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MPUMALANGA PROVINCIAL GOVERNMENT



**DEPARTMENT OF PUBLIC WORKS, ROADS AND
TRANSPORT**

BID NUMBER: PWRT/2575/24/MP

**OFFICE ACCOMMODATION FOR THE
DEPARTMENT OF EDUCATION AT
BARBERTON IN EHLANZENI DISTRICT
FOR A PERIOD OF FIVE (5) YEARS**

ISSUED BY:

Department of Public Works, Roads and Transport
Private Bag X11310
Mbombela
1200

NAME OF BIDDER:

TOTAL BID PRICE (all inclusive) :.....

(Also in words):

.....

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF PUBLIC WORKS, ROADS AND TRANSPORT					
BID NUMBER:	PWRT/2575/24/MP	CLOSING DATE:	13 JUNE 2024	CLOSING TIME:	12H00
DESCRIPTION	OFFICE ACCOMMODATION FOR THE DEPARTMENT OF EDUCATION AT BARBERTON IN EHLANZENI DISTRICT FOR A PERIOD OF FIVE (5) YEARS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
MBOMBELA , Riverside Government Complex, Building No 9, Government Boulevard, Mbombela, 1200, PIET RETIEF , No. 11 Measroch Street, Piet Retief Office, KWAMHLANGA , KwaMhlanga Government Complex, Department of Finance, Building No. 12, Computer Centre EVANDER , 10 Cornell Road (previously occupied by Evander Home Affairs Offices), Evander, 2280, BUSHBUCKRIDGE , Bushbuckridge Advice Centre, Department of Finance, Protea building (old Telkom building), MIDDELBURG , Department of Public Works, Cnr. Lillian Ngoyi and Dr Beyers Naudé Streets – Old TPA Building, Upper ground floor, Office numbers A20, 21 and 25, MALELANE , 24 Air Street, Malelane, ELUKWATINI , Elukwatini Sub Regional offices, Office numbers A49 and A50 (opposite Elukwatini Community Hall) Stand number 12 Extension A, Elukwatini 1192. SIYABUSWA Old Parliament Building, Building No.1, Job Skhosana Street, Siyabuswa 0472					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Mr. RF Nkambule		CONTACT PERSON	Ms. PS Ramodiba	
TELEPHONE NUMBER	013 766 8553		TELEPHONE NUMBER	013 766 8631	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	rnkambule@mpg.gov.za		E-MAIL ADDRESS	psramodiba@mpg.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

**PART B
TERMS AND CONDITIONS FOR BIDDING**

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

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

SIGNATURE OF BIDDER:

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

DATE:

1. Calling for bidders for the provision of lettable office Accommodation:

- Location : Barberton
- Tenants : Department of Education
- Lettable area : 186m²
- Common Area: 44.64m²
- Gross Lettable and Common Area: 230.64m²
- Period : Five years.

2. BID DOCUMENTS AND COMPULSORY RETURNABLE SCHEDULES.

**NOTE: FAILURE TO SUBMIT THE FOLLOWING DOCUMENTS THE BID WILL BE DISQUALIFIED:
(CERTIFIED COPIES OR ORIGINALS)**

PART I : SBD Tender documents (SBD 1, SBD 4, SBD 6.1).

PART II : General requirements

PART III : Specific requirements

PART IV : Detailed pricing proposal and Proxy form must be completed in full in the event the Bidder is not the owner of the building with proof of ownership from the landlord.

PART V : Submit property proof of ownership (Title deed/Deed of transfer/Permission to occupy if the premises/property are in the Tribal land).

- Service Providers must be registered on Central Supplier Database and compliant with tax issues.
- There will be a compulsory briefing session and failure to attend will result bid disqualified.
- SARS security pin.
- Business Certificate.
- Certified ID copies of company's Directors.

3. EVALUATION PROCESS

3.1 EVALUATION CRITERIA

The BEC members shall individually evaluate the responses received and /or presentations made against the following criteria. The applicable points to be applied for functionality evaluation are as follows

FUNCTIONALITY

SUITABILITY	<p>Grade A (Generally not older than 10 years unless renovated, high quality finishes, adequate onsite parking, air conditioning) =40</p> <p>Grade B (Generally 10 to 20 years older unless renovated, accommodation to modern standard, air conditioning, onsite parking) =30</p> <p>Grade C (Generally 20 to 30 years old unless renovated in fairly good condition although finishes are not up to modern standard, may have some onsite parking, unlikely to be centrally air conditioning) =25</p>	40 points
	<p>Compliance to green building standards (Attached certificate from Green Building Council of South Africa):</p> <p>No grading = 0</p> <p>One star=5</p> <p>Two stars=10</p> <p>Three to four stars=15</p>	15 points
ACCESSIBILITY	<p>Accessible to Public Transport = 15</p> <p>Accessible to Public Parking= 10</p> <p>Accessibility in terms of OHSACT:</p> <ul style="list-style-type: none"> • Ramp, lift (in case of the building has more than one story), parking and ablutions =10 • Accessibility to person with disability =10 	45 points
TOTAL		100 points

Criteria and minimum threshold of **60** points. All bidders who scored the minimum threshold of **60** points or above shall be evaluated further for Price and Preference points. Bids/proposals that score less than the minimum threshold of **60** points for functionality shall not be evaluated further.

4. EVALUATION METHODOLOGY

The Bid Evaluation Committee (BEC) on the following basis shall conduct the evaluation as follows:

Functionality	100
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Points for Price and Specific goals

Price	80
Specific Goals	20

4.1 PRICE

Only qualifying bids shall be evaluated further in terms of the 80/20 preference points system, 80 points will be only for the price

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

80/20

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

Where

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

P_{\min} = Comparative price of lowest acceptable bid

4.2 SPECIFIC GOALS

A maximum of **20** points shall be awarded to a bidder(s) in respect of Specific goals as contemplated in the Preferential Procurement Policy Framework Act 2000 (PPPFA) Preferential Regulations 2022, Regulations were gazetted on 4 November 2022 (No. 47552) Vol 689 and effective from 16 January 2023. This bid will be evaluated as per the above mentioned regulations. Bidders are required to submit evidence by which Preference points can be claimed based on the Specific goals determined by the Department. In case of a Joint Venture, the average score of the joint companies will be considered for determining preference point score.

Specific goals	Maximum Preference Points Allocated
HDI	10
Youth	4
Women	4
Disabled persons	2
TOTAL	20 Points

PART II

5. GENERAL REQUIREMENTS.

- Bids must be submitted in South African Rands, on a fixed price basis, including VAT (If the Service Provider is a VAT Vendor or VAT Registered) with escalation per annum.
- The Department is not bound to accept any of the proposals submitted.
- The Department reserves the right to call for Best and Final Offers from short-listed bidders before final selection.
- The Department reserves the right to hold interviews with short-listed bidder/s before final selection.
- The Department reserves the right to negotiate price with preferred bidder.
- The lowest or any bid will not necessarily be accepted and the Department reserves the right to accept the whole or part of any bid.
- Total price must include gardening services, common areas and installation partitioning according to the Departmental specification.
- Common areas in the surrounding of the property, including the hallway, passages, parking areas, entrances, exits, loading areas, landscape areas, interior and exterior stairways, lift, toilets, yards, sidewalks, driveways and ramps.

6. UPON AWARD THE BUILDING MUST COMPLY WITH THE FOLLOWING:

- The building must have standby generator as follows:

SIZE OF THE BUILDING	SIZE OF THE GENERATOR
201-1000m ²	50KVA
1001-2000m ²	100KVA
2001-3000m ²	150KVA
3001-4000m ²	200KVA
4001-5000m ²	250KVA

- Patch room and Server room with all necessary requirements as per the following IT specification:

Detailed specification for IT requirements on office accommodation

- a) 2 network points per official (one voice, one data)
- b) Cat 6e reticulation cable
- c) 1 POE managed switch (preferable HP or Aruba) for voice
- d) 1 POE managed switch (preferable HP or Aruba) for data
- e) Full cabinet with fan and redundant power supply
- f) Patch panel and patch leads
- g) 1.2m fly leads for all officials
- h) Test and label all points
- i) 4 core fibre for interconnections
- j) Air conditioned server room
- k) Fire extinguisher in the server room
- l) Built with wall bricks

- The building must comply with OHS Act e.g. Fire extinguishers etc.
- The building must have a lift if it is more than one floor.
- The building must have access control in form of bio metrics or access cards.
- One Hydro boiler per floor for hot water dispenser (If it is more than one floor).
- Each toilet must have hygiene or sanitary equipment's.
- All offices and boardrooms must be fitted with ceramic tiles, air conditioning, blinds and double power skirting's.
- All offices and boardrooms must be fitted with telephone connections and power plugs (white and red).
- The building must have a facility for security personnel with Guard house and toilet.
- The building must be fitted with 5000 litres tank of running water and have a water pump.
- The strong room must be fitted with steel strong room door and the room must be built with brick walls.
- All the fittings or partitioning shall be done within eight weeks from the day of appointment of Service Provider.
- The bidder must provide electrical compliance certificate and occupational certificate.
- Prospective bidders must sign the standard Departmental lease agreement.
- The bidder must provide a proof of the maintenance plan with regard to his/her responsibilities.
- The landlord will be responsible for filling of diesel/petrol in the generator and be reimbursed by the User Department.
- External doors and windows must have burglar proof
- The building must be secured with two meters' height concrete wall or palisade and functional electric fence.
- The gate must be fitted with functional gate motor.

6.1 The bidder will be responsible of the following at his/her own costs:

- Maintenance: Internal and external maintenance
- Gardening and Air-conditioning maintenance
- Lifts maintenance (if Applicable).
- Floor covering: Normal wear and Tear
- Fire equipment systems and standby generator maintenance
- Insurance of the building, Municipal rates and taxes and its increases.
- Pest control of the building for the entire period.
- Maintenance of the gate motor.

PART III

7. SPECIFIC REQUIREMENTS:

PWRT No. : _____
Occupant : Department of Education
Location : Barberton
Intended Lease period : Five years
Lettable area : 186m²
Common Area : 44.64m²
Lettable area and Circulation area: 230.64m²

DESCRIPTION	NUMBER OF OFFICES PER SQUARE METERS	NUMBER OF STAFF	TOTAL NO. OF LETTABLE SQUARE METERS
1.Closed office	01X20	01	20
2.Closed office	01X12	01	12
3.Closed offices	02X08	02	16
4.Boardroom	01X40	01	40
5.Store room with shelves	01X12		12
6.Strong room with shelves	01X40		40
7.Server Room	01X08		08
8.Photocopier	01X16		16
9. Kitchen	01X08		08
10. Cleaners room	01X06		06
11. Reception	01X08		08
12. Power plugs	All Offices		
13. Telephone Connections	All Offices		
14.Covered parking bays	02		
15.Lock-up parking bays	01		
16. Toilets (tiled) <ul style="list-style-type: none"> ▪ Male=02 ▪ Female=02 People with disability=1	05		
TOTAL LETTABLE AREA			186m²
Common Area			44.64m²
Gross Lettable and Common Area			230.64m²

8. DETAILED PRICING PROPOSAL

PWRT No. _____
 Occupant : Department of Education
 Location : Barberton
 Intended Lease period : Five years
 Lettable area : 186m²
 Common Area : 44.64m²
 Lettable area and Common area: 230.64m²

Physical address of the building: _____
 If it is a shared building, indicate available levels/floors for lease: _____

DETAILED PRICING SCHEDULE

DESCRIPTION (A)	TOTAL NO OF SQUARE METERS	RATE PER SQUARE METER EXCLUDING VAT	RATE PER SQUARE METER INCLUDING VAT	MONTHLY RENTAL TOTAL METERS INCLUDING VAT	ANNUAL SQUARE RENTAL FOR SQUARE METERS (INCLUDING VAT)	MONTHLY RENTAL TOTAL METERS INCLUDING VAT	ANNUAL SQUARE RENTAL FOR SQUARE METERS (INCLUDING VAT)
Combined office requirements	186m ²						
Operational Cost as per 6.1 above	186m ²						
Common areas @ 24% of lettable area	44.64m ²						
Sub Total per month							
DESCRIPTION (B)	TOTAL NUMBER OF PARKING BAYS	RATE PER PARKING BAY EXCLUDING VAT	RATE PER PARKING BAY INCLUDING VAT	MONTHLY AMOUNT TOTAL OF PARKING BAYS INCL VAT	ANNUAL AMOUNT FOR AMOUNT OF PARKING BAYS INCLUDING VAT	MONTHLY AMOUNT TOTAL OF PARKING BAYS INCL VAT	ANNUAL AMOUNT FOR TOTAL PARKING BAYS
1. Covered parking bays							
2. Lock-up garages	01						
Sub Total per month							
Grand Total per month (A & B)				GRAND TOTOAL PER ANNUM (A& B)			

ANNUAL RATE OF ESCALATION OF SIX PERCENT (6%)

YEARS	SUBTOTAL A INCLUDING VAT	SUBTOTAL B INCLUDING VAT	MONTHLY RENTAL INCLUDING A & B (VAT INCLUSIVE)	ANNUAL RENTAL FOR TOTAL INCLUDING VAT
FIRST YEAR				
SECOND INCLUDING 6%ESC				
THIRD INCLUDING 6%ESC				
FOURTH INCLUDING 6%ESC				
FIFTH INCLUDING 6%ESC				
BIDDERS TOTAL CONTRACT PRICE VALUE FOR THE FIVE YEARS LEASE PERIOD)				

PROXY FOR LEASE OF PROPERTY

I the undersigned

Name/s in full : _____
Identity Number : _____

Description of property : _____
(Hereinafter referred to as the **Owner of property**)

OR

Name of Juristic Entity : _____
Represented herein by : _____
in his/her capacity as : _____
duly authorised thereto by resolution no. _____ dated _____
Description of property : _____
(Hereinafter referred to as the **Owner**),

and a certified copy of the title deed hereunto annexed; hereby grand a proxy to

Name/s in full : _____
Identity Number : _____

OR

Name of Juristic Entity : _____
Registration Number : _____
Represented herein by : _____
in his/her capacity as : _____
duly authorised thereto by resolution no. _____ dated _____

to lease the aforesaid property in his/her/company's name and to perform the following acts:

1. To execute a lease. To sign and deliver to the Lessee, his agents,executors,administrators and assigns ,a valid lease of the aforesaid property for the period of _____ years from the commencement date of the lease and/or any extension of the period thereof.
2. Notarial execution of lease. To appear before any Notary in the Province of Mpumalanga or any other place to execute such lease.
3. Registration of lease. To cause or permit such lease to be registered against the title deeds of the property.
4. To litigate on any matter arising from the said lease.

And I declare this proxy to be irrevocable for the period of _____ years from commencement date of the lease and/or any extension of the period thereof.

Sign at _____ on this _____ day of _____ 20__.

SIGNATURE OF OWNER OR PERSON ACTING ON BEHALF OF JURISTIC PERSON

Witnesses

1. _____
FULL NAMES, SURNAME AND SIGNATURE

2. _____
FULL NAMES, SURNAME AND SIGNATURE



STANDARD TO THE LEASE AGREEMENT

BETWEEN

AND

**MPUMALANGA DEPARTMENT OF PUBLIC WORKS,
ROADS AND TRANSPORT**

FOR OFFICE ACCOMMODATION



**EXPANDED PUBLIC WORKS PROGRAMME
LEASE AGREEMENT:** _____



AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

LEASE

1. PARTIES

The parties to this agreement are:

Company Reg. no: _____
represented by _____
in her capacity as _____, duly authorized as
per the attached resolution, hereinafter referred to as the Lessor.

AND

Mpumalanga Provincial Government represented by

in his/her capacity as the _____,
duly authorized, hereinafter referred to as the Lessee.

2. DEFINITIONS AND INTERPRETATION

2.1 In this agreement, unless the context indicates otherwise, the following words have the meaning assigned to them hereunder:

"commencement date" - the date stipulated in Item 6 of Schedule 1 on which the lease commences;

"commencement rental"- the monthly rental payable in respect of the first year of the lease or, in the event of the first fixed period of the lease being less than one year, the rental determined for that period, the amount of which is stipulated in Item 7 of Schedule 1;

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

Common areas” means all amenities provided by the Lessor for the general use of the Lessee and other Lessees (and/or their employees, clients, customers and other persons as may be agreed upon by the Parties, from time to time) on the Surrounding Property, including (but not limited to) the foyers, malls, arcades, passages, parking areas, entrances, exits, loading areas, landscape areas, interior and exterior stairways, toilets, yards, sidewalks, driveways, ramps and other amenities (as may be applicable) having regard to the nature of the Surrounding Property;

"escalation date" - the anniversary date of the lease agreement; mentioned in Item 4 of Schedule 1 on which the escalation rate comes into operation;

"escalation rate"- the percentage per annum which adjusts the rental on every escalation date stipulated in Item 5 of schedule 1;

"Lessee"- Mpumalanga Provincial Government, herein represented by Senior General Manager: Public Infrastructure of Department of Public Works, Roads and Transport of his delegate duly authorised;

"Lessor" - the owner of the premises (or a sub Lessor who warrants his authority to enter into this lease agreement with the Lessee and attaches such authorisation hereto) who, if he does not sign personally, is herein represented by the person mentioned in Schedule 1 who by his signature hereto warrants that he is authorised to sign this agreement on behalf of the Lessor;

"Occupant"- The Department occupying the premises mentioned in Item 13 of Schedule 1, which forms the subject of this lease

"premises" -the building and/or the structure and/or the land, or portions thereof, mentioned in Item 2 of Schedule 1, which forms the subject of this lease; and

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

"termination date" -the date stipulated in Item 11 of Schedule 1 on which the lease terminates;

2.2 The clause headings of this agreement have been inserted for reference purposes only and shall not be taken into account in its interpretation. Unless the context indicates otherwise, words importing the singular shall include the plural, words importing persons shall include bodies corporate, and, in each instance, also the opposite thereof.

2.3 If a provision in a definition is a substantive provision conferring rights or imposing obligations on any party, effect shall be given to it as if it were a substantive provision in the body of the agreement, notwithstanding that it is in the definitions clause.

3. **THE LEASE**

The Lessor hereby leases the premises to the Lessee who hires the premises on the terms and conditions of this agreement, which incorporates the Schedules.

4. **THE PERIOD**

4.1 Notwithstanding the date of the signatures to this agreement, this agreement shall be deemed to have commenced on _____ and terminates on _____ as mentioned in Item 08 of Schedule 1. Each party to the agreement may give one month written notice, which shall run from the first day of the month to terminate the agreement in the event that it is necessary to terminate the agreement before the termination date.

4.2 Should the Lessee remains in occupation of the premises after the termination date of the Lease due to whatsoever reason, the agreement shall continue on month to month and . Each party to the agreement may give one month written

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AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

notice, which shall run from the first day of the month to terminate the agreement in the event that it is necessary to terminate the agreement before the termination date.

5. **RIGHT TO RENEW**

5.1 The Lessee has the right to renew the lease for a further period commencing on the first day after the expiration of the contract of lease and on terms and conditions agreed to by the parties.

5.2 In the event of the Lessee exercising its right of renewal, he shall be obliged to give the Lessor written notice thereof as provided in 5.3 hereunder.

5.3 At least thirty days prior to the expiry of the lease period the Lessee shall notify the Lessor in writing of its intention to exercise the right to renew and the lease renewal period. Should the parties fail to reach an agreement on the terms and conditions of the new lease, the original lease will be terminated at the normal expiry period.

6. **THE RENTAL**

6.1 The lease commences with the commencement rental of R _____ (in figures) (_____ (in words))
VAT Inclusive/Exclusive/Not payable per month.

6.2 The lease commences with the commencement rental.

6.3 The rental shall be payable from the commencement date monthly in advance on or before the seventh day of each month into Lessor’s bank account. Should the rental not be paid by the due date, interest shall be calculated at the National Treasury rate (as may be applicable at the time) from the first date after

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AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

the 7th day until date of payment.

6.4 Parties agree that all rental payable in terms of this agreement shall include value-added tax where such tax is payable. The Lessor shall specify such tax for record and tax-purposes separately from the basic rental.

6.5 The Lessor shall be liable to pay all rates, taxes and levies in respect of the premises to the concerned authority as well as any and all increases therein.

7. **USE OF THE PREMISES**

7.1 The Lessee records that the premises shall be used for the purpose specified in Item 12 of Schedule 1 and for no other purpose, except with the written consent of the Lessor, which consent shall not be withheld unreasonably.

7.2 The Lessor shall be obliged to obtain such consents and authorisations (excluding trade and other licences) as may be required by competent authorities or title conditions to enable the Lessee to use the premises for the purpose referred to in 7.1.

8. **OCCUPATION OF THE PREMISES**

8.1 The Lessor warrants the Lessee's right to free and undisturbed possession of the premises from the commencement date until termination of the contract and subject thereto that any delay in taking possession due to actions of the Lessor , shall not be regarded as a delay on the part of the Lessee.

8.2 Should the Lessor causes any delay in handover of the premises to the Lessee due failure fail to comply with specification floor plan or fitting of installations as required , the Lessee may remind the Lessor in writing, and should the Lessor still be in default fourteen days after receipt of such reminder (or such longer period

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

which the parties may have agreed upon) the Lessee shall be entitled to demand specific performance or to pay such expenses and to recover the amounts thus disbursed from the rental due to the Lessor by set off or by legal action or terminate the Agreement. A certificate by the Lessee of such expenses shall be *prima facie* proof thereof.

9. **CONDITION OF THE PREMISES AT THE COMMENCEMENT DATE AND AT THE TERMINATION DATE**

9.1 Schedule 2 contains details of the installations required by the Lessee, the party responsible for effecting those installations and the party who bears the costs in respect thereof. Schedule 2 also contains the obligations, if any, of the Lessee in regard to the removal thereof at the termination of the contract.

9.2 An initial inspection (on commencement or occupation date whichever comes first) shall jointly be done by the Lessee ,Lessor and occupant so as to ascertain any damages or defects in the premises and the general condition of the premises and to record them in a list which all three parties shall sign.

The Lessee shall, within five (5) working days of occupation, furnish the Lessor the three (3) dates and times, which dates must be within twenty-one (21) days of occupation, to convene a verification meeting to inspect the premises. The Lessor shall accept a date, from those furnished, that is suitable to him. At such meeting the parties, including the occupant, shall jointly inspect the premises, so as to amend and add any damage or defects in the premises and record such items to the list which all parties shall sign.

9.3 The Lessor shall within fourteen (14) days of such inspection repair the defect(s).

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

9.4 Should the Lessor fail to comply with his obligations in respect of installations required by the Lessee, if any, or fail to repair the defect(s), the Lessee shall notify the Lessor of such failure and unless the Lessor so complies within fourteen (14) days, save in emergencies, the Lessee shall be entitled to rectify those matters at his own expense and to recover the costs thus incurred from the Lessor by deducting from the monthly rental.

9.5 The Lessor shall furnish the dates and times at least fourteen working (14) days prior to the expiry of the lease for the inspection of the premises after termination of the lease. Within fourteen (14) days after the expiry of the lease, the Lessor shall ensure that the following lists are compiled:

9.5.1 A list of all the items where both parties agree that such items are damaged or defective and that the Lessee is liable; and

9.5.2 A list of the items, which are damaged, or defective and which in the opinion of the Lessor the Lessee is liable for, whereas the Lessee denies liability.

9.6 The items recorded in the list contemplated in clause 9.5.2 shall be replaced as per agreement between the parties. Should the parties fail to reach such an agreement, the dispute may by agreement between the parties be referred to an independent professional who shall act as a mediator.

9.7 The Lessee shall not be responsible for the payment of rent or damages during the month when the damages caused to the premises are being repaired.

10. **FIXTURES**

10.1 The parties agree that for the purposes of the interpretation of this clause and of

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

this lease, fixtures shall refer to movable or immovable fittings installed by the Lessee and required for his purposes, such as computer cables and telephone systems. The Lessee shall be entitled, at his expense and with the written consent of the Lessor, which consent shall not be unreasonably withheld (alternatively, as arranged in Schedule 2), to install fixtures (which shall remain the property of the Lessee) on the premises: Provided that, after the termination of this lease -

10.1.1 fixtures may be removed by the Lessee on condition that the premises are restored to the condition in which they were before the installation of the fixtures, fair wear and tear excepted; or

10.1.2 the Lessor may demand that fixtures which have not been thus removed, be removed by the Lessee, in which event the same requirements regarding the restoration of the premises shall apply.

11. EXPENSES, MAINTENANCE AND REPAIRS

11.1 For the purpose of the interpretation of this clause and of the lease, the parties agree that the words in the heading bear meanings assigned to them hereunder:

11.1.1 **"expenses"** - those disbursements in respect of the premises which are occasioned by the ownership or the operation thereof, e.g. assessment rates, municipal levies, and insurance premiums, etc.;

11.1.2 **"maintenance"** - everything which is required to be done in order to enable the Lessee to return the premises to the Lessor on the termination date in the condition they were in at the commencement

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

date, fair wear and tear excepted;

11.1.3 **"repairs"** - everything which is required to be done in order to achieve the same goal as that envisaged in the definition of "maintenance", but which requires more labour and more expense than maintenance, such as the replacement of cables, taps, locks, floor tiles, geysers and the like. The parties hereby agree that normal wear and tear can through time require repairs.

11.2 Responsibilities of the Lessor: -

11.2.1 Assessment rates and fixed municipal levies including all related increases;

11.2.2 Any related insurance of the premises and the increase thereof;

11.2.3 Maintenance and repairs (including painting) of interior and exterior of the premises, including cleaning of interior and exterior windows in a high rise building and common areas;

11.2.4 Municipal rates (existing and future) levied on ownership (including rates increases);

11.2.5 Installation, maintenance and repairs of the air conditioners, lifts and generators;

11.2.6 Installation, maintenance and repairs of fire extinguishers, fire alert and fire detection equipment ;

11.2.7 Water and electricity consumption to the extent of space not occupied by the Lessee. The rates shall be determined as provided in clause 11.4 below;

11.2.8 Partitioning of the building at its own costs as per Lessee's specification in **LEASE AGREEMENT:** _____ **AND PWR&T**

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

the tender document or on request ;

11.2.9 Fitting all installations at own costs as per Lessee's specification in the tender document or on request;

11.2.10 The costs of garden services including the maintenance thereof;

11.2.11 Submission of monthly invoices to the Office of the Chief Financial Officer of the Occupant on the 15th of each and every month;

11.2.12 Alterations or improvements of building shall be negotiated directly with the Lessee not with the Occupant of the building;

11.2.13 Any negotiations regarding the terms and conditions of this agreement shall be done with the Lessee ;

11.2.14 The replacement of carpeting at the expiry of their agreed lifetime.

11.3 Responsibilities of the Lessee: -

11.3.1 Domestic cleaning of the interior of the premises;

11.3.2 The domestic services such as the provision of toilet paper, soap, towels, etc,

11.3.3 The costs of water and electricity consumption to the extent of space occupied;

11.3.4 Any cost of refuse removal and sanitary services;

11.3.5 Any security services as may be required by the Lessee.

11.4 In the event of the premises being a portion of a building and it consequently being necessary to determine the Lessee's *pro rata* share in respect of

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

maintenance or consumption of necessary services, the *pro rata* share of the Lessee, for the purpose of this agreement, shall be determined by calculating the area of the premises as a fraction of the total area of the building. For the purpose of such calculation areas shall be determined from time to time by the SAPOA - method for the calculation of rentable areas. Where the *pro rata* share or portion thereof is payable to the Lessor, the Lessee shall pay on receipt of a properly substantiated account. The parties agree that the Lessee's *prorata* share (as contemplated in this clause) is the percentage as indicated in Schedule 1

11.5 Should the Lessor fail to pay expenses or to undertake repairs the Lessee may remind the Lessor in writing, and should the Lessor still be in default fourteen days after receipt of such reminder (or such longer period which the parties may have agreed upon) the Lessee shall be entitled to demand specific performance or to pay such expenses or to undertake such repairs and to recover the amounts thus disbursed from the rental due to the Lessor by set off or by legal action. A certificate by the Lessee of such expenses shall be *prima facie* proof thereof.

11.6 Should the Lessee cause damage and fail to pay expenses or to undertake repairs the Lessor may remind the Lessee in writing and should the Lessee still be in fault thirty days after receipt of such reminder (or such longer period which the parties may have agreed upon) the Lessor shall be entitled to demand specific performance or to pay such expenses or to undertake such repairs and to recover the amounts thus invoicing the Lessee and demand immediate payment. A certificate by the Lessor of such expenses shall be *prima facie* proof thereof.

12. **LIMITATION OF THE LIABILITY OF THE LESSOR**

12.1 The Lessor shall insure the building and shall maintain such insurance throughout the currency of the lease and any extension thereof. The Lessee may not after the commencement of the lease do, or allow anything that is contrary to the

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

provisions of the insurance policy, which shall cause an increase in the premiums of any insurance policy held by the Lessor over the property.

12.2 Should the Lessee do or cause to be done anything that causes an increase in the premiums of such policy, the Lessee will be liable for the increase in the premiums occasioned by the actions of the Lessee. The Lessor shall furnish to the Lessee proof from the insurer.

12.3 The Lessor shall not be liable for any damage which the Lessee may suffer as a consequence of rain, wind, hail, lightning, fire, earthquake, storm, riots, strikes, actions by enemies of the State or in consequence of the interruption of any facility or service supplies to the premises by third parties, unless such damage is caused by the intent or negligence of the Lessor, his employees or agents.

12.4 The Lessor shall not be liable for any accident, injury or damage incurred by the Lessee, his employees, agents or visitors, in or near the premises, unless it is the result of intent or negligence on the part of the Lessor, his employees or agents.

13. **THE BUILDING, FIRE FIGHTING EQUIPMENT AND LIFTS**

13.1 The Lessor shall be obliged to ensure that the building is complying with the National Building Regulations and Building Standards Act (Act No 103 of 1977) as amended, Occupational Health and Safety Act (Act No 85 of 1993) as amended and /or other applicable legislation.

13.2 The Lessor shall be obliged to install, maintain and operate on the premises fire extinguishing and fire detection equipment complying with the National Building Regulations and Building Standards Act (Act No 103 of 1977) as amended, and /or other applicable legislation.

13.3 The Lessor shall be obliged to maintain the lifts and ensure that regular checks are done in accordance with the Occupational Health and Safety Act (Act No 85

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

of 1993) as amended and /or any other applicable legislation.

14. DAMAGE TO OR DESTRUCTION OF THE PREMISES

14.1 In the event of the premises being destroyed and therefore rendered totally unfit for occupation, this lease shall be terminated automatically.

14.2 In the event of the premises being damaged and remaining partially suitable for the purposes of the Lessee, the parties shall have the right to terminate the agreement forthwith. Should the parties continue with the agreement, the Lessee shall be entitled to a reduction in rental to the extent to which the Lessee is deprived of the full use of the premises

15. BREACH

15.1 In the event of either one of the parties committing a material breach of any of the terms of this agreement, and failing to remedy such material breach within a period of thirty (30) days, after receipt of a written notice from the other party calling upon the defaulting party to remedy the material breach complained of, then: -

15.1.1 the grieved party will be entitled, as may be deemed fair, and without prejudice to any of his rights in law and/or in terms of this agreement, either to:

- (a) claim specific performance and/or
- (b) cancel the agreement and/or
- (c) claim damages from the defaulting party

16. MANAGEMENT RULES

The Lessor will furnish the Lessee with all Management Rules, if any, prior to entering into this agreement.

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

17. **OWNERSHIP/ SHAREHOLDING**

17.1 The Lessor shall sustain the equity shareholding and / or ownership to the leased property as claimed in the tender documents /proposal and/or conditions of

tender for the duration of the lease period. Failure/Neglect or omission on the part of the Lessor to sustain the equity shareholding and or ownership to the leased property will constitute a material breach of the agreement.

17.2. In the event that the percentage of such equity ownership and or shareholding decreases, the Lessor shall be responsible to notify the Lessee thereof, in writing, within 14 days of such change of shareholding percentage, failing which the Lessor shall be in material breach of this contract.

17.3 Notwithstanding any recourse as contained in the breach clause of this contract, the Lessee may, in addition to any other remedy it may have:

17.3.1 cancel the contract and claim the all costs losses and/or damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

17.3.2.restrict the Lessor, from obtaining property leasing business from Lessee or any government department for a period not exceeding 5 years.

18. **REASONABLE ACCESS**

The Lessor shall, after reasonable prior written notification to the Lessee, entitled to reasonable admission to the leased premises in order to carry out inspections, maintenance and repairs and to show the premises to prospective new Lessees.

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

19. **CESSION, ASSIGNMENT AND SUB-LETTING**

19.1 The Lessee shall not, except with the prior written consent of the Lessor, which shall not be unreasonably withheld;

18.1.1 cede or assign all or any of the rights and obligations of the Lessee under this lease; or

18.1.2 sublet the premises in whole or in part; or

18.1.3 giveup possession of the premises or any portion thereof to any third party; it being an explicit provision of this agreement that the Lessee may substitute one occupant with another at its own discretion taking into consideration the preferences (if any) of the Lessor.

19. **NON-WAIVER**

19.1 Neither party shall be regarded as having waived, or be precluded in any way from exercising, any right under or arising from this lease by reason of such party having at any time granted any extension of time for or having shown any indulgence to, the other party with reference to any payment or performance hereunder, or having failed to enforce, or delayed in the enforcement of, any right of action against the other party.

19.2 The failure of either party to comply with any non-material provision of this lease shall not excuse the other party from performing that party's obligations hereunder fully and timeously.

20. **SALE OF PREMISES**

20.1 Transfer of the premises from the Lessor pursuant to a sale thereof shall not in any way affect the validity of this lease. It shall accordingly, upon registration of transfer of the premises into the name of the purchaser, remain of full force and

LEASE AGREEMENT: _____ **AND PWR&T**

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

effect save that the purchaser shall be substituted as Lessor and acquire all rights and be liable to fulfil all the obligations which the Lessor, as Lessor, enjoyed against or was liable to fulfil in favour of the Lessee in terms of the lease.

20.1.2 Nothing shall prevent the Lessor from advertising the premises as “for sale” or as “to let” as long as it does not disturb the Lessee in its use and enjoyment of the premises.

21 **WHOLE AGREEMENT**

21.1 This is the entire agreement between the parties.

21.2 Neither party relies, in entering into this agreement, on any warranties, representations, disclosures or expressions of opinion, which have not been incorporated into this agreement as warranties or undertakings.

21.3 No variation or consensual cancellation of this agreement shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of both parties.

22. **DOMICILIUM CITANDI ET EXECUTANDI**

22.1 The parties respectively choose as domicilium citandi et executandi and as the address for the serving of notices the address appearing opposite their names in Item 1 of Schedule 1.

22.2 Any notice given by one of the parties to the other (“the addressee”) which: -

22.2.1 is delivered by hand to the addressee's domicilium citandi et executandi shall be presumed to have been received by the addressee on the date of the delivery, until the contrary is proved;

22.2.2 is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at the addressee's domicilium citandi

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AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

etexecutandi, shall be presumed until the contrary is proved, to have been received by the addressee on the fifth day of the date of posting; or

22.2.3 is faxed to the chosen fax number, will be presumed to be received unless the other party proves the contrary: -

22.2.3.1 within four (4) hours after being faxed during normal business hours; or

22.2.3.2 if not faxed within normal business hours, at twelve o'clock on the first day of business that follows the day on which it was faxed.

22.3 Either party shall be entitled, on seven (7) days notice to the other, to change the address of his domicilium citandi etexecutandi.

23. JURISDICTION

The Magistrate's Courts of South Africa shall have jurisdiction in respect of any legal proceedings arising from this agreement irrespective of the amount of the claim.

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

THUS DONE AND SIGNED AT _____

THIS _____ DAY OF _____ 20__.

FULL NAMES AND SURNAME OF PERSON SIGNING ON
BEHALF OF CUSTODIAN

SIGNATURE

AS WITNESSES

1. _____
FULL NAMES AND SURNAME

SIGNATURE

2. _____
FULL NAMES AND SURNAME

SIGNATURE

THUS DONE AND SIGNED AT _____

THIS _____ DAY OF _____ 20__.

FULL NAMES AND SURNAME OF PERSON SIGNING ON
BEHALF OF USER

SIGNATURE

1. _____
FULL NAMES AND SURNAME

SIGNATURE

2. _____
FULL NAMES AND SURNAME

SIGNATURE

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

SCHEDULE 1

1. Addresses of the LESSOR: (Physical) _____

(Postal) _____

LESSEE :Mpumalanga Department of Public Works, Roads
 and Transport
 Building no 7
 Government Boulevard
 Riverside Park
 Nelspruit
 1200
 Postal :Private Bag X 11302
 Nelspruit
 1200

2. Premises Leased : _____

3. Floor Area Leased : _____

4. Escalation date : _____

5. Escalation rate : _____

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

6. Commencement date : _____
7. Commencement rental : _____
8. Lease period : _____
9. Lessor : _____
 Lessee's representative : _____
10. VAT Registration No. : _____
11. Termination date : _____
12. Use of premises : _____
13. Occupant : _____
14. Bank details of the Lessor
 Name of the Bank : _____
 Name of branch : _____
 Branch code : _____
 Account number : _____

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

SCHEDULE 2

1. Details of installations required by Lessee:

INSTALLATIONS:	PARTY TO EFFECT:	PARTY TO PAY:

LEASE AGREEMENT: _____

AND PWR&T

INITIALS LESSOR	INITIALS LESSEE
X	X
X	X
X	X

Particulars of tender (If applicable)

Tender number

Estimated Tender amount R

Expected duration of the tender year(s)

Particulars of the 3 largest contracts previously awarded

Date started	Date finalised	Principal	Contact person	Telephone number	Amount
--------------	----------------	-----------	----------------	------------------	--------

Audit

Are you currently aware of any Audit investigation against you/the company? YES NO
If "YES" provide details

Appointment of representative/agent (Power of Attorney)

I the undersigned confirm that I require a Tax Clearance Certificate in respect of Tenders or Goodstanding.

I hereby authorise and instruct to apply to and receive from SARS the applicable Tax Clearance Certificate on my/our behalf.

Signature of representative/agent

--

Date

Name of representative/agent

Declaration

I declare that the information furnished in this application as well as any supporting documents is true and correct in every respect.

Signature of applicant/Public Officer

--

Date

Name of applicant/Public Officer

Notes:

- It is a serious offence to make a false declaration.
- Section 75 of the Income Tax Act, 1962, states: Any person who
 - fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
 - without just cause shown by him, refuses or neglects to-
 - furnish, produce or make available any information, documents or things;
 - reply to or answer truly and fully, any questions put to him ...
 As and when required in terms of this Act ... shall be guilty of an offence ...
- SARS will, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.**
- Your Tax Clearance Certificate will only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.

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

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

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

2.2.1 If so, furnish particulars:

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

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

2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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.

- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

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

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
.....
Signature Date

.....
.....
Position Name of bidder

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

This preference form must form part of all 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 90/10 preference point system.
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- c) Either the 90/10 or 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:

$$Ps = 80 \left(1 - \frac{Pt - Pmin}{Pmin} \right) \quad \text{or} \quad Ps = 90 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

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

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:

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

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 (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
HDI		10		
Youth		4		
Women		4		
Disabled persons		2		

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.

<p>.....</p> <p>SIGNATURE(S) OF TENDERER(S)</p>
<p>SURNAME AND NAME:</p>
<p>DATE:</p>
<p>ADDRESS:</p> <p>.....</p> <p>.....</p> <p>.....</p>

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
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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

1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

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

9. Packing

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

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

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

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

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

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination for default

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

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

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

23.4 If a purchaser intends imposing a restriction on a supplier or any

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

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

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 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** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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