



NATIONAL LIBRARY OF SOUTH AFRICA

228 Johannes Ramokhoase Street
Private Bag X397
Pretoria
0001

5 Queen Victoria Street
Cape Town
8001

APPOINTMENT OF A SERVICE PROVIDER TO SUPPLY, INSTALL, CONFIGURE, MAINTENANCE AND SUPPORT NEXT GENERATION FIREWALL (NGFW) FOR A PERIOD OF THREE YEARS (36 MONTHS).

ISSUED DATE:

16 FEBRUARY 2023

CLOSING DATE: 10 MARCH 2023

TIME: 11H00

Bid No: NLSA.36/2022-2023.

VALIDITY PERIOD: 120 DAYS

BID DOCUMENTS MAY BE:

DEPOSITED IN THE TENDER BOX SITUATED AT (STREET ADDRESS)

**NLSA OFFICES, 75 THABO SEHUME STREET OR 228 JOHANNES RAMOKHOASE
PRETORIA CBD**

COMPILED BY:

NAME OF THE COMPANY.....

PHYSICAL ADDRESS/RESIDENTIAL

ADDRESS.....

TELEPHONE NUMBER.....

EMAIL ADDRESS.....



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TERMS OF REFERENCE/SPECIFICATIONS FOR SUPPLY, INSTALL, CONFIGURE, MAINTENANCE AND SUPPORT NEXT GENERATION FIREWALL (NGFW) FOR A PERIOD OF THREE YEARS (36 MONTHS).

CLOSING DATE: 10 March 2023

TIME: 11H00

Bid No: NLSA. 36/2022/2023

NB. Note that Saturday will be treated as the normal working day. Should you want to deliver Bid documents, please note that the NLSA opens at **08:00** and closes at **17:00**. Upon the submission of the Bid Documents Service Providers are requested to sign the register at the reception.

BID DOCUMENTS ARE AVAILABLE ON:

- o NLSA website (www.nlsa.ac.za)

NB. Completed Bid Documents must be deposited at one of the following Campuses addresses;

ADDRESS	CLOSING DATE	TIME
NLSA Pretoria Campus, No 75 Thabo Sehume Street, or 228 Johannes Ramokhoase Street, PTA CBD.	10 March 2023	11H00

1. BACKGROUND

- 1.1 The National Library of South Africa, hereafter referred to as the NLSA, is a world class African National Library and Information Hub. The NLSA is responsible for collecting, recording, preserving and making available, the national documentary heritage of South Africa. The NLSA promotes awareness, appreciation and access to published documents, nationally and internationally, and in doing so, contributes to the development and prosperity of South Africa. The NLSA has Campuses in Pretoria and Cape Town.
- 1.2 National Library of South Africa seeks to appoint Bidder to assist the NLSA with the supply, installation, configuration, maintenance and support of the Next Generation Firewall (NGFW) solution for three years (36 Months)

2. SCOPE OF WORK

- 2.1. The scope of work is for the supplier to provide the Next Generation Firewall (NGFW) solution with the following:
 - 2.1.1. Residual throughput
 - 2.1.2. Residual Random-Access Memory (RAM); and
 - 2.1.3. Residual Central Processing Unit (CPU) as depicted on the Table 1 below when the following components are enabled:
 - 2.1.3.1. Antivirus (AV).
 - 2.1.3.2. Application Control (AC).

- 2.1.3.3. Advanced Threat Protection (ATP)/Advanced Malware Protection (AMP)/Threat Protection (TP).
- 2.1.3.4. Web Filter
- 2.1.3.5. Intrusion Prevention System (IPS).
- 2.1.3.6. Deep packet; and
- 2.1.3.7. Secure Socket Layer (SSL) inspection enabled.
- 2.1.3.8. Cloud Sandboxing
- 2.1.3.9. Centralized Management and reporting
- 2.2. Provide Installation and Configuration of the equipment,
- 2.3. Provide maintenance and support services.
- 2.4. The Products must be licensed in intervals of Twelve Months (12 months) for a period of Three Years (36 Months)
- 2.5. High availability configured in active-passive cluster mode (Heartbeat Link) – Two Firewalls per Campus
- 2.6. Provide formal training / skills transfer to NLSA officials.
- 2.7. The NLSA and the Successful bidder will enter into a Three Years (36 Month) Service Level Agreement (SLA) contract.

NB: Residual throughput after below features is enabled should be as depicted in the Table 1 below:

Table 1: Expected Residual CPU Throughput

Office Area	Description	Quantity	AV	AC	AT P/ AM P/T P	Web Filter	IPS	Deep packet inspection	SSL inspection	Residual Throughput, Residual RAM, Residual CPU
Pretoria Campus	NGFW	1	X	X	X	X	X	X	X	>1.5 Gbps, <70% of total RAM, < 80% of CPU usage.

Cape Town Campus	NGFW	1	X	X	X	X	X	X	X	>1.5 Gbps, <70% of total RAM, < 80% of CPU usage.
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2.8. Details of the scope requirements

2.8.1. Pretoria and Cape Town Campuses.

2.8.1.1. Install and configure the Next Generation Firewall (NGFW) solution during weekdays, over the weekends, during holidays or after hours.

2.8.1.2. Setup & integrate to centralized Firewall management console.

2.8.1.3. Supplier must configure the firewall zones (different network areas) e.g.DMZ

2.8.1.4. Setup and configure all Firewall policies and rules.

2.8.1.5. Setup and customize alerts/reporting.

2.9. Provide Maintenance and Support for the NGFW for Three Years (36 Months).

2.9.1. Firewall hardware and software maintenance

2.9.2. Implement and manage the Firewall.

2.9.3. Monitor health of all the Firewalls deployed on the network.

2.9.4. Backup and retain latest configurations of all deployed firewalls.

2.9.5. Formal training and skills transfer for internal resources on the solution.

2.9.6. Certify NGFW solution implementation by the OEM.

3. TECHNICAL REQUIREMENT OVERVIEW

3.1. PRODUCT REQUIREMENT

3.1.1. Hardware Requirements

	Pretoria Campus	Cape Town Campus
Power Supply	Dual/Redundant 240v AC each Firewall.	Dual/Redundant 240v AC each Firewall.
Interfaces (I/O)	x08 10M/100M/1000M Ethernet interfaces (RJ-45) x02 x SFP fiber x02 10 GB (SFP+) Ethernet interfaces	x08 10M/100M/1000M Ethernet interfaces (RJ-45) x02 x SFP fiber x02 10 GB (SFP+) Ethernet interfaces

Management ports	1 x 10M/100M/1000M Ethernet port (RJ-45)	1 x 10M/100M/1000M Ethernet port (RJ-45)
HA Ports	1x HA Ports	1x HA Ports
Serial port	1 x RJ-45 console each firewall	1 x RJ-45 console each firewall
USB	1 x USB port Each Firewall	1 x USB port Each Firewall
Storage	1x 1 TB Hard drive each Firewall. 1x spare slot (for MSP) each firewall	1x 1 TB Hard drive each Firewall. 1x spare slot (for MSP) each firewall

The NGFW solution features are as follows:

3.2. Required Next Generation Firewall (NGFW) features.

- Built-In Next Generation Firewall Intrusion Prevention System (NGIPS)
- Advance malware protection /advanced threat protection
- Application Control
- Web Filtering
- Anti-virus
- SSL inspection /deeper packet inspection
- Holistic view of network activities.
- Cloud Sandboxing
- Firewall rules security impact assessment
- IPsec & SSL VPN SOLUTION REQUIREMENT for both Pretoria and Cape Town Campuses

Requirements	
Form Factor	1U, Rackmount kit to be included
Swappable components	Optional external power
Performance	
Firewall (Mbps) Throughput	38,000 Mbps or more
IPsec VPN (Mbps) Throughput	17,000 Mbps or More
Threat Protection (Mbps) Throughput	2,000 Mbps or More
IPS (Mbps) Throughput	9,800 or more

Concurrent Connections	12,000,000 or More
New connections per second	186,000 or More
Physical Interfaces	
Storage [local quarantine/logs]	Integrated min. 1TB drive
Ethernet interfaces (fixed)	8 x GE copper 2 x SFP fiber 2 x SFP+ 10 GbE fiber
Bypass ports	1
Management Ports	1 x RJ45 MGMT 1 x COM RJ45 1 x Micro-USB (cable incl.)
Other I/O Ports	2 x USB 3.0 (front) 1 x USB 2.0 (rear)
Display	Multi-function LCD module

4. Training

- 4.1. Bidder must provide training and unlimited access reports for the duration of the contract
- 4.2. Bidder must provide skills transfer to the NLSA's technical support team
- 4.3. Training material must be provided in an electronic format that can be placed on the NLSA's intranet for information sharing.

5. Submission Format

- 5.1. Bid proposals should be submitted in the following format as indicated in the table below.

Table of content	Yes/No
<u>Part A</u>	

1.1 TECHNICAL MANDATORY PRODUCT OR SERVICE REQUIREMENTS <ul style="list-style-type: none"> • The bidder must confirm compliance to the technical mandatory functional requirements. • The bidder must confirm that they comply with the Technical Mandatory Functional and Scope of Work Requirements. 	
<u>Part B</u> Fully completed and signed SBD 4, SBD 6.1, SBD 8, and SBD 9) General conditions of contract	
<u>Part C</u> Breakdown of Pricing Offer (Vat Inclusive).	

6. NLSA RIGHTS

The NLSA is entitled to amend any Bid conditions, bid validity period, bid terms of reference, or extend the Bid's closing date, all before the bid closing date. All bidders, to whom the bid documents have been issued and where the NLSA has record of such Bidders, may be advised in writing of such amendments in good time. Any such changes will also be posted on the NLSA's website under the relevant Bid information. All prospective Bidders must, therefore, ensure that they visit the NLSA's website regularly and before they submit their Bid response to ensure that they are kept updated on any amendments in this regard.

7. DURATION OF THE PROJECT

7.1. The duration of the project is thirty-six (36) months from the date of appointment. The Bidder and NLSA will enter a thirty-six (36) months SLA from the effective date of appointment.

7.2. The bidder must be able to supply, deliver and install the necessary equipment and applications within a maximum period of six (6) calendar months after award of contract.

8. CONDITIONS OF THE BID

- 8.1. The NLSA reserves the right not to accept the lowest proposal. The NLSA reserves the right to appoint one or more Bidder.
- 8.3. The NLSA reserves the right not to award the contract.
- 8.4. The NLSA reserves the right to have any documentation, submitted by the successful Bidder verified or inspected by any other person or organisation.
- 8.5. The General Conditions of Contract will be applicable to this Bid.
- 8.6. Bidders must obtain at least 70 points in the technical evaluation to qualify for the next stage of evaluation.
- 8.7. The NLSA will not be held responsible for any costs incurred by the Bidder in the preparation and submission of the Bid.
- 8.8. The Bidder may be required to prepare for a presentation should the NLSA require such and the Bidder shall be notified thereof in good time before the actual presentation date. Such presentation may include a practical demonstration of services as called for in this Bid.
- 8.9. Bids shall be valid for a period of 120 days (4 months) and may be extended at the discretion of the NLSA.
- 8.10. The NLSA reserves the right to check the service rendered by the successful bidder at any time, in order to ensure that the service is rendered in accordance with the conditions of the contract.
- 8.11. The NLSA reserves the right to require from the successful bidder that any of his/her employees be replaced, in which case the employee must leave the site forthwith. The NLSA will not be held responsible for any damage or claims, which may arise because of this, and is indemnified against such claims and legal expenses.

9. INDEPENDENCE AND CONFIDENTIALITY

The NLSA shall be the owner of all the reports compiled by the successful bidder in the execution of this tender.

These reports shall be regarded as confidential and may not be made available to any unauthorised person or institution without written consent of the NLSA.

10. EVALUATION CRITERIA

10.1 Pre evaluation (standard bid documents)

10.1.1 Fully completed and signed SBD 4, and SBD 6.1)

10.1.2 Central Supplier Database (CSD)

10.2 Mandatory

10.2.1 The bidder must be a registered OSM/OEM partner or an accredited reseller to provide a Next Generation Firewall Solution and provide certified copies of OEM/OSM documentation (valid certificate, license, letter).

10.2.2 One (1) signed original Bid document and One (1) signed electronic copy on a USB or CD (PDF protected with a code).

10.2.3

Description	Yes/No
1.1 BIDDER CERTIFICATION / AFFILIATION REQUIREMENTS <ul style="list-style-type: none">• The bidder must be a registered OSM/OEM partner or an accredited reseller to provide a Next Generation Firewall Solution.• The bidder must attach a copy of OEM/OSM documentation (valid certificate, license, letter or affidavit) that the bidder is a registered OEM/ OSM partner or accredited reseller to provide a Next Generation Firewall Solution	
1.2 BIDDER EXPERIENCE AND CAPABILITY REQUIREMENTS <ul style="list-style-type: none">• The bidder must have provided a Next Generation Firewall Solution to at least five (5) customers during the past five (5) years.	

- Provide reference details from five (5) customers to whom the projects or services were delivered as evidence of providing Next Generation Firewall Solution in the past five (5) years.
- Note: NLSA reserves the right to verify information provided

1.3 TECHNICAL REQUIREMENT

- Form Factor- 1U, Rackmount kit to be included
- Swappable components - Optional external power
- **Performance**
- Firewall (Mbps) Throughput - 38,000 Mbps or more
- IPsec VPN (Mbps) Throughput - 17,000 Mbps or More
- Threat Protection (Mbps) Throughput - 2,000 Mbps or More
- IPS (Mbps) Throughput - 9,800 or more
- Concurrent Connections - 12,000,000 or More
- New connections per second -186,000 or More
- **Physical Interfaces**
- Storage [local quarantine/logs] - Integrated min. 1TB drive
- Ethernet interfaces (fixed)
 - 8 x GE copper
 - 2 x SFP fiber
 - 2 x SFP+ 10 GbE fiber
- Bypass ports 1
- Management Ports
 - 1 x RJ45 MGMT
 - 1 x COM RJ45
 - 1 x Micro-USB (cable incl.)
- Other I/O Ports
 - 2 x USB 3.0 (front)
 - 1 x USB 2.0 (rear)
- Display - Multi-function LCD module

NB: Failure to submit the requested documents shall result in the disqualification of your Bid.

10.3 The bid will be evaluated in two (2) phases. Phase one (1) will be Technical Evaluation and Phase two (2) will be Pricing. Only bidders that meet the minimum technical evaluation (70 points) will move to pricing evaluation.

10.4 Evaluation Phase 1: Technical Evaluation

No	Criteria	Weight	Point	Score
1.	<p>Experience of service provider in similar work required by NLSA to institutions</p> <p>Provide contactable reference letters (within the past 5 years). The letters must be on the company's letterhead including contact name(s), address, phone number, duration of contract, a brief description of the services that you provided and the level of satisfaction.</p> <ul style="list-style-type: none">• 5 Projects or more (Points=5)• 4 Projects (Points=4)• 3 Projects (Points=3)• 2 Projects (Points=2)• 1 Project (Points= 1)• 0 Projects (Points = 0)	40		
2.	<p>Provide detailed CV to indicate the experience of the Head Engineer with the installation and configuring of next generations firewalls (NGFW).</p> <ul style="list-style-type: none">• 5 years and more with relevant experience (Points=5)• 4 years with relevant experience (Points=4)• 3 years with relevant experience (Points=3)	60		

	<ul style="list-style-type: none"> • 2 years with relevant experience (Points=2) • 1 year with relevant experience (Points=1) • 0 years' experience (Points=0) 			
	TOTAL POINTS	100		
	Minimum threshold for technical	70		

10.5 Pricing Phase two (2)

10.5.1 The following formula must be used to calculate the points out of 80 for price in respect of an invitation for a tender with a Rand value equal to or below R50 million, inclusive of all applicable taxes:

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

P_s = Points scored for price of tender under consideration;

P_t = Price of tender under consideration; and

P_{min} = Price of lowest acceptable tender.

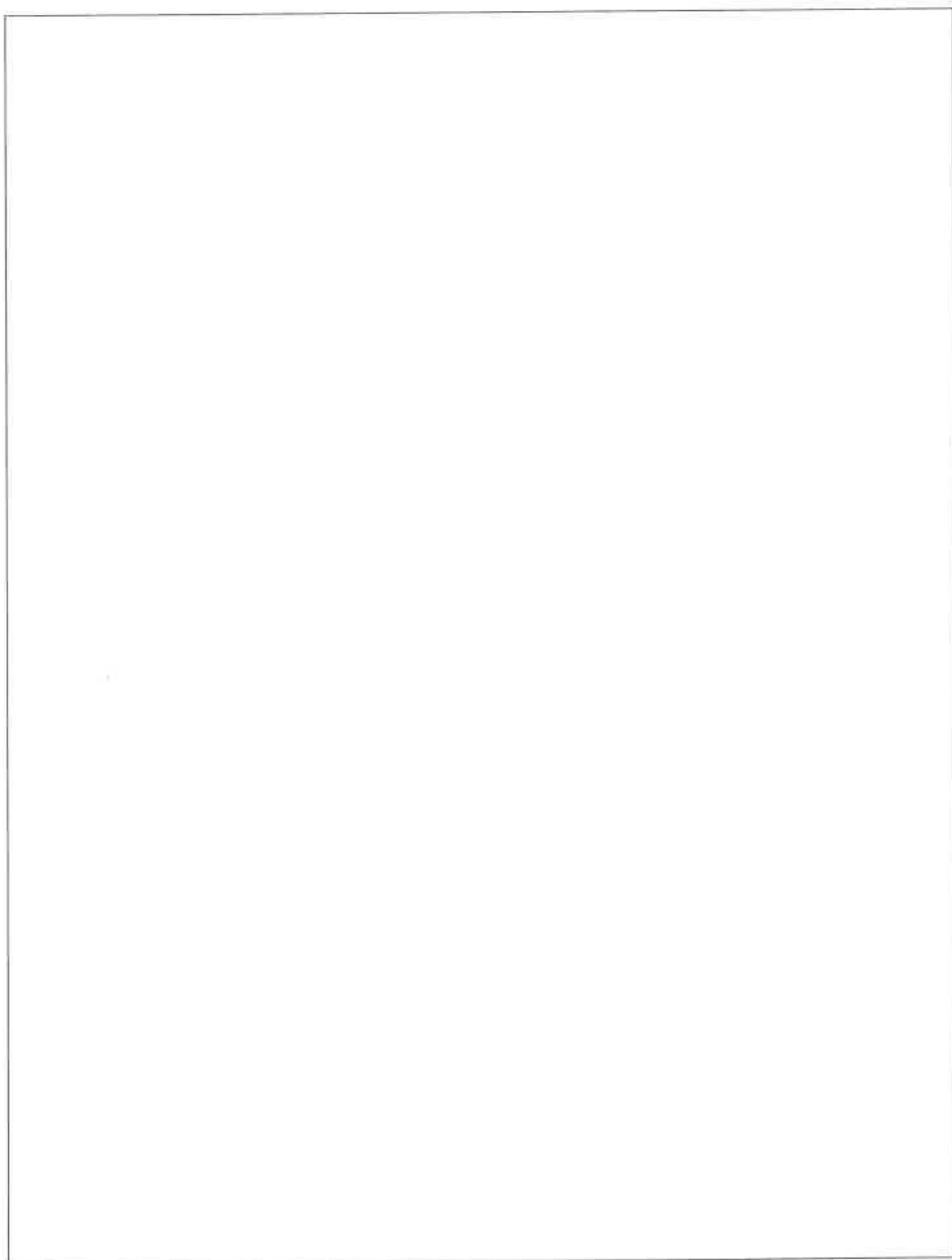
Specific Goal	Scoring
<ul style="list-style-type: none"> • Companies with 100% black ownership 	20 points 10 points with less than 100% black ownership

11 ENQUIRIES

For any Bid related enquiries please sent to the following email address quoting the Bid Number, Bid All enquiries regarding this bid must be directed to the SCM Office:

lebogang.maleka@nlsa.ac.za and quotations@nlsa.ac.za OR (012) 402 3017

Technical Queries: Kopano.selwana@nlsa.ac.za or 012 401 9737



INVITATION TO BID

3 YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/PUBLIC ENTITY)

BID NUMBER: NLSA 36/2022-2023 CLOSING DATE: 10 March 2023 CLOSING TIME: 11:00

DESCRIPTION: Appointment of Service Provider to supply, install, Configure, Maintenance and Support next Generation Firewall (NGFW) for a Period of Three Years (36 Months).

The successful bidder will be required to fill in and sign a written Contract Form (SBD 7).

BID DOCUMENTS MAY BE POSTED TO: Tender Box at the offices of NLSA in Pretoria 75 Thabo Sehume Street, Pretoria CBD

OR

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

228 Johannes Ramokhoase Street, or Pretoria 75 Thabo Sehume Street, Pretoria CBD

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THE FOLLOWING PARTICULARS MUST BE FURNISHED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER.....

POSTAL ADDRESS.....

STREET ADDRESS.....

TELEPHONE NUMBER CODE.....NUMBER.....

CELLPHONE NUMBER

FACSIMILE NUMBER CODENUMBER.....

E-MAIL ADDRESS.....

VAT REGISTRATION NUMBER.....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2) YES or NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (SBD 6.1) N/A

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA).....

.....
A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS);

OR.....

A REGISTERED AUDITOR

[TICK APPLICABLE BOX

ARE YOU THE ACCREDITED REPRESENTATIVE
IN SOUTH AFRICA FOR THE GOODS / SERVICES / WORKS OFFERED?

YES or NO

[IF YES ENCLOSE PROOF]

SIGNATURE OF BIDDER

DATE.....

CAPACITY UNDER WHICH THIS BID IS SIGNED.....

TOTAL BID PRICE.....TOTAL NUMBER OF ITEMS OFFERED.....

ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:

Department: National Library of South Africa.....

Contact Person: Maleka Lebogang.....

Tel: 012 402 3017/9766/9770.....

Fax: N/A.....

E-mail address: Lebogang.Maleka@nlsa.ac.za.....

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Contact Person: David Segalabutla.....

Tel: 012 401 9780.....

Fax: N/A.....

E-mail address: David.segalabutla@nlsa.ac.za.....

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: BID NO.:

CLOSING TIME 11:00 CLOSING DATE.....

OFFER TO BE VALID FORDAYS FROM THE CLOSING DATE OF BID.

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

.....	.....	R.....
.....	.....	R.....
.....	.....	R.....
.....	.....	R.....

TOTAL: R.....

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

Bid No.:

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]

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

- 2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

- 2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

- 2.2 Do you, or any person connected with the bidder, have a relationship

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

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

2.2.1 If so, furnish particulars:

.....

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

2.3.1 If so, furnish particulars:

.....

3 DECLARATION

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

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

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.

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

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

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

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

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

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

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

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

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

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the 90/10 preference point system.
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- c) Either the 90/10 or 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

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

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	
SPECIFIC GOALS	
Total points for Price and SPECIFIC GOALS	100

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

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

Where

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

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

3.2.1. POINTS AWARDED FOR PRICE

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

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

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)

DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium

One-person business/sole propriety

Close corporation

Public Company

Personal Liability Company

(Pty) Limited

Non-Profit Company

State Owned Company

[TICK APPLICABLE BOX]

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

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

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

SURNAME AND NAME:

DATE:

ADDRESS:

.....

.....

.....

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT:

GENERAL CONDITIONS OF CONTRACT

July 2010

3 GOVERNMENT PROCUREMENT

**GENERAL CONDITIONS OF CONTRACT
July 2010**

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

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

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

1.21 "Purchaser" means the organization purchasing the goods.

1.22 "Republic" means the Republic of South Africa.

1.23 "SCC" means the Special Conditions of Contract.

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

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

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

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

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

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

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

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

5. **Use of** 5.1 The supplier shall not, without the purchaser's prior written consent, contract disclose the contract, or any provision thereof, or any specification, documents plan, drawing, pattern, sample, or information furnished by or on and behalf of the purchaser in connection therewith, to any person other information; than a person employed by the supplier in the performance of the inspection.

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** 7.1 Within thirty (30) days of receipt of the notification of contract award, **security** 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** 10.1 Delivery of the goods shall be made by the supplier in accordance with and documents the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

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

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

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

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;

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

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

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

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

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

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after

the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

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

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

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

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

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

20. **Subcontracts** 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such

notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. **Delays in the 21.1 Delivery of the goods and performance of services shall be made by supplier's the supplier in accordance with the time schedule prescribed by the performance purchaser in the contract.**
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. **Penalties 22.1** Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.
23. **Termination 23.1** The purchaser, without prejudice to any other remedy for breach of for default 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 antidumping 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

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the Majeure 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** 26.1 The purchaser may at any time terminate the contract by giving written for insolvency 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** 27.1 If any dispute or difference of any kind whatsoever arises between the Disputes 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 28.1 Except in cases of criminal negligence or willful misconduct, and in liability

the case of infringement pursuant to Clause 6;

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

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

shall also be written in English.

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

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

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

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

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 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.
Industrial Participation (NIP) Programme

- Restrictive practices**
- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.