



**DEPARTMENT OF WATER AND SANITATION
REPUBLIC OF SOUTH AFRICA**

REQUEST FOR BID NUMBER: WP11467

DESCRIPTION

APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER (PSP) TO RE-GRADE WATER SECTOR ENTITIES AND REVIEW POLICIES ON THE REMUNERATION OF CHIEF EXECUTIVE OFFICERS OF WATER SECTOR ENTITIES AND SUBSIDIARIES AND BOARD PRACTICES AND THE REMUNERATION OF NON-EXECUTIVE DIRECTORS FOR A PERIOD OF SIX (6) MONTHS

ISSUE DATE:

09 MAY 2024

CLOSING DATE:

13 JUNE 2024

TIME: 11:00

SUBMIT TENDER DOCUMENT

**POSTAL ADDRESS:
DIRECTOR-GENERAL: WATER AND
SANITATION
PRIVATE BAG X 313
PRETORIA,0001**

OR

**TO BE DEPOSITED IN:
THE TENDER BOX AT THE ENTRANCE
OF ZWAMADAKA BUILDING
157 FRANCIS BAARD STREET
(FORMERLY SCHOEMAN STREET)
PRETORIA,0002**

TENDERER: (Company address and stamp)

Please be aware that the Department representatives at SCM will never call you and demand bribes in exchange for a tender. If this occurs, please notify the Department



DIRECTIVE TO BIDDERS ON COMPLETION OF SBD FORMS AND PACKAGING OF BID PROPOSALS

The purpose of this document is to guide bidders on the completion of SBD forms and packaging of a Bid

Proposals with each document being placed under the correct Annexure. The last column of the table below (this column must be ticked as an indication that each document and its requirements have been complied with by the bidder)

The dates on this all-SBD forms must be a date which is within the bid advert period

TABLE OF CONTENTS FOR BID PROPOSALS

DOCUMENT	ANNEXURE	DIRECTIVE	COMPLIED/NOT COMPLIED
SDB 1	A	Bidders are required to complete this document in full and be signed off. The date on this form must be a date which is within the bid advert period	
SBD 3.1/3.3	B	Bidders are required to complete the applicable form in full and ensure that the amounts in the document are properly calculated. The total amount (inclusive of VAT) as reflected herein will be regarded as the Total Bid Price. Bidders who are not VAT Vendors are not allowed to charge VAT Bidders are required to constantly verify their TAX Status on CSD to ensure that their task matters are in order	
SBD 4	C	This document must be completed in full. Bidders' attention is drawn particularly to paragraph 2.3 which requires the bidder to disclose if the company or any of its directors have interest in other companies whether they have bid or not. Bidders are required to provide all information. Should a bidder have more companies to declare, such information can be provided on a separate sheet in the format prescribed in the form and be attached to the SBD 4. Information captured must be in line with what is captured in the CSD report	
SBD 6.1	D	This document must be completed in full. Bidders are advised to ensure that information captured in this form is aligned to information contained in the CSD Reports.	
BBBEE Certificate/Sworn affidavit	E	Bidders are required to submit a valid BBBEE Certificate or sworn affidavit.	
CSD Report	F	Bidders are requested to provide copies of reg CSD Report.	
Bid Proposal	G	A detailed bid proposal in line with the Specifications must be attached	

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF WATER AND SANITATION					
BID NUMBER:	WP11467	CLOSING DATE:	13 JUNE 2024	CLOSING TIME:	11H00
DESCRIPTION	Appointment of a Professional Service Provider (PSP) to re-grade water sector entities and review policies on the remuneration of chief executive officers of water sector entities and subsidiaries and board practices and the remuneration of non-executive directors for a period of six (6) months				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
ZWAMADAKA BUILDING ENTRANCE (TENDER BOX)					
157 FRANCIS BAARD STREET					
PRETORIA					
0002					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Ms Zelda Phiri		CONTACT PERSON	Mr Sinky Letsholo	
TELEPHONE NUMBER	(012) 336 7954		TELEPHONE NUMBER	(012) 336 8043	
CELLPHONE	-		CELLPHONE	-	
E-MAIL ADDRESS	phiriz@dws.gov.za		E-MAIL ADDRESS	letsholos@dws.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	[TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX]	
	<input type="checkbox"/> Yes	<input type="checkbox"/> No		<input type="checkbox"/> Yes	<input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]
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QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

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

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

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

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

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

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

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

2. TAX COMPLIANCE REQUIREMENTS

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

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

SIGNATURE OF BIDDER:.....

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

DATE:.....

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: BID NO: WP11467
 CLOSING TIME 11:00 CLOSING DATE: 13 JUNE 2024

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

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

*

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

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

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

Full Name	Identity Number	Name of State institution

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

2.2.1 If so, furnish particulars:

.....

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

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

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

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

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

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

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

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

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

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and

1.2 To be completed by the organ of state

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:

$$80/20 \quad \text{or} \quad 90/10$$

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

Where

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

4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
- then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.
(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

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

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Women	5	
People with disability	5	
Youth (35 and below)	5	
Location of enterprise (Province)	2	
B-BBEE status level contributors from level 1 to 2 which are QSE or EME	3	
Total points for SPECIFIC GOALS	20	

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:	.....

STANDARD EVALUATION CRITERIA IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

THE 80/20 POINTS AWARDED FOR PRICE AND SPECIFIC GOALS

The 80/20 Preferential Procurement System will be used in evaluating these bids:

Evaluation element	Weighting (Points)
SPECIFIC GOALS	20
PRICE	80
Total	100

Price

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

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

Where:

- P_s** = Points scored for comparative price of bid under consideration
P_t = Comparative price of bid under consideration
P_{min} = Comparative price of lowest acceptable bid

Preference point system

SPECIFIC GOALS	NUMBER OF POINTS TO BE ALLOCATED
Women	5
People with disability	5
Youth (35 and below)	5
Location of enterprise (Province)	2
B-BBEE status level contributors from level 1 to 2 which are QSE or EME	3
Total points for SPECIFIC GOALS	20

Documents Requirement for verification of Points allocation: -

Procurement Requirement

Women
 Disability
 Youth
 Location

Required Proof Documents

Full CSD Report
 Full CSD Report
 Full CSD Report
 Full CSD Report

B-BBEE status level contributors from level 1 to 2 which are QSE or EME Valid BBBEE certificate/sworn affidavit
Consolidated BEE certificate in cases of Joint
Venture
Full CSD Report

The definition and measurement of the goals above is as follows:

Women, disability, and youth:

This will be measured by calculating the pro-rata percentage of ownership of the bidding company which meets this criterion. E.g., Company A has five shareholders each of whom own 20% of the company. Three of the five shareholders meet the criterion, i.e. they are women/disability/youth. Therefore, this bidder will obtain 60% of the points allowable for this goal.

Location of enterprise

Local equals province. Where a project cuts across more than one province, the bidder may be located in any of the relevant provinces to obtain the points.

B-BBEE status level contributors from level 1 to 2 which are QSE or EME

Measured in terms of normal BBBEE requirements.

Note: Formula for calculating points for specific goals

Preference points for entities are calculated on their percentage shareholding in a business, provided that they are actively involved in and exercise control over the enterprise. The following formula is prescribed:

$$PC = Mpa \times \frac{P\text{-own}}{100}$$

Where

PC= Points awarded for specific goal

Mpa= The maximum number of points awarded for ownership in that specific category

P-own = The percentage of equity ownership by the enterprise or business

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

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

- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection.**
- 5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights**
- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance**
- 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 and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties,

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

may have against the supplier under the contract.

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

available.

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the

envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

- 25. Force Majeure**
- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.
- 26. Termination for insolvency**
- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
- 27. Settlement of Disputes**
- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.
- 28. Limitation of liability**
- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34. Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

TERMS OF REFERENCE

**APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER (PSP) TO RE-GRADE
WATER SECTOR ENTITIES AND REVIEW POLICIES ON THE REMUNERATION OF
CHIEF EXECUTIVE OFFICERS OF WATER SECTOR ENTITIES AND SUBSIDIARIES
AND BOARD PRACTICES AND THE REMUNERATION OF NON-EXECUTIVE
DIRECTORS FOR A PERIOD OF 6 MONTHS**

29 APRIL 2024

DIRECTORATE: WATER SERVICE INSTITUTION GOVERNANCE

Private Bag X313, PRETORIA, 0001

REPUBLIC OF SOUTH AFRICA

1. BACKGROUND

Water sector entities operate in the context of increasing volatility, uncertainty, complexity, and ambiguity (VUCA) in the world. The Chief Executive Officers (CEO) and Non-Executive Directors are expected to possess adequate skill, knowledge, and experience to face the unexpected. Water sector entities are expected to attract and retain the appropriate calibre of skilled, knowledgeable, and experienced CEOs and Board Members. Remuneration is critical to attract, retain and motivate skilled, knowledgeable, and experienced individuals. The market dynamics affecting remuneration must be taken into consideration to achieve the above. However, remuneration affects the wider company beyond the CEOs and Board members. Unregulated remuneration may lead to water boards paying unjustified (high/low) salaries, this may have a ripple effect on employees resulting in demotivation and further damaging a company's reputation. It is also perceived as a visible symbol of inequality. Therefore, the governing body must ensure that the organisation remunerates fairly, responsibly, and transparently.

Water Boards

Water Boards are enterprises in terms of the PFMA. They are provided for in terms of the Water Services Act, no. 108 of 1997 (the 'WSA'). Most Water Board would have been constituted before the commencement of the WSA in terms of the (now repealed) Water Act of 1956. A Water Board is, in the WSA, intended to perform a public function. This primary function is to provide water services to other water services institutions within its service area (s29).

In terms of section 36 (2) of the WSA, a Water Board must determine the salary of its Chief Executive Officer, subject to the approval of the Minister of Water and Sanitation. Further in section 35 (6), members of the Board may be paid out of funds of the Water Board for carrying out their duties as Board members, according to a level of remuneration approved by the Minister. In terms of Principle 14 of the King IV Report, the governing body should ensure that the organisation remunerates fairly, responsibly, and transparently to promote the achievement of strategic objectives and positive outcomes.

Catchment Management Agencies

Chapter 7 of NWA, Act no 36, 1998, gives effect to the establishment of Catchment Management Agencies (CMA) which are statutory bodies and listed as schedule 3a entities under the PFMA- (service delivery public entity). In terms of section 90 (1)(c) of the NWA, the Minister may make regulations determining, in consultation with the Minister of Finance, the basis and extent of remuneration and payment of expenses of members of governing boards and committees.

Water Research Commission

In terms of section 10 (2) of the Water Research Act, 1971 (Act No. 34 of 1971), the conditions of service of the executive director and the other officers and employees of the commission shall be determined by the commission, subject to the approval of the Minister granted with the concurrence of the Minister of Finance. In terms of section 3(7) of Schedule 4 of the National Water Act, 1998 (Act No. 36 of 1998) the salary of the CEO of a CMA must be determined by its governing board in consultation with the Minister of Public Service and Administration, subject to the approval of the Minister of Water and Sanitation.

TCTA

The Trans-Caledon Tunnel Authority was established by Government Notice 2631 of 12 December 1996 in terms of the Water Act of 1956. The Notice sets out the powers and functions of the TCTA. In terms of Government Notice 277 of 24 March 2000, the original notice was repealed and replaced with Notice 277. The TCTA is an Enterprise in terms of the PFMA and is subject to Ministerial directives in terms of s74 of the NWA. The TCTA is deemed to be a 'body' established for the implementation of international agreements in terms of Chapter 10 of the NWA (s102) when read with Notice 277. The Minister has the power to appoint, and to determine the conditions of appointment, the chairperson, deputy chairperson and directors of the TCTA (Item 9(1)). The directors appoint a CEO of the TCTA but this appointment has to be agreed by the Minister before it is made (Item 17(1)).

The policy review and the re-grading are intended to align the current policy to the Presidential review on the Remuneration Standards for State-Owned Entities and to place Entities in their appropriate size category to allow the Board and Remuneration Committee to formulate remuneration and incentive policies and schemes by the size of the Entity. This is also intended to improve accountability and transparent disclosure of remuneration while restraining unreasonably high pay of executives. It is also to promote uniformity in principles and good practices. Given the above, it became imperative to re-grade water sector entities and review policies on the remuneration of Chief Executive Officers of water sector entities board practices and the remuneration of Non-Executive Directors.

2. PURPOSE

The purpose of this Terms of Reference (TOR) is to appoint a PSP to:

- Re-grade Water Sector Entities (i.e., Water Boards, Water Research Commission (WRC), Catchment Management Agencies (CMAs), and Water User Associations) into an appropriate size category.
- Review current Policies on the Remuneration of Chief Executive Officers of Water Sector Entities and Subsidiaries and Board Practices and the Remuneration of Non-Executive Directors.

3. OBJECTIVES

The primary objective of this assignment is to:

- Re-grade Water Sector Entities, namely: Water Boards, Water Research Commission (WRC), Catchment Management Agencies (CMAs), and Water User Association into an appropriate size category.
- Review current policies on Board practices, and the remuneration for Non-Executive Directors and Chief Executive Officers of Water Sector Entities.

4. SUMMARY OF THE SCOPE OF WORK

- Re-grade all the Water Sector Entities.
- Review Policy: Remuneration of Chief Executive Officers of Water Sector Entities and Subsidiaries
- Review Policy: Board Practices and the Remuneration of the Non-executive Directors

- Develop a spreadsheet with a formula to calculate the annual remuneration of Chief Executive Officers of Water Sector Entities and Remuneration of the Non-Executive Directors.

5. METHODOLOGY

The PSP must be familiar with the Hay Grading System as a sizeable portion of the employees of the Water Boards are graded on the Hay System based on the size of the organization.

6. OUTPUTS OF THE STUDY

- Grading Report for all Water Sector Entities with CEO Basic Pay Guidelines and Non-Executive Directors Remuneration Guidelines
- Reviewed Policy: Remuneration of Chief Executive Officers of Water Sector Entities and Subsidiaries
- Reviewed Policy: Board Practices and the Remuneration of the Non-Executive Directors
- Spreadsheet with a formula to calculate the annual remuneration of Chief Executive Officers of Water Sector Entities and Remuneration of the Non-Executive Directors.

7. PROJECT ARRANGEMENTS

The PSP will be appointed for 6 months. The Project will commence immediately upon approval and engagement of the consultants.

The PSPs will complement a DWS team to provide specific skills and inputs.

Phase 1: Inception Report (2 weeks)

Phase 2: Grading Report for all Water Sector Entities with CEO Basic Pay Guidelines and Non-Executive Directors Remuneration Guidelines (3 Months)

Phase 3: Reviewed Policies - (1) Board Practices and the Remuneration of the Non-executive Directors and (2) Remuneration of Chief Executive Officers of Water Sector Entities and Subsidiaries (2 Months)

Phase 4: Model/Spreadsheet with a formula to calculate the annual remuneration of Chief Executive Officers of Water Sector Entities and Subsidiaries and Remuneration of the Non-Executive Directors (2 Weeks)

Phase 5: Close-out report (2 weeks)

8. PROJECT MANAGEMENT

The Department: Water and Sanitation will be the client for the proposed project. Mr. S Letsholo Director: Water Service Institution Management, (or his approved replacement) of the Department of Water and Sanitation, shall manage the project.

9. ADMINISTRATIVE COMPLIANCE

Please note that all bidders must comply with the following administrative compliance

No.	Name of the document that must be submitted	Requirements
1	Invitation to bid –SBD 1	Please complete and sign the supplied <i>pro forma</i> document.
2	Registration with Central Supplier Database (CSD) as per National Treasury SCM Instruction 4 of 2015/17 par 5.2	Attach proof of print out as proof of registration or supplier number.
3	Pricing Schedule – SBD 3.3	Please submit full details of pricing as per the SBD Pricing Schedule
4	Declaration of Interest – SBD 4	Please complete and sign the supplied <i>pro forma</i> document.
5	Preference Point Claim Form – SBD 6.1	Non-submission will lead to a zero score on specific goals.

10. EVALUATION CRITERIA

The Department of Water and Sanitation will evaluate all proposals received in terms of the **Preferential Procurement Regulations 2022**. A copy can be downloaded from www.treasury.gov.za. In accordance with the act, submissions will be adjudicated on an 80/20 points system and the evaluation criteria. A two -phase evaluation criteria will be considered in evaluating the bid.

Phase 1: Functional / Technical Evaluation

Phase 2: Points awarded for Price and Specific Goals

PHASE 1: FUNCTIONAL /TECHNICAL EVALUATION

The bidder is expected to achieve a minimum required score of **70%** for functionality to qualify for further evaluation. Bids that do not meet the minimum required score will be disqualified. The Functional/Technical criteria are:

Criteria	Sub-Criteria	Points Value	Weight
Team capability	<p>The team should have a minimum of five (5) years' experience in undertaking similar projects relating to:</p> <ul style="list-style-type: none"> • Remuneration and/or reward, benchmarking of remuneration, and CEO salaries surveys • Investigating pay policy and pay philosophy methodologies. • CEO salaries surveys • Market Pricing and Competitive Pay Analysis • Remuneration Scales per Hays Points and Grading <p>It is required that PSP attach CVs of the team members, which illustrate their experience,</p>		30%

	with at least two contactable references as proof.		
	At least five Team Members have five years' experience or more in the above-mentioned areas of expertise	5	
	At least four Team Members have five years' experience in the above-mentioned areas of expertise	4	
	At least three Team Members have five years' experience in the above-mentioned areas of expertise	3	
	At least two Team Members have five years' experience in the above-mentioned areas of expertise	2	
	At least one Team Member has five years' experience in the above-mentioned areas of expertise	1	
Track Record	<p>Bidder to refer to the successful completion of the previous Survey following areas:</p> <ol style="list-style-type: none"> 1. Developing remuneration and incentive policies and practices 2. Analysing the business requirements in terms of remuneration philosophy, strategy and policy and ensuring that the reward strategy integrates with the broader HR value chain. 3. Development of guiding principles in setting Short - Term incentive levels (STI) 4. Setting remuneration levels for CEOs and Board members fees. 5. Identifying and analysing the needs of the business by conducting research into remuneration trends and best practices. <p>Provide three (3) testimonials of companies where similar projects have been completed in the last 10 years.</p>		30%
	All 5 items above and three testimonials included	5	
	Items 1,2,3 and 4 and three testimonials included	4	
	Items 1,2 and 3 and three testimonials included	3	
	Items 1 and 2 and three testimonials included	2	
	Any 1 item above included, and three testimonials included	1	

Qualifications of Team Leader	<p>The Team Leader should have qualifications as outlined below (Attach certified copies of qualifications and certification as proof)</p> <ul style="list-style-type: none"> • Honours Degree • Degree • Diploma • Higher Certificate • Registration with South African Reward Association (SARA) 		20%
	Team leader with an Honours degree and SARA certificate	5	
	Team leader with a bachelor's degree and SARA certificate	4	
	Team leader with a Diploma and SARA certificate	3	
	Team leader with a Higher Certificate and SARA certificate	2	
	Team leader with no mentioned qualifications as mentioned above	1	
Qualifications of other Team members	<p>At least five Team Members should have qualifications and certification as per below (Attach certified copies of qualifications and certification as proof):</p> <ul style="list-style-type: none"> • Honours Degree • Degree • National Diploma Management • Higher Certificate 		
	At least five team members have the abovementioned qualifications	5	
	At least four team members have the abovementioned qualifications	4	
	At least three team members have the abovementioned qualifications	3	
	At least two team members have abovementioned qualifications	2	
	At least one team member has abovementioned qualifications	1	
Methodology	<p>The bidder must demonstrate an understanding of the ToR, clarity, and conceptualization of methodology.</p> <p>Project plan and broad methodologies in line with the task descriptions outlined under project scope/ task description, with clear milestones and timeframes for each task to be completed.</p> <p>The following items must be indicated in detail:</p> <ol style="list-style-type: none"> 1. Project Control Plan 2. Project Execution Plan 3. Broad methodologies in line with the task descriptions outlined under item 5 above and the project scope/ task description. 4. Clear milestones, and timeframes for each task to be completed. 5. Evaluation and supervision of work 		20%
	All 5 items above are included.	5	

	Items 1, 2,3 and 4 included.	4	
	Items 1, 2 and 3 are included.	3	
	Items 1 and 2 are included.	2	
	None of the items above.	1	
TOTAL			100%

PHASE 2: THE 80/20 POINTS AWARDED FOR PRICE AND SPECIFIC GOALS

The 80/20 Preferential Procurement System will be used in evaluating these bids:

Evaluation element	Weighting (Points)
SPECIFIC GOALS	20
PRICE	80
Total	100

Price

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

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

Where:

- P_s** = Points scored for comparative price of bid under consideration
- P_t** = Comparative price of bid under consideration
- P_{min}** = Comparative price of lowest acceptable bid

Preference point system

SPECIFIC GOALS	NUMBER OF POINTS TO BE ALLOCATED
Women	5
People with disability	5
Youth (35 and below)	5
Location of enterprise (Province)	2
B-BBEE status level contributors from level 1 to 2 which are QSE or EME	3
Total points for SPECIFIC GOALS	20

Documents requirement for verification of points allocation:

Procurement Requirement	Required Proof Documents
Women	Full CSD Report
Disability	Full CSD Report
Youth	Full CSD Report
Location	Full CSD Report

B-BBEE status level contributors from level 1 to 2 which are QSE or EME	Valid BBEE certificate/sworn affidavit Consolidated BEE certificate in cases of Joint Venture Full CSD Report
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The definition and measurement of the goals above is as follows:

Women, disability, and youth:

This will be measured by calculating the pro-rata percentage of ownership of the bidding company which meets this criterion. E.g., Company A has five shareholders each of whom own 20% of the company. Three of the five shareholders meet the criterion, i.e. they are women/disability/youth. Therefore, this bidder will obtain 60% of the points allowable for this goal.

Location of enterprise

Local equals province. Where a project cuts across more than one province, the bidder may be located in any of the relevant provinces to obtain the points.

B-BBEE status level contributors from level 1 to 2 which are QSE or EME

Measured in terms of normal BBEE requirements.

Note: Formula for calculating points for specific goals

Preference points for entities are calculated on their percentage shareholding in a business, provided that they are actively involved in and exercise control over the enterprise.

The following formula is prescribed:

$$PC = \frac{Mpa \times P\text{-own}}{100}$$

Where

PC= Points awarded for specific goal

Mpa= The maximum number of points awarded for ownership in that specific category

P-own = The percentage of equity ownership by the enterprise or business

11. CONDITIONS

Bidders are requested to provide a clear agreement regarding joint ventures/consortia. The percentage involvement of each company in the joint venture agreement should be indicated in the agreement.

- Bidders are requested to provide separate financial and technical proposals.
- The DWS will become the owner of all documentation and the deliverables produced within the context of this tender. All information should be treated with confidentiality and may not be published, either during the currency of the agreement or thereafter without the prior consent of the department.
- The department reserves the rights to engage with the successful service provider to negotiate the prices as submitted. If it is envisaged that negotiations will be conducted only with the successful supplier, the negotiations will be based on a best estimate of the cost of the works.

12. FURTHER INFORMATION

Service providers are required to submit their formal enquiries directly to the Project Manager and the SCM office at least 5 working days before the tender close.

For further technical information please contact.

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