



employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

REQUEST FOR BID

TCF 10: 2021/22

THE COMPENSATION FUND (CF) WISHES TO INVITE ALL INTERESTED COMPANIES TO SUBMIT BIDS FOR THE APPOINTMENT OF FORENSIC INVESTIGATION FIRMS PANEL TO CONDUCT FORENSIC INVESTIGATIONS AT COMPENSATION FUND FOR THE PERIOD OF SIXTY (60) MONTHS.

ISSUE DATE:

08 June 2021

CLOSING DATE AND TIME

29 June 2021 at 11H00am

NO BRIEFING SESSION

Prospective bidders may send their questions/queries to

SCM.Enquiries@LABOUR.gov.za

NB: The cut-off time to receive enquiries is **6 days** before the closing date.

NB: The cut-off date for the Fund to respond to all questions received is **4 days** before the closing date

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PART A

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE COMPENSATION FUND(CF)					
BID NUMBER:	TCF 10 2021/22	CLOSING DATE:	29 June 2021	CLOSING TIME:	11:00 am
DESCRIPTION	APPOINTMENT OF FORENSIC INVESTIGATION FIRMS PANEL TO CONDUCT FORENSIC INVESTIGATIONS AT COMPENSATION FUND FOR THE PERIOD OF SIXTY (60) MONTHS..				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
167 Thabo Sehume Street					
The Compensation Fund, Delta Heights Building					
Pretoria, 0001					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON			CONTACT PERSON		
TELEPHONE NUMBER			TELEPHONE NUMBER		
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	Scm.enquiries@labour.gov.za		E-MAIL ADDRESS	Scm.enquiries@labour.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]
	☐ Yes ☐ No				☐ Yes ☐ No

**APPOINTMENT OF FORENSIC INVESTIGATION FIRMS PANEL TO CONDUCT FORENSIC INVESTIGATIONS AT
COMPENSATION FUND.**

[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]			
1. ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]	2. 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 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:

INTRODUCTION

- 1.1 The Standing Committee on Public Accounts (SCOPA) requested the Honourable Minister of Department of Employment and Labour on 19 May 2021 to probe forensic investigation at the Compensation Fund (the Fund).
- 1.2 The Fund has been receiving a disclaimer audit opinion over the past 10 years.

1. OBJECTIVE AND SCOPE

- 2.1. The objective of the investigation is to prove or refute allegations of fraud and corruption, maladministration, conflict of interest resulting in unethical culture within the Compensation Fund.
- 2.2. The scope of the investigation will focus on the following types of fraud: financial misstatement fraud, fraud and corruption as well as cybercrime. These types of fraud will cover business areas which have been disclaimed over the years. The information communication technology environment will be investigated/ audited to ascertain if it is an enabler to the fraud types alluded to. The approach and focus on each business unit and process will be discussed in detail in this document.
- 2.3. A risk based approach has been used to identify the high risk areas susceptible to fraud, trend analysis of modus operandi on investigated cases, the audited financial statements as well as the Auditor-General's opinion.
- 2.4. The investigation scope will be based on a 5-year period (2016/17 until 2020/21), and any other years that might require investigation.
- 2.5. The contract is anticipated to be for a period of five (5) years for forensic investigation services.
- 2.6. Litigation support services (Disciplinary, Arbitration, Criminal and Civil) will continue until all cases impacted have been concluded.
- 2.7. The volume of transactions that should be tested and verified, includes claims records of 1 498 196 (1 million four hundred and ninety-eight thousand one hundred and ninety-six), medical invoices records of 716 648 (seven hundred and sixteen thousand six hundred and forty-eight), the number of implicated parties is unknown and the number of bank statements required is also unknown.

2. LIMITATIONS

The investigation will rely on documentary evidence hard and/or electronic copies as part of the chain of custody, therefore any missing electronic transactions or incompleteness of the database will put a limitation to the investigation and might cause delays in finalizing the project.

- The Fund has investigated and finalised 358 cases as such the transactions or allegations already investigated or some which are still under investigation will need to be excluded to avoid duplication of efforts and any possible fruitless and wasteful expenditure.

3. APPROACH

4.1. Our approach is based on materiality and risk exposure. We identified and analysed material account balances and mapped against the audit opinion and fraud risk exposure associated with each account balance.

4.2. The risks of material misstatement in financial reporting which includes but not limited to: altering items in the population of transactions, inappropriately recording journal entries, recording transactions at the wrong amount or misclassifying transactions, recording transactions that did not exist or did not occur, possible overpayments

4.3. Risk Mapping to financial statements

Financial statement	Audit opinion	Impact on AFS	Business process	Fraud risk exposure
Balance sheet				
Investments in associates and subsidiaries	disclaimer	High	Treasury and Investment	significant
Income Statement				
Revenue from non-exchange	disclaimer	High	Employer assessment, Accounts receivables	Significant
Benefits	disclaimer	High	Medical aid, pension, temporary disability and permanent disability	Significant
Operating costs	disclaimer	High	Accounts payable, Supply chain	Significant

Financial statement	Audit opinion	Impact on AFS	Business process	Fraud exposure risk
			management (procurement)	
Financial Statements Prep				
AFS	disclaimer	High	Financial reporting	Significant

5 SCOPE OF WORK

Benefits paid

5.1 Over the past 10 financial years the Fund has paid R43 billion on medical expenses, pension, total temporary disability (TTD) and permanent disability (PD), constant attendance allowance and funeral expenses the break down is detailed below

Financial Year	Amount R'000
2010/2011	2,205,311
2011/2012	2,260,283
2012/2013	1,981,792
2013/2014	2,703,129
2014/2015	6,033,809
2015/2016	7,952,904
2016/2017	5,526,309
2017/2018	2,444,480
2018/2019	5,353,093
2019/2020	6,687,336
2020/2021*unaudited figures	
	43,148,446

Phase 1

5.2 Medical expenses procedure/investigation to be undertaken

- Conduct data analytics
 - Identify any ghost or invalid medical service providers
 - Identify duplicate and/or over payments
 - Identify invalid invoices
- Investigate validation of payments
 - Claim existence on CF records
 - Claim status

- Verify MSP's practice number against Board of Healthcare Funders (BHF) and Health Professional Council of South Africa (HPCSA)
 - Physical verification of the existence of the identified MSPs against medical invoice and employer accident report
 - Medical treatment description/batch line item
 - Tariff code
 - Date of service
 - Analyse the hospital stay/duration
 - Employer accident report
 - Date of payment
 - Bank account details
 - Audit log events of any bank account number change
 - Analysis of the payments made to each MSPs and quantification
- Flow of money analysis
 - Subpoena bank accounts and determine the holder of the bank accounts
 - Conduct bank statement analysis
 - Analysis of the contra accounts
 - Check the bank account to which medical invoices were paid against any CF employee's bank account
 - Identify the capturer and authoriser of the illicit transactions
 - Identify implicated parties
 - Conduct interviews with suspects and witnesses
 - Obtain sworn statements from the parties
 - Link analysis of any syndicate identified and profiling of suspects
 - Profiling of assets procured from the proceeds of fraud
 - Conduct lifestyle audit on any CF implicated employee
 - Refer matters of the criminal nature to law enforcement agencies

Phase 2

5.3 Pension, temporary total disability (TTD), permanent disability(PD), constant attendance allowance (CAA) and funeral expenses

- Conduct data analytics to identify:
 - Ghost claimants, pensioners and dependencies
 - Invalid IOD
 - Stolen outright claims and banking details
 - Life status of claimants
 - Life status of claimants, pensioners and dependencies
 - Dependencies above the age of 18
 - Nature of injury vs adjudication results
 - Claimants earnings vs computation
 - Earnings submitted by employers'/claimants vs earnings captured on the system and PD pay out
 - Banking details
- Investigation

- Validate the claimants and verify their ID documents to Department of Home Affairs and conduct ID verification photos to ascertain if ID fraud exists
 - Validate the claim through analysis of employer accident report, medical records and adjudication outcome
 - Verify the validity of the adjudication outcomes (PD, TTD)
 - Validate the banking details of the claimants
 - Validate the earnings of the claimants
 - Identify the capturers/processors
 - Identify the verifier/assessors
 - Identify the authorisers
 - Identify finance officials responsible for payment processing, verification and authorisation
 - Verify the funeral expenses paid against Home Affairs life status
 - Validate the banking details
 - Identify if the banking details were intercepted and changed, how it was done and by whom
- Interview the claimants and obtain their sworn statements
 - Physically verify the claimant and confirm their injury or disability
 - Verify the dependencies (pension beneficiaries and CAAs)
 - Flow of money analysis
 - Subpoena bank accounts and determine the holder of the bank accounts
 - Conduct bank statement analysis
 - Analysis of the contra accounts
 - Check the bank account to which claimants were paid against any CF employee's bank account
 - Identify and profile implicated parties and any assets purchased from the proceeds of fraud
 - Interview suspects and witnesses and obtain their sworn statements
 - Conduct lifestyle audit on any CF implicated employee
 - Refer matters of the criminal nature to law enforcement agencies

Phase 3

5.4 Revenue from non-exchange

Over the past 10 years the Fund has generated revenue aggregating to R81 billion

Financial Year	Amount R'000
2010/2011	5,271,589
2011/2012	4,978,276
2012/2013	8,092,646
2013/2014	8,185,636
2014/2015	8,338,831
2015/2016	7,675,104
2016/2017	9,250,063
2017/2018	7,298,648

Financial Year	Amount R'000
2018/2019	9,336,733
2019/2020	12,573,341
2020/2021*unaudited figures	
	81,000,867

Investigation procedure to be under taken but not limited to:

- Obtain audit trail for the issuance of the letter of good standing
- Employer name and company registration
- Return on Earnings submitted (from 2016/17 to 2020/2021)
- Analyse invoices issued per employer (from 2016/17 to 2020/2021)
- Analyse amount paid by employer (from 2016/17 to 2020/2021)
- Analyse bank account numbers to which monies where paid by employers
- Identify dates loaded
- Dates paid by employer
- Dates letters of good standing were issued per employer (from 2016/17 to 2020/2021)
- Identify officials who have access to the employer master file
- Analyse any changes made to the master file
- Profile CF officials who worked on each employer file, account, journal and any finance function.
- Validation of employer status against CIPC and UIF
- Compare employer assessment to the annual return on earnings (from 2016/17 to 2020/2021)
- Compare earnings of employers from UIF (EMP 501) to earnings submitted at the Compensation Fund (from 2016/17 to 2020/2021)
- Establish whether the issuance of the letter of good standing was issued when the employer was not in good standing
- Verify if there were any manual journal manipulation and if the profiles of employers who are in good standing were compromised.
- Conduct lifestyle audit on implicated parties
- Verify the employers' nature of business
- Interview the employers and verify their existence
- Interview the suspects and witnesses and obtain their sworn statements
- Identify and profile all bogus companies purporting to conduct services on behalf of the Compensation Fund and interview the individuals involved
- Verify if there is fictitious revenue
- Verify the validity of credit balances (refunds) paid to employers.
- Flow of money analysis
 - Subpoena bank accounts and determine the holder of the bank accounts
 - Conduct bank statement analysis
 - Analysis of the contra accounts
 - Check the bank account to which employers were paid/refunded against any CF employee's bank account
- Conduct conflict of interest checks of the implicated employees and determine whether any corrupt relationship exists
- Report any criminal conduct to law enforcement agency

Phase 4

5.5 Investments and associates

The Fund has invested about R2,7 billion on Social Responsible Investments (SRI) companies

Financial Year	Amount R'000
2016/2017	80,039
2017/2018	910,076
2018/2019	754,955
2019/2020	997,066
2020/2021* unaudited figures	
	2,742,136

- Identify all companies under unlisted investments (SRIs)
- Identify who the directors of those companies are and their relationship direct or indirect with Department of Employment and Labour and its entities and/ or its employees, their relationship and influence in government (political influence).
- Quantify the amounts invested on each company from 2010 to 2020 against its financial performance
- Verify if the investees or its directors are conducting business with CF
- Establish the reinvestments on any poor performing investee
- Establish the criteria used to nominate investees and the percentage of funds allocations
- Identify any potential or perceived conflict of interest.

Phase 5

5.6 Cybersecurity audit

- Identify control weaknesses on the Information Communication and Technology (ICT) network
- Verify if the ICT governance and architecture if is fit for purpose to support the CF environment
- Test if the audit logs of the past 10 years are available on all CF transactions
- Test the controls embedded on the domain control servers
- Establish if there are any audit logs deleted from the domain control servers on CF transactions
- Identify if event logs are monitored to identify any unauthorised access or irregularities with user access and or unauthorised applications
- Establish if the service account password has been changed and the frequency of those changes
- Test the adequacy and effectiveness of the ICT cyber risk strategy
- Test the incident response plan (IRP) and provide the gaps, control weaknesses and recommendations
- Test the effectiveness of the triggers/risk indicators on the network and domain control servers.

Phase 6

5.7 Conflict of interest

- Conduct background checks on all CF officials
- Conduct analytics on CF officials bank accounts against bank accounts on CF database/systems
- Map former and current CF employees against CIPC database, Central Supplier database and compare with approved Other Remunerative Work records.

Phase 7

5.8 Accounts payable, Supply chain management (procurement)

- Identify any fictitious invoices paid
- Identify any fictitious suppliers paid
- Duplicate invoices paid
- Invoices paid for services not rendered
- Verify banking details of suppliers
- Any possible bid rigging
- Establish any conflict of interest between supply chain management, accounts payable officials and suppliers
- Conduct lifestyle audit on SCM and financial control officials
- Report any criminal conduct to the law enforcement agency
- Interview and profile the suspects
- Obtain the sworn statements from suspects

Phase 8

5.9 Financial Reporting (financial statement fraud)

- Identify if there was fictitious revenue in the past 10 years
- Establish timing differences including improper revenue recognition in the financial statements and journals (from 2016/17-2020/21)
- Assess any concealed liabilities and expenses
- Identify any improper disclosures
- Identify journals manipulations
- Identify employees involved
- Interview suspects and witnesses and obtain their sworn statements
- Report any criminal conduct to the law enforcement agency

6 CRIMINAL SUPPORT

- Compile A1 or A2 statements as and when required for criminal investigation
- Testify at the court of law.
- Provide criminal litigation support to the law enforcement agencies
- Briefing the State prosecutors
- Engaging with the National Prosecution Authority (NPA)

7. CIVIL SUPPORT

- Gathering and collation of evidence in a manner that can be presented to legal counsel
- Provide civil litigation support to the Legal Services, State Attorney/ Asset Forfeiture Unit (AFU)
- Briefing of counsel on the investigation and recoveries
- Quantification of losses suffered due to fraud/financial misconduct

8 DISCIPLINARY AND /OR ARBITRATION MATTERS

- Compilation of individual reports and annexures as evidence to support the disciplinary hearing
- Attend briefing and preparations sessions with Employee Relations
- Testify at the disciplinary hearing, arbitration and labour court.

9 PROJECT TIMELINES AND PAYMENT SCHEDULE

- 9.1.1 A detailed work-plan as well as the proposed approach to undertaking the scope of the project;
- 9.1.2 Previous experience and references of similar projects in a health sector and insurance industries;
- 9.1.3 Costs/rates for the project must be inclusive of VAT;
- 9.1.4 Names of personnel to be employed to perform this task and their curriculum vitae.
- 9.1.5 The team should comprise of various streams that would focus on each investigation phase
- 9.1.6 The investigation scope will be based on a 5-year period (2016/17 until 2020/21), and any other years that might require investigation.
- 9.1.7 The contract is anticipated to be for a period of five (5) years for forensic investigation services.
- 9.1.8 Litigation support services (Disciplinary, Criminal and Civil) will continue until all cases impacted have been concluded.
- 9.1.9 The payment schedule guide

Rates must be as per AGSA published rates per hour.

APPOINTMENT OF FORENSIC INVESTIGATION FIRMS PANEL TO CONDUCT FORENSIC INVESTIGATIONS AT COMPENSATION FUND.

Required Skill	Rates per Hour
Director/Partner	
Senior Manager	
Manager	
Medical expert	
Cyber specialist/auditor	
Investigators	
Chartered accountant	
Investment specialist	
Data analyst	
Data extractor/Miner	
Polygraph expert	
Handwriting specialist/expert	

Devices	Cost per Device
Device imaging and indexing (computer hard drives<= 500gig)	
Device imaging 510gig- 2TB and indexing	
Servers< 1TB and indexing	
Cell phones imaging (non-smart) and indexing	
Cell phones imaging (smart) and indexing	
Polygraph test equipment	
Surveillance equipment	

9.1.10 Billing will be based on approved deliverables

Deliverables	Costs
Investigations reports with supporting annexures of all the phases	
Total	

Disbursements (as per government rates)	Costs
Total	

10 REQUIRED EXPERTISE AND SKILLS:

- 10.1 The Forensic firms should have 15 years' overall experience in this field and 6 years of those should have conducted fraud investigation in healthcare and insurance industries.
- 10.2 The individual team members assigned to this project should have at least 8 years' experience in investigation, testifying in court and/or disciplinary hearings.
- 10.3 The investigators should have experience in engaging with the law enforcement agencies.
- 10.4 The Director or Partner should have a minimum of 12 years' experience in investigation and should be a qualified certified fraud examiner, as per their resume and not of a company.
- 10.5 The team should possess different skill sets to execute the mandate

11 PROJECT DURATION AND SKILLS TRANSFER

The project may run for a minimum of (5) years; with a panel of multiple forensic firms on board.

12. LEGISLATIVE AND REGULATORY FRAMEWORK

This TOR and all contracts emanating there from will be subject to the General Conditions of Contract issued in accordance with Treasury Regulation 16A published in terms of the Public Finance Management Act, 1999 (Act 1 of 1999). The bid conditions are supplementary to that of the General Conditions of Contract. Where, however, the TOR conditions are in conflict with the General Conditions of Contract, the TOR conditions prevail.

13. BID SUBMISSION REQUIREMENTS

The bidder has to submit a bid response documentation pack and it must be delivered at the correct physical or postal address and within the stipulated date and time as specified in the "Invitation to Bid" cover page, and the bidders are expected to submit the following:

- Copies in two separate batches (1) Technical (2) Price proposal.
- One original, 4 exact copies of the original technical and price proposal.

- CD containing a true copy of the technical proposal with price proposal.

14. PRICE PROPOSAL

The fixed fee bid for the assignment, payable at deliverable milestones as specified in the remuneration table below. Bidders are required to present their proposals according to the below costing template.

Although VAT will be payable on each invoice, for the purposes of the bid, it should be specified separately on the total sum only.

This total tender price must also be captured on the SBD3.3 which forms part of the tender pack

Rates must be as per latest AGSA published rates per hour.

Required Skill	Rates per Hour
Director/Partner	
Senior Manager	
Manager	
Medical expert	
Cyber specialist/auditor	
Investigators	
Chartered accountant	
Investment specialist	
Data analyst	
Data extractor/Miner	
Polygraph expert	
Handwriting specialist/expert	

Devices	Cost per Device
Device imaging and indexing (computer hard drives<= 500gig)	
Device imaging 510gig- 2TB and indexing	
Servers< 1TB and indexing	
Cell phones imaging (non-smart) and indexing	
Cell phones imaging (smart) and indexing	
Polygraph test equipment	
Surveillance equipment	

Deliverables	Costs
Investigation reports with annexures	
Total	

Disbursements (as per government rates)	Costs
Total	

15. BID EVALUATION STAGES

- a) The bid evaluation process consists of several stages that are applicable according to the nature of the bid as defined in the table below.

Stage	Description	Applicable for this bid
Phase 1	Administrative Pre-qualification requirements	YES
Phase 2	Technical Mandatory requirements	YES
Phase 3	Evaluation on functionality	YES
Phase 4	Evaluation on Price / B-BBEE	YES

The bidder must qualify for each stage to be eligible to proceed to the next stage of the evaluation.

15.1 PHASE 1: ADMINISTRATIVE PRE-QUALIFICATION REQUIREMENTS

The bidder **must comply** with ALL of the bid pre-qualification requirements in order for the bid to be accepted for evaluation.

If the Bidder failed to comply with any of the administrative pre-qualification requirements, or if Compensation Fund is unable to verify whether the pre-qualification requirements are met, then Compensation Fund reserves the right to –

- Reject the bid and not evaluate it, or
- Accept the bid for evaluation, on condition that the Bidder must submit within 7 (seven) days any supplementary information to achieve full compliance, provided that the supplementary information is administrative and not substantive in nature.

- (c) All bids will be measured against the administrative pre-qualification requirements. Only bids that comply with the criteria mentioned below will be considered for further evaluation.
- (d) The service provider must attach the reference letters that are in the signed letterheads of the companies/organisations where the similar alignment was conducted.
- (e) The bidder must also ensure that the curriculum vitae for all the resources to be deployed in this project are attached
- (f) The Service providers must be registered with the Central Supplier Database (please attach recent (CSD) report /proof with the company's unique number and M number);
- (g) Tax Compliance Status Pin.
- (h) Valid COIDA Letter of Good Standing or tender letter from the Compensation Fund.
- (i) Completed and Signed Standard Bidding Documents (SBD forms)

NB: Please note that failure to provide any of the above requirements within (7) days will lead to automatic disqualification of the service provider's bid proposal.

15.2 PHASE 2: TECHNICAL MANDATORY REQUIREMENTS

- (a) Project lead who is at a Director or Partner level should be a Certified Fraud Examiner (CFE). A certified copy of the CFE certificate should be provided.
- (b) Costing Template must be as per the provided template on NO.14 Pricing Proposal.

The bidder must comply with all the technical mandatory requirements in order for the bid to proceed to the next stage of the evaluation.

15.3 PHASE 3: EVALUATION ON FUNCTIONALITY

- a) An evaluation panel will be established by the Fund, made up of members of the Evaluation Committee. Bids will be evaluated strictly according to the bid evaluation criteria set out below.
- b) Only Bidders that have met the Pre-Qualification Criteria in (Phase 1) and Mandatory requirements (Phase 2) will be evaluated in Phase 3 for functionality. Functionality will be evaluated as follows:

- c) A minimum threshold of 75% for the technical elements must be attained; otherwise the bid will be regarded as non-responsive and be disqualified.

Bids that meet the 75% minimum threshold on functionality will be shortlisted further for the fourth phase which is Price/BBBEE.

16. EVALUATION CRITERIA

During this phase all responsive bids will be evaluated in terms of the following evaluation criteria, weights and values

Technical scorecard			
#	CRITERIA	SCORING GUIDE	WEIGHTS
1	15 years' knowledge and experience in forensic investigation and conducting lifestyle audit (The Firm)	15 years' and above = 5 14 years' = 4 11- 13 years' = 3 8-10 years' = 2 7 years and below = 1	20
2	10 years' experience in utilising advance tools and techniques not limited to data analytics (The Firm)	10 years' and above = 5 9 years' = 4 6-8 years' = 3 4- 5 years' = 2 3 years and below = 1	10
3	15 years' experience in litigation support covering and not limited to evidence preparation and testifying in criminal, civil and disciplinary hearings (The Firm)	15 years' and above = 5 14 years' = 4 11- 13 years' = 3 8-10 years' = 2 7 years and below = 1	10
4	10 years' experience in investigating financial statement fraud (The Firm)	10 years' and above = 5 9 years' = 4 6-8 years' = 3 4- 5 years' = 2 3 years and below = 1	10
5	10 years' experience in cyber security investigation/audit (The Firm)	10 years' and above = 5	20

Technical scorecard			
#	CRITERIA	SCORING GUIDE	WEIGHTS
		9 years' = 4 6-8 years' = 3 4- 5 years' = 2 3 years and below = 1	
6	6 years' experience in conducting investigation in healthcare industry (Director/Partner/Project Lead)	6 years' and above = 5 5 years' = 4 3 -4 years' = 3 2 years' = 2 1 year = 1	15
7	6 years' experience in conducting investigation in insurance industry (Director/Partner/Project Lead)	6 years' and above = 5 5 years' = 4 3 -4 years' = 3 2 years' = 2 1 year = 1	15
MINIMUM THRESHOLD TO BE MET			75%
TOTAL			100%

Values ranging from 1-poor, 2 – average, 3 – good, 4 – very good and 5 – excellent, will apply.

Points will be awarded per individual evaluation committee member, after which average points will be calculated.

Service Providers must score at least an average of **75 points** (minimum threshold - only an example) for functionality to qualify for Phase 4 Price and BBBEE

Phase 4: EVALUATION ON PRICE/BBBEE

Only Bidders that have met the 75-point threshold in Phase 3 will be evaluated in Phase 4 for price and BBBEE.

Price and BBBEE will be evaluated as follows:

- Bidders who quoted outside the legislated AGSA rates will be disqualified.
- Only top 6 successful bidders who qualify on this phase will be considered for appointment.

- c. Bid proposals will be evaluated in accordance with the 90/10-preference point system, as contemplated in the Preferential Procurement Policy Framework Act (Act 5 of 2000) and Preferential Procurement Regulations, 2017.
- d. The points in respect of price will be calculated on the ceiling price of the bid.
- e. The following formula will be used to calculate points out of 90 for price in respect of a tender with a Rand value above R50 million, inclusive of all applicable taxes:

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

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

- f. The following table will be used to calculate the score out of 10 for B-BBEE:

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

- a) The Service provider must submit proof of its B-BBEE status level of contribution.

17. RULES OF BIDDING/SPECIAL CONDITIONS OF CONTRACT

- a) The Fund will enter into a single contract with multiple companies for the delivery of the work set out in these terms of reference. It will be expected that the contracted company have necessary expertise secured via subcontract, or under a joint venture arrangement.
- b) Litigation support services costs will only be applicable upon the conclusion of the investigation assignments.
- c) The shortlisted companies may be required to conduct a presentation to the CF at no cost to the Compensation Fund.
- d) Tax Compliance pin or pins must be submitted by all South African companies submitting bids as part of a consortium or joint venture.
- e) Foreign company providing proposals must become familiar with local conditions and laws, and take them into account in preparing their proposals.
- f) Bids must be submitted in South African Rands, on a fixed price basis.
- g) The cost of preparing bids and of negotiating the contract will not be reimbursed.
- h) The Fund is not bound to accept any of the bids submitted.
- i) The Fund reserves the right to withdraw or amend these terms of reference by notice in writing to all parties who have received the terms of reference.
- j) The Fund reserves the right to call interviews with short-listed bidders before final selection.
- k) The Fund reserves the right to negotiate price with the preferred bidder.
- l) Company may ask for clarification on these terms of reference up to close of business six (6) days before the deadline for the submission of bids. Any request for clarification must be submitted in writing by email and will be replied to in writing by email. SCM.Enquiries@LABOUR.gov.za
- m) The Fund reserves the right to return late bid submissions unopened.
- n) The Fund reserves the right not to evaluate bids that are not submitted in the format specified in these terms of reference. Failure to submit the bids in the specified format will invalidate your bid.
- o) A company may not contact the Fund or any member of the bid committees, on any matter pertaining to their bid from the time when bids are submitted to the time the consultant contract is awarded. Any effort by a bidder to influence bid evaluation, bid comparisons or bid award decisions in any matter, may result in rejection of the bid concerned.
- p) The deadline for submission of bids is **11h00** on **29 June 2021**

- q) The required service must commence one week after the official order has been placed and contract signed.
- r) No incomplete tenders, late tenders and tenders received telegraphically or per facsimile shall be accepted.
- s) The personnel of the civil company shall adhere to security regulations of the Fund. This entails issues like locking all valuables and computer equipment, remove of any computer equipment from the Department's premises.
- t) A two envelope system must be used, with one envelope containing only the price proposal and the other envelope containing the technical proposal, tax compliance pin, and all other tender documents.

Bids must be submitted by hand to:

**The Compensation Fund
167 Thabo Sehume,
Delta Heights Building,
Pretoria CBD, 0001**

- u) **Bids must be clearly marked:**
 - I. Bid Number **TCF 10:2021/22**
 - II. Forensic Investigation
 - III. Compensation Fund: Supply Chain Management
 - IV. Attention: Acquisition Management

18. GENERAL CONDITIONS OF CONTRACT

The general conditions of contract as enclosed in the standard bidding documents apply.

19. NO BRIEFING SESSION

Prospective bidders may send their questions/queries to

SCM.Enquiries@LABOUR.gov.za

NB: The cut-off time to receive enquiries is **6 days** before the closing date.

NB: The cut-off date for the Fund to respond to all questions received is **4 days** before the closing date

20. ENQUIRIES

- SCM.Enquiries@LABOUR.gov.za

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: BID NO: TCF 10: 2021/22

CLOSING TIME 11:00

CLOSING DATE: 29 June 2021

OFFER TO BE VALID FOR 90 DAYS FROM THE CLOSING DATE OF BID.

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

1. The accompanying information must be used for the formulation of proposals.

2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project. R.....

3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

4. PERSON AND POSITION DAILY RATE	HOURLY RATE	DAILY RATE
.....	R.....	
.....	R.....	
.....	R.....	
.....	R.....	
.....	R.....	

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

.....	R.....	days
.....	R.....	days
.....	R.....	days
.....	R.....	days

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

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT

TOTAL:

R.....

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

APPOINTMENT OF FORENSIC INVESTIGATION FIRMS PANEL TO CONDUCT FORENSIC INVESTIGATIONS AT COMPENSATION FUND.

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

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 –

SCM.enquiries@labour.gov.za

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 an advertised competitive bid, a limited bid, a proposal or written price quotation). 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, member):
.....

2.4 Registration number of company, enterprise, close corporation, partnership agreement or trust:
.....

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

YES / NO

presently employed by the state?

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 attach 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,

YES/NO

APPOINTMENT OF FORENSIC INVESTIGATION FIRMS PANEL TO CONDUCT FORENSIC INVESTIGATIONS AT
COMPENSATION FUND.

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?

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 Income Tax Reference Number	State Employee Number / Persal Number

1. 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
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**

i)

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 90/10 system for requirements with a Rand value of R50 000 000 and above (all applicable taxes included); and

1.2

- a) The value of this bid is estimated to exceed R50 000 000 (all applicable taxes included) and therefore the 90/10 preference point system shall be applicable.

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	90
B-BBEE STATUS LEVEL OF CONTRIBUTOR	10
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 90/10 PREFERENCE POINT SYSTEMS

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

90/10

$$P_s = 90 \left[1 - \frac{P_t - P_{\min}}{P_{\min}} \right]$$

Where

- P_s = Points scored for comparative 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)
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	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 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:
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	☐	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 least 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:

- ii) The information furnished is true and correct;
- iii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iv) 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;
- v) 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 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). 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.	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)? 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.	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

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

SBD 9

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
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

GOVERNMENT PROCUREMENT GENERAL CONDITIONS OF CONTRACT.

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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

General Conditions of Contract

1. **Definitions** 1. The following terms shall be interpreted as indicated:
 - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
 - 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
 - 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders prior to or after bid submission) designed to establish bid prices at

artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application.

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X 85, 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 organization acting on behalf of the Department.

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 8 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 those 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

- 5.1 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 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:
- (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 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.
- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise

control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

25. Force 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
 - (c) 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;
- (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 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 (NIP) Programme

- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation

34. Prohibition of Restrictive practices

- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 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.

