

NATIONAL HERITAGE COUNCIL OF SOUTH AFRICA

BID DOCUMENT

INVITATION TO TENDER NO: NHC/01/05/2025

CLOSING DATE: 30 MAY 2025

TIME: 11:00AM

APPOINTMENT OF A PANEL OF SERVICE PROVIDERS TO RENDER LEGAL SERVICES FOR A PERIOD OF 36 MONTHS TO THE NATIONAL HERITAGE COUNCIL

Bidder Name: _____

Contact person: _____

Tel No: _____

Email address: _____

CSD Ref No: MAAA_____

1. BACKGROUND

The National Heritage Council (NHC) of South Africa is a public entity that is responsible for the preservation of the country's heritage. The important areas that the NHC focusses on are policy development for the sector to meet its transformation goals, public awareness and education, knowledge production in heritage subjects that were previously neglected, as well as making funding available to projects that place heritage as a socio-economic resource.

The NHC is a Schedule 3A public entity in terms of the Public Finance Management Act 1 of 1999 as amended by Act 29 of 1999, that came into existence through an amendment of the Cultural Laws Second Amendment Act, Act 69 of 2001, and was officially constituted through the National Heritage Council Act, Act 11 of 1999).

The NHC requires the service of a suitably qualified and experienced panel of legal service providers to carry out the legal functions of the NHC and enter into a service level agreement for the period of thirty-six (36) months.

The NHC does not guarantee exclusive procurement from the Legal Services company, nor any minimum order or quantity of services. The Legal Services company is expected to win over market share through the quality of services rendered and competitive prices.

2. PURPOSE

- 2.1. The National Heritage Council would like to invite suitable, qualified and competent Legal Practitioners to send proposals to be considered for inclusion on its panel of 5 Law Firms, as 'preferred service providers'. Preferred service providers imply that the selected firms will form a pool of legal practitioners who would not necessarily be the contracted service provider but will be requested to quote before their services are utilized.
- 2.2. The panel of Legal Practitioners will be required to render legal services within various Legal Disciplines indicated in the scope of services to NHC, on an ad hoc basis, for a period of three (3) years.
- 2.3. The NHC is under no obligation to obtain legal services during the period of contract from all the listed service providers.

3. TERMS AND CONDITIONS

- 3.1. This Request for Proposal (RFP), as compiled by NHC is being made available, on the same basis to all bidders and a bidder submitting a response thereto will be deemed to do so on the basis that they acknowledge and accept the terms and conditions set by NHC.
- 3.2. The successful bidder shall upon receipt of written notification of an award, be required to sign a Service Level Agreement for a period of 36 months which will form an integral part of the General Conditions of Contract. This SLA will serve as a tool to measure, monitor and assess the supplier's performance and ensures effective delivery of

service, quality and value-add to NHC. The scope of work shall form part of the agreement.

4. CONFIDENTIALITY

- 4.1. The Legal Practitioners will be required to sign confidentiality and/or indemnity agreements with NHC.
- 4.2. The bidder undertakes, at any time during the term of its appointment and after any termination or cancellation thereof, not to directly or indirectly disclose, or directly or indirectly use, whether for its own benefit or that of any other person any confidential information of NHC including that of or any information relating to its clients, customers, suppliers, donors, sponsors or agents.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1. All copyright and intellectual property rights that may result as consequences of the work to be performed will become the property of NHC.
- 5.2. Legal Practitioners must hand over all documents and information in any format, including copies thereof, that it received from NHC or that it had access to during the assignment immediately after completion of the assignments to NHC.
- 5.3. Legal Practitioners shall deliver to NHC, on completion of an assignment, any security devices, passwords or protective mechanisms to the soft versions of documents that were written and NHC will have the right to amend and change these without obligation whatsoever to the firms of attorneys upon completion of the assignment.
- 5.4. A due diligence review may be conducted at the sole discretion of NHC at any time prior to the awarding of the contract which may include but is not limited to conducting site visits at bidder's corporate offices.
- 5.5. Only legal practices established and registered in accordance with the provisions of the Legal Practice Act, 2014 (Act No. 28 of 2014 as amended) will be considered for this tender.
- 5.6. NHC does not guarantee that bidders will receive instructions in the event that they are appointed onto the NHC panel of Legal Practitioners.
- 5.7. All instructions to selected practitioners on the panel of Legal Practitioners shall be given in writing, by a duly authorized representative of NHC.
- 5.8. NHC promotes local production and content and for purposes of this RFP, NHC reserves the right to only consider South African Based Legal Practices for appointment under this RFP.
- 5.9. NHC reserves the right to interview panel members that would have been shortlisted for specific assignments.
- 5.10. NHC may, at its sole discretion award an assignment or any part thereof to more than

one panel member or to any legal firm not forming part of the panel of attorneys depending on the nature of the assignment.

- 5.11. Legal Practitioners may not cede or assign any part of their agreement with NHC nor subcontract any part of the work assigned to them without the prior written authorization of NHC.
- 5.12. Failure to comply with any conditions of this request for a proposal will invalidate respective tender proposal.
- 5.13. Regular monthly written feedback must be given to the Company Secretary and Chief Legal Counsel, or his/her nominee on all matters, including employment law matters, received from the NHC with the service provider, at no costs to the NHC.
- 5.14. When cases have been postponed at the request of the service provider acting on behalf of NHC owing to non-compliance with any procedural requirements, the service provider who was negligent in this regard will bear the costs of postponement, and this amount will not be recovered from NHC.
- 5.15. Successful bidders will be required to negotiate fees with advocates and inform NHC in writing before a brief is finalised. Service providers may not appoint Senior Counsel, unless written instructions to this effect have been received from NHC.
- 5.16. Payment of legal fees by NHC will be affected within 30 (thirty) days from the date of receipt of an acceptable invoice.
- 5.17. If any conflict of interest is discovered during a particular assignment, NHC reserves the right to summarily cancel the services agreement and demand that all information, documents and property of NHC be returned forthwith.
- 5.18. Where the panel falls short of other fundamental legal aspects, NHC reserves the right to appoint Legal Practitioners outside the appointed panel.
- 5.19. NHC shall be entitled, in its discretion, to remove a Legal Practitioner from the panel before the expiry of the three (3) years' period by written notice and recall all the files in the possession of the said firm of attorneys.
- 5.20. No entity may be involved, whether directly or indirectly, in more than one Bid in response to the RFP.

A failure to comply with this requirement may, within the sole discretion of NHC, result in disqualification of the relevant entity.

6. SCOPE OF WORK

The preferred service providers will be expected to render services on an ad hoc basis to NHC in the following service categories aligned to the core functions of Contract Administration and Legal Advisory Directorates within Legal Services:

6.1 SERVICE CATEGORIES

- | | |
|---|--------------------------|
| 6.1.1. Commercial Litigation & Dispute Resolution | <input type="checkbox"/> |
| 6.1.2. Employment and Labour Law | <input type="checkbox"/> |
| 6.1.3. Property Law, Conveyancing and Notarial | <input type="checkbox"/> |
| 6.1.4. Regulatory Compliance & Administrative Law | <input type="checkbox"/> |
| 6.1.5. Public Private Partnerships (PPP) | <input type="checkbox"/> |
| 6.1.6. Contract Law | <input type="checkbox"/> |
| 6.1.7. Procurement Law | <input type="checkbox"/> |
| 6.1.8. Competition Law | <input type="checkbox"/> |
| 6.1.9. Intellectual Property and Patents | <input type="checkbox"/> |
| 6.1.10. Public Law | <input type="checkbox"/> |

[Tick which items are applicable]

NOTE:

6.2 Bidders may submit proposals in respect of anyone or a combination of the 10 services categories with a minimum of 7 services. Please indicate which service categories under you are bidding for. Bidders must indicate in their proposals the relevant experience and exposure in relation to the selected service categories.

6.3 NHC intends to promote broad-based transformation and development of small and medium firms in this industry and as such will appoint Legal Practitioners in the following categories. The bidder must indicate the category relevant to it:

7. FIRM CATEGORY

7.1 DEFINITION

Category 1: Small Firms

Firms with an annual turnover of not more than R10 million

Category 2: Medium Firms

Firms with an annual turnover greater than R10 million but less than R50 million

Category 3: Large Firms

Firms with an annual turnover greater than R50 million

Note: Bidders must submit their latest financial statements as proof of their annual turnover as confirmed by an independent Accountant. Small businesses with no financial history must submit a letter from their independent accounting firm confirming their financial status and/or projections.

7.2 It is NHC's objective to promote the participation of historically disadvantaged professionals through its panel of Legal Practitioners. Bidders are requested to indicate in their proposals how they will assist NHC in achieving this objective.

7.3 It is understood that the legal fees are based on hourly rates and that budgets are

compiled once the appointed law firm has assessed the likely extent of the work and is subject to approval by management.

- 7.4 Financial proposals will be compared on the total estimated legal fees for the period of three years. However, legal firms are also required to submit a table of hourly rates as per the table below. Rates should be inclusive of overheads and VAT. If a particular category does not exist for the firm, it can be omitted.

8. RATES SCHEDULE

NHC will pay the following rates as maximum that can be charged by the legal practitioner:

Item	Professional Fees (Exclusive of VAT) R 0 to below max (excl. Disbursement)	Hourly rate (inclusive of VAT at 15%) R 0 to below max (excl. Disbursement)
Director/Partner	R 2,600,00/h	R 2,990,00/h
Associate	R 1,800,00/h	R 2,070,00/h
Candidate Attorney	R 950,00/h	R 1,092,00/h

NB: Travel rate per km in case of any travel that may take place during the appointment period must be included.

NHC will pay the rate per km as per the tariffs published by Department of Transport up to 1600 sedan. Log sheets will be required when submitting the invoice.

A breakdown of disbursements e.g. Copy charges, telephone calls, etc. must also be included. Proof will be required with each payment.

9. HANDOVER REPORTS AND SKILLS TRANSFER

The successful preferred suppliers will be required to ensure handover and transfer of skills to in-house legal advisors of NHC as and when they are issued with instructions/assignments by NHC.

10. EVALUATION PHASES

The evaluation of the bids will be conducted in line with the Preferential Procurement Regulations of 2022 as issued in terms of section 5 of the Preferential Procurement Policy Framework Act number 5 of 2000 (PPPFA) as follows:

- 10.1 Mandatory Compliance and compliance with the requirements stipulated in the Terms of Reference
- 10.2 Functionality Evaluation Criterion
- 10.3 Price and Specific Goals

11. MANDATORY REQUIREMENTS

11.1 Bidders will be evaluated according to compulsory and pre-qualification requirements which include submission of mandatory information and/or documentation. Bidders that fail to meet the pre-qualification requirements of the request will not be considered further for evaluation on technical requirements as per Phase 2.

11.2 Bidders are required to complete the table. Should the space be inadequate, bidders are required to copy the table and provide the information as an annexure and refer in this table to the specific page. Failure to complete the table may result that the proposal be regarded as a non-responsive bid.

No	Mandatory requirement	Comply (Yes / No)	Comment / Details to offer
11.2.1.	The bidder must be able to commit at least a minimum of (1) director to the NHC.		
11.2.2.	<p>The team must consist of the following minimum key personnel:</p> <ul style="list-style-type: none"> - At least a director (1) must be registered on CIPC under the Bidder's name. NHC reserves the right to verify the registration. - The quality assurance must be clearly stipulated and the person responsible for quality assurance must be specified in the team. - Director - Associate or Candidate legal practitioner 		
11.2.3.	The bidder must have at least 5 years' public sector legal services experience. Bidders must be able to demonstrate the legal services they have conducted and provide at least three (3) written references letters from the clients within the past five (5) years. References should attest to the provision of value-added services.		

No	Mandatory requirement	Comply (Yes / No)	Comment / Details to offer
11.2.4.	The bidder must disclose if they have rendered services to the NHC in the past two (2) years. This includes services through contract work allocations. The bidder must submit a letter from NHC confirming the work done.		
11.2.5.	Service providers shall include the CV's of professional legal staff of the <u>core management team proposed</u> for the engagement and the authorized representative submitting the proposal. Key information should include the position of the individual in the company, the role that the individual will have in the legal services, the number of years' experience, all tertiary and professional qualifications, professional memberships, experience, and degree of responsibility held in various assignments during the last three (3) years.		

12. ACCREDITED PROFESSIONAL MEMBERSHIP

- 12.1. It is Compulsory for the senior resources of the preferred service provider (i.e. directors, senior manager and specialists) to have the appropriate professional qualifications(s) enabling them to perform legal services. The minimum required membership to be considered is admission as Legal Practitioners in terms of Legal Practise Act 28 of 2014 with a valid Fidelity Fund Insurance.

Compulsory documentation that must be submitted with the bid proposal. Non-submission of the documents will result in disqualification.

Bidders are required to submit the following documentation as part of the pre-qualification and compulsory requirements:

No	Document required	Compulsory	Comment
a)	Invitation to Bid – SBD 1	Yes	Complete and sign the supplied document
b)	Pricing Schedule – SBD 3.3	Yes	Complete and sign the supplied document
c)	Declaration of Interest - SBD 4	Yes	Complete and sign the supplied document
d)	Preference Point Claim Form – SBD 6.1	Yes	Non-submission or failure to claim points will lead to a zero (0) score on preference points

No	Document required	Compulsory	Comment
e)	Registration on Central Supplier Database (SBD)	Yes	The bidder must be registered as a service provider on the Central Supplier Database (CSD). If the bidder is not registered, proceed to complete the registration of the company prior to submitting the proposal. Visit https://secure.csd.gov.za to obtain the vendor number. Proof of registration must be submitted.
f)	General conditions of Contract	Yes	Bidder must initial each page and sign on the last page
g)	Proof of registration with the Legal Practice Council and Fidelity Fund Insurance	Yes	Proof of registration must be submitted
h)	Company Registration (CIPC) documentation with a minimum of 1 listed Director as required.	Yes	CIPC documents must be provided. NHC reserves the right to verify contents of the document on the CIPC website for compliance.
i)	The minimum required membership to be considered is admission as Legal Practitioners in terms of Legal Practice Act 28 of 2014 with a valid Fidelity Fund Insurance.	Yes	Failure to submit proof will render the bid as non-responsive
j)	Appropriate professional qualifications(s) enabling them to perform legal services	Yes	Failure to submit proof will render the bid as non-responsive
k)	Signed letter of good standing from the Legal Practice Council.	Yes	

13. FUNCTIONALITY CRITERIA

Only bids that comply with the above criteria as per phase 1, will be considered for evaluation on functional criteria. The minimum qualification score for functionality / technical evaluation is 70%. All bids that fail to achieve the minimum qualification score on functionality shall not be considered for further evaluation on Price and strategic goals.

NB: No Briefing Session or any presentation will be held. All enquiries to be directed to procurement@nhc.org.za.

No	Functional / Technical Evaluation criteria	Weighted score	Points Allocated
13.1.	Legal services approach	30	
	<p>The bidder's approach to perform a legal service, including legal methodology processes.</p> <p>Bidder will be rated as follows:</p> <p>The methodology is clear and relevant to the selected practice areas (30 points).</p> <p>The methodology is clear and described or not relevant to the selected practice areas 20 points).</p> <p>The methodology is poorly described or not relevant to the selected practice areas 10 points).</p>		
13.2.	Legal services experience	30	
	<p>The bidder's legal services experience in the public sector, including specialized skills, expertise, and value-added services.</p> <p>To demonstrate knowledge and experience, the bidder must submit a minimum of three (3) client references where the bidder has successfully concluded legal services work within the public sector in terms of scope and complexity in the past three (3) years.</p> <p>The reference letters must be signed, clearly specify the date and scope of work conducted and be on the letterhead of the company for which the work was done.</p>		
	- At least three (3) or more (3) written references		30
	- Two (2)) written client references		20
	- One (1) written client references		10
	- None		0
13.3.	The qualification and experience of the professionals proposed to provide the services	30	
	<ul style="list-style-type: none"> Assessment of the condensed CVs of personnel who will be assigned to the NHC's account. (Qualification and experiences of proposed resources) 		

No	Functional / Technical Evaluation criteria	Weighted score	Points Allocated
	<ul style="list-style-type: none"> • For the proposed legal team, a detailed CV for each of the human resources allocated to the NHC must be attached to the bidder’s proposal. • Failure to submit the detailed CV will result in no points being allocated. • Points will be allocated based on joint experience. The professional proposed must have at least 10 years’ joint experience in the public sector and private sector. 		
	<ul style="list-style-type: none"> • The professionals proposed have jointly at least 10 years’ experience preferable in public sector or public and private sector legal services 		30
	<ul style="list-style-type: none"> • The professionals proposed have jointly at least 8 years’ experience preferable in public sector or public and private sector legal services 		20
	<ul style="list-style-type: none"> • The professionals proposed have jointly at least 6 years’ experience in public sector or public and private sector legal services 		15
	<ul style="list-style-type: none"> • The professionals proposed have jointly at least 4 years’ experience in public sector or public and private sector legal services 		10
	<ul style="list-style-type: none"> • The professionals proposed have jointly less than 2 years’ experience in public sector or public and private sector legal services 		5
13.4.	Professional membership	10	
	<ul style="list-style-type: none"> • Certified copies of proof of admittance in respect of each attorney within the firm to be submitted. • Certified copies will be accepted if NHC can insist on having the original submitted for verification. • All directors / partners / principals of the attorney’s firm must have the necessary Fidelity Fund Certificates. 		

No	Functional / Technical Evaluation criteria	Weighted score	Points Allocated
	<ul style="list-style-type: none"> • Certified copies of Fidelity Fund Certificates must be provided to NHC for the present year and thereafter annually or for the duration of the contract period. Points will be allocated as follows: <ul style="list-style-type: none"> - Submitted all the certified copies as indicated – 10 points - Submitted 3 of the certified copies as indicated – 7 points - Submitted 2 the certified copies as indicated – 5 points - Submitted less than 2 of the certified copies as indicated – 1 point 		
	Total	100	

Bidders who fail to obtain a minimum score of 70% on functionality will not be considered for further evaluation on price and preference points.

14. EVALUATION ON PRICE AND PREFERENCE POINTS AS PER THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

14.1. All quotations will be evaluated based on compliance with compulsory requirements, compliance with specifications / Terms of Reference and the 80/20 preference point system prescribed by the Preferential Procurement Policy Framework Act 5 of 2000 and its Regulations. The lowest acceptable price will score 80 points; the 20 points according to the specific goals will be allocated as follows:

No	Price and Strategic Goals Evaluation Criteria	Weight	Points allocated
14.1.1.	Price		80
	Bidders must submit a comprehensive and detailed line-item (VAT inclusive) budget, as well as proposed hours and rates. (Pricing schedule in paragraph 8 is applicable).		
14.1.2.	Preference points		20
	The promotion of SMME's	5	
	The promotion of woman owned enterprises <ul style="list-style-type: none"> - 100% women owned – 5 points - 50% – 99% women owned – 2.5 points - 1% - 49% women owned - 1 point - Not women owned – 0 points 	5	
	The promotion of youth owned enterprises <ul style="list-style-type: none"> - 100% youth owned – 5 points - 50% – 99% youth owned – 2.5 points 	5	

No	Price and Strategic Goals Evaluation Criteria	Weight	Points allocated
	- 1% - 49% youth owned - 1 point - Not youth owned – 0 points		
	The promotion of people with disabilities - 100% youth owned – 5 points - 50% – 99% youth owned – 2.5 points - 1% - 49% youth owned - 1 point Not youth owned – 0 points	5	
	Total achievable score		100

IMPORTANT:

Bidders that failed to submit the proposal as per the provided table, will not be considered and the bid offer will be regarded as a non-responsive bid.

14.2. The estimated hours must be indicated and the applicable cost.

14.3. The NHC will only pay for actual hours worked. Timesheets and supporting documentation must be submitted.

15. SERVICE LEVEL AGREEMENT

The successful service provider/s will be required to sign a service level agreement for the duration of the contract. No service may be rendered unless an official purchase order was issued and/or the Service Legal Agreement has been signed.

16. BID SUBMISSION

The completed bid submissions reflecting the bid number and the name of the bidder must be submitted on the eTender portal at www.etenders.gov.za or via email to tenders@nhc.org.za. The email address is an unattended email used for the submission of bid proposals only. No other submissions will be accepted.

Emailed bid proposals must include in the subject line, the bid number and the bid name / project name applicable to this bid document. The name of the bidder must appear in the email address as well as the contact information. NHC reserves the right to communicate with the bidder via email if the attached document(s) cannot be opened.

Enquiries must be directed via email to s.skenjana@nhc.org.za, cc procurement@nhc.org.za with the heading that includes the bid number and bid name in the subject line as well as the bidder name in the email.

Bid proposals must be submitted on the eTender portal or via email as stated above not later than the following date and time:

Closing date: 30 MAY 2025

Time: 11:00am

17. LATE SUBMISSION

Bid documents submitted after the closing time and date, will not be considered. **No submissions sent by hand or facsimile will be accepted.** Bid proposals must reach the NHC via eTender or email by no later than the indicated date and time.

Late bid proposals will not be accepted.

18. LEGISLATIVE FRAMEWORK OF THE BID

The following legislation, but not limited to, the following must be adhered to:

- 18.1 The Constitution of the Republic of South Africa;
- 18.2 Public Finance Management Act, 1999 (Act no 1 of 1999) as amended by Act 29 of 1999 (PFMA);
- 18.3 The Treasury Regulations (TR) issued in terms of the PFMA;
- 18.4 The South African Legal Practice Act, Act 28 of 2014;

19. COMPLIANCE WITH GENERAL CONDITIONS OF CONTRACT

No alteration, variation or amendment of the Contract (of which this bid represents the offer) shall be permitted unless otherwise agreed to in writing. Should the prospective bidder, in the case of non-compliance, wish to make any amendments to the conditions stipulated by the NHC in this bid, which shall form the offer element of a Contract and if it is accepted by the NHC, then such proposed amendments shall be clearly stipulated by the prospective bidder and where possible, stating the increase or decrease in the cost involved by such proposals. The NHC reserves the right to reject such submissions.

Misrepresentation of facts will result in disqualification and cancellation of the Contract.

20. NATIONAL HERITAGE COUCIL LIABILITY

The NHC does not bind itself to accept the lowest or any bid proposal, nor to assign any reason for the rejection of a bid proposal, nor shall it be responsible for or pay expenses or losses that may be incurred by the prospective bidder in the preparation and delivery of its submission.

21. SUBMISSION ACCEPTANCE

No submission shall be deemed to have been accepted, unless and until a formal appointment letter is issued to the successful bidders. Submissions shall remain open for acceptance by the NHC for a period of 90 (ninety) days from the date on which they are returnable in terms of this bid.

22. TERMS OF ENGAGEMENT

- 22.1 The successful bidder shall not take more than one (1) month to deliver from date of bid award unless otherwise indicated and agreed between the bidder and the NHC.
- 22.2 The bidder shall be available for consultation with the NHC representative.
- 22.3 The Bidder shall manage confidential all data, information and insights gained in execution of work for the NHC.
- 22.4 NHC retains the right to negotiate with the successful bidder for partial execution of the proposal.
- 22.5 NHC retains the right to enter into a non-exclusive agreement with bidders that do not restrict the procurement of goods and services from other service providers.
- 22.6 NHC retains the right to require the bidder to obtain permission in writing from the NHC prior to replacement of individuals proposed for execution of the bid.
- 22.7 The proposals presented are to be as comprehensive as possible and NHC reserves the right to request the Bidder to provide more details.
- 22.8 Bidders shall adhere to the conditions stipulated in the General Conditions of Contract as prescribed by the National Treasury.
- 22.9 Bidders must ensure that the complete bid document is submitted with all additional required information and any other documents that the bidder wishes to supply to substantiate or clarify specific aspects in the proposal.

23. CONTENTS OF THE SUBMISSION

The bid proposal must be structured in accordance with the requirements stipulated in this bid document, following the guideline as set below:

- 23.1 Company information, track record and relevant documentation. The bid proposal must include all relevant information about the bidder, which is thought appropriate to assist the NHC to assess its capabilities, capacity, outputs, value adding abilities, competitive advantage, etc.
- 23.2 Expertise and capacity of the bidder
- 23.3 Accredited professional membership
- 23.4 Quality control
- 23.5 Resource planning
- 23.6 Core management team proposed
- 23.7 The breakdown of the complete terms of reference with associated cost.
- 23.8 All Standard Bidding Documents (SBD) completed and signed.

24. AMPLIFICATION OF SUBMISSIONS

The NHC may, after the opening of submissions, call on the prospective bidder to amplify in writing any matter which is not clear in the prospective bidder's submission and such amplification shall form part of the original submission. In the event of the prospective bidder failing to supply such information, the submission will be liable to rejection.

25. COST OF PROPOSAL

Bidders shall bear the cost associated with the preparation and submission of their proposals, the NHC will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bid.

26. BID DOCUMENTS

This document in its entirety serves as the complete bid document. Proposals offering only part of the requirements will be rejected. The bidder is expected to examine all corresponding instructions, forms, terms and specifications contained in this document. Failure to comply with these documents will be at the Bidder's risk and may affect the evaluation of their proposal.

27. DOCUMENTS COMPRISING THE PROPOSAL

In preparing the technical and price components of the submissions, all references to descriptive material and brochures should be included in the appropriate response paragraph, although material documents themselves may be provided as annexes to the proposal / response. Bidders are requested to focus on the provision of relevant information and to limit the amount of marketing and "boilerplate" material. The successful bidder's proposal may be incorporated in whole or in part in the final contract. Any information that the Bidder considers propriety should be marked as such.

28. INFORMATION

Information that the bidder considers propriety, if any, should be clearly marked "propriety" next to the relevant part of the text and it will be treated as such accordingly.

29. PERIOD OF VALIDITY

Proposals shall remain valid for hundred-and-twenty (120) days after the date of proposal submission. A proposal valid for a shorter period may be rejected by the NHC on the grounds that it is non-responsive.

In exceptional circumstances, the NHC may solicit the Bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing.

30. INTERLINEATIONS

A proposal shall contain no interlineations, erasures, or overwriting except, as necessary to correct errors made by the bidder, in which case such corrections shall be initiated by the person or persons signing the proposal.

31. PAYMENTS

The successful bidder shall be paid upon submission of an invoice for each transaction of satisfactory work detailed in the scope.

32. DUE DILIGENCE EXERCISE

The NHC reserves the right to perform due diligence exercise for the purpose of appointing a credible bidder.

33. CANCELLATION OF THE BID

The NHC reserves the right to cancel the bid at any time of the process should be recommended bidders fail to meet the requirements of the bid.

34. SITE INSPECTION

The NHC reserves the right to conduct a site inspection to the premises of the recommended bidder and/or the recommended bidder's clients at any given time.

35. SUB-CONTRACTING / JOINT VENTURE BUSINESS

Bidders must ensure that both / all bidders submit their tax compliant pin numbers, standard bidding documents and Central Supplier Database report.

The bid must be clear where it is submission by an individual company or Joint Venture or where sub-contracting is done. The agreements must be included and be specific to this bid document. The following, but not limited to, must be included:

- 35.1. Name of the companies in the Joint Venture
- 35.2. Tender number and tender description
- 35.3. Purpose of the agreement
- 35.4. Names and addresses of members
- 35.5. Roles and responsibilities / Duties and obligations in terms of this bid for each party
- 35.6. Percentage share of the work performed
- 35.7. Start and ending date of the joint agreement
- 35.8. Resources allocated to this project by each party
- 35.9. Voting and formal meeting requirements
- 35.10. Profit or loss allocation

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE NATIONAL HERITAGE COUNCIL					
BID NUMBER:	NHC/01/05/2025	CLOSING DATE:	2025-05-30	CLOSING TIME:	11:00am
DESCRIPTION	APPOINTMENT OF A PANEL OF SERVICE PROVIDERS TO RENDER LEGAL SERVICES FOR A PERIOD OF 36 MONTHS TO THE NATIONAL HERITAGE COUNCIL				
BID RESPONSE DOCUMENTS MAY BE SUBMITTED TO THE FOLLOWING ONLINE MEDIUMS					
eTender portal www.etender.gov.za					
Email tenders@nhc.org.za					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Mr. Sipehelele Skenjana		CONTACT PERSON	Mr. Sonti Pudikabekwa	
TELEPHONE NUMBER	012 748-3910		TELEPHONE NUMBER	012 748-3910	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	s.skenjana@nhc.org.za procurement@nhc.org.za		E-MAIL ADDRESS	s.pudikabekwa@nhc.org.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELL PHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
--	--	---	--

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA? YES NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? YES NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES NO

IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.

PART B
TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

(Proof of authority must be submitted e.g. company resolution)

DATE:

PRICING SCHEDULE

(Professional Services)

NAME OF BIDDER:	BID NO.: <u>NHC/01/05/2025</u>
CLOSING TIME 11:00am	CLOSING DATE: 2025-05-30

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

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)	
1.	The accompanying information must be used for the formulation of proposals.		
2.	Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project. R.....		
3.	PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)		
4.	PERSON AND POSITION	HOURLY RATE	DAILY RATE
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
5.	PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT		
	-----	R-----	----- days
	-----	R-----	----- days
	-----	R-----	----- days
	-----	R-----	----- days

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

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

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

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

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

6. Period required for commencement with project after Acceptance of bid

7. Estimated man-days for completion of project

8. Are the rates quoted firm for the full period of contract? *YES/NO

9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.

.....

***[DELETE IF NOT APPLICABLE]**

Any enquiries regarding bidding procedures may be directed to the –

Bid document: NHC/01/05/2025 – Panel of Legal services

Tel: 012-748-3910

Or for technical information –

Mr. Sonti Pudikabekwa

E-mail: s.pudikabekwa@nhc.org.za cc procurement@nhc.org.za

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:

.....

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

.....

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

2.3.1 If so, furnish particulars:

.....
.....

3. **DECLARATION**

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

- 1.1 I have read and I understand the contents of this disclosure;
- 1.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 1.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 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.

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.

- 1.7 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

DECLARATION OF INTEREST

In order to assess the conflict of interest that may arise as a consequence of your potential future employment / contractual agreement by the National Heritage Council (NHC), you are required to disclose all interest, direct or indirect that may have the potential to undermine your impartiality as an employee / service provider of the NHC and/or impact on the interests of the NHC. These include interests which may be actual or potential, financial or non-financial, direct or indirect interest of a candidate / service provider, or of a close family member or related party of the candidate / service provider, in any business entity, undertaking or investor as a shareholder, director, associate, member, advisor / consultant, or in any other capacity.

Name and Surname:		Position Applied for and Division or RFQ / Bid No and Name	
Nationality:		Identify Number:	
Current Occupation:		Current Employer:	

1.

EXECUTIVE AND NON-EXECUTIVE DIRECTORSHIPS AND PARTNERSHIPS

Name of Company	Company Reg No	Directorship Type	Nature of Business	Address	% of Interest	Remuneration ✧	Period

2.

CURRENT COMPANY NOMINEE DIRECTORSHIP

Title / Business Unit	Name of Entity	Date Commenced	No. of Meetings	Remuneration payable / Received ✧	Comments

3.

SHARES AND OTHER BUSINESS / FINANCIAL INTEREST (including JV, SPV, etc.)

Name of Company	Details	Date	Nominal Value

4.

ALL REMUNERATED AND NON-REMUNERATED WORK OUTSIDE OF CURRENT EMPLOYMENT

Details of Interest	Sector	Remuneration ✧

Details of Interest	Sector	Remuneration ✦

5.

BUSINESS INTEREST WITH NHC GROUP CLIENTS

Name of Business	Details of Business Relationship including financial implications	Date

6.

DIRECT OR INDIRECT RELATIONSHIP WITH SERVICE PROVIDERS OF NHC (Incl. Associates that are vendors to the NHC)

Company Name	Details of Relationship	Date Commenced

7.

ANY OTHER FINANCIAL INTEREST

Details	Date Commenced

Details	Date Commenced

8.

DIRECTORSHIPS RESIGNED IN THE:

i) PAST 12 MONTHS

Company Name	Company Reg	Past 12 months

ii) PAST 5 YEARS

Company Name	Company Reg	Past 5 years

Company Name	Company Reg	Past 5 years

9.

LAND AND PROPERTY – BUSINESS RELATED ONLY

Details	Land Size	Land Area	Value

10.

ARE YOU A POLITICALLY EXPOSED PERSON? YES NO

ARE YOU A CLOSE FAMILY TO A POLICITICALLY EXPOSED PERSON? YES NO

ARE YOU CLOSELY ASSOCIATED TO A POLITICALLY EXPOSED PERSON? YES NO

“Politically Exposed Person” – According to the Financial Intelligence Centre (FIC) a politically exposed person (PEP) is the term used for an individual who is or has in the past been entrusted with prominent public functions in a particular country.

“**Close Family**” – are defined as individuals who are related to the PEP either directly (consanguinity) or through marriage or similar (civil) forms of partnership.

“**Close Associated**” – are individuals who are closely connected to a PEP, either socially or professionally.

Name and Surname of PEP	Organisation Name where PEP is currently employed	Details of Relationship (e.g. PEP, Close Family or Closely Associated with the PEP)	Example of Relationship (e.g. Mother, Father, Aunt, etc.)	Date Commenced	Status (Active or Inactive)

11.

ARE YOU OR ANY OF THE DIRECTORS DEFENDANTS IN ANY COURT OF LAW? YES NO

If Yes, state the nature of the case: _____

DO YOU OR THE COMPANY HAVE ANY PENDING LITIGATION CASES? YES NO

If Yes, state the nature of the case: _____

WERE YOU OR ANY OF THE DIRECTORS DECLARED INSOLVENT / TECHNICAL INSOLVENT? YES NO

ARE YOU OR ANY OF THE DIRECTORS A GOING CONCERN? YES NO

HAVE YOU OR ANY OF THE DIRECTORS FILED FOR VOLUNTARY / FORCED LIQUIDATION YES NO

Name and Surname	Company Name (Where applicable)	Voluntary / Forced Liquidation	Date Commenced

I certify that all information is accurate and correct to the best of my knowledge. I further acknowledge that providing inaccurate, incorrect or misrepresented information will lead to me not being considered for any position / contract in the NHC.

You authorise the NHC to make enquiries to confirm any information provided by you (the candidate / service provider) including, but not limited to, to credit information, tertiary qualifications, employment references, identity verification, driver's license verification, fraud prevention and Companies and Intellectual Property Commission (CIPC) related data and that the NHC may obtain such information from any agency when assessing your application, RFQ or Bid proposal.

Date:

Signature:

This document must be signed and submitted together with your bid

THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

INTRODUCTION

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works or services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

1. PILLARS OF THE PROGRAMME

- 1.1. The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation. The threshold of US\$ 10 million can be reached as follows:
- (a) Any single contract with imported content exceeding US\$ 10 million.
or
 - (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$ 3 million awarded to one seller over a 2-year period which in total exceeds US\$ 10 million.
or
 - (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$ 10 million.
or
 - (d) Multiple suppliers of the goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to be the same government institution, which in total over two (2) year period exceeds US\$ 10 million.
- 1.2. The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30% of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a pro-rata basis.
- 1.3. To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.
- 1.4. A period of seven years has been identified at the time frame within which to discharge the obligation.

2. REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

- 2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in exceed of **R 10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.
- 2.2 The purpose for reporting details of contracts in excess of the amount of R 10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1 (b) to 1.1 (d) above.

3. BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

- 3.1. Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.
- 3.2. In order to accommodate multiple contracts for the same goods, works or services, renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in exceed of R 10 million (ten million Rands), to contact and furnish the DTI with the following information:
 - Bid / contract number
 - Description of the goods, works or services
 - Date on which the contract was accepted
 - Name, address and contact details of the government institution
 - Value of the contract
 - Imported content of the contract, if possible.
- 3.3. The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr. Elias Malapane within five (5) working days after award of the contract. Mr. Malapane may be contacted on telephone (012) 394-1401, facsimile (012) 394-2401 or email at Elias@thedti.gov.za for further details about the programme.

4. PROCESS TO SATISFY THE NIP OBLIGATION

- 4.1. Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:
 - a. The contractor and the DTI will determine the NIP obligation;
 - b. The contractor and the DTI will sign the NIP obligation agreement;
 - c. The contractor will submit a performance guarantee to the DTI;
 - d. The contractor will submit a business concept for consideration and approval by the DTI;
 - e. Upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
 - f. The contractor will implement the business plans; and
 - g. The contractor will submit bi-annual progress reports on approved plans to the DTI.

- 4.2. The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid Number: NHC/01/05/2025	Closing date: 2025-05-30
Name of Bidder: _____	
Postal address: _____ _____	
Signature: _____	Name (in print): _____
Date: _____	

**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

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the **80/20** preference point system.
- b) The **80/20 preference point system** will be applicable in this tender. The lowest / highest 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:

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

Where

P_s = Points scored for price of tender under consideration

P_t = Price of tender under consideration

P_{min} = 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:

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

Where

- P_s = Points scored for price of tender under consideration
- P_t = Price of tender under consideration
- P_{max} = 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)
B-BBEE level of contribution - Level 1 – 5 points - Level 2 – 4 points - Level 3 – 3 points - Level 4 – 2 points - Level 5 to 8 – 1 point - Level 9 – 0 points	5	
The promotion of SMME's	5	
The promotion of woman owned enterprises: - 100% women owned – 5 points - 50 – 99% women owned – 2.5 points - 1 – 49% women owned – 1 points - None – 0 points	5	
The promotion of youth owned enterprises: - 100% youth owned – 5 points - 50 – 99% youth owned – 2.5 points - 1 – 49% youth owned – 1 point - None – 0 points	5	

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:

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT:

GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

JULY 2010

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

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1.	Definitions	<p>The following terms shall be interpreted as indicated:</p> <ol style="list-style-type: none">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 goodson 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
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		<p>prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.</p> <p>1.14. “GCC” means the General Conditions of Contract.</p> <p>1.15. “Goods” means all of the equipment, machinery, and/or other materialsthat the supplier is required to supply to the purchaser under the contract.</p> <p>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 bemanufactured.</p> <p>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.</p> <p>1.18. “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.</p> <p>1.19. “Order” means an official written order issued for the supply of goods or works or the rendering of a service.</p> <p>1.20. “Project site,” where applicable, means the place indicated in bidding documents.</p> <p>1.21. “Purchaser” means the organization purchasing the goods.</p> <p>1.22. “Republic” means the Republic of South Africa.</p> <p>1.23. “SCC” means the Special Conditions of Contract.</p> <p>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.</p> <p>1.25. “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.</p>
2.	Application	<p>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.</p> <p>2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.</p> <p>2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.</p>
3.	General	<p>4.1. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and</p>

		<p>submission of a bid. Where applicable a non-refundable fee for documents may be charged.</p> <p>4.2. 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.</p>
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	<p>5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.</p> <p>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.</p> <p>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.</p> <p>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.</p>
6.	Patent rights	6.1.
7.	Performance security	<p>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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> b) 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 c) a cashier's or certified cheque. <p>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.</p>

<p>8.</p>	<p>Inspections, tests and analyses</p>	<p>8.1. All pre-bidding testing will be for the account of the bidder.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>8.7. Any contract supplies may on or after delivery be inspected, tested or analysed 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.</p> <p>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.</p>
<p>9.</p>	<p>Packing</p>	<p>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.</p> <p>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</p>

		requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.
10.	Delivery and documents	<p>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.</p> <p>10.2. Documents to be submitted by the supplier are specified in SCC.</p>
11.	Insurance	11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
12.	Transportation	12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
13.	Incidental services	<p>13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:</p> <ul style="list-style-type: none"> 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. <p>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.</p>
14.	Spare parts	<p>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:</p> <ul style="list-style-type: none"> 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: <ul style="list-style-type: none"> 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

		<p>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.</p> <p>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.</p> <p>15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.</p> <p>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.</p> <p>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.</p>
16.	Payment	<p>16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.</p> <p>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.</p> <p>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.</p> <p>16.4 Payment will be made in Rand unless otherwise stipulated in the SCC.</p>
17.	Prices	<p>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.</p>
18.	Contract amendments	<p>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.</p>
19.	Assignment	<p>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.</p>
20.	Subcontracts	<p>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.</p>
21.	Delays in the supplier's performance	<p>21.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.</p>

		<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p>
<p>22.</p>	<p>Penalties</p>	<p>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.</p>
<p>23.</p>	<p>Termination for default</p>	<p>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:</p> <ul style="list-style-type: none"> 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.

		<p>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.</p> <p>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.</p> <p>23.4. If a purchaser intends imposing a restriction on a supplier of 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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none"> a) the name and address of the supplier and / or person restricted by the purchaser; b) the date of commencement of the restriction c) the period of restriction; and d) the reasons for the restriction. <p>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.</p>
24.	Anti-dumping and countervailing duties and rights	<p>24.1. When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount</p>

		<p>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.</p>
25.	Force Majeure	<p>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.</p> <p>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.</p>
26.	Termination for insolvency	<p>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.</p>
27.	Settlement of Disputes	<p>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.</p> <p>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.</p> <p>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.</p> <p>27.4. Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.</p> <p>27.5. Notwithstanding any reference to mediation and/or court proceedings herein,</p> <ul style="list-style-type: none"> 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 to the supplier.
28.	Limitation of liability	<p>28.1. Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6:</p> <ul style="list-style-type: none"> 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

		<p>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</p> <p>b) 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.</p>
29.	Governing language	29.1. The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
30.	Applicable law	30.1. The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
31.	Notices	<p>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.</p> <p>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.</p>
32.	Taxes and duties	<p>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.</p> <p>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.</p> <p>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.</p>
33.	National Industrial Participation (NIP) Programme	33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
34.	Prohibition of Restrictive practices	<p>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).</p> <p>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.</p> <p>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</p>

		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.
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