00** on the **18 April 2023**.

Bidders must ensure that bids submitted via courier services are deposited by the courier service in the Departmental bid box prior to the closing date and that it is not delivered to Departmental officials. The Department will not accept responsibility if bids received by officials are not timely deposited in the Bid Box.

17. NEGOTIATION WITH THE IDENTIFIED PREFERRED BIDDER

17.1 The Bid will be awarded to the bidder who scores the highest PPPFA points:

- 17.1.1 However, should an offer not be market related, the Department reserves the right to negotiate with bidders in accordance with the PPPFA Regulation 6 sub regulation 9(a) & (b).

18. PAYMENT FOR SERVICES RENDERED

Payment will be accordance to the General Conditions of Contract.

19. AWARD OF BIDDERS NOT SCORING THE HIGHEST POINTS

19.1 A contract may be awarded to a tenderer that did not score the highest points subject to a risk assessment.

20. LATE BIDS

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

21. COMMUNICATION

21.1 A nominated official of the bidder(s) can make enquiries in writing, to the specified persons, as indicated on this document via email. Bidder(s) must reduce all telephonic enquiries to writing and send to the above-mentioned email addresses.

21.2 The delegated office of Department of Public Works & Infrastructure may communicate with Bidder(s) where clarity is sought in the bid proposal.

21.3 Any communication to an official or a person acting in an advisory capacity for the Department of Public Works in respect of the bid between the closing date and the award of the bid by the Bidder(s) is discouraged.

- 21.4 Whilst all due care has been taken in connection with the preparation of this bid, Department of Public Works & Infrastructure makes no representations or warranties that the content of the bid or any information communicated to or provided to Bidder(s) during the bidding process is, or will be, accurate, current or complete. The Department of Public Works & Infrastructure, and its employees and advisors will not be liable with respect to any information communicated which may not accurate, current or complete.
- 21.5 If Bidder(s) finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by the Department of Public Works (other than minor clerical matters), the Bidder(s) must promptly notify the Department of Public Works & Infrastructure in writing of such discrepancy, ambiguity, error or inconsistency in order to afford the Department of Public Works & Infrastructure an opportunity to consider what corrective action is necessary (if any).
- 21.6 Any actual discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by the Department of Public Works & Infrastructure will, if possible, be corrected and provided to all Bidder(s) without attribution to the Bidder(s) who provided the written notice.
- 21.7 All persons (including Bidder(s)) obtaining or receiving the bid and any other information in connection with the Bid or the Tendering process must keep the contents of the Bid and other such information confidential, and not disclose or use the information except as required for the purpose of developing a proposal in response to this Bid.

22. SUPPLIER DUE DILIGENCE

The Department of Public Works & Infrastructure reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period or visits/In loco Inspection (if applicable).

23. PREPARATION COSTS

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 bid process. Furthermore, no statement in this bid will be construed as placing the Department of Public Works & Infrastructure, 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 response to this bid.

24. INDEMNITY

If a bidder breaches the conditions of this bid and, as a result of that breach, the Department of Public Works & Infrastructure incurs costs or damages (including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations), then the bidder indemnifies and holds the Department of Public Works & Infrastructure harmless from any and all such costs which Department of Public Works & Infrastructure may incur and for any damages or losses the Department of Public Works & Infrastructure may suffer.

25. PRECEDENCE

This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

26. LIMITATION OF LIABILITY

A bidder participates in this bid process entirely at its own risk and cost. The Department of Public Works & Infrastructure 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 Bid process.

27. TAX COMPLIANCE

No tender shall be awarded to a bidder who is not tax compliant

28. REGISTRATION AS A VAT-VENDOR

28.1 Non-VAT vendors do not have to include VAT in their bid prices, however

28.2 Non-VAT vendors who submit bids for contracts that would, if successful, take their annual turnover above the threshold of R1 million must include VAT in the prices quoted and must therefore immediately upon award of the contract, register with the South African Revenue Service (SARS) as VAT vendors.

28.3 The award of contract would be (for Non-VAT vendors who included VAT in their prices) conditional pending the successful bidder submitting proof of registration as VAT vendor with SARS within 21 days of award.

29. GOVERNING LAW

South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African courts 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.

30. GENERAL BID RULES

- a) The bid document shall be completed and signed
- b) The Department of Public Works & Infrastructure Supply Chain Management Policy will apply.
- c) The Department of Public Works & Infrastructure does not bind itself to accept the lowest bid or any other bid and reserves the right to accept the whole or part of the bid.
- d) The Department of Public Works & Infrastructure may accept or reject any bid offer and may cancel the bid process or reject all bid offers at any time before the formation of a contract.
- e) The Department shall not accept or incur any liability to a supplier for such cancellation or rejection or acceptance, but will give written reasons for such action upon receiving a written request to do so.
- f) Bids which are late, incomplete, unsigned or submitted by facsimile or electronically, will not be accepted
- g) Bidders are not allowed to recruit or shall not attempt to recruit an employee of the Department for purposes of preparation of the bid or for the duration of the execution of this contract or any part thereof.

31. CONTRACT VARIATIONS, EXPANSIONS, AMENDMENTS OR MODIFICATIONS

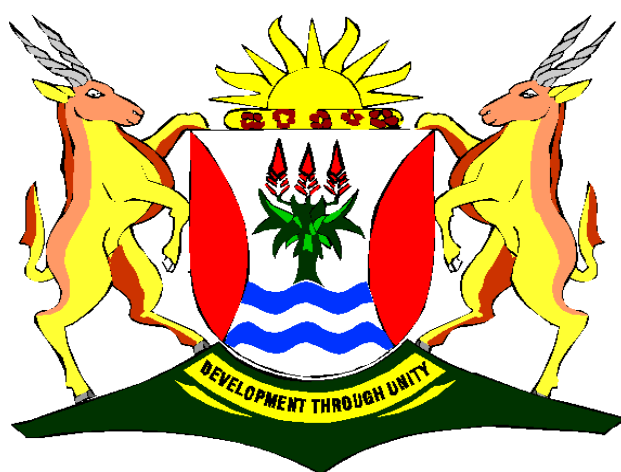
- 31.1 Should a need arise to vary or expand or amend or modify contract quantities for any goods or services, after a valid contract has been concluded and or after the contract has already commenced, the Department reserves the right to approach the contracted service provider to reduce or increase the contracted quantities.
- 31.2 Bidders are required to submit their proposal based on the current Rate of Exchange (ROE) on the time of the advert. negotiations will be made with the awarded bidder to adjust their pricing to align with the exchange rate on time of award.

32. OTHER CONDITIONS OF BID

- 32.1 The bidder must be registered on the Central Supplier Database (CSD) prior the award
- 32.2 All bidders' tax matters must be in order prior award. Bidders' tax matters will be verified through CSD.
- 32.3 The Department will contract with the successful bidder by signing a formal contract.
- 32.4 All bidders' tax matters must be in order prior award. Bidders will be afforded by the Department an opportunity of not more than 7 working days to correct their tax matters, if it is found not to order. Failure to comply within the prescribed period, will lead to elimination. Bidders' tax matters will be verified through CSD.
- 32.5 The Department will contract with the successful bidder by signing a formal contract after all suspensive conditions has been met
- 32.6 The successful bidder may be subjected to a security screening or vetting.
- 32.7 As part of the Department's risk analysis, the Department reserves the right to verify the Operational Office of the service provider

TERMS OF REFERENCE/ SPECIFICATION

Eastern Cape Provincial Government Public Works & Infrastructure



BID NUMBER: SCMU5-23/24-0002

SPECIFICATION/TERMS OF REFERENCE

**BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE
IMPLEMENTAION OF CYBER RESILENCE FOR EMAILS SOLUTION AS PER
SPECIFICATION**

1. SCOPE OF WORK

The intent of this document is to invite suppliers to submit bids for implementation, maintenance, and support services for the Cyber Resilience for Emails Solution in the Department of Public Works and Infrastructure over a period three-years (36 Months).

2. OBJECTIVES

- The goal of ECDPWI is to provide service continuity for emails so that users can access the most recent version of the emails from any location and at any time using any device
- The solution must also be able to guarantee that user emails are backed up and archived in accordance with industry best practices, improving the current backup and archiving arrangements.
- It is in this regard that ECDPWI wishes to acquire a proven cloud based solution, it should therefore be appropriately maintained, supported by an accredited and suitable supplier. ECDPWI needs a continuity solution that delivers always-on, seamless availability of emails, through automatic failover in real-time during an email outage.

3. SOLUTION FEATURES AND CAPABILITIES

The solution must possess the following functions and capabilities;

FUNCTIONS	SOLUTION KEY CAPABILITIES
Email Business continuity	<ul style="list-style-type: none">• Constant monitoring of inbound and outbound email flow to alert server issues.• Supports a business continuity for email strategy for cloud, hybrid and on-premises Infrastructures.• Automated alerts with one click continuity activation and employee notification.• Protects employee productivity with fully functional live and historic email as well as calendar access via Outlook, mobile, web and Mac apps.• Streamlines and reduces the risk of email disruption during migration to cloud email services like Office 365.
Cloud-Based email security services	<ul style="list-style-type: none">• Defends against the risk of spear-phishing and advanced threats in email.• Blocks spam & viruses.• DMARC Analyzer to stop email impersonation based on domain spoofing and deter fraudulent attacks that tarnishes the image of the Department.• Protects employees against social engineering and impersonation attacks.• Neutralizes threats from malware attachments and malicious URLs.• Enables automated email encryption and secure message deliver.• Various end user applications enhance user experience.• Detects and blocks attacks from both external and internal threat actors.
Email Archiving: Improved compliance, e-discovery, and productivity.	<ul style="list-style-type: none">• Comprehensive regulatory, e-discovery and litigation support through compliance-driven chains of custody and fully indexed archive for rapid search.• Seamless migration of live and archived email data to Office 365 and other cloud environments.• Reduced cost and complexity through a single cloud platform and an intuitive, unified administrative console.

Targeted Threat Protection: Internal Email Protect with Remediation	<ul style="list-style-type: none"> • 100% cloud-based solution inspecting email coming into, going out of and staying within the Department. • Detection of lateral movement of attacks via email from one internal user, to another. • Identification of threats or sensitive data leaving an organization that can result in reputational damage. • Automated detection and removal of internal emails which are determined to contain threats. • Reduced risk of a breach or damaging security incident spreading throughout the organization. • Single administration console for reporting, configuration and management across entire email security solution. • Provides instant and comprehensive protection against malware-less email attacks seeking to impersonate trusted senders.
Content Control & Data Leak Protection: Cloud-based email service that enforces compliance and addresses data leakage.	<ul style="list-style-type: none"> • Makes content compliance controls simple to deploy and manage. • Support governance and compliance objectives to help meet regulations • Enables speedy rollout of data leak prevention. • Administrators can easily detect sensitive or confidential information in emails. • Respond to compliance requirements with granular content and DLP policies. • Employees can control administrator-defined policies within Microsoft Outlook.
Sync and Recover	<ul style="list-style-type: none"> • Unify management of compliance archiving and data resiliency. • Streamline configuration of recovery and search. • Provide a multi-layered defense against Exchange data loss or damage due to ransomware, human error and technical failure. • Enable cloud-to-cloud backup; no hardware or software to manage.
Awareness Training	<ul style="list-style-type: none"> • Phishing Simulations to drive employee change towards cyber security • Online Videos and assessments on Cyber Security Awareness and user tracking of assessments automated

The service to be rendered must ensure that the following email continuity functionalities are available: Email continuity and archiving system:

- The solution must provide uninterrupted email services.
- The Solution must seamlessly integrate with Microsoft Outlook, ensuring that users will carry on using email safely and securely – whether the email outage is planned or not.
- The service provider must perform the initial migration of the current mailbox to Cyber Resilience for Emails Solution
- The solution must be managed from a single web based administration console, and with no additional on premise hardware required.
- The solution must integrate with MS Exchange 2016 or later versions and MS Active Directory 2012 or later versions
- Ensure that the system integrates with MS Outlook 2016 or latest version, web interface (HTTPS), Internet Explorer
- The service provider must ensure that the system is able to brand email messages in line with corporate identity.
- The service must provide automatic failover in an event of email outage, mail servers or Active Directory failure, to ensure email continuity

- The solution must offer 99% email service uptime / availability
- The solution must re-synchronize changes of user's emails after the failback and when Exchange is restored
- The solution must be able to integrate with mobile devices / handsets
- In the case of an outage of the ECDPW email servers, users must be able to access emails remotely.
- The service must be able to sync with MS Outlook calendar.
- The solution must have the ability to encrypt all email data and user's mailboxes
- In instances of deployment or redeployment the solution must not require additional hardware to be installed on ECDPWI local area network
- The solution must continue to allow users to search for their own individual archived emails using MS Outlook / Internet Explorer
- The solution must offer unlimited storage for individual mailboxes
- The solution must be able to archive emails and retain data indefinitely or minimum period of ninety-nine (99) years
- Email performance reporting, inbound and outbound emails and Audit trail of emails by users, date and subject.
- The solution must provide spam and antivirus filtering
- The solution must be able to encrypt all mails and prevent data leaks
- The solution must integrate with Active Directory and import security policies
- The solution must have different levels of administrator rights.
- Ensure that the solution is hosted on behalf of ECDPWI in accordance with South African legislation and prescripts (e.g. POPI, MISS etc.).
- The data centres must be within the borders of the Republic of South Africa

4. PROFESSIONAL AND SUPPORT SERVICES

6.1 PROFESSIONAL AND SUPPORT SERVICES

The supplier will be required to provide professional and support services. The purpose of these services will be to:

- Perform the installation, configuration and deployment of the solution;
- Assist in developing roadmap architecture in relation to expansion requirements or upgrades in so far as arising user requirements;
- Assist in re-configuration of the Cyber Resilience for Emails Solution where required;

6.2 SUPPORT AND MAINTENANCE SERVICES

The supplier will be required to provide support and maintenance services for the duration of the contract (24 Months), the purpose of these services will be to

- Conduct regular quarterly quality of service meetings with ECDPWI ICT management on the status of the contract and the service.
- The service provider will be required to effectively and efficiently maintain the system for ECDPWI to ensure that users have access to the following:
 - 24/7 x 365 access to the emails irrespective of location or device.
 - User account information and emails hosted in the Cyber Resilience for Emails Solution are protected and kept safe from unauthorised access.
 - Ensure that the highest levels of security in relation to emails is implemented and adhered to.
 - Regularly monitor and report on system performance including but not limited to the number of email users successfully syncing with the Cyber Resilience for Emails Solution.
 - Ensure that the necessary security procedures are followed, such as contingency planning, system audits, and continued end user assistance via training and documentation.

- Ensure that the solution is regularly updated with the newest versions and suitably configured for the shifting environment.
- Provide skills transfer on Cyber Resilience for Emails Solution to ECDPWI internal support staff.
- The service provider must conduct phishing awareness simulated campaigns and provide an online resource where departmental officials can be capacitated and assessed on email cyber security.
- The service provider must develop awareness popup screens that include best practise recommendations.

5. CERTIFICATION, ACCREDITATION, EXPERTISE AND QUALIFICATION

The Supplier represents that,

- It is committed to provide the services; and
- Perform all obligations detailed herein without any interruption to the Department.
- The Supplier must perform the services in the most cost-effective manner consistent with the level of quality and performance as defined in Sections 8 and 9.
- The service provider must provide a copy of a valid certificate or letter from Original Software Manufacturer (OSM) indicating: (a) the bidder name, (b) the bidder is a OSM or a OSM partner to implement/support the solution (c) date the partnership was established
- The service providers must provide proof that the OSM to which the solution will be sourced is ISO/IEC 27001:2013 compliant (to attach a copy of a valid ISO/IEC 27001:2013 Certificate from the OSM)
- Only SITA Accredited Service Providers on SITA Contract 1183 with IT services such as INFORMATION SECURITY SERVICES (ICN: 811120111-0029 to 8111-20111-0031) OR SPECIALIZED SECURITY SERVICES (ICN: 8111- 20111-0032 to 8111-20111-0037) from the Eastern Cape Province are invited to respond or in the event you are not on SITA contract list provide proof that you have been accepted. The bidder might've applied to be on the SITA contract after the publishing of the Transversal Contracts, hence the bidder needs to submit proof should the bidder not appear on the list provided by the contracts
- Service Provider to provide three contactable references where they have implemented similar solution in the previous 10 years.
- The bidders must provide a completed POPIA checklist as proof that they have complied with the eight requirements for the lawful processing of personal information.
 - Accountability
 - Processing limitation
 - Purpose specification
 - Further processing limitation
 - Information quality
 - Openness
 - Security safeguards
 - Data subject participation

6. SERVICE DELIVER SCHEDULE AND PERFORMANCE METRICS

Service	KPI	Metric
Cyber Resilience for Emails Solution: Professional Services	Successful deployment and implementation of Cyber Resilience for Emails Solution where and when requested.	100% successful implementation or deployment.
Cyber Resilience for Emails Solution: Maintenance and Support	The ability of users to access Cyber Resilience for Emails Solution and effectively use it to access their emails	99% of users able to access their emails via Cyber Resilience for Emails Solution

7. STATEMENT OF WORK

The Supplier is responsible to perform the work as outlined in the following Work Breakdown Structure (WBS):

WB S	STATEMENT DELIVERY OF WORK	TIMEFRAME
1.	Assessment of ECDPW existing email environment, to ensure that the Cyber Resilience for Emails Solution is appropriately configured to provide uninterrupted email continuity services.	Within 12 months the contract
2.	Develop Project Plan and Charter with Project Milestones, Timeframes, Assumptions and Risks stipulated	
3.	Installation, Configuration and Deployment of The Cyber Security for Emails Solution on the live ECDPWI environment	
4.	Provide system administration training for 12 personnel to enable ECDPWI to operate the product or solution after implementation	
5.	Maintenance and Support Services on the Solution to include: <ul style="list-style-type: none">• License Management• Email Continuity and Archiving Support Services• Service Level Management Reports	Last 24 months of Contract
6.	Conduct Phishing Awareness and Simulation Campaigns for all email users	

8. SKILLS TRANSFER AND TRAINING

- The Supplier must provide training on the proposed solution or product to staff to enable ECDPW to operate and support the product or solution after implementation.
- In the event of system enhancements, training must be provided.
- The training can be conducted physically or virtually.

BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE IMPLEMENTATION OF A CYBER RESILIENCE FOR EMAILS SOLUTION AS PER SPECIFICATION

BID EVALUATION CRITERIA

This bid will be evaluated in three (3) phases as follows:

1. Phase One: Compliance, responsiveness to the bid rules and conditions, thereafter
2. Phase Two: Bidders passing phase one above will thereafter be evaluated on functionality
3. Phase Three: Bidders passing phase one above will thereafter be evaluated on PPPFA

PHASE ONE: ADMINISTRATIVE COMPLIANCE

1. The purpose of this evaluation phase is to determine which bid responses are responsive to the minimum bid specifications and the minimum bid requirements. Bid proposals that do not meet the minimum bid specifications and or minimum bid requirements will be regarded as “non-responsive” and will not be considered for further evaluation.
2. Bidders’ proposals must meet the following minimum requirements and the required supporting documents (as required below) must be submitted with the completed bid document in a sealed envelope in the bid box at the closing date and time. Failure to comply will automatically eliminate the bid for further consideration.
 - (a) Bids must be submitted on the original documents and bids which are late, incomplete, unsigned or submitted by facsimile or electronically, will not be accepted.
 - (b) SBD4 must be duly completed and signed. 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, such interest must be disclosed on question 2.3.1 of SBD 4.
 - (c) Proposals that do not meet the specifications will be eliminated.
 - (d) If the offer is “Vat Inclusive”, the VAT registration number of service provider must be indicated and if a service provider is not a VAT Vendor but include VAT in its prices, the successful service provider will be given 21 days to register as a VAT Vendor with SARS, after the issuing of an appointment letter. If a bidder is a VAT vendor/registered, the bidder is required to explicitly state the VAT amount. VAT vendors must include VAT at 15% in the bid offer(s).
 - (e) The Resolution to Sign - Annexures A must be duly completed & signed (if applicable)
 - (f) SBD 3.1- Pricing Schedule- Firm Prices – must be completed.
 - (g) If the Bid Sum (amount in words) is not completed, the bid will be eliminated
 - (h) Bidders must be a legal entity. In the event of a subcontractor or joint ventures or consortiums a signed agreement by all parties must be submitted with the bid. Also see notes to the “Authority to Sign”. Failure to submit a compliant agreement with the bid will automatically eliminate the bid for further consideration.
 - (i) Form SBD1 “Part A” should be completed and “Part B” must fully completed (date, signature, amount).
 - (j) Only SITA Accredited Service Providers on SITA Contract 1183 with IT services such as INFORMATION SECURITY SERVICES (ICN: 811120111-0029 to 8111-20111-0031) OR SPECIALIZED SECURITY SERVICES (ICN: 8111- 20111-0032 to 8111-20111-0037) from the Eastern Cape Province are invited to respond or in the event you are not on SITA contract list provide proof that you have been accepted. The bidder might’ve applied to be on the SITA contract after the publishing of the Transversal Contracts, hence the bidder needs to submit proof should the bidder not appear on the list provided by the contracts
 - (k) Bidders to provide and submit two contactable references not older than ten (10) years from current and or previous clients where similar projects were executed: The references must indicate the following:
 - o Name of client,
 - o Contact person indicating position and contact details,
 - o Brief synopsis of similar completed work performed indicating whether the quality of work was satisfactory or not
 - o Dates of engagement (Start and end date of the project).

- (l) The data centres hosting the ECDPWI data must be located within the boundaries of the Republic of South Africa. (service provider to attach Municipal account, electricity bill or lease agreement as proof).
- (m) The service provider must provide a copy of a valid certificate or letter from Original Software Manufacturer (OSM) indicating: (a) the bidder name, (b) the bidder is a OSM or a OSM partner to implement/support the solution (c) date the partnership was established
- (n) The service providers must provide proof that the OSM to which the solution will be sourced is ISO/IEC 27001:2013 compliant (to attach a copy of a valid ISO/IEC 27001:2013 Certificate from the OSM)

PHASE TWO: EVALUATION ON FUNCTIONALITY

(A) Functionality evaluation requirements

Provide contactable positive references not older than ten (10) years from current and or previous clients where similar projects were executed in an organization with a minimum of 1000 users: The references must be in the form a signed testimonial and must indicate the following:

- Name of client,
- Contact person indicating position and contact details,
- Brief synopsis of work performed, indicating whether the quality of work was satisfactory or not and
- Start and End Dates of engagement.

(B) Process and Methodology of Functionality evaluation

The functionality criteria and maximum score in respect of the criteria are as follows:

CRITERIA	WEIGHT
Tenders experience in terms of completed projects	100
Total points on functionality	100

TENDERS EXPERIENCE ON COMPLETED PROJECTS (MAXIMUM 100 POINTS)

- Provide contactable positive references not older than ten (10) years from current and or previous clients where similar projects were executed in an organization with a minimum of 1000 users: The references must be the form a signed testimonial and must indicate the following:
 - Name of client,
 - Contact person indicating position and contact details,
 - Brief synopsis of work performed, indicating whether the quality of work was satisfactory or not and
 - Start and End Dates of engagement.

3 Reference between 500 and 799 users = 50 points;

3 References between 800 and 999 users = 80 points;

3 References 1000 and above users = 100 points

- Bidders must submit at least one contactable references. If no contactable references are given, the bidder's proposal will not be considered for further evaluation.

<u>PHASE THREE: EVALUATION ON NEW PPPFA and SPECIFIC GOALS</u>	
THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT WILL BE APPLIED AND THE 80/20 PREFERENCE POINTS SYSTEM WILL BE APPLICABLE	
POINTS FOR PRICE	80 POINTS
SPECIFIC GOALS	20 POINTS
TOTAL POINTS	100 POINTS

Please note:

- 1. Bidders need to complete and sign SBD 6.1 to claim points for specific goals.
Failure will lead in non-awarding of points for specific goals**
- 2. The Department intends to award this to the highest point scorer as whole, unless circumstances justifies otherwise**
- 3. All information will be verified through CSD**
- 4. SBD 6.1 is attached**

**PRICING SCHEDULE – FIRM PRICES
(PURCHASES)**

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED

Name of bidder Bid number: **SCMU5-23/24-0002**

Closing Time **11h00**

Closing date: **18 April 2023**

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

**BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE IMPLEMENTATION OF A
CYBER RESILIENCE FOR EMAILS SOLUTION AS PER SPECIFICATION**

No	Product / Service description	Quantity	Price Year 1 (VAT excl.)	Price Year 2 (VAT excl.)	Price Year 3 (VAT excl.)	TOTAL
1.	Professional Services - Installation and configuration of Cyber Resilience for Emails Solution for approximately 1500 users (including licensing costs)	1500 users	R	---	----	R
2	Licensing	1500 licenses	R	R	R	R
3	Support and Maintenance(Monthly x 24)	24 months	---	R	R	R
4.	User training per technical user (ICT personnel)	12 ICT Officials	R	---	---	R
5	Phishing Simulation Campaigns (2 campaigns)	2 Campaigns (1 – 2 nd YR) (1 – 3 rd YR)	---	R	R	R
SUBTOTAL						R
VAT at 15% (if applicable)						R
TOTAL PRICE (Grand total must be carried over to SBD1 on page 3)						R

VAT NUMBER REGISTRATION (if applicable)

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

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

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

1. GENERAL CONDITIONS

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

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

1.2 To be completed by the organ of state

- a) The applicable preference point system for this tender is the 80/20 preference point system.
- b) The lowest acceptable tender will be used to determine the accurate system once tenders are received.

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

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

1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

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

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

2. DEFINITIONS

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

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)} & \mathbf{or} & \mathbf{Ps = 90 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)} \end{array}$$

Where

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

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

3.2.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)} & \mathbf{or} & \mathbf{Ps = 90 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)} \end{array}$$

Where

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

4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
- then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.
(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

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

The specific goals allocated points in terms of this tender		Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Historically Disadvantaged Individual:-			
	(a) 100% black ownership	8	
	(b) 51% to 99% black ownership	4	
	(c) Less than 51% black ownership	2	
Black women ownership:-			
	(a) 100% black women ownership	4	
	(b) 30% to 99% black women ownership	2	
	(c) Less than 30% black women ownership	0	
Black youth ownership:-			
	(a) 100% black youth ownership	4	
	(b) 30% to 99% black youth ownership	2	
	(c) Less than 30% black youth ownership	0	
People with disability:-			
	(a) 20% or more disabled people ownership	4	
	(b) Less than 20% disabled people ownership	0	

DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One-person business/sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company
- ☐ (Pty) Limited
- ☐ Non-Profit Company
- ☐ State Owned Company

[TICK APPLICABLE BOX]

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –

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

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

SURNAME AND NAME:

DATE:

ADDRESS:

.....

.....

.....

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 State institution

- 2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution?

YES/NO

- 2.2.1 If so, furnish particulars:

.....

- 2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

YES/NO

- 2.3.1 If so, furnish particulars:

.....

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.

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 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

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.

RESOLUTION FOR SIGNATORY

(See also "Special Conditions of Bid")

Signatory for companies shall confirm their authority hereto by attaching a duly signed and dated copy of the relevant resolution of the board of directors to this form.

An example is given below:

"By resolution of the board of directors passed at a meeting held on _____

Mr/Ms _____, whose signature appears below, has been duly authorised to sign all documents in connection with the tender for

Bid Number: SCMU5-23/24-0002

and any Contract which may arise there from on behalf of (Block Capitals) _____

SIGNED ON BEHALF OF THE COMPANY: _____

IN HIS/HER CAPACITY AS: _____

DATE: _____

SIGNATURE OF SIGNATORY: _____

WITNESSES:

1. _____ SIGNATURE: _____

**DETAILS OF TENDERERS NEAREST OFFICE TO DEPARTMENT OF PUBLIC
WORKS EASTERN CAPE**

1. Physical address of tenderer:

1 Telephone No of nearest office: _____

3 Time period for which such office has been used by tenderer: _____

.....
SIGNATURE OF (ON BEHALF OF) TENDERER

.....
NAME IN CAPITALS

In the presence of:

1.

2.

SCHEDULE OF PROPOSED SUB-CONTRACTORS

Project Title:	BID FOR THE APPOINTMENT OF SERVICE PROVIDER FOR THE IMPLEMENTATION OF A CYBER RESILIENCE FOR EMAILS SOLUTION AS PER SPECIFICATION
Contract Number	SCMU5-23/24-0002

We notify you that it is our intention to employ the following subcontractors for work in this contract. If we are awarded a contract, we agree that this motivation does not change the requirement for us to submit the names of proposed Subcontractors in accordance with the requirements in the contract for such appointments. If there are no such requirements in the contract, then your written acceptance of this list shall be binding between us.

	Name and address of proposed Subcontractor (s)	Nature and extend of Work	Previous experience with Sub-contractor	Estimated R-value of sub-contract works	Sub-contracting % based on R-Value of total Bid price
1				R	_____ %
2				R	_____ %
3				R	_____ %
4				R	_____ %
5				R	_____ %
TOTAL R- VALUE AND PERCENTAGE OF WORK OF SUB-CONTRACTORS				R	_____ %

Signed _____ Date _____
(Signature of bidder)

Name _____ Position _____
(Name of authorised signature) (Position of authorised signature)

Name of Bidder

GENERAL CONDITIONS OF CONTRACT

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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 provider, 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 provider 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 the 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 provider 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 provider and not involving the provider’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 provider 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 provider or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as land 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 provider covered under the contract.
- 1.25 **“Written”** or **“in writing”** means hand-written 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 (excluding professional services related to the building and construction industry), sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise 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 Invitations to bid are usually published in locally distributed news media and in the institution's website.

4. Standards

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

5. Use of contract documents and information; inspection

- 5.1 The provider 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 provider 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 provider 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 provider's performance under the contract if so required by the purchaser.

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

6. Patent rights

- 6.1 The provider shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of goods or any part thereof by the purchaser.
- 6.2 When a provider developed documentation/projects for the department or PROVINCIAL entity, the intellectual, copy and patent rights or ownership or such documents or projects will vest in the department or PROVINCIAL entity.

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the success 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 provider'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 provider not later than thirty (30) days following the date of completion of the provider's performance obligations under the contract, including any warranty obligations, unless otherwise specified.

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 purchaser or an organization acting on behalf of the purchaser.
- 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 clause 8.2 & 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 provider.
- 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 provider who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do not comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the providers cost and risk. Should the provider fail to provide the substitute supplies forthwith, the purchaser may, without giving the provider further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the provider.
- 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. Packaging

- 9.1 The provider shall provide such packaging of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packaging shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packaging, case size and weights shall take into consideration, where appropriate, the remoteness of the good's final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packaging, 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, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

- 10.1 Delivery of the goods and arrangements for shipping and clearance obligations, shall be made by the provider in accordance with the terms specified in the contract.

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.

12. Transportation

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

13. Incidental services

13.1 The provider may be required to provide any or all of the following services, including additional services, if any:

- (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 provider of any warranty obligations under this contract; and
- (e)** training of the purchaser's personnel, at the provider'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 provider 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 provider for similar services.

14. Spare parts

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

- 1) such spare parts as the purchaser may elect to purchase from the provider, provided that this election shall not relieve the provider of any warranty obligations under the contract, and
- 2) in the event of termination of production of the spare parts:
 - a) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - b) 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 provider 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 provider 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 provider, 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.
- 15.3** The purchaser shall promptly notify the provider in writing of any claims arising under this warranty.
- 15.4** Upon receipt of such notice, the provider shall, within the period specified and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5** If the provider, having been notified, fails to remedy the defect(s) within the period specified, the purchaser may proceed to take such remedial action as may be necessary, at the provider's risk and expense and without prejudice to any other rights which the purchaser may have against the provider under the contract.
- 16. Payment**
- 16.1** The method and conditions of payment to be made to the provider under this contract shall be specified
- 16.2** The provider 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 provider.
- 16.4** Payment will be made in Rand unless otherwise stipulated.
- 17. Prices**
- 17.1** Prices charged by the provider for goods delivered and services performed under the contract shall not vary from the prices quoted by the provider in his bid, with the exception of any price adjustments authorized or in the purchaser's request for bid validity extension, as the case may be.
- 18. Increase/decrease of quantities**
- 18.1** In cases where the estimated value of the envisaged changes in purchase does not exceed 15% of the total value of the original contract, the contractor may be instructed to deliver the revised quantities. The contractor may be approached to reduce the unit price, and such offers may be accepted provided that there is no escalation in price.
- 19. Contract amendments**
- 19.1** No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 20. Assignment**
- 20.1** The provider shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 21. Subcontracts**
- 21.1** The provider 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 provider from any liability or obligation under the contract.

22. Delays in the provider's performance

22.1 Delivery of the goods and performance of services shall be made by the provider in accordance with the time schedule prescribed by the purchaser in the contract.

22.2 If at any time during performance of the contract, the provider or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the provider 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 provider's notice, the purchaser shall evaluate the situation and may at his discretion extend the provider'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.

22.3 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if any emergency arises, the provider's point of supply is not situated at or near the place where the supplies are required, or the provider's services are not readily available.

22.4 Except as provided under GCC Clause 25, a delay by the provider in the performance of its delivery obligations shall render the provider 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.

22.4 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 provider'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 provider.

23. Penalties

23.1 Subject to GCC Clause 25, if the provider 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 good 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.

24. Termination for Default

24.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the provider, may terminate this contract in whole or in part:

(a) if the provider 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 provider fails to perform any other obligation(s) under the contract; or

(c) if the provider, in the judgement of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

24.2 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 provider shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the provider shall continue performance of the contract to the extent not terminated.

25. Anti-Dumping And Counter-Vailing Duties And Rights

25.1 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 provider to the purchaser or the purchaser may deduct such amounts from moneys (if any) which may otherwise be due to the provider 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.

26. Force Majeure

26.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the provider 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.

26.2 If a force majeure situation arises, the provider shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the provider 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.

27. Termination for Insolvency

27.1 The purchaser may at any time terminate the contract by giving written notice to the provider if the provider becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the provider, 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,

28. Settlement of Disputes

28.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the provider 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.

28.2 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 provider 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.

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

28.4 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 provider any monies due to the provider for goods delivered and / or services rendered according to the prescripts of the contract.

29. Limitation of Liability

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

- (a) the provider 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 provider to pay penalties and / or damages to the purchaser; and
- (b) the aggregate liability of the provider 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.

30. Governing Language

- 30.1 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.

31. Applicable Law

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

32. Notices

- 32.1 Every written acceptance of a bid shall be posted to the provider 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.
- 32.2 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.
- 33. TAXES AND DUTIES**
- 33.1 A foreign provider shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 33.2 A local provider shall be entirely responsible for all taxes, duties, license fees, etc, incurred until delivery of the contracted goods to the purchaser.
- 33.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid SARS must have certified that the tax matters of the preferred bidder are in order.

34. Transfer of Contracts

- 34.1 The contractor shall not abandon, transfer, assign or sublet a contract or part thereof without the written permission of the purchaser.

35. Amendment of Contracts

- 35.1 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.