

SSASSA 01 (QO)

INVITATION FOR QUOTATIONS

**THE SOUTH AFRICAN SOCIAL SECURITY AGENCY INVITES QUOTATIONS
FOR THE PROVISION OF *description of works***

Project title:	SERVICE PROVIDER TO CONDUCT AN INVESTIGATION ON THE ALLEGATIONS OF NEPOTISM DURING RECRUITMENT		
RFQ No:	106/23/LR	Closing Date:	28 AUGUST 2023
Closing time:	11:00	Validity period:	30 days

1. COMPLETION OF QUOTATION/BID DOCUMENTS:

1.1 All quotations documents must be completed in ink.

All quotations and completed SBD forms must be addressed to the South African Social Security Agency and must be hand delivered in a sealed envelope marked with the RFQ number stated above. **NB: PLEASE SIGN THE QUOTATION REGISTER AT RECEPTION. Quotations that are e-mailed to any other e-mail address other than the one mentioned above WILL not be considered.**

1.2 All proposals must be deposited in the QUOTATION BOX situated at the reception at **SASSA House, 501 Prondisa Building Cnr Steve Biko & Pretorius Streets, Arcadia, Pretoria 0083. Late quotations will not be considered.**

1.3 This quotation is subject to the GCC (General Conditions of Contract) and any other special conditions of contract where applicable.

1.4 The taxes of the successful bidder must be in order, or satisfactory arrangements must be made with the Receiver of Revenue to meet the bidder's tax obligations. **SARS PIN SHOULD BE SUBMITTED TOGETHER WITH THE QUOTATION FOR TAX COMPLIANCE VERIFICATION PURPOSE.**

1.5 Your quotation must include costs breakdown and that is inclusive VAT inclusive, (where applicable)



*paying the right social grant, to the right person,
at the right time and place. NJALO!*

South African Social Security Agency
Head Office

SASSA House • 501 Prondisa Building Cnr Beatrix & Pretorius Street
Pretoria • Private Bag X55662 Arcadia • Pretoria 0083
Tel: +27 12 400 2000 • Fax: +27 12 400 2257
www.sassa.gov.za

- 1.6 Quotations above R30 000 must be accompanied by an original or certified original B-BBEE certificate issued by SANAS accredited agencies. Exempted Macro Enterprise (EME's) must submit an original Sworn Affidavit signed by EME's representative and attested by commissioner of oath. Failure to submit will result in the supplier not awarded points for B-BBEE level of contribution.
- 1.7 Quotations equal to or above R30, 000 Vat inclusive shall be evaluated on 80\20 point system.
- 1.8 Suppliers to indicate validity of quotation and delivery date for goods and services.
- 1.9 The quotation must be detailed as per the SASSA attached specification and where the quotation is itemised, the supplier must indicate price for each line item. Failure to comply with this condition (paragraph 1.10) WILL result in the invalidation of your quotation.

2. DESCRIPTION OF SERVICE REQUIRED:

Description of Goods / Services	Quantity
SERVICE PROVIDER TO CONDUCT AN INVESTIGATION ON THE ALLEGATIONS OF NEPOTISM DURING RECRUITMENT	

NB: Please find attached SBD Forms and Detailed Specification or TOR's

3. ENQUIRIES RELATED TO DOCUMENTS MUST BE ADDRESSED TO:

BUYER:	D. LEKGANYANE	Telephone no:	012 400 2154
Cell no:	N/A	Fax no:	

Name: D. Lekganyane

Signature:

Date: 17 AUGUST 2023



*paying the right social grant, to the right person,
at the right time and place. N!ALO!*

South African Social Security Agency
Head Office

SASSA House • 501 Prondisa Building Cnr Beatrix & Pretorius Street
Pretoria • Private Bag X55662 Arcadia • Pretoria 0083
Tel: +27 12 400 2000 • Fax: +27 12 400 2257
www.sassa.gov.za

TERMS OF REFERENCE

Terms of reference for the Procurement of a Service Provider to conduct an investigation on the allegations of nepotism during recruitment; collusion with service provider's practices by management in the Mpumalanga region: and protest action and its impact in the workplaces under Mpumalanga region.

1. BACKGROUND

- 1.1 SASSA is a Schedule 3A Public Entity in terms of the Public Finance Management Act; 1999; as amended; and duly established in terms of South African Social Security Act, No.9 of 2004. It has the staff complement of 7552 employees on its establishment currently; of which **537** are based under Mpumalanga region;
- 1.2 It has been reported that since the 6th February 2023, the staff (mostly said to be members of NEHAWU) have been engaged in a protest action.
- 1.3 At the meeting held between NEHAWU and SASSA executives on the 16th February 2023 it was resolved that an urgent investigation should be undertaken to ensure that all the allegations of irregularities raised by NEHAWU are dealt with and if confirmed to have been committed by some officials in the management of Mpumalanga region; appropriate action would have to be taken against those identified;



*paying the right social grant, to the right person,
at the right time and place. Njalo!*

South African Social Security Agency

Head Office

SASSA House • 501 Prodinsa Building Cnr Beatrix & Pretorius Street

Pretoria • Private Bag X55662 Arcadia • Pretoria 0083

Tel: +27 12 400 2000 • Fax: +27 12 400 2257

TOR for procurement of service provider to conduct an investigation on the allegations in the MP Region

- 1.4 The approval to outsource the investigation for objectivity purposes was sought; whereby an independent service provider would be appointed to conduct such investigation.

2. OBJECTIVE OF THE BID

- 2.1 To appoint a service provider to conduct an investigation and produce a report as outlined in the scope of work. Based on the report and related recommendations, the South African Social Security Agency(SASSA) will be able to take appropriate actions, including disciplinary action within the ambit of the applicable labour laws;
- 2.2. To appoint service provider, who on receipt of relevant instructions will provide a detailed project methodology to be followed during the investigation processes up to the completion of the project; and
- 2.3. That the project will be limited to not more than one (01) month, calculated from the date on which the order (instruction to proceed) is issued

3. SASSA'S RESPONSIBILITY

- 3.1 The appointed service provider, will be provided with the necessary information and documents which may assist in the completion of the project;
- 3.2 The Agency will appoint its own Project Manager who will work closely with the appointed service provider to ensure that any risks related to the project are given urgent attention within the contract management framework and the scope of work.

4. SCOPE OF SERVICE

- 4.1. It is expected that the Service Provider will conduct an in-depth investigation on the allegations of irregularities raised by Organized Labour against some senior managers under Mpumalanga region which includes the following:
 - 4.1.1. Non-compliance with HR recruitment policies whereby nepotism (appointment of relatives and friends and thus disadvantaging the internal staff) is driven by some in the senior management system;
 - 4.1.2. That some managers are bullying their staff in the work places;
 - 4.1.3. That the Senior Manager: HCM is victimizing the shop stewards in the workplaces and implemented leave without pay to such shop stewards unduly/without just cause;
 - 4.1.4. That some of the service providers are colluding with certain service providers and thus compromising the services to be rendered by such service providers in terms of the signed contracts. The examples cited are cleaning and security contracts;
- 4.3. The impact of the protest action to service delivery and its effect on employer/employee relations in the workplaces under Mpumalanga region;
- 4.4. Determine and recommend appropriate cause of action/remedial actions to be taken to address the issues raised;
- 4.5. Prepare, provide and present reports including signed statements from interviewed individuals to SASSA in respect of the fulfilment of the scope of work; including the close out report of the project;
- 4.6. The Service Provider to avail themselves for consultation and testify in case of a disciplinary enquiry being pursued.

5. REPORTING REQUIREMENT

- 5.1. The appointed service provider must provide and present reports including signed statements from interviewed individuals to SASSA in respect of the fulfilment of the scope of work; including the close out report of the project.

6. TECHNICAL EXPERTISE AND KNOWLEDGE/QUALIFICATION REQUIRED:

- 6.1. The service provider/legal company must have the personnel with the following skills; knowledge and experience in relation to the scope of work:-
- 6.1.1. NQF Level 7 qualification related to labour law;
 - 6.1.2. An in-depth knowledge of Human Resource principles, functions, methods and best practices;
 - 6.1.3. A minimum of five years' experience in handling labour law related matters (namely; dispute resolutions; strikes and picketing; disciplinary procedures; negotiations; etc.);
 - 6.1.4. A minimum of five years' experience in conducting investigations related to misconduct in the workplaces;
 - 6.1.5. Experience in project management;
 - 6.1.6. Report writing skills; and
 - 6.1.7. Knowledge of prescripts applicable to government/public sector environment.

TOR for procurement of service provider to conduct an investigation on the allegations in the MP Region

7. DELIVERABLES

- 7.1. The appointed service provider to provide a comprehensive report with findings and recommendations to be considered as remedial actions; and
- 7.2. The expected deliverables should be in line with the project scope and contractual period.

8. COMMENCEMENT DATE AND PERIOD OF EXECUTION OF THE PROJECT

- 8.1. The service provider must be prepared to complete the assignment/project within one (1) month period commencing from the date of the order (instruction to proceed).

9. EVALUATION CRITERIA

- 9.1. The evaluation process will be carried out in terms of the following two (2) Stages:

- 9.2. The bid proposals shall be evaluated in accordance with the 80/20 principle and shall be conducted as follows:-

9.2.1. STAGE 1: Mandatory Requirements, Administrative Compliance & Functionality Evaluation

- ✓ **Phase One:** Mandatory Requirements
- ✓ **Phase Two :** Administrative Compliance
- ✓ **Phase Three:** Functionality Evaluation

9.2.2. STAGE 2 : Price and Specific Goals

9.2.2.1. PHASE ONE: Mandatory Requirements

a) The service provider **must** provide the following:

- i) **Certified copy of NQF Level 7 qualification related to labour law of the Personnel/Project Team Member/s to be allocated to SASSA for this project**
- ii) **CV's of Personnel/Project Team Member/s stipulating a minimum of five years' experience in investigating labour law related matters (namely; dispute resolutions; strikes and picketing; disciplinary procedures; negotiations; etc.);**

Curriculum Vitae should highlight the following:

- Years of experience including specific dates;
- Service offered;
- Company name of the client and
- Contactable details.

- iii) **Personnel/Project Team Member/s to be allocated to SASSA for this project must have a minimum of five years' experience in conducting investigations related to misconduct in the workplaces.**

Submit at least **two (2)** reference letters from **different clients** to prove that similar/related projects have been undertaken previously and **successfully completed**.

The letters to include the following:

- Client letterhead
- Service rendered
- Contactable person and details
- Duration of the project
- Signed by Project Manager or Equivalent
- Quality of service delivered

TOR for procurement of service provider to conduct an investigation on the allegations in the MP Region

- b) The service provider **must** have a minimum experience of **5 years** in relevant **business/legal environment with specialization in labour law and human resource** related matters.

The service provider must **submit reference letter/s** to prove that **similar/related projects** have been undertaken previously and **successfully completed**.

The letter to include the following:

- Client letterhead
- Service rendered
- Contactable person and details
- Duration of the project
- Signed by Project Manager or Equivalent
- Quality of service delivered

NB: Failure to comply with the above will result in your bid proposal being disqualified

9.2.2.2. PHASE TWO: Administrative Compliance

- a) The Service Provider should provide the following:

NO	REQUIREMENTS FOR ADMINISTRATIVE COMPLIANCE
i)	Tax compliance verification pin
ii)	Fully completed and signed Standard Bidding Documents (SBD's)
iii)	Certification/Proof of registration of the company (CIPC)

- b) **Failure to submit the above mention documents may result in your proposal being disqualified.**

TOR for procurement of service provider to conduct an investigation on the allegations in the MP Region

9.2.2.3.PHASE THREE: Functionality Criteria

- a) Prospective bidders will be evaluated for functionality as stipulated in the Terms of Reference. Only those bidders who score a minimum of **60 points out of 100 points** on functionality will be considered and proceed to be evaluated further on Price and Specific goals and **80/20** principle will apply.
- b) Service Providers will be evaluated in terms of the following values:

1=Poor, 2=Average, 3= Satisfactory, 4 Good, 5 Excellent

CRITERIA	WEIGHT	TOTAL
<p><u>EXPERIENCE</u></p> <p>The service provider must have a minimum of five (5) years' experience in the relevant business/legal environment with specialization in labour law and human resource related matters.</p> <p>1. <u>Number of years of an experience</u></p> <ul style="list-style-type: none"> • 5 years' experience = 3 • Above 6 - 7 years' experience = 4 • Above 7 years' experience= 5 <p><u>The reference letter will be utilized to evaluate, and should include the following :</u></p> <ul style="list-style-type: none"> • Client letterhead • Service rendered • Contactable person and details • Duration of the project • Signed by Project Manager or Equivalent • Quality of service delivered <p>2. <u>Projects successfully completed</u></p> <ul style="list-style-type: none"> • 0 – 1 Projects = 1 • 2 – 3 Projects = 2 • 4 – 5 Projects = 3 	<p>35</p> <p>35</p>	<p>70</p>

TOR for procurement of service provider to conduct an investigation on the allegations in the MP Region

<ul style="list-style-type: none"> • 6 – 7 Projects = 4 • More than 7 Projects = 5 <p>NB : Service providers are required to submit reference letter/s (not limited to number of project) to prove that similar project(s) were performed and executed successfully.</p>		
<p>Service providers must provide detailed Project Implementation Plan (with methodology to execute the project) to prove that the project can be completed successfully within the set time lines (within one (1) months from the date of an order.</p> <p>Methodology including (but not limited to):</p> <ol style="list-style-type: none"> 1. Preplanning activities 2. Implementation plan 3. Phase out plan <p>Methodology attached and includes more than three of the above listed aspects – 5</p> <p>Methodology attached and includes three of the above listed aspects - 4</p> <p>Methodology attached and includes any two of the above listed aspects – 3</p> <p>Methodology attached and includes any one of the above listed aspects – 2</p> <p>No methodology attached- 1</p>		30
Total	100	100

TOR for procurement of service provider to conduct an investigation on the allegations in the MP Region

9.3. STAGE TWO: Price & Specific Goals

9.3.1. Provision of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its regulation will apply in terms of awarding points. SBD 6.1 should be completed and signed by the bidder to be able to claim points for Specific Goals.

Illustration:

Price and Specific Goals	100
Price	80
Specific Goals	20

Bidder should note that 80 points will be for price and the 20 points will be for specific goals.

9.3.2. Cost / Price

9.3.2.1. The service providers must cost the project according to the deliverables and firm price is required.

9.3.2.2. The service providers are required to fully complete amongst others SBD 3.3.

Calculation of Price

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

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

TOR for procurement of service provider to conduct an investigation on the allegations in the MP Region

Specific Goals

Number of points will be awarded to a bidder for attaining the specific goals in accordance with the table below:

Specific Goals	Number of points (80/20)	Bidders must submit the following to claim number of points for Specific Goals
B-BBEE Status Level 1 - 2 contributor with at least 51% black women ownership	20	<p>1. Bidders must submit the following to claim number of points:</p> <ul style="list-style-type: none"> ✓ B-BBEE verification certificate from a verification agency accredited by the South African National Accreditation System (SANAS) and/or a sworn affidavit indicating the percentage of ownership of all shareholders and/or owners and also signed by the commissioner of oaths. ✓ Bidder to Submit Central Supplier Database Report / CSD MAAA number <p>2. A sworn affidavit should be submitted over and above the B-BBEE verification certificate or CSD MAAA number to claim points for the below Level of contributor:</p> <ul style="list-style-type: none"> • B-BBEE Status Level 3-4 contributor with at least 51% women ownership
B-BBEE Status Level 3 - 4 contributor with at least 51% women ownership	18	
B-BBEE Status Level 1 - 2 contributor with at least 51% black youth or disabled ownership	16	
B-BBEE Status Level 1 - 2 contributor	14	
B-BBEE Status Level 3 - 8 contributor with at least 51% youth or disabled ownership	12	
B-BBEE Status Level 3 - 4 contributor	8	
B-BBEE Status Level 5 - 8 contributor	4	
Others (Non-Compliant)	0	
<p>Note:</p> <p>In the event of a bidder claiming more than one specific goal category, SASSA will allocate points based on specific goal with the highest points.</p> <p>Failure to submit the required documents shall be interpreted to mean that preference points for specific goals are not claimed.</p>		

TOR for procurement of service provider to conduct an investigation on the allegations in the MP Region

	<ul style="list-style-type: none">• B-BBEE Status Level 3-8 contributor with at least 51% youth or disabled ownership
--	---

10. COMPULSORY BRIEFING SESSION

- 10.1.** Service Providers are invited to attend virtual compulsory briefing session as per the date and time stipulated in the Request for Quotation;
- 10.2.** All enquiries, questions and requests for clarification that may arise in relation to this request will be addressed during the compulsory briefing session.
- 10.3.** Failure to attend the compulsory briefing session will disqualify your bid proposal.

11. BID CONDITION

- 11.1.** SASSA reserves the right to verify the information / documents submitted by the Service Providers and therefore any misrepresentation of information will disqualify the proposal or termination of the contract.
- 11.2.** SASSA may conduct reference checks at any time on the information provided by the Service Providers and it is the responsibility of the bidder to provide SASSA with details and accurate information.
- 11.3.** SASSA shall further not be obliged to accept the lowest of any quotation, offer or proposal. All quotation will be evaluated according to the evaluation criteria's
- 11.4.** The Service Provider will enter into a contract with SASSA.
- 11.5.** SASSA reserve the right to negotiate price with the preferred bidder.
- 11.6.** The SASSA reserves the right to award the bid or not to award the bid at all.
- 11.7.** The General Conditions of the contract as stipulated by the National Treasury will be applicable.

12. APPLICABLE LEGISLATIONS

12.1. SASSA as an agency of government is obliged to comply with the legislative framework and policies which all Bidders must familiarise themselves with. These include but not limited to the following:

- RSA Constitution(1996);
- PFMA(1999,as amended);
- National Treasury Regulations(2005);
- Preferential Procurement Policy Framework Act(20000)
- Broad Based Black Economic Empowerment Act(2003);
- Labour Relations Act , 1995 , as amended;
- Chapter 7 of the SMS Handbook;
- Resolution 1 of 2003 and
- Prevention and combating of corrupt activities Act (2004).
- Staffing Practices Policy

13. DEAD LINE FOR SUBMISSION OF PROPOSALS

13.1. The deadline for submission of response to this RFQ shall be as prescribed in the Request for Quotation.

14. PAYMENTS

14.1. No advance payments will be made in respect of the project. Payments will be effected after the completion of the investigation and the submission of the reports.

STANDARD BIDDING DOCUMENT (SBD) 4

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

- 1.1** 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.
- 1.2** 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.

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.

STANDARD BIDDING DOCUMENT (SBD) 4

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....

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

2.3.1 If so, furnish particulars:

.....

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;

STANDARD BIDDING DOCUMENT (SBD) 4

- 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.
- 3.5 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.7 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for

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.

STANDARD BIDDING DOCUMENT (SBD) 4

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**

- a) The applicable preference point system for this tender is the **80/20** preference point system.

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:

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

Where

- P_s = Points scored for price of tender under consideration
- P_t = Price of tender under consideration
- P_{min} = Price of lowest acceptable tender

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

3.2.1. POINTS AWARDED FOR PRICE

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

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

Where

P_s = Points scored for price of tender under consideration
 P_t = Price of tender under consideration
 P_{max} = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.)

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

The specific goals allocated points in terms of this tender	Number of points allocated (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)
B-BBEE Status Level 1 - 2 contributor with at least 51% black women ownership	10	20		
B-BBEE Status Level 3 - 4 contributor with at least 51% women ownership	9	18		
B-BBEE Status Level 1 - 2 contributor with at least 51% black youth or disabled ownership	8	16		
B-BBEE Status Level 1 - 2 contributor	7	14		
B-BBEE Status Level 3 - 8 contributor with at least 51% youth or disabled ownership	5	12		
B-BBEE Status Level 3 - 4 contributor	4	8		
B-BBEE Status Level 5 - 8 contributor	2	4		
Others (Non-Compliant)	0	0		
Note: In the event of a bidder claiming more than one specific goal category, SASSA will allocate points based on specific goal with the highest points.				

Returnable document to claim points	Please tick below for the attached document
1. B-BBEE Certificate	
2. Sworn Affidavit (EME or QSE)	
3. CSD registration number	

DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution, if deemed necessary.

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

SURNAME AND NAME:

DATE:

ADDRESS:

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

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

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as amended 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 "Controlling 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 consignee store or to his car" 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 markets 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 practices 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 thereof, 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, consulting, guarding, 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, retail, bidding, testing 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 expenses 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 1253, Pretoria 0001, or accessed electronically from www.gtrm.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 OCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in OCC 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.

2. 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.

3. Inspection, 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 at 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 furnish substitutes there with supplies which do comply with the requirements of the contract. Failure to remove the rejected supplies shall be retained at the supplier's 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.

8.5 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 13 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 weight shall take into consideration, where appropriate, the remoteness of the goods' final destination and the chance 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 or/else, 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 or 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 equipment; 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 delay 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 | <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> |
| 17. Prices | <p>17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.</p> |
| 18. Contract amendments | <p>18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.</p> |
| 19. Assignment | <p>19.1 The supplier shall not assign, in whole or in part, its obligations or perform under the contract, except with the purchaser's prior written consent.</p> |
| 20. Subcontracts | <p>20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.</p> |
| 21. Delays in the supplier's performance | <p>21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.</p> <p>21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be notified 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 OCC Clause 21, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to OCC Clause 22, unless an extension of time is agreed upon pursuant to OCC Clause 21.3 without the application of penalties.

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

22. Penalties

22.1 Subject to OCC Clause 26, 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 OCC 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 OCC Clause 21.3;
- (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 restrictive 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.

21.5 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 owns or manages 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.

21.6 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.

21.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corruption Activities Act, No. 12 of 2004, the court may also rule that such person's name be entered on the Register for Tender Defaulters. When a person's name has been entered 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 prohibition and such 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 subsidised 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 not be deemed to be paid forthwith by the contractor to the State or the State may deduct such amounts from monies (if any) which may otherwise be due to the contractor in respect 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 SCC Clause 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 referred to 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 payment 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 profit 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

		(4) 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 law, unless otherwise specified in SCC.
31. Notices	31.1	Every written acceptance of a bid shall be posted to the supplier accompanied 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 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 1996, an agreement, arrangement, concerted practice or, 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 practices 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 1996.

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.

As General Conditions of Contract (updated July 2012)