

INVITATION TO TENDER

BID NO MKRI03/2024: Appointment of an intellectual property firm of attorneys for a period of three years

Company Name	
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The Moses Kotane Research Institute (MKRI) invites prospective bidders to submit proposals for the appointment of a service provider for an intellectual property firm of attorneys for a period of three years. This invitation is issued in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and Preferential Procurement Regulations, 2022.

The evaluation criteria are divided into three phases:

1. PHASE 1: ADMINISTRATIVE COMPLIANCE

- (a) The bid submitted must be complete in all respects.
- (b) The standard bidding documents must be duly completed and be submitted with the bid at the time of closing of the bid.

Failure to comply with the administrative compliance shall result in the proposal being considered non-responsive and shall be rejected.

2. PHASE 2: FUNCTIONALITY CRITERIA

To assess the execution capacity of the bidder, all the documents outlined in the bid document must be submitted on the closing date and time of the bid.

Failure to meet the minimum passing score of 80 points functionality criteria (phase 2) will be deemed the bidder non-responsive and will not be further evaluated in terms of phase 3.

3. PHASE 3: 80/20 PRICE AND PREFERENCE POINT SYSTEM

The applicable preference point system for this tender is an 80/20 preference point system where 80 points will be allocated for price and 20 points will be allocated for specific goals as follows:

Preference point system	
Price	80
Specific Goals	20
• Tenderer who has 51% to 100% black people ownership	8
• Tenderer who has 30% to 100% women ownership	6
• Tenderer who has 30% to 100% youth ownership	6
Total	100

It is compulsory for bidders to substantiate the above specific goals and requirements by submitting the following evidence:

- (a) Copy of Enterprise Registration Certificate (CIPC)
- (b) Copies of an identity document (ID)

It is mandatory for tenderers to complete SBD 6.1 to claim points for specific goals, failure to complete SBD 6.1 shall be interpreted to mean that the points for specific goals are not claimed.

4. CONTACT PERSON FOR SCM AND TECHNICAL ENQUIRIES

SCM enquiries may be directed to:

Ms Sinenhlanhla Ngqulunga at 0312661777 / Snenhlanhla.ngqulunga@moseskotane.com

Technical enquiries may be directed to:

Dr Xolani Ngema at 031266 1777 / Xolani.ngema@moseskotane.com

5. CLOSING OF BID:

The closing date and time for receipt of Tenders is **25 October 2024** at **11:00 am**.

Telegraphic, telephonic, telex, facsimile, emails and late tender proposals will not be accepted. Bids must be deposited in the bid box specified below. Bids deposit in any other bid box and address will not be accepted.

The Bid Box, located on the ground floor at the Moses Kotane House.

Attention: Supply Chain Management Unit

Unit 14, Lakeside Derby Down

1 University Road

Westville

4399



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DEFINITIONS

1. **“Acceptable bid”** means any bid which, in all respects, complies with the specifications and conditions of bid as set out in the bid document under MKRI03/2024
2. **“Bid”** means a written offer in a prescribed or stipulated form in response to the invitation by the entity for the provision of goods, works or services MKR03/2024.
3. **“Comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration.
4. **“Consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract.
5. **“Contract”** means the agreement that results from the acceptance of the bid by the entity.
6. **“Control”** means the possession by a person, of a permanent authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business.
7. **“Entity”** means the Moses Kotane Research Institute, established in terms of the KwaZulu-Natal Moses Kotane Research Institute Act No 3 of 2024
8. **“Equity Ownership”** means the percentage of ownership and control exercised by individuals within an enterprise.
9. **“Specific goals”** means the inclusion of the following:
 - (i) contracting with persons or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender, or disability.
 - (ii) implementing the programme of the Reconstruction and Development Programme as published in the Government Gazette No. 16085 dated 23 November 1994

Definitions of Acronyms/Glossary

• BBEE	Black Broad-Based Economic Empowerment
• CV	Curriculum Vitae
• EDTEA Affairs	Department of Economic Development, Tourism and Environmental
• IDP	Integrated Development Plan
• IP	Intellectual Property
• GIS	Geographic Information System
• LED	Local Economic Development
• M&E	Monitoring and Evaluation
• MKRI	Moses Kotane Research Institute
• PGDS	Provincial Growth and Development Strategy
• PSC	Project Steering Committee
• PSEDs	Provincial Spatial Economic Development Strategy
• SA	South Africa
• SLA	Service Level Agreement
• SMME	Small, Medium and Micro-Enterprise
• SP	Service Provider
• Stats SA	Statistics South Africa
• SWOT	Strengths Weaknesses Opportunities and Threats
• UNWTO	United Nations World Tourism Organization
• WTO	World Tourism Organization
• SBD	Standard Bid Document



SBD1

PART A
INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (MOSES KOTANE RESEARCH INSTITUTE)					
BID NUMBER:	MKRI03/2024		CLOSING DATE:	25 October 2024	
DESCRIPTION	Appointment of an intellectual property firm for a period of three years				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Lakeside Unit 14					
Derby Down, 1 University Road					
Westville					
3629					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Sinenhlanhla Ngqulunga		CONTACT PERSON	Xolani Ngema	
TELEPHONE NUMBER	031 266 1777		TELEPHONE NUMBER	031 266 17777	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	Snenhlanhla.ngqulunga@moseskotane.com		E-MAIL ADDRESS	Xolani.ngema@moseskotane.com	
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
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES 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, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:.....

CAPACITY UNDER WHICH THIS IS SIGNED:.....

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

DATE:.....

SECTION A

SPECIAL INSTRUCTIONS AND NOTICES TO BIDDERS REGARDING THE COMPLETION OF BIDDING FORMS

PLEASE NOTE THAT THIS BID IS SUBJECT TO TREASURY REGULATIONS 16A ISSUED IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999, THE KWAZULU-NATAL SUPPLY CHAIN MANAGEMENT POLICY FRAMEWORK.

1. Unless inconsistent with or expressly indicated otherwise by the context, the singular shall include the plural and vice versa and with words importing the masculine gender shall include the feminine and the neuter.
2. Under no circumstances whatsoever may the bid forms be retyped or redrafted. Photocopies of the original bid documentation may be used, but an original signature must appear on such photocopies.
3. The bidder is advised to check the number of pages and to satisfy himself that none are missing or duplicated.
4. Bids submitted must be complete in all respects.
5. Bids shall be lodged at the address indicated not later than the closing time specified for their receipt, and in accordance with the directives in the bid documents.
6. Each bid shall be addressed in accordance with the directives in the bid documents and shall be lodged in a separate sealed envelope, with the name and address of the bidder, the bid number and closing date indicated on the envelope. The envelope shall not contain documents relating to any bid other than that shown on the envelope. If this provision is not complied with, such bids may be rejected as being invalid.
7. All bids received in sealed envelopes with the relevant bid numbers on the envelopes are kept unopened in safe custody until the closing time of the bids. Where, however, a bid is received open, it shall be sealed. If it is received without a bid number on the envelope, it shall be opened, the bid number ascertained, the envelope sealed, and the bid number written on the envelope.
8. A specific box is provided for the receipt of bids, and no bid found in any other box or elsewhere subsequent to the closing date and time of bid will be considered.
9. No bid sent through the post will be considered if it is received after the closing date and time stipulated in the bid documentation, and proof of posting will not be accepted as proof of delivery.
10. No bid submitted by telefax, telegraphic or other electronic means will be considered.
11. Bidding documents must not be included in packages containing samples. Such bids may be rejected as being invalid.
12. Any alteration made by the bidder must be initialled.
13. Use of correcting fluid is prohibited.
14. Bids will be opened in public as soon as practicable after the closing time of bid.
15. Where practical, prices are made public at the time of opening bids.
16. If it is desired to make more than one offer against any individual item, such offers should be given on a photocopy of the page in question. Clear indication thereof must be stated on the schedules attached.
17. Bidder must initial each and every page of the bid document.

SECTION B

REGISTRATION ON THE CENTRAL SUPPLIERS DATABASE

1. In terms of the National Treasury Instruction Note, all suppliers of goods and services to the State are required to register on the Central Suppliers Database.
2. Prospective suppliers should self-register on the CSD website www.csd.gov.za
3. If a business is registered on the Database and it is found subsequently that false or incorrect information has been supplied, then the Department may, without prejudice to any other legal rights or remedies it may have.
 - 3.1 cancel a bid or a contract awarded to such supplier, and the supplier would become liable for any damages if a less favourable bid is accepted, or less favourable arrangements are made.
4. **The same principles as set out in paragraph 3 above are applicable should the supplier fail to request updating of its information on the Central Suppliers Database, relating to changed particulars or circumstances.**
5. **IF THE SUPPLIER IS NOT REGISTERED AT THE CLOSING TIME OF BID, THE SUPPLIER WILL BE DISQUALIFIED AT THE BID EVALUATION PROCESS.**

SECTION C

DECLARATION THAT INFORMATION ON CENTRAL SUPPLIER DATABASE IS CORRECT AND UP TO DATE

(To be completed by bidder)

THIS IS TO CERTIFY THAT I (name of bidder/authorized representative)

....., WHO REPRESENTS (state name of bidder)

.....CSD Registration

Number.....

AM AWARE OF THE CONTENTS OF THE CENTRAL SUPPLIER DATABASE WITH RESPECT TO THE BIDDER'S DETAILS AND REGISTRATION INFORMATION, AND THAT THE SAID INFORMATION IS CORRECT AND UP TO DATE AS ON THE DATE OF SUBMITTING THIS BID.

AND I AM AWARE THAT INCORRECT OR OUTDATED INFORMATION MAY BE A CAUSE FOR DISQUALIFICATION OF THIS BID FROM THE BIDDING PROCESS, AND/OR POSSIBLE CANCELLATION OF THE CONTRACT THAT MAY BE AWARDED ON THE BASIS OF THIS BID.

.....
SIGNATURE OF BIDDER OR AUTHORISED REPRESENTATIVE

DATE:

SECTION E
PRICING SCHEDULE – FIRM PRICES (PURCHASES)

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

Name of bidder:	Bid number: MKRI03/2024
Closing Time: 11:00	Closing date: 25 October 2024

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

No.	PROJECT ITEMS	COST PER ITEM
	Trademark availability search	
	Filing SA trademark applications	
	Prosecution of trademark applications	
	Patent novelty search	
	Drafting and filing of provisional patent applications	
	Trademark acceptance and publication	
	Patent acceptance and publication	
	Drafting and filing of complete patent	
	Prosecution of complete applications	
SUB-TOTAL COST		
VAT AT 15%		
GRAND TOTAL (BID PRICE IN RSA CURRENCY WITH ALL APPLICABLE TAXES INCLUDED)		

- Required by:
- At:
- Brand and model
- Country of origin
- Does the offer comply with the specification(s)? *YES/NO
- If not to specification, indicate deviation(s)
- Period required for delivery
*Delivery: Firm/not firm
- Delivery basis



Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

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

*Delete if not applicable

SECTION F

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

- 2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state?

YES/NO

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

Full Name	Identity Number	Name of State institution

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

- 2.2.1. If so, furnish particulars:

.....

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

- 2.3.1 If so, furnish particulars:

.....

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

4. DECLARATION

I, the undersigned, (name)

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

- a. I have read and I understand the contents of this disclosure.
- b. I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect.
- c. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- d. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- e. 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.
- f. There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- g. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....Signature

.....Date

.....Position

.....Name of bidder

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

SECTION G

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

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

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

1. GENERAL CONDITIONS

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

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

1.2 To be completed by the organ of state

(delete whichever is not applicable for this tender).

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

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

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

1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

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

2. DEFINITIONS

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

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

80/20

$$Ps = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

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

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

3.2.1. POINTS AWARDED FOR PRICE

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

80/20

$$Ps = 80 \left(1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

W
h
e
r
e

Ps = Points scored for price of tender under consideration
 Pt = Price of tender under consideration
 Pmax = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

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

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.)

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

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Tenderer who has 51% to 100% black ownership	8	
Tenderer who has 30% to 100% black women ownership	6	
Tenderer who has 30% to 100% black women ownership	6	

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

DECLARATION WITH REGARD TO COMPANY/FIRM

- 4.3. Name of company/firm.....
- 4.4. Company registration number:
- 4.5. TYPE OF COMPANY/ FIRM
- ☐ Partnership/Joint Venture / Consortium
 - ☐ One-person business/sole propriety
 - ☐ Close corporation
 - ☐ Public Company
 - ☐ Personal Liability Company
 - ☐ (Pty) Limited
 - ☐ Non-Profit Company
 - ☐ State Owned Company
- [TICK APPLICABLE BOX]
- 4.5. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:
- i) The information furnished is true and correct;
 - ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
 - iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
 - iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

(e) forward the matter for criminal prosecution, if deemed necessary.

.....	
SIGNATURE(S) OF TENDERER(S)	
SURNAME AND NAME:	
DATE:	
ADDRESS:	
	
	
	

CALCULATION OF EQUITY FOR SPECIFIC GOALS

- (a) Preference points stipulated in respect of a tender must include preference points for equity ownership by HDPs.
- (b) The equity ownership contemplated in sub-paragraph (a) must be equated to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the enterprise or business and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender.
- (c) In the event that the percentage of ownership contemplated in sub-paragraph (b) changes after the closing date of the tender, the tenderer must notify the relevant organ of state and such tenderer will not be eligible for any preference points.
- (d) Preference points may not be claimed in respect of individuals who are not actively involved in the management of an enterprise or business and who do not exercise control over an enterprise or business commensurate with their degree of ownership.
- (e) Subject to sub-paragraphs (a), (b), (c) and (d), all claims made for equity ownership by an HDP must be considered according to the following criteria:
 - (i) Equity within private companies must be based on the percentage of equity ownership;
 - (ii) Preference points may not be awarded to public companies and tertiary institutions;
 - (iii) The following formula must be applied to calculate the number of points for equity ownership by an HDP:

$$NEP = NOP \times \frac{EP}{100}$$

Where:

- NEP = Points awarded for equity ownership by an HDP
- NOP = The maximum number of points awarded for equity ownership by an HDP
- EP = The percentage of equity ownership by an HDP within the enterprise or business, determined in accordance with sub-regulations (a), (b), (c) and (d).

- (f) Equity claims for a Trust may only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the Trust.
- (g) Documentation to substantiate the validity of the credentials of the trustees contemplated in sub-paragraph (f) must be submitted to the relevant organ of state.
- (h) A Consortium or Joint Venture may, based on the percentage of the contract value managed or executed by their HDP members, be entitled to equity ownership in respect of an HDP.
- (i) The number of points scored for a Consortium or Joint Venture must be added to the number of points scored for achieving specified goals. The points contemplated in sub-paragraph (i) must be added to the points scored for price, in order to establish the total number of points scored.
- (j) The contract must be awarded to the tender which scores the highest points.
- (k) A person awarded a contract as a result of preference for contracting with, or providing equity ownership to, an HDP, may not subcontract more than 25% of the value of the contract to a person who is not an HDP or does not qualify for such preference.

SECTION H

GENERAL CONDITIONS OF CONTRACT

1. Definitions

The following terms shall be interpreted as indicated:

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

restrictions and freight embargoes.

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

2) Application

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting

and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3) General

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4) Standards

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

5) Use of contract documents and information; inspection.

- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6) Patent rights

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

7) Performance security

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

8) Inspections, tests and analyses

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

- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9) Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10) Delivery and documents

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

11) Insurance

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

12) Transportation

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

13) Incidental Services

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

- 13.2. performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- 13.3. furnishing of tools required for assembly and/or maintenance of the supplied goods;
- 13.4. furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- 13.5. performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- 13.6. 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.
- 13.7. Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

- 14.1. As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
 - 14.1.1. such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - 14.1.2. in the event of termination of production of the spare parts:
 - 14.1.3. Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - 14.1.4. following such termination, furnishing at no cost to the purchaser, the
 - 14.1.5. blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

- 15.1. The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2. This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4. Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5. If the supplier, having been notified, fails to remedy the defect(s) within the

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

16. Payment

- 16.1.** The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2.** The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 16.3.** Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4.** Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

- 17.1.** Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments 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 contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

- 21.1.** Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2.** If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3.** 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

minoresential 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 21.

23. Termination for default

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

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

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

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

23.4. If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

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

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

- (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.

23.6.1 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,
- 27.5.1.** the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- 27.5.2.** the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1.** Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;
- 28.1.1.** the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- 28.1.2.** the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

- 29.1.** The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

- 30.1.** The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

31. Notices

- 31.1.** Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2.** The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

- 32.1.** A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2.** A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3.** No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the 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.

SECTION I

SPECIAL CONDITIONS OF CONTRACT

This bid is subject to the Preferential Procurement Policy Framework Act, 2000 and the Preferential Procurement Regulations, 2022; the General Conditions of Contract (GCC) and the following applicable other Special Conditions of Contract.

1. ACCEPTANCE OF OFFER

- a) This bid has been invited and will be adjudicated in terms of the KwaZulu-Natal Supply Chain Management Policy Framework and the KwaZulu-Natal Provincial Practice Notes. The Moses Kotane Research Institute Bid Evaluation and Adjudication Committee is under no obligation to accept the lowest or any bid.

2. ADDRESS OF THE BIDDER

- a) Bidders must advise the MKRI should their address (*domicilium citandi et executandi*) (physical address) details from the time of bidding to the expiry of the contract.

3. CONTRACT PERIOD

- a) The duration of the project is 18 months from the signing of the Service Level Agreement; and the project will be undertaken and delivered in two phases
- b) The MKRI reserves the right to terminate the contract should the awarded entity fail to fulfil its contractual obligation in terms of this contract.

4. FALSE DECLARATION

- a) All information requested in this document and provided by the bidder is accepted in good faith as being true and accurate.
- b) Any false declaration or intentional omission of relevant facts shall lead to disqualification.

5. AWARD OF BID

The Entity shall award one (1) service provider for this project.

6. PRICE AND PRICING RISK ASSESSMENT

- a) A bidder must submit one consolidated price schedule for the whole project. The pricing schedule must be fully completed. Failure to comply shall be deemed as non-responsive.
- b) Prices must be in South African Currency and inclusive of VAT and all other applicable taxes.

7. ORDERS

- a) Services shall be rendered only upon receipt of a written official order from the Entity as per the contract.

8. WARRANTS

- a) The awarded service provider warrants that it is able to deliver to the satisfaction of the entity.
- b) The involvement of the awarded service provider in any other business or venture shall not compete or conflict with the obligations of the entity to provide the services to the Entity in terms of this bid.

9. PAYMENT AND INVOICING

- a) Payment will only be processed upon receipt, verification of invoices and confirmation by the appropriately authorized officials of actual services rendered.
- b) Payment will be made to the awarded Entity only. Any deviations (e.g. cession of contract) will only be accepted after relevant approval has been granted by the Bid Adjudication Committee.
- c) Invoices must clearly indicate the order number, invoice number and VAT number (where it is applicable).
- d) Any variation to the quantities other than those stipulated in this bid document shall be approved by the Entity.

10. AMENDMENT OF BID CONDITIONS, ORDER STIPULATIONS OF BID, ETC.

No agreement to amend or vary the bid conditions or order or stipulations of bid shall be valid and of any force and effect unless such agreement to amend or vary is entered into in writing and signed by contracting parties subject to approval by the CEO.

11. CANCELLATION

The MKRI reserves the right to cancel the bid. Such cancellation shall be published in the print media and/or Entity Website.

12. TAX CLEARANCE CERTIFICATE OR TAX COMPLIANCE STATUS PIN

- a) The Entity will verify the tax compliance status of a bidder through CSD.
- b) Bidders must ensure that their tax matters are compliant with CSD.

13. CENTRAL SUPPLIERS DATABASE (CSD)

- a) A bidder submitting an offer must be registered on the Central Suppliers Database (CSD).
- b) A bidder who has submitted an offer and is not registered on the Central Suppliers Database will not be considered.
- c) Each party to a Joint Venture/Consortium must be registered on the Central Suppliers Database at the time of submitting the bid.
- d) A full CSD Report (not older than one month) must be attached to the bid document.
- e) All information supplied in the bid document must correlate with information on CSD. It is the responsibility of the supplier to ensure that information on CSD is up to date at all times.
- f) Failure to comply with any of the above will result in the bidder being disqualified.

14. STATUTORY CHECKS

- a) Central Suppliers Database
- b) CIPC
- c) Database of Defaulters (Restricted Suppliers)
- d) Any violation or non-compliance with any of the above shall lead to disqualification.

15. COMPLETENESS OF THE BID DOCUMENT

The bid will only be considered if it is correctly completed in all respects and accompanied by all relevant and other necessary and applicable information/documents, i.e., signatures should be appended where required and documents called for should be submitted. (This section must be read together with Clause 4 of Section A: Special Instructions and Notices to Bidders Regarding the Completion of Bidding Forms).

16. SUBMISSION OF BIDS

Bids are to be submitted to the offices of the Entity, ground floor at the Moses Kotane house The Bid Box, located on the ground floor at the Moses Kotane's Offices.

Attention: Supply Chain Management Unit

Unit 14, Lakeside Derby Down, 1 University Road, Westville, 4399

before **25 October 2024 at 11:00 am**. All bids are to be deposited in the bid box situated at the address provided above. Late bids shall not be accepted.

17. TERMINATION OF SERVICES

Should the Contractor fail to meet the conditions of this contract, or continue rendering unsatisfactory service, the Employer reserves the right to terminate the contract, after written notification has been served on the Contractor, with retention of the right to recover from the Contractor any losses which the Employer may suffer/ incur as a result of the failure, without prejudicing any other rights it may have.

18. UNSATISFACTORY PERFORMANCE

- a) Unsatisfactory performance occurs when performance is not in accordance with the contract conditions.
- b) Before any action is taken, the Entity shall warn the contractor by registered/certified mail that action will be taken in accordance with the contract conditions unless the contractor complies with the contract conditions and delivers satisfactory supplies or services within a specified reasonable time (7 days minimum). If the contractor does not perform satisfactorily despite the warning the Department will:
 - a) Take action in terms of its delegated powers.
 - b) Make a recommendation for cancellation of the contract concerned.

19. LATE BIDS

- a) Bids are late if they are received at the address indicated in the tender documents after the closing date and time.
- b) A late bid shall not be considered.

20. UNSOLICITED OFFERS

In the event that an unsolicited offer is received, the offer shall not be considered.

21. EQUAL OFFERS

- a) If two or more tenderers score an equal total number of points, the contract must be awarded to the tenderer that scored the highest points for specific goals.
- b) If two or more tenderers score equal total points in all respects, the award must be decided by the drawing of lots, according to the Preferential Procurement Policy Framework Act, 2000, Preferential Procurement Regulations, 2022, section 8(1) and (2).

22. VALIDITY PERIOD AND EXTENSION THEREOF

- a) The validity (binding) period for the bid must be 90 Days from close of tender. However, circumstances may arise whereby this Entity may request the bidders to extend the validity (binding) period. Should this occur, the Entity will request bidders to extend the validity (binding) period under the same terms and conditions as originally tendered for by bidders.

23. CONFIDENTIALITY

- a) The contractor's staff that comes into contact with MKRI's confidential information and documents may be required to sign confidentiality agreements so as to protect the Entity's information.

24. EXPENSES INCURRED IN PREPARATION OF BIDS

- a) The Entity's will not be responsible for any expenses or losses which the bidder may incur in the preparation of this bid.

25. NOTIFICATION OF AWARD OF BID

- a) The publication of an award will be advertised in the same media as the invitation to bid.
- b) Notification of award of a bid shall be in writing to the successful bidder/s by a duly authorised official of the Entity.
- c) The letter of acceptance of the bidder's offer or an official order note constitutes a legal and binding contract.

26. CONTRACT AND SERVICE LEVEL AGREEMENT

- a) The successful bidder shall be required to enter into a Service Level Agreement with the Entity.
- b) The bid document constitutes a legal document and a binding contract.

27. QUERIES FROM THE BIDDERS

Any correspondence with regards to this bid which the bidder wishes to raise must be emailed to the following officials by **11 October 2024 at 11:00 am.**

28. SCM enquiries may be directed to:

Ms S. Ngqulunga at 031 266 1777 / Snenhlanhla.ngqulunga@moseskotane.com

29. Technical enquiries may be directed to:

Dr Xolani Ngema at 031 266 1777 / Xolani.ngema@moseskotane.com

- a) Bidders must note that all queries received via email before the stipulated date will be consolidated and a composite response will be sent to all who submitted queries

30. JOINT VENTURES/CONSORTIUM

- a) Any Bid by a Joint Venture (JV)/ Consortium must be accompanied by a copy of a duly signed Joint Venture Agreement. Such agreement must specify the portion of the bid to be undertaken by each participating entity.
- b) Parties to the JV/Consortium must all sign the JV Agreement, and the minutes of the meeting must be submitted with the bid at the closing date.
- c) Should the parties enter into a JV, the JV Agreement should reflect a lead partner and the following nominations:
 - A) Bank account to be used for the purpose of this Bid or Contract.
 - B) authorized representative and signatory.
 - C) Authorized letterhead, address, etc.

31. COMMUNICATION, MEDIA RELEASES, ETC

- a) Bidders shall not in any way communicate with the press, or any representative of the written or electronic media, on a question affecting this bid during the period between the closing date for the receipt of bids and the dispatch of the written notification of the Entity, which on receipt of such report may, at their discretion, disqualify the bidder concerned.
- b) All rights of publication on articles in the media, together with any advertising relating to, or in any way concerned with this project shall vest in the Entity. The successful bidder shall not, without the written consent of the Entity, cause any statement or advertisement to be printed screened or aired by the media.

32. COMMUNICATION WITH MEMBERS OF THE BID COMMITTEE

- a) A bidder shall not in any way communicate with a member of a Bid Committee or with any officer, agent, or representative of the MKRI on a question affecting any contract for the supply of goods or for any work, undertaking or service which is the subject of a bid during the period between the closing date for receipt of bids and the dispatch of the written notification of the decision on the award of the Contract provided that a bidder shall not hereby be precluded.

33. UNDERTAKING

33.1. In the event of there being any change in the nature of the Contractor including, but not limited to, inter alia, it's: -

- a) Directors, shareholdings, membership and/or management;
- b) Constitution, memorandum and/or articles;
- c) Service providers, partners, joint venture entities and/or subcontracting parties;
- d) Change in specific goals issued with the bid;
- e) Any changes ancillary to the above.

33.2. The Contractor undertakes, where possible, to inform the entity as least thirty (30) days before the above changes are effected of the details of the proposed changes.

33.3. Alternatively, the Contractor undertakes that there shall be no material changes in the nature of the Contractor for the duration of this contract, including, but not limited to, inter alia, the following: -

- a) Directors, shareholdings, membership and/or management; trustees;
- b) Constitution, memorandum and/or articles; trustee
- c) Service providers, partners, joint venture entities and/or subcontracting parties;
- d) Change in specific goals issued with the bid;
- e) Any changes ancillary to the above.

33.4. However, in the event of any of the above changes being anticipated, the Contractor undertakes to immediately inform the Entity alternatively at least thirty (30) days prior to the proposed changes.

33.4.1. The Contractor furthermore undertakes to immediately inform the Entity should the Contractor, any of its directors, members, partners, service providers, subcontractors or managers: -

33.4.2. has been listed on the National Treasury's Database as entities prohibited from doing business with the public sector.

33.4.3. been 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);

33.4.4. has been charged or convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption.

33.4.5. has died or ceased to exist;

33.4.6. has a civil judgment taken against it/them by a court of law or any other competent authority;

33.4.7. or their estates being placed under judicial management or being provisionally or finally sequestrated or liquidated.

33.5. In the event of the Contractor failing to act as aforesaid, the Entity will be at liberty to, in its discretion, exercise any one or a combination of the following remedies: -

32.5.1 immediately cancel the contract;

32.5.2 revisit the contract and issue directives with regard to the remaining term of the contract;

32.5.3 engage the services of other parties and service providers;

32.5.4 engage the service of the next favourable bidder;

32.5.5 exercise the remedies available to it in terms of the provisions of paragraph 23 of the General Conditions of Contract;

32.5.6 recover from the Contractor all costs, losses or damages incurred or sustained by the Entity as a result of the award of the contract;

32.5.7 cancel the contract and claim any damages which the Province may suffer by having to make less favourable arrangements after such cancellation;

32.5.8 Cash in any securities, utilise deposits and/or withhold any payment due to the Contractor in lieu of damages.

34. BID APPEAL TRIBUNAL (BAT)

BAT finds its establishment in Treasury Regulation 16A9.3 and Section 18(1) of the KwaZulu-Natal Supply Chain Management Policy Framework. Treasury Regulation 16A9.3 empowers the National and Provincial Treasury to establish a mechanism to consider complaints and make recommendations for remedial actions to be taken in the non-compliance with the norms and standards. Section 18(1) of the KZN SCM Policy Framework empowers the MEC for Finance to establish an independent and impartial Bid Appeals Tribunal. In line with Paragraph 19 of the KZN SCM Policy Framework of 2006 the following procedure must be followed to lodge an appeal:

34.1. The bidder must, within five working days of receipt of the notification of an award,

deliverwritten notification of an intention to appeal.

- 34.2. The bidder may, together with the notification of intention to appeal under paragraph (2) of the KZN SCM Policy Framework, deliver a request for written reasons for the award of the said bid.
- 34.3. The Bid Adjudication Committee or a delegate of an accounting officer must deliver to the appellant the written reasons requested under paragraph (3) of the KZN SCM Policy Framework within ten working days.
- 34.4. The appellant must, within ten working days of receipt of the written reasons delivered under paragraph (4) of the KZN SCM Policy Framework, or, failing a request for written reasons under paragraph (3) of the KZN SCM Policy Framework, within ten working days of giving notice under paragraph (2) of the KZN SCM Policy Framework, submit written representations to the Bid Appeals Tribunal, indicating sufficiently and without unnecessary elaboration the grounds and basis of the appeal and the nature of the complaint.
- 34.5. Upon receipt of a notice of intention to appeal, the Bid Appeals Tribunal must notify other bidders who may be adversely affected by the appeal, in writing of the appeal and invite them to respond within five working days.

The address provided for the lodging of appeals is: **Email:**
Batsecretariat@kzntreasury.gov.za

The Chairperson

Bid Appeals Tribunal Private Bag X9082 Pietermaritzburg 3200

SECTION K

AUTHORITY TO SIGN A BID

The bidder must indicate the enterprise status by ticking the appropriate box hereunder.

(I) CLOSE CORPORATION	(II) COMPANIES	(III) SOLE PROPRIETOR	(IV) PARTNERSHIP	(V) CO-OPERATIVE	(VI) JOINT VENTURE / CONSORTIUM	
					Incorporated	
					Unincorporated	

I/We, the undersigned, being the Member(s) of Cooperative/ Sole Owner (Sole Proprietor)/ Close Corporation/ Partners (Partnership)/ Company (Representative) or Lead Partner (Joint Venture / Consortium), in the enterprise trading as:

.....

hereby authorise Mr/Mrs/Ms

acting in the capacity of

whose signature is

to sign all documents in connection with this bid and any contract resulting therefrom on behalf of the enterprise.

NAME	ADDRESS	SIGNATURE	DATE

(If the space provided is not enough, a separate list should be attached)

Note:

Members of the enterprise must complete this form in full according to the type of enterprise, authorising the signatory to sign all documents in connection with this bid and any contract resulting therefrom on behalf of the enterprise.

Note: In a case of a Sole proprietor, a director may appoint himself/herself if they will be the one signing all documents in connection with this bid and any contract resulting therefrom on behalf of the enterprise

TERMS OF REFERENCE/SPECIFICATION

PROJECT NAME: APPOINTMENT OF INTELLECTUAL PROPERTY FIRM OF ATTORNEYS FOR A PERIOD OF 3 YEARS

1. BACKGROUND INFORMATION

1.1. Introduction

The Moses Kotane Research Institute (MKRI) is an entity of the KwaZulu-Natal Department of Economic and Development, Tourism and Environmental Affairs (EDTEA), established in terms of the KwaZulu-Natal Moses Kotane Research Institute Act No 3 of 2024 with a mandate which includes supporting the intellectual property (IP) needs of Small, Medium, and Micro Enterprises (SMMEs), innovators, researchers and entrepreneurs throughout KwaZulu-Natal. This support is essential to the commercialisation of their innovations, protecting their IP rights, and ensuring their sustainable growth in a competitive market environment.

1.2. Objectives

- 1.2.1. To appoint a suitably qualified and experienced Intellectual Property (IP) Firm of Attorneys.
- 1.2.2. To ensure the provision of high-quality IP legal services through the Moses Kotane Research Institute (MKRI).
- 1.2.3. To protect and manage the intellectual assets of SMMEs, innovators, researchers, and entrepreneurs enabling them to bring their innovations to market with confidence.
- 1.2.4. To deliver specialised legal expertise that ensures compliance with South African IP laws and international standards.

1.3. Scope of Engagement

The selected IP firm will enter into a service agreement with MKRI for a period of 36 months. During this period, the firm will be responsible for a comprehensive range of IP services as outlined in these ToRs. The engagement will be governed by a detailed Service Level Agreement (SLA), which will define the firm's responsibilities, expected deliverables, performance standards, and reporting requirements. The firm will work closely with MKRI's Innovation Programmes to provide tailored IP support to on-boarded SMMEs, innovators, researchers and entrepreneurs.

1.3.1. Support for SMMEs, Innovators, Researchers and Entrepreneurs

The appointed IP firm will provide essential legal support to SMMEs, innovators, researchers and entrepreneurs participating in MKRI's Innovation Programmes. This support will include patent filing, trademark registration, copyright protection, and trade secret management, all of which are critical for the protection and commercialisation of their innovative products and services. The firm's role will be to ensure that these entities can navigate the complexities of IP law, thereby protecting their innovations and enhancing their potential for market success.

2. AREAS OF WORK

2.1. Patent Services

The firm will provide comprehensive patent services, including patentability assessments, drafting and filing of patent applications, patent prosecution, and ongoing patent portfolio management. These services are essential for protecting novel inventions and securing exclusive rights to innovative products and processes.

2.2. Trademark Services

Trademark services will encompass conducting thorough trademark searches, providing legal advice on trademark registrability, filing and prosecuting trademark applications, and enforcing trademark rights. These services are vital for protecting brand identity and ensuring that businesses can establish a distinctive presence in the market.

2.3. Copyright Services

The firm will offer specialised copyright services, including advisory services on copyright law, registration of copyrightable works, and the management of licensing agreements. Copyright protection is crucial for protecting creative works, such as literature, music, art, and software, ensuring that creators retain control over their intellectual property.

2.4. Design Services

Design services will involve the registration of designs, providing legal protection for the unique appearance of products. This includes design portfolio management to maintain the exclusivity of registered designs, which is essential for companies whose competitive advantage lies in the aesthetic appeal of their products.

2.5. Trade Secret Protection

The firm will assist in protecting trade secrets through the drafting and enforcement of confidentiality agreements, as well as the development of strategies for managing sensitive business information. Trade secret protection is key to maintaining competitive advantage, especially for businesses that rely on proprietary processes or formulas.

3. SCOPE OF WORK

3.1. Assessing Registrability

The firm will conduct thorough novelty searches and provide legal opinions on the registrability of patents, trademarks, and designs. This initial assessment is critical to determining the likelihood of successful registration and the potential value of the IP assets.

3.2. Technical and Legal Drafting

The firm will be responsible for the technical and legal drafting of patent specifications, trademark applications, and design registrations. High-quality drafting is essential for

ensuring that the IP rights are robust and enforceable, providing comprehensive protection for the client's innovations.

3.3.Applications and Filings

The firm will handle the filing of IP applications both locally and internationally (if possible), ensuring compliance with the relevant legal frameworks. This includes managing all aspects of the application process, from initial submission to responding to examiner queries.

3.4.Revocation and Voluntary Surrender

The firm will manage revocation proceedings and voluntary surrender of IP rights where necessary. This includes advising clients on strategic decisions regarding the continuation or abandonment of IP assets based on business needs and legal considerations.

3.5.Amendments and Corrections

Ensure the firm handles amendments and corrections to existing IP filings, rectifying any deficiencies or errors promptly to maintain the accuracy and enforceability of IP rights.

4. REQUIREMENTS FOR FIRM AND PROPOSED LEGAL PROFESSIONALS

4.1.Company profile

The appointed Intellectual Property (IP) law firm must demonstrate expertise in the field of IP law, with specialisation in patents, trademarks, copyrights, trade secrets, and licensing. The firm must have substantial experience in providing legal services to innovators/entrepreneurs/SMME/businesses/researchers/individuals, etc, specifically in the areas of IP protection, commercialisation of innovations, and technology transfer.

The profile should detail the qualifications and experience of key personnel, including attorneys with a proven track record in securing IP rights. The firm must demonstrate a history of supporting public sector entities, government research bodies, innovation hubs, or similar institutions, providing examples of past successful engagements in securing and managing IP rights for research-based projects (or related) and commercial ventures.

4.2.Legal professionals

- a) Proposed legal practitioners must possess at least a Bachelor of Laws (LLB) degree from a South African university or an equivalent SAQA verified qualification.
- b) Minimum of 5 years post admission experience in the IP field.
- c) Must be admitted as Attorney/ Legal Practitioner of the High Court of South Africa.
- d) Must be registered as Patent Attorney/Legal Practitioner with the Patent Board of the South African Institute of Intellectual Property law (SAIIPL)
- e) Must have the right of appearance in the High Court of South Africa.
- f) Must be in good standing with the Legal Practice Council.

1. EVALUATION CRITERIA

The Evaluation Criteria will consist of the following three phases:

1.1. Phase 1 (a) - Administrative compliance

- (i) Bids submitted must be complete in all respects.
- (ii) The following forms must be duly completed and be submitted with the bid at the time of closing date of bid:

COMPULSORY BID FORMS		Tick to indicate submission
PART A	INVITATION TO BID (SBD 1)	
PART B	TERMS AND CONDITIONS FOR BIDDING (SBD 1)	
SECTION B	REGISTRATION ON CENTRAL SUPPLIERS DATABASE	
SECTION C	DECLARATION THAT INFORMATION ON CENTRAL SUPPLIERS	
SECTION E	PRICING SCHEDULE (SBD3.1)	
SECTION F	DECLARATION OF INTEREST (SBD 4)	
SECTION K	AUTHORITY TO SIGN THE BID	

Failure to comply with the administrative compliance shall result in the proposal considered non-responsive and shall be rejected.

1.2.Phase 1 (b) – Mandatory requirements

The following mandatory documents must be submitted with the bid at the time of the closing date

Requirements	Yes/No	Proof to be provided
Legal firm		
Certification that the firm is duly registered as per the Legal Practice Council Act of 2014		Proof of registration with the Legal Practice Council
Legal professional		
Right of appearance in the High Court of South Africa		Proof of the right of appearance in the High Court of South Africa
Admitted as Attorney in the High Court of South Africa.		Submit certificate for admission as attorney/Legal Practitioner in the High Court of South Africa
Registration as Patent Attorney with the Patent Board of the South African Institute of Intellectual Property law (SAIIPL)		Submit certificate of registration as Patent Attorney with the SAIPL (current)
Certification that the legal professional(s) are duly registered as per the Legal Practice Council Act of 2014		Submit letter of Good Standing as proof of registration with the Legal Practice Council (current)

1.3. Phase 2: Functionality evaluation

FUNCTIONALITY EVALUATION		
EVALUATION CRITERIA	SUB EVALUATION CRITERIA	WEIGHT
Legal Firm		
Company specific intellectual property experience (submit reference letters). Reference letters should contain the client's name, the contact person and contact details	5 Reference letters = 30 4 Reference letters= 25 3 Reference letters = 20 2 and below reference letters = 0	30
Legal Professional(s)		
Intellectual property experience of the professionals to be assigned on this project (submit copies of individual profiles clearly showing number of years of experience)	<6 years =20 1-3 years = 8 4-6 years = 16	20
Qualification of the legal professional/s Copies of qualifications should be submitted	Minimum LLB or equivalent (SAQA Verification Certificate to be provided of degrees obtained outside SA)	20
Number of IP projects executed and completed by the individual Legal Practitioner proposed to be assigned to this project. Provide report indicating Project Portfolio: List of completed IP projects, including scope, type (patents, trademarks, etc.), and completion dates. Client References: Testimonials or references confirming successful project outcomes.	4 Projects = 30 3 Projects= 20 2 Projects = 10 1-0 Project = 0	30

• Supporting Documents: Redacted (anonymised) filings or agreements demonstrating involvement in IP work. • Role Description: Clear outline of their specific role in each project.		
Total Score		100
Minimum threshold (failure to meet this threshold your bid will be disqualified) Bidders who did not meet a minimum threshold of 80% on the functionality will be disqualified		80

Part A: Proposals from prospective bidders will be evaluated on functionality listed below:

1.4. Phase 3: Price and Preference Points

This invitation is issued in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) and its Regulations, 2022.

Specific goals may include the following:

- (i) Contract with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability,
- (ii) Implementing the programmes of the Reconstruction and Development Programme as published in government gazette No. 16805 dated 23 November 1994. It is mandatory for tenderers to complete SBD 6.1 to claim the points for specific goals, failure to complete the SBD 6.1 shall be interpreted to mean that the points for specific goals are not claimed.

The applicable preference point system for this tender is 80/20 preference point system wherein 80 points will be allocated for price and 20 points will be allocated for specific goals as follows:

Preference Point Systems		
Price	80	
Specific Goals	20	Evidence required
Tenderer who has 51% to 100% black people ownership	8	CIPC
Tenderer who has 30% to 100% women ownership	6	ID Copy
Tenderer who has 30% to 100% youth ownership	6	ID Copy
Total	100	

It is compulsory for bidders to substantiate that they meet the above specific goals requirements by submitting the following evidence:

- (i) Copy of Enterprise Registration Certificate (CIPC)
- (ii) Copies of an identity document (ID)

1.1.1 Calculation of Equity for Specific Goals

- (m) Preference points stipulated in respect of a tender must include preference points for equity ownership by HDPs.
- (n) The equity ownership contemplated in sub-paragraph (a) must be equated to the percentage of an enterprise or business owned by individuals or, in respect of a company, the percentage of a company's shares that are owned by individuals, who are actively involved in the management of the enterprise or business

and exercise control over the enterprise, commensurate with their degree of ownership at the closing date of the tender.

- (o) In the event that the percentage of ownership contemplated in sub-paragraph (b) changes after the closing date of the tender, the tenderer must notify the relevant organ of state and such tenderer will not be eligible for any preference points.
- (p) Preference points may not be claimed in respect of individuals who are not actively involved in the management of an enterprise or business and who do not exercise control over an enterprise or business commensurate with their degree of ownership.
- (q) Subject to sub-paragraphs (a), (b), (c) and (d), all claims made for equity ownership by an HDP must be considered according to the following criteria
 - (i) Equity within private companies must be based on the percentage of equity ownership;
 - (ii) Preference points may not be awarded to public companies and tertiary institutions;
- (iii) The following formula must be applied to calculate the number of points for equity ownership by an HDP:

$$NEP = NOP \times \frac{EP}{100}$$

Where:

NEP = Points awarded for equity ownership by an HDP

NOP = The maximum number of points awarded for equity ownership by an HDP
EP = The percentage of equity ownership by an HDP within the enterprise or business, determined in accordance with sub-regulations (a), (b), (c) and (d).

- (r) Equity claims for a Trust may only be allowed in respect of those persons who are both trustees and beneficiaries and who are actively involved in the management of the Trust.
- (s) Documentation to substantiate the validity of the credentials of the trustees contemplated in sub-paragraph (f) must be submitted to the relevant organ of state.
- (t) A Consortium or Joint Venture may, based on the percentage of the contract value managed or executed by their HDP members, be entitled to equity ownership in respect of an HDP.
- (u) The number of points scored for a Consortium or Joint Venture must be added to the number of points scored for achieving specified goals.
- (v) The points contemplated in sub-paragraph (i) must be added to the points scored for price, in order to establish the total number of points scored.
- (w) The contract must be awarded to the tender which scores the highest points.
- (x) A person awarded a contract as a result of preference for contracting with, or providing equity ownership to, an HDP, may not subcontract more than 25% of the value of the contract to a person who is not an HDP or does not qualify for such preference.