



public enterprises

Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA

REQUEST FOR PROPOSALS

RFP Ref. No:	DPE 05/2021/2022
Description	REQUEST FOR PROPOSAL FOR THE APPOINTMENT OF A PANEL OF ATTORNEYS
Publication date	18 OCTOBER 2021
RFP Closing Details	Date: 15 NOVEMBER 2021 Time: 11:00 (South African Time) Place: Department of Public Enterprise Street: 80 Hamilton Street Arcadia, Pretoria
Deadline for enquiries	Date: 5 NOVEMBER 2021 @ 16:00
Public Opening of RFP Responses	Date: 15 NOVEMBER 2021 Time: 11:00 (South African Time) Place: Department of Public Enterprise Street: 80 Hamilton Street Arcadia, Pretoria
RFP Validity Period	90 Days from the Closing Date

PROSPECTIVE BIDDERS MUST REGISTER ON NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE PRIOR TO SUBMITTING BIDS.

CHECK LIST FOR BID DOCUMENTATION

TAKE NOTE: SHOULD ANY OF THE MENTIONED BID DOCUMENTS NOT BE DULY COMPLETED AND SIGNED YOUR BID WILL BE DISQUALIFIED

FORM	DESCRIPTION	CHECK BOX
SBD 1	INVITATION TO BID	
SBD 3.3	PRICING SCHEDULE (PROFESSIONAL SERVICES)	N/A
TOR	TERMS OF REFERENCE FOR SERVICE	
SBD 4	DECLARATION OF INTEREST	
SBD 6.1	PREFERENCE POINTS CLAIM FORM: ORIGINAL B-BBEE CERTIFICATE/CERTIFIED ORIGINAL/ORIGINAL SWORN AFFIDAVIT OR ORIGINAL CERTIFIED COPY TO BE SUBMITTED	
SBD 8	DECLARATION OF BIDDER'S PAST SCM PRACTICES	
SBD 9	CERTIFICATE OF INDEPENDENT BID DETERMINATION	
GCC	GOVERNMENT PROCURMENT: GENERAL CONDITIONS OF CONTRACT	
REGISTRATION ON CENTRAL SUPPLIER DATABASE	<u>CENTRAL SUPPLIER DATABASE</u> Effective from 1 ST September 2015 all prospective suppliers have to self-register once on the central supplier database website https://secure.csd.gov.za . In order to do business with all spheres of government. As soon as supplier's information has been verified with external data sources (e.g sars and cipc) a unique supplier nr and security code will be allocated and communicated to all suppliers. The supplier can use this information to update and maintain his profile. <u>NB A copy of your company registration report must be submitted with your bid/price quotation.</u> <u>Failure thereof may disqualify your proposal.</u>	
NB: ONLY SUBMIT ONE COPY OF THE ORIGINAL BID AS RECEIVED AND 1 COPY EACH OF THE TECHNICAL/FUNCTIONALITY AND FINANCIAL PROPOSAL		

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	BID DPE5/2021-2022	CLOSING DATE:	15 NOVEMBER 2021	CLOSING TIME:	11:00
DESCRIPTION	THE DEPARTMENT OF PUBLIC ENTERPRISES INVITES SERVICES PROVIDERS TO SUBMIT A PROPOSAL FOR THE APPOINTMENT OF A PANEL OF ATTORNEYS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
DEPARTMENT OF PUBLIC ENTERPRISES, GROUND FLOOR SECURITY					
80 HAMILTON STREET, ARCADIA, 0083					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	ABEL MAKHAFOLA		CONTACT PERSON	ABEL MAKHAFOLA	
TELEPHONE NUMBER	012 431-1030		TELEPHONE NUMBER	012 431-1005	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	abel.makhafola@dpe.gov.za		E-MAIL ADDRESS	abel.makhafola@dpe.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] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] ☐ Yes ☐ 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?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
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 PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

(Proof of authority must be submitted e.g. company resolution)

.....

DATE:

.....



public enterprises

**Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA**

80 Hamilton Street, Arcadia 0073 Private Bag X15 Hatfield 0028

Ref: Denzel Matjila Tel: 012 431 1131 Email: Denzel.Matjila@dpe.gov.za

TERMS OF REFERENCE ("TOR")

FOR THE APPOINTMENT OF A PANEL OF ATTORNEYS

Department of Public Enterprises

("DPE")

1. DISCLAIMER

- 1.1 This TOR has been compiled and is issued by the DPE. The sole purpose of this document is to assist parties in deciding whether they wish to submit a proposal in response to this TOR.
- 1.2 The recipient agrees and undertakes that it will procure and ensure that its directors, officers, employees, agents, representatives, and advisors use the TOR only to evaluate, prepare and submit a proposal for the purposes contemplated in this TOR, and for no other purpose.
- 1.3 The recipient further undertakes not to divulge the contents of, or distribute any copies of, this TOR to any other party without the prior written consent of the DPE and shall return all copies of this TOR to the DPE promptly upon request.
- 1.4 The DPE reserves the right to amend, modify or withdraw this TOR or to amend, modify or terminate any of the procedures or requirements set out herein at any time and from time to time, without notice to the Interested Party but without liability to compensate or reimburse any party.
- 1.5 The information contained in this TOR was obtained from the DPE and other sources. Neither Government, the DPE nor any of their respective directors, officers, employees, agents, representatives or advisors make any representation or warranty or give any undertaking, express or implied, or accept any responsibility or liability whatsoever as to the content, accuracy or completeness of the information contained in this TOR or any other written, electronic or verbal information made available in connection with the Proposed Project, and nothing contained herein is, or shall be relied upon, as an offer capable of acceptance, a promise or representation, whether as to the past or the future. Interested Parties shall accordingly only be entitled to rely on those representations and warranties set forth in the final Project Documents when, and if, such final Project Documents are ultimately agreed and executed, and subject to such limitations and restrictions as may be contained therein.
- 1.6 This TOR does not contain all of the information that may be required by an Interested Party in considering whether to submit a proposal and/or a Bid and is merely issued for information purposes to enable Interested Parties to formulate a proposal. Neither Government, the DPE nor any of their respective directors, officers, employees, agents, representatives or advisors have independently verified any of the information

contained in this TOR nor are they obliged to update or otherwise revise this TOR or other material supplied herewith nor do they accept any obligation to provide recipients with access to any additional information or to correct any inaccuracies which may become apparent in this TOR or in any other information which may be made available concerning the Proposed Project.

- 1.7 This TOR is not intended to form the basis of a decision to enter into any transaction or any other agreement and does not constitute an offer, invitation, or recommendation to enter into any such transaction, or an intention to enter into any legal relationship with any party.
- 1.8 The information contained in this TOR has been compiled to enable Interested Parties to consider whether to submit a proposal. Interested Parties should be aware that this information has been prepared by DPE and involves elements of subjective judgement and analysis. This information is subject to change between the date of issue of this TOR and the issuing of more detailed information during the ensuing phase/s of the Proposed Project due to the passage of time and the changes in circumstances relating to the Proposed Project, and the verification of such information.
- 1.9 Any party considering submitting a proposal and/or submitting a Bid and/or entering the Proposed Project is advised to seek its own independent legal, tax, financial and other advice. The costs of engaging advisors shall be solely for the account of the Interested Party concerned.
- 1.10 The issue of this TOR should not be regarded as any form of commitment on the part of the DPE to proceed with the Proposed Project. Receipt of this TOR does not confer any right on any party. The DPE reserves the right in its sole and absolute discretion to terminate any party's participation in the Proposed Project on notice to the Interested Party concerned without liability whatsoever.
- 1.11 No written, electronic or verbal communication shall be made with the DPE or any of its respective directors, officers or employees, either directly or indirectly, with respect to any information contained in this TOR or with respect to any possible transaction concerning an SOE and any communication must be directed to the contact persons referred to in section 10 of this TOR or such other person/s appointed by the DPE for such purpose.

2. GLOSSARY OF TERMS

In this TOR, unless the context otherwise indicates-

- 2.1 "B-BBEE" means Broad Based Black Economic Empowerment.
- 2.2 "Consortium or joint venture" 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.
- 2.3 "DPE" means the Department of Public Enterprises.
- 2.4 "Functionality" means the measurement according to predetermined norms of a service or commodity designed to be practical and useful, working or operating, taking into account quality, reliability, viability and durability of a service or commodity.
- 2.5 "Interested Party" means a party that delivers a proposal in response to this TOR.
- 2.6 "Proposal" means the document(s) delivered, by Interested Parties in accordance with this TOR, expressing interest in the Project.
- 2.7 "Proposed Project" means the establishment of a Panel of attorneys.
- 2.8 "SOC" means State-Owned Company as defined in the Companies Act No 7 of 2008,
- 2.9 "Person" means a natural or juristic person.
- 2.10 "Successful Bidder" means a party advised by the Department in writing that its (party) proposal for the proposed project is successful.
- 2.11 "Service Provider" means a party with whom terms have been agreed with the Department and appointed to provide services; and
- 2.12 "TOR" means the Terms of Reference together with all its attachments.

3. INTERPRETATION

- 3.1 any reference to the singular includes the plural and *vice versa*.
- 3.2 any reference to natural persons includes legal persons and *vice versa*.
- 3.3 any reference to gender includes the other gender; and
- 3.4 headings have been inserted for convenience only and shall not be considered in the interpretation of this TOR.

4. BACKGROUND

- 4.1 The DPE is the shareholder representative for Government with oversight responsibility for the following State-Owned Companies:

Energy Enterprises:

- Eskom

Manufacturing Enterprises:

- Alexkor

- Denel
- Safcol

Transport Enterprises:

- South African Airways
- South African Express Airways
- Transnet

- 4.2 State Owned Companies (“SOC”) have a crucial role to play in advancing economic growth, since they are responsible for the development of key infrastructure and manufacturing capacity for South Africa. Infrastructure investments are a core part of the accelerated growth strategy, and SOC are implementing comprehensive investment programmes to ensure that significant and sustained opportunities for investment are created.
- 4.3 SOC are strategic instruments of industrial policy and core players in the New Growth Path. The DPE aims to provide decisive strategic direction to the SOC, so that their businesses are aligned with the national growth strategies arising out of the New Growth Path. It will do this by ensuring that their planning and performance, and investments and activities, are in line with Government medium term strategic framework and the Minister’s service delivery agreement.
- 4.4 In relation to Government’s 12 outcomes, the DPE is contributing directly to creating an efficient, competitive, and responsive economic infrastructure network (outcome 6), which forms the basis of the Minister’s service delivery agreement, signed in October 2010. Over the medium term, the DPE will focus on achieving the outputs and sub-outputs that are linked to the Outcome and contained in the Agreement.
- 4.5 These are:
- Improving the delivery and maintenance of infrastructure and monitoring the rollout of the Transnet and Eskom build programmes.
 - Achieving policy and regulatory clarity in sectors in which the SOC operate.
 - Improving operational efficiencies of the SOC, particularly in relation to the reliable delivery of rail and ports services and the reliable generation, distribution, and transmission of electricity.
 - And developing operational indicators for each of the required sub-outputs identified as part of the delivery agreement and where necessary including shareholder compact concluded within the SOC.
- 4.6 The SOC GAP Unit of the DPE is responsible for, *inter alia*, providing legal services and Corporate Governance systems, and facilitate the implementation of all legal aspects of

transactions that are strategically important to the DPE, and state-owned companies, and ensure alignment with Government's strategic intent by, amongst others, monitoring the SOC' indicators. To this end, the SOC GAP Unit seeks to establish its database of attorneys/panel from whom assistance will be sought through a limited competitive process when the need for any legal intervention arises.

- 4.7 The DPE seeks to appoint fifteen (15) qualified and experienced law firms/firms of attorneys/attorney(s) in private practice to serve on its panel to provide legal services to the DPE as and when the need arises. The panel will be used on a rotational basis.

5. PROJECT OBJECTIVES

To establish a Panel by appointing fifteen (15) experienced law firms/firms of attorneys/attorney(s) in private practice to serve on its panel to provide legal services to the DPE as and when the need arises. The panel will be used on a rotational basis.

6. SCOPE

- 6.1 The DPE seeks to appoint fifteen (15) law firms to serve on its Panel of Attorneys to provide legal services to the DPE. As and when the need for independent legal assistance arises, request for proposals (bids) will be forwarded to the law firms/firm of attorneys on the panel that the Department deem suitable i.e. the law firms/firms of attorneys appointed to the panel will be used on a rational basis based on the services required through an evaluation and adjudication process that the Department will undertake to identify a suitable Service Provider(s).
- 6.2 Therefore, the DPE wishes to establish a Panel of Attorneys by issuing a Request for Expression of Interest/TOR on the Departmental website, E-Tender Portal.

7. DELIVERABLES

- 7.1 Appointment of fifteen (15) competent and experienced law firms of attorneys/attorney(s) in private practice to the DPE's Panel of Attorneys.

- 7.2 The Department hereby invites proposals from qualified and experienced law firms of attorneys in private practice interested in the provision of professional legal services with a minimum of 10 years' experience in the areas mentioned herein under to be included in the panel of the DPE.
- 7.3. The firms of attorneys in private practice should be able to demonstrate:
- 7.3.1 Leading expertise with extensive track record to best advice, execution of transactions and processing of matters in one or more of the following fields of law:
- Aviation
 - Corporate and Commercial
 - Legislative drafting
 - Labour (including handling labour disputes and disciplinary cases for the Department)
 - Public Law
 - Law of Contract
 - Maritime
 - Energy and
 - Mining.
- 7.3.2 Ability and flexibility to collaborate and work with another law firm(s)/firm of attorneys should the Department so require.
- 7.4 The request for proposal (RFP) concise deliverables, price and B-BBEE preference points will be solicited from the panel on rotational basis based on the speciality of the law firms as and when services are required.

8. PROJECT MANAGEMENT

Supply Chain Management and the SOC GAP Units within the DPE will be responsible for the management of the Panel.

9. DURATION

The establishment of the Panel is valid for a period of two (2) years from the date of appointment.

10. CONTACT DETAILS

Name: Mr Abel Makhafola

Supply Chain Management

Phone: 012 431 1005

Fax: 086 615 5711

Email: abel.makhafola@dpe.gov.za

11. CONTENT OF PROPOSALS

- 11.1 An interested party must be able to demonstrate leading expertise and an extensive track record in the provision of legal services in the areas mentioned herein.
- 11.2 The address of the interested party, together with the contact details (telephone numbers, tele fax numbers and emails addresses) of the principal contact of the interested parties, must be provided.
- 11.3 Full details of the interested party, including full details of its ownership, shareholding structure, composition, B-BBEE credentials, Directors, management, experience, and credentials (as applicable) must be provided.
- 11.4 In the case of a consortium, any agreement evidencing the relationship between the consortium partners and the composition, structure and operation of the consortium must be provided.
- 11.5 In addition, proposal shall address the issues or matters outlined below and include the following information and documents regarding the interested party (as applicable)
 - i. ownership structure of the interested party including any share holders's agreement and the like; and
 - ii full profile of the interested party, including resources.
- 11.6 All proposals will have to meet the minimum requirements/set criteria before inclusion into the Panel. Therefore, the submission of a proposal is not guaranteed to be included into the Panel.

12. COMPULSORY REQUIREMENT

The Department hereby invites proposals from qualified and experienced law firms of attorneys in private practice interested in the provision of professional legal services with a minimum of 10 years' experience in the areas mentioned in par 7.3.1 above.

13. EVALUATION OF PROPOSALS

13.1 The evaluation of proposals will be done only in 3 phases i.e.:

13.1.1 First phase will be for administrative compliance.

13.1.2 a) First phase

NO.	DESCRIPTION	YES	NO
1.	Completion of all SBD Forms (SBD1, SBD 4, SBD 6.1, SBD 8, SBD 9)		
2.	Proof that tax matters with SARS are in order (SARS Pin Number/ Tax Clearance Certificate)		
3.	Proof of company registration documents (e.g. Pty; Trust; CC etc.)		
4.	Valid B-BBEE Level of contribution or Sworn affidavit certificate (Failure to attach certificate will lead to non-allocation of points)		
5.	General Conditions of contract signed/initialled (GCC)		
6.	Registration with CSD (Central Suppliers Database)		
7.	Submission of a tender document in the form of an original printed hard copy.		

13.1.3 Second phase: **Mandatory Requirements:** The proposals will be pre-screened to establish that bidders meet the mandatory requirements. During this phase bidders who do not meet the mandatory requirement will be disqualified.

NO.	DESCRIPTION	YES	NO
1.	Formal written proposal		
2.	Bidder(s) must provide a valid Certificate of Good Standing (not older than twelve (12) months at the time of submission) from the appropriate Legal Practice Council in respect of each Attorney.		
3.	Bidders must have a project leader with minimum qualification of LLB and must have led a merger and acquisition transaction of at least R 50 million with a traceable reference (written confirmation is necessary).		

- 13.1.4 Third phase is the technical evaluation phase where bidders will be evaluated for functionality to establish a short list to be captured on the Department's Panel. A minimum threshold of 480 points or 80% on technical capacity (functionality) will be the cut off points to qualify for further evaluation. The requirement for this phase is spelt out in clause 13.3 hereunder.
- 13.2 Proposals for price will be requested from the panel (once established) on a rotational basis based on the law firm's area of speciality as and when services are required. No pricing schedules must be submitted with this proposal.
- 13.3 Proposals will be reviewed and evaluated by an Evaluation Committee comprised of representatives from the DPE. The Evaluation Committee, in evaluating the proposal, will base their evaluation on the following functionality criteria:

Functionality	Score according to the score value	Score per values below in each commodity	Total Weight Points	Maximum points 600
Content and Methodology: - Detailed approach methodology and process to be adopted in the project plan - Project Plan to be linked to the deliverables.			30	150
	Excellent	5		
	Very Good	4		
	Good	3		
	Poor	2		
	Fair	1		
	No Information	0		
Qualifications of lead consultant and key personnel in aviation law, labour law, mining, energy, public law, maritime law, corporate and commercial law, legislative drafting and law of contract. Copy of qualification to be submitted)			20	100
	Master degree	5		
	Bachelor degree of law (4 years)	4		
	Advanced diploma in law (4 years)	3		
	Diploma in Law	2		
Experience of the lead Consultant and key personnel: Key personnel including the project leader, who will be assigned to this project must have vast and combined experience in transaction execution in Aviation law, labour law, mining, energy, public law, maritime law, corporate and commercial law, legislative drafting and law of contract. Attorneys must be admitted attorneys. Bidders must attach concise CVs/Biography of key personnel/lead consultant.			40	200
	10 years	5		
	8 years	4		
	6 years	3		
	4 years	2		
	2 years	1		

Company Experience: Company should demonstrate local and global reach and network in transaction execution in the fields of law stated above by providing contactable references of projects undertaken. Written testimonials of each project as per criteria in paragraph 13.4 below (Refer to criteria below for explanation for reference assessments) must also be provided.			30	150
	5 and more reference or testimonial letters	5		
	4 reference or testimonial letters	4		
	3 reference or testimonial letters	3		
	2 reference or testimonial letters	2		
	1 reference or testimonial letter	1		
	No Information	0		

Score values: 0 = No information, 1 = Poor; 2 Fair, 3 = Good, 4 = Very Good and 5= Excellent

13.4 References should be in a form of letter/s containing the following information:

- Full Particulars of the entity for which the transaction was executed,
- Full details of the law firms' project leader in the transaction,
- Value and duration of the contract for which the transaction was executed
- Reference letter/s should not be more than five years old.

Value: 1 = Poor, 2 = Fair, 3 = Good, 4 = Very Good and 5 = Excellent

13.5 Bid documents to be submitted:

- One envelope with one original technical/functionality proposal that include signed all bid documents required by the department, Central Supplier Database report with tax compliant status.

14. RESERVATION OF RIGHTS

Without limiting any other rights of the DPE (whether otherwise reserved in this TOR or under any law).

14.1 The DPE reserves the right to amend, modify or terminate any of the procedures or requirements set out in this TOR at any time or from time to time without prior notice to Interested Parties or successful bidders. The DPE further reserves the right not to accept any proposal or bid.

14.2 The Proposed Project described in this TOR may be cancelled at any time, at no cost and with no liability being incurred to the DPE or Government, if the DPE so determines in its sole and absolute discretion;

- 14.3 An interested Parties and/or Successful parties agree and undertake to hold harmless, Government, the DPE and their respective directors, officers, agents, representatives from and against any and all such claims, actions and legal proceedings and any and all liabilities, damages, loss, costs and expenses (including all legal costs and expenses) of whatever nature in connection with or arising from the Project and/or the process outlined in this TOR.
- 14.4 No proposal will be deemed accepted and no agreement will be deemed to be reached with any Interested Party or successful party if all the parties have not executed the Project Documents thereto. Accordingly, unless and until such time as the Project Documents have been executed as aforesaid, no Interested Party or successful party will have any rights, claims or entitlement with respect to the Project, as a result of its participation in the process outlined in this TOR; and
- 14.5 The DPE, Government, and their respective directors, officers, agents, representatives expressly disclaim any and all liability for representations, warranties or statements contained in any written material furnished or information verbally transmitted to or received by an Interested Party or Successful Party. The DPE will make only those particular representations and warranties set forth in the final Project Documents when, and if, such Project Documents are ultimately agreed upon and executed, and subject to such limitations and restrictions as may be contained therein.

15. CLOSING DATE

- 15.1 The submission/delivery of proposals will be published on the Bid documents with prior notice the closing date. Any proposal arriving after this time will not be considered.
Proposals should be submitted into the departmental Bidding box at:
Department of Public Enterprises
Ground Floor Security
80 Hamilton Street
Arcadia
Pretoria
- 15.2 It is the responsibility of every interested party to ensure that its proposal and any correspondence in response to the TOR are received:
- a) by the DPE or such other person/appointed for such purpose, and
 - b) on or before the closing time and date.

16. REFERENCES

An interested party must also furnish the Department with recent, service – comparable references, including contact details and an overview of the service provided. Personal interviews may be conducted with references where required.

17. VALUE ADDED SERVICES

Should an interested party wish to provide the Department with additional services not outlined herein, but which would add value to the proposed project, it is welcome to do however, it will be at no additional cost. An interested party should first however meet the minimum service requirements/scope of work outlined herein.

SBD 4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
 - the bidder is employed by the state; and/or
 - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.
2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
 - 2.1 Full Name of bidder or his or her representative:
.....
 - 2.2 Identity Number:
.....
 - 2.3 Position occupied in the Company (director, trustee, shareholder²):
.....
 - 2.4 Company Registration Number:
.....
 - 2.5 Tax Reference Number:
.....
 - 2.6 VAT Registration Number:
.....
 - 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

¹"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder presently employed by the state? YES / NO

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:
Name of state institution at which you or the person connected to the bidder is employed :
Position occupied in the state institution:

Any other particulars:

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

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? YES / NO

2.7.2.1 If yes, did you attached proof of such authority to the bid document? YES / NO

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

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

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? YES / NO

2.8.1 If so, furnish particulars:

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

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? YES / NO

2.9.1 If so, furnish particulars.

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

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? YES/NO

2.10.1 If so, furnish particulars.

.....

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract? YES/NO

2.11.1 If so, furnish particulars:

.....

3 Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Reference Number	Tax Number	State Number	Employee / Persal Number

4 DECLARATION

I, THE UNDERSIGNED (NAME).....

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

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
 Signature

.....
 Date

.....
 Position

.....
 Name of bidder

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

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

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

1. GENERAL CONDITIONS

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

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

1.2

- a) The value of this bid is estimated to ~~exceed/not exceed~~ R50 000 000 (all applicable taxes included) and therefore the **...80/20.....** preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	
B-BBEE STATUS LEVEL OF CONTRIBUTOR	
Total points for Price and B-BBEE must not exceed	100

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

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

2. DEFINITIONS

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

3. POINTS AWARDED FOR PRICE

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

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

80/20

or

90/10

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

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

P_{min} = Price of lowest acceptable bid

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

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

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

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

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

- 6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

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

(***Tick applicable box***)

YES	☐	NO	☐
-----	--------------------------	----	--------------------------

- 7.1.1 If yes, indicate:

- What percentage of the contract will be subcontracted.....%
- The name of the sub-contractor.....
- The B-BBEE status level of the sub-contractor.....
- Whether the sub-contractor is an EME or QSE

(***Tick applicable box***)

YES	☐	NO	☐
-----	--------------------------	----	--------------------------

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		

Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name _____ of
company/firm:

8.2 VAT _____ registration
number:

8.3 Company _____ registration
number:

8.4 TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium
One person business/sole propriety
Close corporation
Company
(Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

Manufacturer
Supplier
Professional service provider
Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a

fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

WITNESSES

1.

2.

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

DATE:

ADDRESS

.....

.....

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's database as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied).	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? To access this Register enter the National Treasury's website, www.treasury.gov.za , click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.	Yes ☐	No ☐
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME).....
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION
FORM IS TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,
ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION
PROVE TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid/price quotation:

(Bid Number/price quotation and Description)

in response to the invitation for the bid/price quotation made by:

Department of Public Enterprises

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid/price quotation, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid/price quotation in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid/price quotation invitation, based on their qualifications, abilities or experience; and

- (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

SBD 9

6. The bidder has arrived at the accompanying bid/price quotation independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium⁹ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding/quote with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. 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.

⁹ 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.

SBD 9

10. 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.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

Annexure G: Government Procurement: General Conditions of Contract – July 2011

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 GCC 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 GCC. 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
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General conditions of contract

1 Definitions

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 anything 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 markets its goods on its 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 organisation purchasing the goods.
- 1.22 "Republic" means the RSA.
- 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, SCC are also laid down to cover specific supplies, services or works.
- 2.3 Where such SCC 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.

3 Use of contract documents and information; inspection

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection

therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6 Patent rights

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

7 Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
 - 7.3.1 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

7.3.2 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 SIU or an organisation acting on behalf of the SIU.

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:
- 13.1.1 performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- 13.1.2 furnishing of tools required for assembly and/or maintenance of the supplied goods;

- 13.1.3 furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - 13.1.4 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
 - 13.1.5 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:
- 14.1.1 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
 - 14.1.2 in the event of termination of production of the spare parts:
 - 14.1.2.1 Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - 14.1.2.2 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 fulfilment 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 authorised 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 contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

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 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.
- 21.4 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.
- 21.5 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22 Penalties

- 22.1 Subject to 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:
- 23.1.1 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;
 - 23.1.2 If the Supplier fails to perform any other obligation(s) under the contract; or
 - 23.1.3 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:

23.6.1 the name and address of the supplier and / or person restricted by the purchaser;

23.6.2 the date of commencement of the restriction

23.6.3 the period of restriction; and

23.6.4 the reasons for the restriction.

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

23.8 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,

27.5.1 the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

27.5.2 the purchaser shall pay the supplier any monies due the supplier.

28 Limitation of liability

28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;

28.1.1 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

28.1.2 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 SARSS.

33 National Industrial Participation (NIP) Programme

- 33.1 The NIP Programme administered by the DTI 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.

The above General Conditions of Contract (GCC) are accepted by:

Name:	
Designation:	
Bidder:	
Signature:	
Date:	