



**CLOSING DATE: 11:00 AM ON 11 MARCH 2026**

## **BID DESCRIPTION**

**APPOINTMENT OF VMWare vSphere ESXi SOFTWARE AND OPERATING VMware PER CORE LICENSES FOR A PERIOD OF THIRTY-SIX (36) MONTHS.**

ONE (1) SEALED ENVELOPE WITH ALL BID DOCUMENTS, i.e. (SBD 1, SBD 3.3, SBD 4, SBD 6.1, GENERAL CONDITIONS OF CONTRACT AND THE SPECIFICATIONS).

**NB: BIDDERS ARE ALSO REQUESTED TO SUBMIT ONE (1) ORIGINAL PLUS ONE (1) COPY AND ELECTRONIC COPY (USB) OF BID PROPOSALS AND RESPONSES.**

## **INFORMATION SESSION**

DATE: 02 MARCH 2026

TIME: 10:00 AM

VENUE: ONLINE (MICROSOFT TEAMS)

**[LINK TO ATTEND INFORMATION SESSION](#)**

[BRIEFING SESSION \(STATS SA 003/25\) | Meeting-Join | Microsoft Teams](#)

**In order to connect, click the link above**

**NB: SERVICE PROVIDERS ARE REQUESTED TO CONNECT TEN (10) MINUTES BEFORE THE INFORMATION SESSION STARTS AT 10:00 AM.**

BIDDERS ARE REQUESTED TO SIGN ATTENDANCE REGISTER WHICH WILL BE PROVIDED BEFORE THE END OF THE SESSION.



## FAILURE TO SUBMIT BIDS AS REQUESTED WILL INVALIDATE YOUR BID

**YOU ARE HEREBY INVITED TO BID TO THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

**PLEASE TAKE NOTE**

**BID NUMBER: STATS SA 003/26**

**CLOSING TIME: 11:00 AM**

**CLOSING DATE: 11 MARCH 2026**

*BIDS RECEIVED AFTER THE CLOSING TIME AND DATE ARE LATE AND WILL AS A RULE NOT BE ACCEPTED FOR CONSIDERATION*

**ALL SBD FORMS - MUST BE COMPLETED AND SIGNED.**

**NB: THIS DOCUMENT IS NOT FOR SALE**

**BID DOCUMENTS MAY BE POSTED TO:**

**Bid Section  
Statistics South Africa  
Private Bag x44  
Pretoria**

The bid documents may be deposited in the bid box which is Isibalo House , Koch Street, Salvokop, Pretoria, 0002

Bid documents that are posted must reach Statistics South Africa before the closing date of the bid

The bid box of Statistics South Africa is generally open between 06h00 to 16h00, 7 days a week. The bid box will be closed on the closing time of bids.



**TEL: 012- 310 8940 / 6978 / 2946 / 2114 / 4766 or 012 406 3154**

**CELL: 082 903 7611 / 076 511 7800 / 076 536 5274 / 076 596 3836 / 076 511 7787 / 076 544 7548 / 076 596 2234**

*Bidders should ensure that bids are delivered timeously to the correct address*

**SUBMIT ALL BIDS ON THE OFFICIAL FORMS – ALL DOCUMENTS MUST BE FILLED BY HAND WRITING**  
*bids by telegram, facsimile or other similar apparatus will not be accepted for consideration*

**SUBMIT EACH BID IN A SEPARATE SEALED ENVELOPE**



### 1. SUBMISSION OF DOCUMENTS

- 1.1 One (1) original bid proposal/response plus one (1) copy and electronic copy (USB) which must include all the SBD forms i.e. (SBD 1, SBD 3.3, SBD 4, SBD 6.1, SBD 7.2, general conditions of contract and terms of reference).
- 1.2 The original copy must be signed in ink by an authorized employee, agent or representative of the Bidder and initialized in each and every page of the bid.
- 1.3 Bids must be deposited into Statistics South Africa bid box on or before **11 MARCH 2026** not later than **11h00 am South African Time**. The Bid box is situated at the reception area of Statistics South Africa Head Office, Koch Street, Salvokop, Pretoria, 0002. All bids in this regard shall only be accepted if they have been placed in the bid box before or on the closing date as stipulated time.
- 1.4 Bid responses sent by post or courier must reach this office at least 36 hours before the closing date to be deposited into the bid Box. Failure to comply with this requirement will result in your Bid being treated as a “late bid” and will not be entertained. Such bids will be returned to the respective bidders.
- 1.5 No bid shall be accepted by Statistics South Africa if submitted in any manner other than as prescribed above.
- 1.6 **BELOW LIST OF ADMINISTRATIVE DDOCUMENTS REQUIRED TO BE SUBMITTED WITH THE BID DOCUMENT. PLEASE INDICATE BY TICKING YES OR NO ON THE BELOW TABLE (even if you have attached documents). ALL PAGES MUST BE COMPLETED INITIALED AND SIGNED (WHERE SIGNATURE IS APPLICABLE) BY THE BIDDER**

NO	DOCUMENTS	TICK (YES OR NO)
1.1	SBD 1 – Invitation to Bid	
1.2	SBD 3 – Price Schedule	
1.3	SBD 4 – Declaration of Interest	
1.4	SBD 6.1 – Preference Points	
1.5	General Condition Of Contract	
1.6	Terms Of Reference (Bid Specification)	
1.7	The board resolution letter with the company letter head confirming that the person signing the bid document is duly authorised and can conclude any legal document on behalf of the company.	
1.8	Company Registration document (CIPC)- certified copy not older than six months.	
1.9	Certified copy of identity document of the owner/ director of the company not older than six (6) months.	
1.10	Medical certificate of the owner/director who are living with disability	



1.11	Central Supplier Database (CSD – recent full detail report must be submitted)	
1.12	Valid SARS certificate or TCS Pin	
1.13	Company Profile / Proposal	
1.14	Any other document in relation to specification	

## **2. REASONS FOR DISQUALIFICATION**

Statistics South Africa reserve the right to disqualify any service provider which does not comply with the following below, and such disqualification may take place without prior notice to the offending service provider.

- 2.1 Service provider which submitted information that is fraudulent, factually untrue or inaccurate, for example, membership that do not exist, experience, etc.
- 2.2 Service provider that receive information not available to the other service providers that may result in such service provider having unfair advantage over other service providers.
- 2.3 Service provider that does not comply with mandatory requirements as stipulated in this bid specification



**PART A  
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE STATISTICS SOUTH AFRICA					
BID NUMBER:	STATS SA 003/25	CLOSING DATE:	11 MARCH 2026	CLOSING TIME:	11:00 AM
DESCRIPTION	APPOINTMENT OF VMWare vSphere ESXi SOFTWARE AND OPERATING VMware PER CORE LICENSES FOR A PERIOD OF THIRTY-SIX (36) MONTHS.				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7.2).					

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

**Head Office, Isibalo House, Koch Street, Salvokop, Pretoria,0002**

**SUPPLIER INFORMATION**

NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	AREA CODE	<input type="text"/>	NUMBER	<input type="text"/>	
CELLPHONE NUMBER	<input type="text"/>				
E-MAIL ADDRESS	<input type="text"/>				
VAT REGISTRATION NUMBER	<input type="text"/>				
SUPPLIER COMPLIANCE NUMBER	TAX COMPLIANCE SYSTEM PIN:	<input type="text"/>	OR	CENTRAL SUPPLIER DATABASE NO	<input type="text"/>



SBD 1

Form with sections: ARE YOU THE ACCREDITED REPRESENTATIVE..., SIGNATURE OF BIDDER, CAPACITY UNDER WHICH THIS BID IS SIGNED, TOTAL BID PRICE, BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO: (DEPARTMENT, CONTACT PERSON, TELEPHONE NUMBER, CELL NUMBER, E-MAIL ADDRESS)

PART B
TERMS AND CONDITIONS FOR BIDDING

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID

- 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 ONLINE
1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES).
1.4 THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.





<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
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 VIEW THE TAXPAYER’S PROFILE AND TAX STATUS.	
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.	
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.	
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / 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.	
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>	
3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</b>	



PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: ..... BID NO.: STATS SA 003/25
CLOSING TIME: 11:00 CLOSING DATE: 11 MARCH 2026

BID PRICE/OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID.

BID PRICE IN RSA CURRENCY (ALL APPLICABLE TAXES MUST BE INCLUDED)
APPOINTMENT OF A SERVICE PROVIDER/S TO SUPPLY STATISTICS SOUTH AFRICA (STATS SA)
WITH VMWARE VSPHERE LICENSES, IMPLEMENTATION, MIGRATION AND SUPPORT FOR A
PERIOD OF 36 MONTHS.

NOTE:

- (a) Bidders must complete the pricing as per table below
(b) Line prices are all VAT EXCLUDING, and TOTAL PRICE is VAT INCLUSIVE

1. PRODUCT OR SERVICE PRICING

Table with 7 columns: No, Product/Service description, Quantity, Unit price (VAT excl.), Price Year 1 (VAT excl.), Price Year 2 (VAT excl.), Price Year 3 (VAT excl.). Rows include VMware vSphere license, support, and total bid price.



**SBD 3.3**

Required by: Statistics South Africa

**Please Note:**

Is the offer to specification?  Yes  No

If not to specification, state deviation(s) \_\_\_\_\_

\_\_\_\_\_

Price:  Firm

If price not firm, state reason(s) \_\_\_\_\_

\_\_\_\_\_

**Any enquiries regarding bidding procedures may be directed to:**

**STATISTICS SOUTH AFRICA**

Bid Office

E-mail Address: [bidoffice@statssa.gov.za](mailto:bidoffice@statssa.gov.za)

Bidder Initials \_\_\_\_\_



**BIDDER’S DISCLOSURE**

**1. PURPOSE OF THE FORM**

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

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

**2. Bidder’s declaration**

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest 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?

Table with YES and NO columns and empty checkboxes.

2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

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

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





**SBD 4**

- 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



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

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for specific Goal(s).

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF SPECIFIC GOALS, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

**1. GENERAL CONDITIONS**

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

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

1.2 **To be completed by the organ of state**

- a) The applicable preference point system for this tender is the **90/10** 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 Goal(s)

1.4 **To be completed by the organ of state:**

The maximum points for this BID are allocated as follows:

	POINTS
PRICE	90
SPECIFIC GOAL(S)	10
<b>TOTAL POINTS FOR PRICE AND SPECIFIC GOAL(S) MUST NOT EXCEED</b>	<b>100</b>



- 1.5 Failure on the part of a bidder to fill in and/or to sign this form and submit proof of claim for specific goals together with the bid, will be interpreted to mean that preference points for specific goal(s) 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) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **“Bid”** 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 bidding process or any other method envisaged in legislation;
- (c) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (d) **“Consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (e) **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- (f) **“disability”** means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.
- (g) **“Functionality”** means the ability of a bid to provide goods or services in accordance with specifications as set out in the bid documents.
- (h) **“Price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (i) **“EME”** means any enterprise with an annual total revenue of R5 million or less.
- (j) **“rand value”** has the same meaning as contemplated in the *Preferential Procurement Regulations, 2022*;
- (k) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (l) **“Youth”** means persons between the ages of 14 and 35 in terms of the *National Youth Development Agency Act, 2008*. For the purpose of this bid the date to be used for determination of age will be the closing date of the bid and in a case where the closing date of a bid has been extended, the original (first) closing date shall be used for the purpose of determining age.
- (m) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and



SBD 6.1

- (n) **“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
- (o) **“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 90/10 PREFERENCE POINT SYSTEMS**

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

**90/10**

$$Ps = 90 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

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

**4. POINTS AWARDED FOR SPECIFIC GOAL(S)**

4.1.1 In terms of Regulation 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the specific goal(s) in accordance with the table below:

Specific Goal(s)	Number of points (90/10 system)	Percentage Ownership equity (To be completed by the Bidder)	Number of Points claimed (90/10 system) to be completed by the Bidder
1   Black	5		
2   Woman	2		
3   Disabled	1		
4   Youth	2		



SBD 6.1

4.1.2 The following formula must be applied to calculate the number of points for equity ownership by an HDI:

NEP = NOP x (EP / 100)

Where:

NEP = Points awarded for equity ownership by an HDI

NOP = The maximum number of points awarded for equity Ownership by an HDI

EP = The percentage of equity ownership by an HDI Within the enterprise or business

4.1.3 Bidders who wish to claim points in terms of the tables above need to provide proof for each point claimed as guided below.

- i. Race: (Black) - attach certified copy of Identity document (Id) and certified company registration document/ CSD full detail report to show/substantiate ownership equity.
ii. Women: - attach certified copy of Identity Document (ID) and certified company registration document/ CSD full detail report to show/ substantiate percentage ownership equity.
iii. Disabled – attach medical certificate from a medical practitioner registered with the Health Professional Council of South Africa (HPCSA) confirming the disability.
iv. Youth – attach certified copy of Identity Document (ID) and certified company registration document/ CSD report to show/ substantiate percentage ownership equity.

5. SUB-CONTRACTING

5.1. Will any portion of the contract be sub-contracted?

(Tick applicable box)

Table with YES and NO columns and empty boxes for ticks.

5.1.1. If yes, indicate:

i) What percentage of the contract will be sub-contracted? [ ] %

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

iii) The total Specific Goal(s) points of the sub-contractor [ ]



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

(Tick applicable box)

Table with 4 columns: YES, YES, NO, NO

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2022:

Table with 3 columns: Designated Group, EME, QSE. Rows include Black people, Black people who are youth, Black people who are women, Black people with disabilities, Black people living in rural or underdeveloped areas or townships, Cooperative owned by black people, Black people who are military veterans, OR, Any EME, Any QSE.

6. DECLARATION WITH REGARD TO COMPANY/FIRM

6.1. Name of company/firm.....

6.2. Vat registration number .....

6.3. Company registration number: .....

6.4. TYPE OF COMPANY/ FIRM [tick applicable box]

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



SBD 6.1

6.5. DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

6.6. COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional Service Provider
- Other, (e.g transporter) .....
- .....

6.7. Total Number of years the company/firm has been in business

6.8. 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 goal(s) indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, 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 6.1, 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 goal(s) has 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 BIDDER(S)**

**SURNAME AND NAME:** .....

**DATE:** .....

**ADDRESS:** .....

.....

.....



## Annexure A

### GOVERNMENT PROCUREMENT

### GENERAL CONDITIONS OF CONTRACT

#### NOTES

The purpose of this document is to:

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

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

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



## **TABLE OF CLAUSES**

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices



## General Conditions of Contract

### 1. Definitions

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



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



1.23 “SCC” means the Special Conditions of Contract.

1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

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

## 2. Application

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

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

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

## 3. General

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

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

## 4. Standards

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

## 5. Use of contract documents information; Inspection.

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

5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC



clause 5.1 except for purposes of performing the contract.

- 5.3 Any document, other than the contract itself mentioned in GCC Clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

**6. Patent rights**

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

**7. Performance security**

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

**8. Inspections, tests and Analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.



- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## **9. Packing**

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



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

**10. Delivery and documents**

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

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

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental**

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

- (a) Performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) Furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) Performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) Training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

**14. Spare parts**

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



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

**15. Warranty**

- 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser’s specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier’s risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

**16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.



- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

**17. Prices**

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

**18. Contract amendments**

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

**19. Assignment**

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

**20. Subcontracts**

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

**21. Delays in the performance**

- 21.1 Delivery of the goods and performance of services shall be made by **supplier's** the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s).

As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's



point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

**22. Penalties**

- 22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

**23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
  - (a) If the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) If the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) If the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance



of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) The name and address of the supplier and / or person restricted by the purchaser;
- (ii) The date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public

sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.



- 24 **Anti-dumping countervailing duties and rights** 24.1 When, after the date of bid, provisional payments are required, or anti and dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional **payment** is no longer required or any such anti-dumping or **countervailing** right is abolished, or where the amount of such **provisional** payment or any such right is reduced, any such favourable **difference** shall on demand be paid forthwith by the contractor to the **State** or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or **services** which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.
- 25 **Force Majeure** 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.
- 26 **Termination for insolvency** 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent.
- In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
- 27 **Settlement of Disputes** 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence



with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

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

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

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

- (a) The parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) The purchaser shall pay the supplier any monies due the supplier.

**28 Limitation of liability**

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

- (a) The supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- (b) The aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

**29. Governing Language**

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

**30. Applicable**

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

**31. Notices**

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

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



date of posting of such notice.

**32. Taxes and duties**

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

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

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

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

33.1 The NIP Programme administered by the Department of Trade and Industry shall applicable to all contracts that are subject to the NIP obligation.

**34. Prohibition of Restrictive Practices**

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

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

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