

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF MINERAL RESOURCES AND ENERGY</b>					
BID NUMBER:	DMRE/020/2022/23	CLOSING DATE:	24 JANUARY 2023	CLOSING TIME:	11H00
DESCRIPTION	APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT SKILLS AUDIT AND THE COMPILATION OF COMPETENCY FRAMEWORK FOR A PERIOD OF SIX (6) MONTHS IN THE DEPARTMENT OF MINERALS RESOURCES AND ENERGY				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
DEPARTMENT OF MINERAL RESOURCES AND ENERGY					
192 CNR VISAGIE AND PAUL KRUGER STREET, MATIMBA BUILDING					
PRETORIA					
0001					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	MR. SAMUEL MSIZA		CONTACT PERSON	MR.Headmam Mbiko	
TELEPHONE NUMBER	012 406 7910		TELEPHONE NUMBER	Tel No: (012) 406 77 68	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	<a href="mailto:Samuel.Msiza@dmre.gov.za">Samuel.Msiza@dmre.gov.za</a>		E-MAIL ADDRESS	<a href="mailto:Headman.Mbiko@dmre.gov.za">Headman.Mbiko@dmre.gov.za</a>	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW ]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
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**

<b>1. BID SUBMISSION:</b>
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO 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 <a href="http://WWW.SARS.GOV.ZA">WWW.SARS.GOV.ZA</a> .
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: .....

## TAX CLEARANCE CERTIFICATE REQUIREMENTS

**It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.**

- 1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website [www.sars.gov.za](http://www.sars.gov.za).
- 6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website [www.sars.gov.za](http://www.sars.gov.za).

**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: .....	BID NO.: DMRE/020/2022/23
CLOSING TIME 11:00	CLOSING DATE: 24 JANUARY 2023

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

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)	
1.	The accompanying information must be used for the formulation of proposals.		
2.	Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.	R.....	
3.	PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)		
4.	PERSON AND POSITION	HOURLY RATE	DAILY RATE
	.....	R.....	.....
	.....	R.....	.....
	.....	R.....	.....
	.....	R.....	.....
	.....	R.....	.....
5.	PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT		
	.....	R.....	..... days
	.....	R.....	..... days
	.....	R.....	..... days
	.....	R.....	..... days
5.1	Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.		
	DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY AMOUNT
	.....	.....	R.....
	.....	.....	R.....
	.....	.....	R.....
	.....	.....	R.....
		TOTAL: R.....	

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

Name of Bidder: .....

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

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

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

\*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

**Department of Minerals Resource and Energy****Bid Enquiries:****Contact Person: Mr. Samuel Msiza.****Tel: 012 406 7910****Email: [Samuel.Msiza@dmre.gov.za](mailto:Samuel.Msiza@dmre.gov.za)****ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:****All technical enquiries to be directed in writing to:****Mr. Headman Mbiko****Telephone No: (012) 406 7768****E-mail: [Headman.Mbiko@dmre.gov.za](mailto:Headman.Mbiko@dmre.gov.za)**

## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

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

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

### 2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> 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

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<sup>1</sup> 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 consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

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<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

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

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

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

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

.....	.....
Signature	Date
.....	.....
Position	Name of bidder



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

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

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

### 1. GENERAL CONDITIONS

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

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

1.2

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

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

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

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

## 2. DEFINITIONS

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

## 3. POINTS AWARDED FOR PRICE

### 3.1 THE 80/20 PREFERENCE POINT SYSTEMS

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 price of bid under consideration
- $P_t$  = Price of bid under consideration
- $P_{\min}$  = Price of lowest acceptable bid

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

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

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

## 5. BID DECLARATION

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

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

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

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

## 7. SUB-CONTRACTING

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

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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7.1.1 If yes, indicate:

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

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

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

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

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME ✓	QSE ✓
Black people	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are youth	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are women	<input type="checkbox"/>	<input type="checkbox"/>

Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

**8.4 TYPE OF COMPANY/ FIRM**

Partnership/Joint Venture / Consortium

One person business/sole propriety

Close corporation

Company

(Pty) Limited

[TICK APPLICABLE BOX]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

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

**8.6 COMPANY CLASSIFICATION**

Manufacturer

Supplier

Professional service provider

Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;

- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

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

DATE: .....

ADDRESS .....

.....

.....

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT**

**July 2010**

**GOVERNMENT PROCUREMENT**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**NOTES**

The purpose of this document is to:

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

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

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

## TABLE OF CLAUSES

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



## **General Conditions of Contract**

### **1. Definitions**

1. The following terms shall be interpreted as indicated:
  - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of 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](http://www.treasury.gov.za)

## **4. Standards**

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

## **5. Use of contract documents 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.

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

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.
<b>29. Governing language</b>	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.
<b>30. Applicable law</b>	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
<b>31. Notices</b>	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.
<b>32. Taxes and duties</b>	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.
<b>33. National Industrial Participation Programme (NIP)</b>	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.
<b>34 Prohibition of Restrictive practices</b>	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.

Js General Conditions of Contract (revised July 2010)

# **TERMS OF REFERENCE FOR APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT SKILLS AUDIT AND THE COMPILATION OF COMPETENCY FRAMEWORK FOR A PERIOD OF SIX (6) MONTHS IN THE DEPARTMENT OF MINERALS RESOURCES AND ENENERGY**

## **1. BACKGROUND**

- 1.1 The Department of Mineral Resources and Energy is a newly formed Department emanating from the merger of two Departments, following the announcement of the new Cabinet by the President on the 29 of May 2019. Subsequently, the Department embarked on a comprehensive strategic review and structure alignment to ensure better coordination, planning for effective service delivery.

## **2. CONTRACT PERIOD**

- 2.1 The expected duration of the project is Six (6) months after the signing of a contract.

## **3. OBJECTIVE**

- 3.1 The specific objective of this project is to assist the DMRE to review the current skills and competencies in lieu of the reviewed strategy and structure through skills audit process and compilation of competency framework aligned to The Public Service Skills Audit Methodology Framework.

## **4. SCOPE OF WORK**

- 4.1 The Department currently has 1458 employees in the following offices: Pretoria x2, Polokwane x2, Johannesburg, Witbank x2, Cape Town, Kimberly, Mthatha, Welkom, Klerksdorp, Rustenburg, Mafikeng, Springbok, East London, and Port Elizabeth.
- 4.2 The scope of work requires a thorough understanding of the DMRE's mandate, operations, and business environment to ensure comprehensive skills audit on all positions in the department. The services to be rendered are, but not limited to, the following:
  - 4.2.1 Identify the skills and knowledge that the DMRE requires and currently has.

4.2.2 Provide an overview of the scarce and critical skills needs that will enable the DMRE to deliver on its strategic objectives and goals.

4.2.3 Develop a competency framework and assess the current skills set.

4.2.4 Identify the skills gaps and recommend targeted training and skills development interventions for every employee.

4.2.5 Develop skills profiles for all occupations.

4.2.6 Mapping of all occupations in the DMRE and link to the Organizing Framework for Occupations (OFO)

4.2.7 Provide accurate information to develop Workplace Skills Plan.

4.2.8 Generate, consolidate, and present skills audit report and recommendations.

4.2.9 Partner with internal HRD staff to transfer skills.

## **5. DELIVERABLES OR PROJECT OUTPUT AND OR OUT COME**

5.1 Department's current and future skills identified.

5.2 Department's skills gaps identified per each staff member per branch.

5.3 Scarce and critical skills identified per branch.

5.4 Training interventions per skills gap and future skills needs identified.

5.5. Training interventions per critical and or scarce skills per branch consolidated.

5.6 Approved skills audit comprehensive training plan for HRD staff approved.

5.7 Competency framework for each occupational class/group developed

5.8 Comprehensive Skills Audit report produced.

## **6. COMPANY EXPERIENCE**

6.1 The Service provider should have a minimum of three (3) years' experience in conducting skills audit within the Public Service or SOE's. Service providers are required to provide proof that they

have successfully facilitated or performed similar projects and that the project has been successfully executed. This must be in a form of testimonial(s) or reference letter(s) proving that such projects were executed, Testimonial/s or Reference Letter/s should include contact details for verification purposes.

## **7. QUALIFICATION AND EXPERIENCE OF TEAM LEADER AND TEAM MEMBER**

### **7.1 TEAM LEADER**

- 7.1.1 The team leader should have a three-year degree, in Human Resource Development/Human Resource Management/Industrial Psychology, registered with SABPP/SDF certificate and four (4) years' experience in conducting skills audit. A comprehensive CV of the team leader that will be involved in the project should be attached, indicating qualifications and experience in similar projects.

### **7.2 TEAM MEMBERS**

- 7.1.1 Team members should have three-year qualification and three years' experience in conducting skills audit. A comprehensive CV of team members that will be involved in the project should be attached, indicating qualifications and experience in similar projects. Certified copies of qualifications for team members must be attached.

## **8. REPORTING REQUIREMENTS**

- 8.1 Service Provider shall report to the Director: Human Resource Utilisation and Development.
- 8.2 Service Provider shall twice a month, supply DMRE with a summarized written report to the Director: Human Resource Utilisation and Developments.
- 8.3 It is envisaged that the DMRE will require an initial meeting with the successful service provider to agree on the project process and options to be investigated.
- 8.4 Progress meeting feedback shall be held virtually or face-to-face as and when necessary, but at least once in two weeks until completion of the project. The venue of these meetings will be at the Department of Mineral Resources and Energy, Trevena Building, Corner 72 Meintjies and Francis Baard Street, Pretoria. Representatives from the service provider's organisation shall be obliged to attend at their own costs.
- 8.5 Successful service provider shall submit copies of progress report during the project and final report at the end of the project.

- 8.6 The final finding will then be submitted to the Director-General of the Department of Mineral Resources and Energy in a form of electronic and written report.

## **9. WORK PLAN AND METHODOLOGY**

### **9.1 The following methodologies will be used:**

- 9.1.1 Analysis of the DMRE's mandate, Structure, operations, and business environment.
- 9.1.2 Interviewing DDG's, CD's and D where necessary
- 9.1.3 Benchmarking with the Skills Audit Methodology Framework for the Public Service
- 9.1.4 Develop skills profiles for all occupations aligned to Job descriptions.
- 9.1.5 Develop Skills Matrix
- 9.1.6 Develop a competency framework and assess the current skills set
- 9.1.7 Conduct data analysis
- 9.1.8 Reporting on the finding
- 9.1.9 Recommendations for the Workplace Skills Plan and Talent Management Strategy
- 9.1.10 Development of Personal Development Plans

## **10. ROLE AND RESPONSIBILITY**

### **10.1 The Department**

- 10.1.1 The Department will be responsible for establishing a Project Steering Committee to manage, monitor and oversee the project. This committee will ensure that services are rendered timeously, timeframes as far as possible are not extended, render a quality assurance function, and ensure that additional costs are not incurred unnecessarily.
- 10.1.2 The Department will monitor the payment schedule that will be attached to the SLA. Payments will therefore only be approved and processed based on achieved deliverables as per the implementation plan and/or project plan and related performed project tasks. Deliverables and payments will be recommended by the Project Manager and approved by the Project Steering Committee.



## **10.2 The service provider shall:**

10.2.1 comply with the relevant Departmental policies, procedures and regulations in the execution of contract deliverables.

10.2.2 Advise the Department when unforeseen circumstances will adversely affect the execution of the contract. Full particulars of such circumstances as well as the period of delays must be furnished.

## **11. CONFIDENTIALITY OF INFORMATION**

11.1 The names of all the members of the service provider team must be disclosed for the project for prior approval of Department of Mineral Resources and Energy. Any changes, replacements and or additions should be submitted for prior approval of the Department.

11.2 All members will have to sign a non-disclosure agreement before project commencement and may be required to undergo security screening and tests as the Department of Mineral Resources and Energy deems necessary

11.3 Service provider shall keep confidential and shall not, without the written consent of the Department and/or its duly authorised official use, copy or communicate to any person the terms and conditions, documents or other information furnished directly or indirectly by DMRE, except as strictly necessary for the purpose of this contract.

## **12. PAYMENTS**

12.1 The Department will not make an upfront payment to a successful service provider. Payments will only be made in accordance to the delivery of service that will be agreed upon by both parties and receipt of an original invoice.

## **13. TAX CLEARANCE CERTIFICATE**

13.1. The potential service provider/s must ensure compliance with their tax obligations.

13.2. The potential service provider/s is/are required to submit their unique personal identification number (pin) issued by SARS to enable the organ of state to view the taxpayer's profile and tax status.

- 13.3 Application for tax compliance status (TCS) or pin may also be made via e-filing. In order to use this provision, taxpayers will need to register with SARS as e-filers through the website [www.sars.gov.za](http://www.sars.gov.za).
- 13.4. The potential service provider may also submit a printed TCS together with the proposal.
- 13.5. In proposals where consortia / joint ventures / sub-contractors are involved; each party must submit a separate proof of TCS / pin / CSD number.
- 13.6. Where no TCS is available, but the potential service provider/s is registered on the central supplier database (CSD), a CSD number must be provided

## 14. EVALUATION METHODOLOGY

### 14.1 Phase 1: Compliance and Technical Review:

14.1.1. Each submission is checked for compliance. The following documents are compulsory:

A valid Tax Clearance Certificate	
A valid B-BBEE Certificate	
Signed SBD forms	
Proof of CSD registration	
<b>Disqualification criteria (if available, e.g. registration with professional body)</b>	

14.1.2 Service providers will be evaluated based on functionality. The minimum threshold for functionality is 70 out of 100 points. Service providers who fail to meet the minimum threshold will be disqualified and will not be evaluated further for price and preference points for B-BBEE.

NO	CRITERIA	SCORING	WEIGHTS
1	<b>Company Experience:</b>		<b>15</b>
	(i) Service providers should at least have three (3) years	5 years or more = 5 points 4 years = 4 points 3 years = 3 points 1-2 years = 2 points 0 years = 1 point	10
	(ii) Proof from 3 contactable referees indicating that similar project was executed should be attached.	5 letters or more = 5 points 4 letters = 4 points 3 letters = 3 points 2 letters = 2 points 1 letter = 1 point	5

2	<p><b>Team leader and team members:</b></p> <p>(i) Team Leader must have at least four (4) years practical experience in conducting skills audit</p> <p>(ii) Individual team members must have at least three (3) years practical experience in conducting skills audit (CV's must be attached as proof)</p>	<p>6 years or more = 5 points</p> <p>5 years = 4 points</p> <p>4 years = 3 points</p> <p>1 to 3 years = 2 points</p> <p>0 years = 1 point</p> <p>5 years or more = 5 points</p> <p>4 years = 4 points</p> <p>3 years = 3 points</p> <p>1-2 years = 2 points</p> <p>0 year = 1 point</p>	<p><b>20</b></p> <p><b>10</b></p> <p><b>10</b></p>
3.	<p><b>Qualifications:</b></p> <p>(i) Team leader must possess a minimum of a 3-year degree in Human Resources Development/Human Resources Management/Industrial Psychology.</p> <p>(ii) Copies of certified certificates must be attached to the proposal as proof</p>	<p>Masters and above = 5 points</p> <p>Honours degree = 4 points</p> <p>Degree = 3 points</p> <p>Diploma = 2 points</p> <p>No Degree = 1 point</p> <p>Copies of certified certificates attached = 5 points</p>	<p><b>25</b></p> <p><b>5</b></p> <p><b>5</b></p>

	<p>(iii) Team members must possess a minimum of a 3-year degree in Human Resources Development/Human Resources Management/Industrial Psychology (Proof of certified certificates must be attached.)</p> <p>(iv) Copies of certified certificates must be attached to the proposal as proof</p>	<p>Copies of certificates attached but not certified = 1 point.</p> <p>Masters and above = 5 points</p> <p>Honours degree = 4 points</p> <p>Degree = 3 points</p> <p>Diploma = 2 points</p> <p>Matric = 1 point</p> <p>Copies of certified certificates attached = 5 points</p> <p>Copies of certificates attached but not certified = 1 point.</p>	<p>10</p> <p>5</p>
4	<p><b>Project Plan:</b> Detailed Project/ Execution Plan and Management should be attached.</p>	<p>Detailed project plan with project deliverables and detailed logistics plan, milestones, scope, schedule, cost, resources &amp; change management plan =5 points</p> <p>Detailed project plan with project deliverables logistical plan, milestones, scope, schedule, cost &amp; resources = 4 points</p> <p>Project plan with project deliverables inadequate logistical</p>	<p>40</p> <p>15</p>

		<p>plan, milestones, scope, schedule, cost &amp; resources = 3 points</p> <p>Inadequate Project Plan and logistical plan and with project deliverables, milestones, scope, schedule, cost &amp; resources = 2 points</p> <p>No Project and logistical plan=1 point</p>	
	<p><b>Proposed Methodology</b></p> <p>Analysis of: Departmental Strategy, Departmental Structure, Job Profiles / Job Descriptions. Develop: Competency Framework, Skills Matrix, Proficiency Levels. Conduct: Self-Assessment, Line Manager Assessment, Competency assessment. Data analysis. Reporting. Workplace skills plan. Input into talent management. Personal Development Plans</p>	<p>Analysis of: Departmental Strategy, Departmental Structure, Job Profiles / Job Descriptions. Develop: Competency Framework, Skills Matrix, Proficiency Levels. Conduct: Self-Assessment, Line Manager Assessment, upward feedback/peer feedback, workforce studies or observation, Competency assessment. Data analysis. Reporting. Workplace skills plan. Input into talent management. Personal Development Plans = 5 points.</p> <p>Analysis of: Departmental Strategy, Departmental Structure, Job Profiles / Job Descriptions. Develop: Competency Framework, Skills Matrix, Proficiency Levels. Conduct: Self-Assessment, Line Manager Assessment, upward</p>	15

		<p>feedback/peer feedback, Competency assessment. Data analysis. Reporting. Workplace skills plan. Input into talent management. Personal Development Plans = 4 points.</p> <p>Analysis of: Departmental Strategy, Departmental Structure, Job Profiles / Job Descriptions. Develop: Competency Framework, Skills Matrix, Proficiency Levels. Conduct: Self-Assessment, Line Manager Assessment, Competency assessment. Data analysis. Reporting. Workplace skills plan. Input into talent management. Personal Development Plans = 3 points.</p> <p>Analysis of: Departmental Strategy, Departmental Structure, Job Profiles / Job Descriptions. Develop: Competency Framework, Skills Matrix, Proficiency Levels. Conduct: Competency assessment. Data analysis. Reporting. Workplace skills plan. Input into talent management. Personal Development Plans = 2 points.</p> <p>Analysis of: Departmental Strategy, Departmental Structure, Job Profiles / Job Descriptions. Develop: Competency Framework, Skills Matrix, Proficiency Levels.</p>	
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		Conduct: Self-Assessment/Line Manager Assessment. Data analysis. Reporting. Workplace skills plan. Input into talent management. Personal Development Plans = 1 points.	
	<b>Skills Transfer</b>  Skills transferred: development of skills Matrix, develop a competency framework and assessing skills set, conducting data analysis, reporting on the finding, Development of Personal Development Plans, and inputs to Talent Management Strategy. 12 HRD officials	Skills transferred: development of skills Matrix, develop a competency framework and assessing skills set, conducting data analysis, reporting on the finding, Development of Personal Development Plans, and inputs to Talent Management Strategy. 15 HRD officials = 5  Skills transferred: development of skills Matrix, develop a competency framework and assessing skills set, conducting data analysis, reporting on the finding, Development of Personal Development Plans, and inputs to Talent Management Strategy. 14 HRD officials = 4  Skills transferred: development of skills Matrix, develop a competency framework and assessing skills set, conducting data analysis, reporting on the finding, Development of Personal Development Plans, and inputs to Talent Management Strategy. 12 HRD officials = 3	10



		<p>Skills transferred: development of skills Matrix, develop a competency framework and assessing skills set, conducting data analysis, reporting on the finding, Development of Personal Development Plans, and inputs to Talent Management Strategy. 10 HRD officials = 2</p> <p>Skills transferred: development of skills Matrix, develop a competency framework and assessing skills set, conducting data analysis, reporting on the finding, Development of Personal Development Plans, and inputs to Talent Management Strategy. 8 HRD officials = 1</p>	
<b>Total</b>			<b>100</b>

For purpose of evaluating functionality, the following values will be applicable:

<b>1=</b>	<b>Very poor</b>	Does not understand the requirements
<b>2=</b>	<b>Poor</b>	Will not be able to fulfil the requirements
<b>3=</b>	<b>Average</b>	Will partially fulfil the requirements
<b>4=</b>	<b>Good</b>	Will be able to fulfil the requirements
<b>5=</b>	<b>Excellent</b>	Will fully fulfil the requirements

## **15. PHASE 2: PRICING AND BBBEE**

15.1. Bids will be evaluated on the 80/20 preference point system as outlined in the Procurement Preferential Regulation of 2017. Bidder that scores the highest points in this phase will be awarded the tender.

CRITERIA	WEIGHT
Price	80
B-BBEE Status level contributor	20

### **15.2. COST / PRICING**

15.2.1. The service provider will be requested to provide a quoted proposal regarding the work to be undertaken.

15.2.2. The total cost must be VAT inclusive and should be quoted in South African Rands (i.e. ZAR).

15.2.3. The service provider should provide hourly rates as prescribed by Department of Public Service and Administration (DPSA), Auditor- General (AG) or the body regulating the profession of the consultant.

15.2.4. The service Provider should provide (Subsistence & Travel (S&T)) rates that are in aligned to the National Treasury instruction note as follows:

- i) Hotel Accommodation – R1550 per night per person, including breakfast, dinner and parking
- ii) Air travel must be restricted to economy class
- iii) Claims for kilometres may not exceed the rates approved by the Automobile Association of South Africa.

### **15.3. BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

- 15.3.1. Provisions of the Preferential Procurement Policy Framework Act (PPPFA) of 2000 and its regulation of 2017 will apply in terms of awarding points.
- 15.3.2. Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims.
- 15.3.3. Bidders who do not submit their B-BBEE status level verification certificates or are non-compliant contributors to B-BBEE will not qualify for preference points for B-BBEE.
- 15.3.4. Accounting Officers must ensure that the B-BBEE Status level Verification Certificates submitted are issued by the following agency:
- Verification agencies accredited by SANAS.
- 15.3.5. Bidders who qualify as EMEs and QSEs must submit:
- Sworn affidavit signed by the EME or QSE representative and attested by a Commissioner of oath.

15.4. The table below depicts the B-BBEE status level of contribution:

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

## **16. CONDITIONS OF THE CONTRACT**

- 16.1 The appointed service providers will enter into a Service Level Agreement prior to commencement of the project.
- 16.2 The Department reserves the right to terminate the appointment of any part thereof, at any stage of completion should the Department decide not to proceed with the project.
- 16.3 Should the contract between the Department and the service provider be terminated by either party due to reasons not attributed to the service providers, the service providers will be remunerated for the appropriate portion of work completed

## **17. FORMAT OF SUBMISSION OF PROPOSAL**

- 17.1. Service providers are requested to submit four (4) copies of technical proposals plus the original.
- 17.2. Service providers are requested to index their proposals for easy reference.

## **18. PRE-BID MEETING / BRIEFING SESSION DETAILS-**

- 18.1. A compulsory briefing session will be held on 9<sup>th</sup> December 2022 at 10:00, Department of Minerals Resource and Energy, at 192 Matimba Building, Corner Visagie and Paul Kruger Streets, Pretoria.

or

Building 2 C, Trevenna Campus, C/o Meintjes and Francis Baard Street, Schoeman St, Sunnyside, 0007

**Alternatively depending on the circumstances Microsoft Teams or Zoom maybe used to conduct briefing session.**

- 18.2 A compulsory briefing session certificate will be issued after the briefing session to confirm attendance. Failure to submit fully completed original compulsory briefing session certificate with your proposal will invalidate your bid.

**19. CLOSING DATE**

- 91.1 Proposals must be submitted on or before **24 JANUARY 2023, 11:00** at Department of Minerals Resource and Energy, at 192 Matimba Building, Corner Visagie and Paul Kruger Streets, Pretoria in the bid box marked in the bid box marked Department of Minerals Resource and Energy. **No late bids will be accepted.**

**20. ENQUIRIES**

- 20.1 All general enquiries relating to bid documents should be directed to:**

Mr Samuel Msiza

Tel No: (012) 406 7910

E-mail: [/Samuel.msiza@dmre.gov.za](mailto:Samuel.msiza@dmre.gov.za)

- 20.2 Technical enquiries can be directed to:**

Mr. Headman Mbiko

Tel: (012) 406 7768

Email: [Headman.Mbiko@dmre.gov.za](mailto:Headman.Mbiko@dmre.gov.za)