



**TERMS OF REFERENCE
PROVISION OF LEGAL AND COMPLIANCE EXPERTS
SERVICES**

BID NUMBER: CATHS/PLCE/03/2021

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CATHSSETA					
BID NUMBER:	CATHS/PLCE/03/2021	CLOSING DATE:	31 May 2021	CLOSING TIME:	11H00am
BID DESCRIPTION	APPOINTMENT OF AT LEAST THREE (03) BUT NOT MORE THAN SIX (06) LEGAL FIRMS TO SERVE ON THE PANEL OF LEGAL AND COMPLIANCE EXPERTS FOR A PERIOD OF THREE (3) YEARS				
VALIDITY PERIOD	NINETY (90) DAYS AFTER THE CLOSING DATE				
BRIEFING SESSION	NO BRIEFING SESSION				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT					
CATHSSETA HEAD OFFICE					
270 AND 294 GEORGE ROAD, ERAND GARDENS, MIDRAND					
ERAND GARDENS, MIDRAND					
JOHANNESBURG					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	TUMELO MASITENG		CONTACT PERSON		
TELEPHONE NUMBER			TELEPHONE NUMBER		
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	supplychain@cathsseta.org.za		E-MAIL ADDRESS		
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] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
[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]					

<p>1. ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</p> <p><input type="checkbox"/>Yes <input type="checkbox"/>No</p> <p>[IF YES ENCLOSE PROOF]</p>		<p>2. ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</p> <p><input type="checkbox"/>Yes <input type="checkbox"/>No</p>	<p>[IF YES, ANSWER THE QUESTIONNAIRE BELOW]</p>
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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**

<p>1. BID SUBMISSION:</p>
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>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.</p> <p>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.</p> <p>1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</p>
<p>2. TAX COMPLIANCE REQUIREMENTS</p>
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF THE STATE TO VERIFY THE TAXPAYER’S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>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.</p> <p>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.”</p>

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:

**TERMS OF REFERENCE/SPECIFICATIONS OF SERVICES
REQUIRED: **CATHS/PLCE/03/2021**
LEGAL AND COMPLIANCE EXPERTS SERVICES**

Briefing Session	N/A (Electronic Questions and Answers to be published on the website)
Technical and SCM enquiries by	21 May 2021
Closing date	31 May 2021 at 11:00am
Envisaged Evaluation date	02 May 2021
Envisaged Adjudication date	09 June 2021
Envisaged Appointment and Award date	18 June 2021
Project Start Date	01 July 2021
Bid Validity period	90 days from closing date

1. Background to CATHSSETA

The Skills Development Act No 97 of 1998 as amended (SDA) makes provision for the establishment of Sector Education and Training Authorities (SETAs) for each national economic sector and thereby aims to develop the skills of the South African workforce by increasing the investment in education and training in the labour market; and encouraging employers to play a meaningful role in developing employees, particularly the previously disadvantaged. The Culture, Arts, Tourism, Hospitality and Sport Sector Education and Training Authority (CATHSSETA) was established through the SDA, to research and establish a nationally recognised Sector Skills Plan (SSP) supported by skills development programmes serving the interests of the following sectors:

- Culture, Arts and Heritage;
- Tourism and Travel Services;
- Hospitality;
- Gaming and Lotteries;
- Conservation; and
- Sport, Recreation and Fitness.

These sectors are diverse and unique and they play a significant role not only in the economy but also in the broader quest for social cohesion and formulation of a unique South African national identity.

CATHSSETA's critical success factors are described as the Key processes that deliver services to the CATHSSETA beneficiaries, i.e. learners and employers. The process is based on the three critical components of the CATHSSETA service delivery Value Chain:

- Facilitation of Learning Interventions. Involves facilitation of all skills development initiatives
- Quality Assurance of Skills Development. Involves accreditation of skills development facilitators, verification of learners, and development of occupational qualifications

Employer engagements. Involves the receipt of levies and payments of grants. The importance of the three (3) areas are the points of integration between them.

2. Overall objective

The objective of this bid is to appoint a panel of at least three (3) but not more than six (6) Legal and Compliance Experts to assist the CATHSSETA in handling corporate/commercial legal and compliance services, labour law/ employment services, litigation and investigations and any other ad hoc legal services. Only legal practices established in accordance with the provisions of the Legal Practice Act No 28 of 2014, read in conjunction with the Attorneys Act No.53 of 1979 as

amended will be considered for this bid. Firms bidding for this tender should be in possession of a valid Fidelity Fund certificate.

A contract will be signed with each service provider appointed to the panel. The firms of attorneys will be required to sign confidentiality and indemnity agreements with the CATHSSETA upon being appointed to the legal panel.

3. Contract duration period

Start: 01 July 2021
End: 30 June 2024

4. Indication if the tender will be evaluated on functionality as well as minimum acceptable qualifying score

Yes, the bid will be evaluated on functionality and bidders require a minimum of **70 out of 100** points allocated for functionality. Bidders will be evaluated in terms of the gatekeeper/minimum requirements. Bidders who do not fulfill all the requirements or do not submit the required documents will be disqualified. Those who fulfill all requirements or have submitted the required documents will be further evaluated on critical requirements. The discretion on the final award will be based on functionality as the core scoring element, and thereafter in consideration of the price and preference points.

5. Indication if the bid will be evaluated related to local production and contents as well as the minimum thresholds applicable to local production and contents

Not applicable

6. Detailed scope of services to be rendered by the service provider

- 6.1 CATHSSETA seeks to appoint at least three (3) but not more than six (6) Legal Firms to serve on the panel of legal and compliance experts.
- 6.2 CATHSSETA requests proposals from service providers with the knowledge, expertise and resources to provide legal services in the areas listed below:

<p>Corporate/ commercial law services</p> <ul style="list-style-type: none"> (a) Contracts and Service Level Agreements drafting; (b) Vetting of contracts; (c) Compliance and governance reviews; (d) Copyright, trademark and intellectual property rights; (e) Legal Opinions 	<p>Labour law/ Employment services</p> <ul style="list-style-type: none"> (a) Employment relations matters; (b) Disciplinary enquiry facilitation, initiation and chairing; (c) Human Resources Matters; (d) Representing the SETA at Labour and/or High Courts, Commission for Conciliation, Mediation and Arbitration (CCMA) and other related jurisdictions; (e) Arbitrations and dispute resolutions.
<p>Litigation and Investigations</p> <ul style="list-style-type: none"> (a) Investigations and Forensic Investigations; (b) Legal opinions on the investigations and report outcomes; (c) Litigation; and (d) Legal opinions on litigation matters. 	

7. Rules of engagement and awarding once appointed to the legal panel

- 7.1 The cost of every assignment will be as per the pricing schedule in paragraph 11 with the relevant panel members and a letter of appointment or instruction to proceed will be issued for each assignment awarded.
- 7.2 CATHSSETA will appoint at least three (03) but not more than six (06) service providers to serve on the panel of legal experts.
- 7.3 Panel members are not guaranteed any work under this bid proposal. The basis of engaging the firms of attorneys will be on an assignment (as and when required) basis.
- 7.4 CATHSSETA will source and award assignments on a rotational basis to all panel members to ensure fairness and equitability. The award of the assignment will be amongst others, based on the functional strength and/or expertise of the panel members, at the discretion of CATHSSETA.
- 7.5 CATHSSETA may at its sole discretion under specific circumstances, award an assignment or any part thereof to more than one (1) panel member.
- 7.6 CATHSSETA may at its discretion vary an instruction to include more work or exclude work areas. In the case of the latter, the firm of attorneys will not be entitled to claim any additional costs.
- 7.7 CATHSSETA reserves the right to interview panel members and review their suitability for assignments on an ongoing basis and for specific assignments.

7.8 The panel members should not cede nor assign any part of its agreement with CATHSSETA nor subcontract any part of the work assigned to them without the prior written authorisation of CATHSSETA.

7.9 The panel members are required to keep the same profile of team members as per bid documentation throughout the contract period. Should there be any changes within the firm's structure or team profile, an authorisation in writing should be sought from CATHSSETA.

<p>A. Detailed Scope of Work and Objectives of the Project</p>	<p>1. The tender documentation should outline the bidder's complete proposal: methods, current staff (and their skills sets/curricula vitae), timeframes and costs.</p> <p>2. CATHSSETA will select a preferred supplier on the basis of CATHSSETA's evaluation of the extent to which the bidder's documents demonstrate that they offer the best value for money and that they satisfy the following criteria:</p> <p>2.1. Proposals must demonstrate knowledge of relevant legislation and regulations. by showcasing:</p> <ul style="list-style-type: none"> (a) experience of providing legal services in the areas identified to organs of state; (b) Skills and capacity. <p>2.2. Bidders must provide evidence of previous experience. References of work done must be listed. Further, evidence of the quality of work rendered in similar projects must be provided in:</p> <ul style="list-style-type: none"> (a) Number of assignments awarded (b) The complexity of matter(s) (c) Extent of engagement
<p>B. Milestones and date of completion of service.</p>	<p>Bidder to propose work plans and estimated timelines in line with the contract period</p>
<p>C. Contact details for technical enquiries</p>	<p>supplychain@cathsseta.org.za</p>
<p>D. Contact details for procurement enquiries</p>	<p>supplychain@cathsseta.org.za</p>

8. Details of CATHSSETA role and functions in the service/project

8.1 The Service provider will work under the direct supervision of the Executive Manager: Corporate Services or the nominated delegate who will provide all project management inputs.

8.2 The Legal Specialist and the department responsible for the area in which the assignment is related will supply the information needed by the firm upon appointment.

9. QUALIFICATIONS AND CRITICAL REQUIREMENTS

Requirements for bid submission :

- 9.1 Provide and attach a valid copy of Tax Compliance Pin
- 9.2 Provide and attach a valid copy of the Broad-Based Black Economic Empowerment (BBBEE) Certificate, should the bidder wish to claim BBBEE points
- 9.3 Provide and attach the most recent CSD report (not older than three (3) months)
- 9.4. The bid document must be completed in full, and all declaration of interests must be signed
- 9.5. Provide and attach a copy of the Company Registration documents
- 9.6. Provide and attach a valid and certified copy of a Fidelity Fund Certificate not older than three (3) months.
- 9.7. Provide and attach a valid and certified Copy of an Admission Certificate to the relevant Law Society/Legal Practice Council and current Membership not older than three (3) months.
- 9.8. Provide the company historical information relating to experience per practice specialist area and relevant reference letters.
- 9.9. The bidder must provide a company profile.

10. Monitoring and reporting requirements after the contract is signed

The following reports/information may on a regular basis, be submitted to the CATHSSETA:

Management Reports

- 10.1. Periodic progress reports on each assignment awarded.
- 10.2. Closeout report after the completion of an assignment.
 - 10.2.1. Preliminary close-out report
 - 10.2.2. Final close-out report
- 10.3. Any other reports that CATHSSETA may deem necessary.

11. Price specification/ requirements

- 11.1 A firm fixed price (rates) is required for the duration period of the contract.
- 11.2 The Bidder is required to specify the rates to be charged per position (Pricing Schedule) which will also be used for pricing evaluation purposes. The rates indicated should be inclusive of VAT, where applicable.
- 11.3 In the event that personnel holds a position different to the stipulated ones under the Pricing Schedule, the Bidder is required to allocate that personnel to an existing position and indicate the actual position in brackets next to their name:

PRICING SCHEDULE

FOCUS AREAS	POSITION	NAMES OF EXISTING PERSONNEL IN POSITION	FIXED HOURLY AND DAILY FEE (Including VAT)
For all four (4) legal specialities as reflected under 6.2 above	Director/Partner		Hourly Rate:
			Daily Rate:
	Senior Associate		Hourly Rate:
			Daily Rate:
	Associate		Hourly Rate:
			Daily Rate:
	Candidate Attorney		Hourly Rate:
			Daily Rate:
Total hourly rates			
Total Daily rates			

12. Requirements regarding the pre-bid meeting

None

13. Validity period

Validity period: 90 days. The Bidder is required to confirm that it will hold its proposal valid for 90 days from the closing date of the submission of proposals, during which time it will maintain without change, the personnel proposed for the services together with their proposed rates.

14. Available data/information to the potential supplier relevant to this bid

The CATHSSETA's Strategic Plan, Sector Skills Plan and Annual Performance Plan are available on the CATHSSETA website. www.cathsseta.org.za

15. Transfer of knowledge and training

Yes – Skills transfer to relevant custodians

16. The following bid process will be followed

Description	Due Date
Tender Advert Request for Proposal	07 May 2021
Briefing Session	None
Closing date for Request for Proposals	31 May 2021 at 11h00am

17. Evaluation process
Bid evaluation process if functionality is stipulated

- 17.1. All bids duly lodged will be examined to determine compliance with bidding requirements and conditions.
- 17.2. Bids that do not meet the minimum qualifying score for functionality and/or minimum stipulated threshold for local content or production will be eliminated from further evaluation
- 17.3. The responsive proposals will then be evaluated further based on the 80/20 preference point system in terms of the Preferential Procurement Policy Framework Act (PPPFA) Act and its regulations 2017. (See SBD 6.1)
- 17.4. The contract will be awarded to the bid proposal that scored the highest total number of points.

18. Evaluation criteria that will be used to evaluate the functionality		
Evaluation criteria	Sub-evaluation criteria	Points allocation for sub-evaluation criteria
18.1 Understanding of the regulatory framework applicable to the related area(s) of specialisation and experience of providing legal services to organs of the state (the Firm/Company)	• Bidder demonstrates extensive experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialisation. (10 years and above relevant experience, plus the proposal demonstrates understanding)	35
	• Bidder demonstrates reasonable experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialisation. (more than 5 years but less than 10 years experience, plus the proposal demonstrates understanding)	15
	• Bidder demonstrates limited experience and understanding of the legislative and regulatory framework applicable to the related area(s) of specialisation. (less than 5 years experience, plus proposal demonstrates understanding)	5
18.2 Location of the law firm (the physical address of the offices)	• A law firm with offices in Johannesburg (within a 15km radius from the South Gauteng High Court)	10
	• A law firm with offices outside of Johannesburg (i.e., outside the 15km radius from the South Gauteng High Court) but within Gauteng	5
	• A law firm with no offices in Johannesburg or Gauteng	0
18.3 General experience of the project team as stated under 11 above in the	• Project team. More than 10 years' relevant experience (total duration of professional activity from the point of admission as a Legal Practitioner / Attorney)	35

related area(s) of specialisation (CV/Profiles to be attached)	<ul style="list-style-type: none"> Project team. Five (5) to ten years experience (total duration of professional activity from the point of admission as a Legal Practitioner / Attorney) 	15
	<ul style="list-style-type: none"> Project team. Less than five (5) years experience (total duration of professional activity from the point of admission as a Legal Practitioner / Attorney) 	5
18.4 Experience in comparative projects. Bidders must supply details of specific, relevant assignments with contact details. (Assignments must be undertaken within organs of state, and preferably within a SETA environment. The reference letters must be on official company letterheads).	<ul style="list-style-type: none"> Provision of seven (7) or more reference letters for the identified legal specialities areas stated under 6.2 above undertaken within the past five (5) years. 	20
	<ul style="list-style-type: none"> Provision of five (5) or more reference letters for the identified legal specialities areas stated under 6.2 above undertaken within the past five (5) years. 	10
	<ul style="list-style-type: none"> Provision of three (3) or more reference letters for the identified legal specialities stated under 6.2 above undertaken within the past five (5) years. 	5

19. Bidders must score a minimum qualifying score for functionality

70 points out of 100

20. General Bid administrative information

The completed response and submissions must be returned to –

**CATHSSETA Head Office
270 and 294 George Road,
Erand Gardens, Midrand,
Johannesburg
Attention: Supply Chain Office**

Bid proposals must consist of **three (3)** hardcopies, **one (1)** original and **two (2)** copies. **one (1)** electronic copy (CD or USB Flash drive).

Incomplete submissions including the insufficient number of printed or electronic copies will result in disqualification.

E-mail or fax proposals are **not** acceptable.

Questions for clarification of issues will be considered by the CATHSSETA up to the close of business 21st May 2021, all bid-related queries to be sent via email to supplychain@cathsseta.org.za. No verbal requests for information or clarification will be accepted. Answers to queries shall be posted to the CATHSSETA website www.cathsseta.org.za (under Bids) and will therefore be in the public domain.

All documentation and responses will be supplied and exchanged utilising standard Microsoft Office (Word, Excel and PowerPoint) products.

Any attempt to gain information in a manner deemed to be fraudulent or disadvantageous to other respondents or any attempt to influence the outcome of the response evaluation will result in immediate disqualification from the bid process. It should also be noted that any attempt at collusion or fronting, may be reported to SAPS in terms of Section 34 of the Prevention and Combating of the Corrupt Activities Act (PRECCA, 2004)

MANDATORY REQUIREMENTS – GATE ONE

Bidders are required to indicate in the checklist below (using a tick) whether or not they have submitted all the mandatory documents. Please note no submission of mandatory documents will disqualify the bidder from proceeding to the next stage of technical specification evaluation.

MANDATORY REQUIREMENTS CHECKLIST – GATE ONE	YES	NO	NA
Invitation to Bid - SBD Form 1			
Pricing Schedule – Professional Services - SBD Form 3.3			
Declaration of Interest - SBD Form 4			
PPPFA 2017 Regulations Claim Form - SBD Form 6.1			
Contract Form - Rendering of Services - SBD Form 7.2			
Declaration of Bidder's Past Supply Chain Management Practices - SBD Form 8			
Certificate of Independent Bid Determination - SBD Form 9			
General Conditions of Contract			
Valid Tax Clearance Pin			
Valid BBBEE Certificate Should the bidder wish to claim BBBEE points			
Company Registration Documents			
Central Supplier Database (CSD)			
3 x Hardcopy Proposals & 1 x Electronic Proposal			

Technical Specification(s)/ Technical proposal based on TOR – Gate Two

The technical proposal should address the following content (if applicable) **Refer to Evaluation Criteria:**

- **Background information of service provider.**
 - Service provider Profile / Management structure
- **Proposal regarding the scope of services to be rendered**
 - Approach, Plan and Time Lines
 - Project Organisation and logistical arrangements
 - Methodology to ensure successful completion of the contract

- Business arrangement approach
 - ✓ An overview of the proposed business arrangement;
 - ✓ How CATHSSETA and the service provider will manage risks and realise benefits;
 - ✓
- **Information and evidence to address the evaluation criteria set in the particular bid documents:**
 - Proven Credentials and Team Expertise
 - Detail of any professional associations the respondents belongs to and indicate the length of membership.
 - Performance capabilities (CVs of key personnel to be attached)
 - Performance abilities relevant to the scope of services to be rendered
 - Senior Management Experience
 - Reference sites and contact details where a project of this nature was conducted

All bid proposals must at least adhere to the minimum requirements as specified in the Terms of Reference.

If the bidder suggests certain changes to the General Conditions of the contract or the special conditions of the contract, the proposed changes will be evaluated and if acceptable by CATHSSETA such suggested changes may be included in the contract as special conditions of the contract. If the suggested changes are unacceptable, the General Conditions of the contract and the special conditions of the contract will stand. The potential bidder will then have to decide to abide by the decision or to withdraw its bid proposal.

Supporting documentation should be attached as annexures and cross-referenced to the appropriate section of the bid.

Please note that the scope of services as indicated in this TOR reflects CATHSSETA true requirements and once the contract is signed amendments to the contract will only be allowed in exceptional circumstances. Please ensure that your costing is based on the scope of services to be rendered.

Disclaimer

The SETA reserves the right not to appoint a service provider and is also not obliged to provide reasons for the rejection of any proposal. CATHSSETA reserves the right to:

- Award contract or any part thereof to one or more Service Providers;
- Reject all bids;
- Consider any bids that may not conform to any aspect of the bidding requirements;
- Decline to consider any bids that do not conform to any aspect of the bidding requirements;
- Request further information from any Service Provider after the closing date;
- Cancel this tender or any part thereof at any time.

Take note that if **subcontractors** are going to be utilized the following B-BBEE rules will be applicable for the allocation of B-BBEE points:

Pre-contract (Regulation 11.8)

- (8) A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.
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Post contract (Regulation 11.9)

- (9) A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an exempted micro enterprise that has the capability and ability to execute the sub-contract.

Bidders notification

Unsuccessful respondents will be notified by e-mail.

21. Additional Bid requirements if a consortium/ joint venture/ trusts is submitting a bid proposal

The name of the entity with whom the CATHSSETA will ultimately contract and who will be responsible for the overall service delivery. This is required in all instances and is particularly relevant in a consortium.

- The names of all consortium/ joint venture members and evidence there-of.
- SARS tax clearance pin (if consortium and/or joint venture kindly ensure that all members submit a Tax Clearance pin);
- Consortiums must submit a Copy of Registration Documents with the Registrar of Companies (CIPC)
- All members of a consortium or joint venture must provide an original SARS tax pin.
- A trust, consortium or joint venture will qualify for their B-BBEE status level points as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.

- Regarding joint ventures, the joint venture agreement between the different suppliers must be provided indicating the role and responsibilities of each supplier towards the contract.

Note! All Standard Bid documents must be completed and signed and will form part of a signed contract.

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO:
CLOSING TIME 11:00	CLOSING DATE.....

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

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
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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

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

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

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5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

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

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

..... days
..... days
..... days
..... days

5.1 Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

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

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.....
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.....

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

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

TOTAL: R.....

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

Bid No.:

Name of Bidder:

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

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

TOTAL: R.....

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

*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

(INSERT NAME AND ADDRESS OF DEPARTMENT/ENTITY)

Tel:

Or for technical information –

(INSERT NAME OF CONTACT PERSON)

Tel:

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 / Persal Number	Employee 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

May 2011

**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 **.....** 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**

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = Price of lowest acceptable bid

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

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

B-BBEE Status Level of Contributor	Number of points (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	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

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

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

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
.....
.....

CONTRACT FORM - RENDERING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I..... in my capacity as..... accept your bid under reference numberdated.....for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED ATON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1

2

DATE:

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	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers 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 Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>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)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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 <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

SBD 8

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

Js365bW

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:

(Bid Number and Description)

in response to the invitation for the bid made by:

(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, 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 in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid 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

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ 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 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.

³ 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.

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

THE NATIONAL TREASURY

Republic of South Africa



**GOVERNMENT PROCUREMENT:
GENERAL CONDITIONS OF CONTRACT**

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

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

7. Performance security

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
 - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 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.

Js General Conditions of Contract (revised July 2010)