



REQUEST FOR PROPOSALS

SUPPLY, IMPLEMENTATION, MAINTENANCE AND TRAINING ON THE RISK MANAGEMENT SOFTWARE SYSTEM FOR A PERIOD OF FIVE (5) YEARS

Tender No:
Closing date:
Time:
Submission:

11/2021
02 August 2021
11H00
Legal Aid House
29 De Beer Street
Braamfontein

Bid Enquiries:

Technical Enquiries:

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TABLE OF CONTENTS

1.	Introduction-----	Pg.4
1.1	Vision-----	Pg.4
1.2	Mission-----	Pg.4
1.3	Legal Aid SA Values -----	Pg.4
1.4	Outcomes and Objectives-----	Pg.4
2.	Closing Date-----	Pg.6
3.	Security and Integrity Clearance-----	Pg.6
4.	Proposal / Tender Submission -----	Pg.6
4.1	Tender Documents Marking-----	Pg.6
4.2	Tender Format -----	Pg.7
4.3	Validity Period-----	Pg.7
4.4	Completeness of the solution-----	Pg.7
4.5	Contractual implications-----	Pg.7
4.6	Conditions of Payment-----	Pg.7
4.7	Quality Assurance-----	Pg.7
4.8	Intellectual Property Rights-----	Pg.7
4.9	Disbursements, travel and subsistence-----	Pg.7
5.	Contractual Details-----	Pg.8
5.1	Awarding of contract-----	Pg.8
6.	Evaluation Criteria and References -----	Pg.8
7.	Company Information-----	Pg.9
7.1	Bidder's company details-----	Pg.9
8.	Detailed Breakdown of Total Charges, Implementation and Support Services-----	Pg.10
9.	SBD1 Invitation to Bid-----	Pg.11
10.	SBD2 Tax Clearance Requirements-----	Pg.14

11. SBD 3.1 Pricing Schedule-----	Pg.15
12. SBD4 Declaration of Interest-----	Pg.16
13. SBD 5 The National Industrial Participation Programme-----	Pg.20
14. SBD 6.1 Preference Points Claim Form-----	Pg.23
15. SBD 6.2 Declaration Certificate for Local Production and Content -----	Pg.28
16. SBD 8 Declaration of bidders's past Supply Chain Management-----	Pg.32
17. SBD9 Certificate of Independent Bid Determination-----	Pg.34
18. General Conditions of the Contracts -----	Pg.37
19. Bid Specification -----	Pg.48
20. Bid Conditions -----	Pg.57

1. INTRODUCTION:

Legal Aid South Africa (abbreviated “*Legal Aid SA*”) is a national public entity established in terms of section 2 of the Legal Aid South Africa Act 39 of 2014 (“*Act*”) read together with its Legal Aid Manual and Regulations. The objective of Legal Aid SA is to render or make available legal aid and legal advice, provide legal representation to persons at state expense and provide education and information concerning legal rights and obligations as envisaged in the Constitution and this Act. Legal Aid SA is funded by the Government and ensure access to justice and the realisation of the right to have legal representation.

Arising from this constitutional and legislative mandate, Legal Aid SA has defined its vision, mission and values as follows:

1.1 VISION:

A dynamic South Africa in which constitutional rights are realised to ensure a just society for all.

1.2 MISSION:

To remain a leader in the provision of equal access to justice to indigent and vulnerable persons by rendering quality legal services.

1.3 LEGAL AID SA VALUES:

- Passion for Justice
- Ubuntu
- Integrity
- Accountability
- Service Excellence
- People and Planet Focused

1.4 OUTCOMES AND OBJECTIVES:

Objective 1: Empowered clients and communities making informed choices about their legal matters, rights and responsibilities.

Objective 2: All indigent and vulnerable members of society have equal access to public-funded legal services to protect and defend their rights.

Objective 3: A fair, efficient and effective justice system that ensures equal access to justice for all.

Objective 4: Delivering on our constitutional and statutory mandate thereby ensuring equal access to justice for all, in an independent, accountable and sustainable manner.

Objective 5: An organisation re-inventing and embedding sustainable and agile practises in every segment to positively impact on society, the economy and the environment.

Objective 6: Sustaining good governance, best practises and maintaining high ethical standards and integrity, high performance and accountability.

Objective 7: Legal Aid South Africa's regulatory framework is responsive to the changing legal, social and economic environment.

Objective 8: An effective, efficient, economic and environmentally responsive supply chain management system supporting client services delivery and internal business processes.

Objective 9: An appropriately resourced national footprint that is adaptable to changing technological and environmental factors to ensure improved access to our clients, communities, stakeholders and employees.

Objective 10: Knowledgeable, informed, self-directed and committed employees competently delivering the organisation's constitutional mandate and strategies in a sustainable manner.

Objective 11: Embracing emerging technologies including the Fourth Industrial Revolution to optimise its impact on business and the provision of client services through a responsive and adaptive IT environment.

Outcomes, to realise our mandate, are as follows:

Outcome 1: Quality client-focused legal aid in criminal matters, particularly for indigent and vulnerable persons.

Outcome 2: Quality client-focused legal aid, including to indigent and vulnerable persons, in civil matters with a priority focus on land and other constitutional rights matters.

Outcome 3: Quality client-focused legal advice services.

Outcome 4: Client-focused strategic litigation services in order to give content to constitutional rights, as well as to increase access to justice for indigent and vulnerable persons.

Outcome 5: Contribute to the effective functioning of the justice and legal sector, thereby promoting the rule of law and increasing access to justice.

Outcome 6: Account to the Executive Authority (the Minister of Justice and Correctional Services) and Parliament on delivery of mandate, governance and sustainability.

Outcome 7: Improve financial sustainability and manage the reductions to the budget.

Outcome 8: Maintain and enhance good governance.

Outcome 9: Maintain a regulatory framework that incorporates best practises and is responsive to changes in the overall environment.

Outcome 10: Sustain strong financial management, supply chain and asset management practises informed by best practise.

Outcome 11: Consolidate and review the resourcing of our national footprint to ensure adequate staffing, as well as safe and secure facilities for clients and staff, within available resources.

Outcome 12: Strengthen and continuously improve the quality and expertise for each segment of the national footprint.

Outcome 13: Enhance and maintain an integrated and service and client-oriented and secured Information Technology system with capacity to integrate stakeholders.

2 CLOSING DATE:

The closing date for the submission of proposals is **11h00 on 02 August 2021**. All proposals should be submitted on or before the time and date specified and placed in the Legal Aid SA tender box, which is located in the foyer of **Legal Aid House, 29 De Beer Street, Braamfontein, Johannesburg**.

3 SECURITY AND INTEGRITY CLEARANCE:

All information documents, records and books provided by Legal Aid SA to any bidder, in connection with the request for proposals or otherwise, are strictly private and confidential. Any bidder will not disclose these to any third party, except with the express consent of Legal Aid SA, which will be granted in writing prior to such disclosure. Legal Aid SA, however, reserves the right to disclose any information provided by any bidder to any of the employees of Legal Aid SA.

4 PROPOSAL/TENDER SUBMISSION:

IMPORTANT NOTES:

ALL ANNEXURES MUST BE COMPLETED IN FULL, USING THE GIVEN NUMBERING FORMAT. ALL ATTACHMENTS OR REFERENCES TO ATTACHMENTS MUST BE CLEARLY MARKED AND BE SPECIFIC TO INFORMATION REQUIRED. NO DEVIATION WILL BE ACCEPTED.

BIDDERS ARE REQUIRED TO REPLY TO EACH OF THE CRITERIA LISTED IN PARAGRAPH 19.5.2 (FUNCTIONAL EVALUATION) ON PAGES 53, 54 AND 55 OF THIS TENDER DOCUMENT.

BIDDERS MUST PREPARE AN INDEX WITH PAGE NUMBERS THAT CROSS-REFERENCES TO THE RESPONSES TO EACH OF THE CRITERIA.

FAILURE TO COMPLY AND ADHERE TO THE ABOVE TWO NOTES MAY LEAD TO YOUR PROPOSAL BEING DISQUALIFIED.

BIDDERS ARE ALSO REQUESTED TO RESPOND WITH A SOFT COPY DUE TO COVID-19 REASONS.

4.1 TENDER DOCUMENTS MARKING:

Tenders, completed as described, will be sealed in an envelope marked:

Tender Number: No. 11/2021

Closing Date: 02 August 2021 Time: 11h00

Name of Company: _____ (Bidder)

and deposited in the locked tender box in the foyer in the reception area at:

Legal Aid House
29 De Beer Street
Braamfontein
Johannesburg
2001

4.2 TENDER FORMAT:

Tender Numbering Format must be adhered to. Compliance or Non-compliance with detailed information must be indicated per paragraph as per Numbering Format. If there are additional and/or Alternative Product options, every option/alternative proposal to an item, must be separately bid for in the form of a separate proposal, with a complete schedule and description. Deviations from specifications and technical brochures must be submitted where applicable.

All documents submitted in response to this request for proposals will become the property of Legal Aid SA.

4.3 VALIDITY PERIOD:

The proposal must remain valid for a period of 120 days.

4.4 COMPLETENESS OF THE SOLUTION:

The bidder must complete all documents in full and submit these with the proposal.

The bidder must provide proof of registration on National Treasury's Central Supplier Database (CSD) which should reflect that the bidder is an active supplier, is tax compliant and is not a restricted supplier.

4.5 CONTRACTUAL IMPLICATIONS:

After awarding the Tender, this proposal together with its Tender terms, Conditions and Specifications will constitute a binding contract between Legal Aid SA and the successful bidder. The successful bidder will assume total responsibility, regardless of any third party or subcontracting agreements it may enter into. Legal Aid SA has the right not to award the tender.

4.6 CONDITIONS OF PAYMENT:

Legal Aid SA will approve all project plans and projected project activity costs. No project activity will be delivered to Legal Aid SA before an official order has been issued to the supplier and delivery will be within the specified time scale after the receipt of the official order.

4.7 QUALITY ASSURANCE:

Any defects, patent or latent, which are attributable to poor workmanship, will be rectified by the bidder at own cost and time and all costs relating to the correction of defects will be expressly and separately noted on billing documentation.

4.8 INTELLECTUAL PROPERTY RIGHTS:

Copyright, patent rights and other similar rights in any works or products created as a result of the performance of this proposal and its assignments will vest in and are hereby transferred to Legal Aid SA, unless specifically agreed otherwise, in the form of individual written Agreement signed by both parties.

For this purpose only, all works created in terms of this proposal and the assignments thereof will be deemed to have been created under the control and direction of Legal Aid SA.

4.9 DISBURSEMENTS, TRAVEL AND SUBSISTENCE:

No bidder will be refunded any cost or disbursements incurred in respect of the project, save where the prior written approval of Legal Aid SA has been obtained in respect of such expenditure.

Any authorised disbursements will be refunded at the reasonable and actual cost determined by Legal Aid SA.

Any expenditure incurred by the successful bidder in respect of authorised travel for the project will be refunded in accordance with the Legal Aid SA travel policy as applicable from time to time. The rates payable for the use of private vehicles will be the prevailing rates quoted by the Automobile Association of South Africa

All claims in respect of authorised disbursements (travel and subsistence costs) must be substantiated by documentary evidence such as receipts and logs of kilometers traveled.

All expenses incurred by the bidder for the proposal and presentations are the responsibility of the bidder and will not be reimbursed by Legal Aid SA.

5 CONTRACTUAL DETAILS

5.1 AWARDING OF CONTRACT:

Proven relevant experience and success, as well as the ability to deliver a reliable, efficient and effective service will be important considerations.

By the submission of a proposal, each bidder warrants that he/she/it is highly skilled, professional, competent and experienced in the area for which he/she/it has bid. Any work performed by a successful bidder will be evaluated against these criteria.

The bidder also warrants that the service provided will be of a superior standard, and is unlikely to cause undue difficulties.

The tender may be awarded, in part or in full, at the sole discretion of Legal Aid SA, to one or more concerns on a non-exclusive basis.

Proposals/tenders that are qualified by a bidder's own conditions may be rejected as being invalid, and failure of the bidder to renounce such conditions when called upon to do so may invalidate the proposal.

Legal Aid SA may request clarification or additional information regarding any aspect of the proposal. The bidder must supply the requested information within 24 hours after the request has been made, otherwise the bidder may be disqualified. Legal Aid SA may also request a demonstration, and bidders must comply with such a request within 24 hours.

6 EVALUATION CRITERIA AND REFERENCES:

The bidding companies will be evaluated on the criteria listed in the tender document and must take into account the information listed below:

1. Provide the names of reference sites that could be contacted by Legal Aid SA to carry out reference checks, and to substantiate claims contained in their proposal.
2. Demonstrate they are applying affirmative action employment practices and procurement programmes that promote empowerment of SMMEs and historically disadvantaged groups.
3. The bidder must provide proof of registration on National Treasury's Central Supplier Database (CSD) which should reflect that the bidder is an active supplier, is tax compliant and is not a restricted supplier.
4. Support for empowerment as specified by government (refer to form SBD 6.1 as per tender) the 80/20 system will be applicable.

5. Proposals will be evaluated both in terms of price - (80 points) and in terms of B-BBEE Level of Contribution status (20 points).
6. Please refer to SBD 6.1 for important information on B-BBEE requirements.
7. Please refer to the section on Special Conditions contained under par. 20 for important information on administrative documents required before this bid can be awarded.

7. COMPANY INFORMATION:

7.1 Bidder's company details

Please complete all the questions below in as much detail as possible.

- i. Company Name:

- ii. Contact Names and Numbers:

- iii. Company Address:

- iv. Indicate if the above company is the primary contractor or joint venture/
alliance partner:

- v. Number of personnel:

- vi. Turnover in the last three financial years:

- vii. Percentage growth in the last three years:

- viii. Valid Tax Clearance Certificate:

8. DETAILED BREAKDOWN OF TOTAL CHARGES, IMPLEMENTATION AND SUPPORT SERVICES:

Please supply a detailed breakdown of costs/charges and related charges as well as a total bid amount.

IMPORTANT CONDITIONS:

1. Failure on the part of the bidder to sign/mark this tender form and thus to acknowledge and accept the conditions in writing or to complete the attached forms, questionnaires and specifications in all respects, may invalidate the tender.
2. Tenders should be submitted in the format and numbering sequence similar to the tender document and should preferably not be qualified by the bidder's own conditions of tender. Failure to comply with these requirements or to renounce specifically the bidder's own conditions of tender when called upon to do so, may invalidate the tender.
3. If any of the conditions on this tender form are in conflict with any special conditions, stipulations or provisions incorporated in the tender, such special conditions, stipulations or provisions will apply.
4. Tender forms are not to be filled in by means of mechanical devices, e.g. Typewriters. All tender forms must be handwritten in BLACK ink.
5. Bidders will check the numbers of the pages and satisfy themselves that none are missing or duplicated. No liability will be accepted with regard to claims arising from the fact that pages are missing or duplicated.
6. In terms of Legal Aid SA's procurement policies, firm tender prices and delivery periods are preferred. Consequently, bidders will clearly state whether prices and delivery periods will remain firm for the duration of the contract or not.
7. Where items are specified in detail, the specifications form an integral part of the tender document and bidders will indicate in the space provided whether the items offered are to specification or not.
8. In respect of the paragraphs where the items offered are strictly to specification, bidders will insert the words "as specified".
9. In cases where the items are not to specification, the deviations from the specifications will be indicated.
10. The tender prices will be quoted in South African currency, Rand, unless otherwise specified.
11. Unless specifically provided for in the tender document, no tenders transmitted by telegram, telex, facsimile, E-mail or similar apparatus will be considered.

These conditions form part of the tender and failure to comply therewith may invalidate a tender.

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	11/2021	CLOSING DATE:	02 August 2021	CLOSING TIME:	11H00
DESCRIPTION	SUPPLY, IMPLEMENTATION, MAINTENANCE AND TRAINING ON RISK MANAGEMENT SOFTWARE SYSTEM FOR A PERIOD OF FIVE (5) YEARS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Legal Aid House					
29 De Beer Street					
Braamfontein					
2017					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Buhle Sesiko		CONTACT PERSON	Zimasa Silevu	
TELEPHONE NUMBER	011 877 2000		TELEPHONE NUMBER	011 877 2000	
FACSIMILE NUMBER	011 877 2222		FACSIMILE NUMBER	011 877 2222	
E-MAIL ADDRESS	FelicityZ@legal-aid.co.za		E-MAIL ADDRESS	ZimasaS@legal-aid.co.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] ☐ Yes ☐ No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					

6.1.1.1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]	6.1.1.2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? ☐ YES ☐ NO DOES THE ENTITY HAVE A BRANCH IN THE RSA? ☐ YES ☐ NO DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? ☐ YES ☐ NO DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? ☐ YES ☐ NO IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? ☐ YES ☐ NO IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.			

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:

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

DATE:

PART A INVITATION TO BID

10.

SBD2

TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

1. In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit a bid.
2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval
3. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not accepted
4. In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
5. Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS Branch office nationally or on the website www.sars.gov.za.
6. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sarsefiling.co.za

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

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of bidder.....	Bid number 11/2021
Closing Time 11h00	Closing date 02 August 2021

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

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

-
- Required by:
 - At:
 - 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.

DECLARATION OF INTEREST

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

¹“State” means –

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

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

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

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

.....

Name of state institution at which you or the person connected to the bidder is employed:

.....

Position occupied in the state institution:.....

Any other particulars:

.....

.....

.....

.....

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

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

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

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

.....

.....

.....

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

2.8.1 If so, furnish particulars:

.....

.....

.....

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

2.9.1 If so, furnish particulars.

.....

.....

.....

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

YES/NO

2.10.1 If so, furnish particulars.

.....

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?

YES/NO

2.11.1 If so, furnish particulars:

.....

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

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

4 DECLARATION

I, THE UNDERSIGNED

(NAME).....

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

INTRODUCTION

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1st of September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

1 PILLARS OF THE PROGRAMME

- 1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation. This threshold of US\$ 10 million can be reached as follows:
 - (a) Any single contract with imported content exceeding US\$10 million.
or
 - (b) Multiple contracts for the same goods, works or services each with Imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$10 million.
or
 - (c) A contract with a renewable option clause, where should the option be exercised, the total value of the imported content will exceed US\$10 million.
or
 - (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.
- 1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30 % of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a *pro-rata* basis.
- 1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.
- 1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

2 REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

- 2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rand) contract to the DTI for reporting purposes.
- 2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

3 BID SUBMISSIONS AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

- 3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.
- 3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1(d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:
- Bid / contract number.
 - Description of the goods, works or services.
 - Date on which the contract was accepted.
 - Name, address and contact details of the government institution.
 - Value of the contract.
 - Imported content of the contract, if possible.
- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 e-mail at Elias@thedti.gov.za for further details about the programme.

4 PROCESSES TO SATISFY THE NIP OBLIGATION

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:
- a. the contractor and the DTI will determine the NIP obligation;
 - b. the contractor and the DTI will sign the NIP obligation agreement;
 - c. the contractor will submit a performance guarantee to the DTI;
 - d. the contractor will submit a business concept for consideration and approval by the DTI;
 - e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
 - f. the contractor will implement the business plans; and
 - g. the contractor will submit bi-annual progress reports on approved plans to the DTI

4.2 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number Closing date:

Name of bidder.....

Postal address

Signature..... Name (in print).....

Date

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

6.1.1.3

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

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

1. GENERAL CONDITIONS

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

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

1.2

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

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

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

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

2. DEFINITIONS

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

3. POINTS AWARDED FOR PRICE

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

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

80/20

or

90/10

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

$P_{\min}$ = Price of lowest acceptable bid

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

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

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

5. BID DECLARATION

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

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

- 6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

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

(Tick applicable box)

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

- 7.1.1 If yes, indicate:

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

(Tick applicable box)

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

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

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

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....
.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

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

WITNESSES

1.

2.

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

DATE:

ADDRESS

.....

.....

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

- 1.1. Preferential Procurement Regulations, 2017 (Regulation 8) make provision for the promotion of local production and content.
- 1.2. Regulation 8.(2) prescribes that in the case of designated sectors, organs of state must advertise such tenders with the specific bidding condition that only locally produced or manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. Where necessary, for tenders referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BEE.
- 1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on [http://www.thedti.gov.za/industrial development/ip.jsp](http://www.thedti.gov.za/industrial%20development/ip.jsp) at no cost.

1.6. A bid may be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

2. **The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:**

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
_____	_____ %
_____	_____ %
_____	_____ %

3. Does any portion of the goods or services offered have any imported content?

(Tick applicable box)

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

3..1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on www.reservebank.co.za

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

LOCAL CONTENT DECLARATION
(REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO.

ISSUED BY: (Procurement Authority / Name of Institution):

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on http://www.thdti.gov.za/industrial_development/ip.jsp. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, (full names),
 do hereby declare, in my capacity as
 of(name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
 - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	
Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.

The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2017 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____ **DATE:** _____

WITNESS No. 1 _____ **DATE:** _____

WITNESS No. 2 _____ **DATE:** _____

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify on behalf of

that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

18. GENERAL CONDITIONS OF THE CONTRACT

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.
- (iii) In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.
- (iv) The General Conditions of Contract will form part of all bid documents and may not be amended.
- (v) Special Conditions of Contract (SCC) relevant to a specific bid should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the GCC shall prevail.

TABLE OF CLAUSES

18.1	Definitions
18.2	Application
18.3	General
18.4	Standards
18.5	Use of contract documents and information; inspection
18.6	Patent rights
18.7	Performance security
18.8	Inspections, tests and analysis
18.9	Packing
18.10	Delivery and documents
18.11	Insurance
18.12	Transportation
18.13	Incidental services
18.14	Spare parts
18.15	Warranty
18.16	Payment
18.17	Prices
18.18	Contract amendments
18.19	Assignment
18.20	Subcontracts
18.21	Delays in the supplier's performance
18.22	Penalties
18.23	Termination for default
18.24	Dumping and countervailing duties
18.25	Force Majeure
18.26	Termination for insolvency
18.27	Settlement of disputes
18.28	Limitation of liability
18.29	Governing language
18.30	Applicable law
18.31	Notices
18.32	Taxes and duties
18.33	National Industrial Participation Programme (NIPP)

18.1 Definitions

The following terms shall be interpreted as indicated:

- (a) "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- (b) "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.
- (c) "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- (d) "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.
- (e) "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- (f) "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.
- (g) "Day" means calendar day
- (h) "Delivery" means delivery in compliance of the conditions of the contract or order
- (i) "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- (j) "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.
- (k) "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- (l) "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.

"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.
- (m) "GCC" means the General Conditions of Contract.

- (n) "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- (o) "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.
- (p) "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- (q) "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- (r) "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- (s) "Project site," where applicable, means the place indicated in bidding documents.
- (t) "Purchaser" means the organization purchasing the goods.
- (u) "Republic" means the Republic of South Africa.
- (v) "SCC" means the Special Conditions of Contract.
- (w) "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.
- (x) "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

18.2 Application

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

18.3 General

- (a) 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.

- (b) 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

18.4 Standards

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

18.5 Use of contract documents and information; inspection

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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.

18.6 Patent rights

- (a) 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.

18.7 Performance security

- (a) 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.6
- (b) 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.
- (c) 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:
- (d) 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

(e) a cashier's or certified cheque

(f) 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.

18.8 Inspections, tests and analyses

(a) All pre-bidding testing will be for the account of the bidder.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

18.9 Packing

(a) 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.

- (b) 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.

18.10 Delivery and documents

- (a) 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.
- (b) Documents to be submitted by the supplier are specified in SCC.

18.11 Insurance

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

18.12 Transportation

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

18.13 Incidental services

- (a) The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (b) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (c) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (d) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (e) 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
- (f) 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.
- (g) 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.

18.14 Spare parts

- (a) 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:
- (b) 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
- (c) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

18.15 Warranty

- (a) 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 actor omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination
- (b) 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 loading in the source country, whichever period concludes earlier unless specified otherwise in SCC.
- (c) The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- (d) 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.
- (e) 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.

18.16 Payment

- (a) The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC
- (b) The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract

- (c) 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
- (d) Payment will be made in Rand unless otherwise stipulated in SCC.

18.17 Prices

- (a) 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.

18.18 Contract Amendments

- (a) No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

18.19 Assignment

- (a) 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.

18.20 Subcontracts

- (a) The supplier shall notify the purchaser in writing of all subcontracts awarded under these contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

18.21 Delays in the supplier's performance

- (b) 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.
- (c) 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.
- (d) 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.
- (e) The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- (f) 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.

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

18.22 Penalties

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

18.23 Termination for default

- (a) 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:
- 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;
 - if the Supplier fails to perform any other obligation(s) under the contract; or
 - if the supplier, in the judgment of the purchaser, has engaged in corruption or fraudulent practices in competing for or in executing the contract
 - 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.

18.24 Anti-dumping and countervailing duties and rights

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

18.25 Force Majeure

- (a) 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.
- (b) 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.

18.26 Termination for insolvency

- (a) 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.

18.27 Settlement of Disputes

- (a) 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.
- (b) 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.
- (c) Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- (d) Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- (e) Notwithstanding any reference to mediation and/or court proceedings herein,
- the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - the purchaser shall pay the supplier any monies due the Supplier

18.28 Limitation of liability

- (a) Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- 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

- 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.

18.29 Governing language

- (a) 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.

18.30 Applicable law

- (a) The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

18.31 Notices

- (a) 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
- (b) 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.

18.32 Taxes and duties

- (a) A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- (b) A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- (c) 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.

18.33 National Industrial Participation Programme (NIP)

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



19. RISK MANAGEMENT SOFTWARE SYSTEM SPECIFICATION/REQUIREMENTS

19.1 BACKGROUND

In 2020 the Risk Management section conducted a risk maturity assessment for Legal Aid SA. Gaps were identified and recommendations made to take the maturity of risk management to the next level. The use of a risk management software system was identified, among other things, as a contributor to a mature risk management. Currently, Legal Aid SA uses an Excel spreadsheet which has no real-time visibility, promoting a silo approach, to implement the risk management in the organisation.

The request for proposal (RFP) is issued to solicit proposals from suitable providers to supply, implement and maintain a customisable risk management software system for a period of 5 years. The successful service provider will also be responsible for user training.

19.2 SCOPE

Legal Aid SA hereby invites suitably qualified and reputable service providers to submit proposals for the supply, implementation, maintenance and training of risk management software system for a period of 5 years. Bidders are also welcome to add any functionalities not mentioned in the RFP.

The successful bidders will be required to:

- Supply a Risk Management Software System that meets the functional and technical requirements that are outlined below;
- Implement the system (which includes customisation, development/configuration);
- Testing and approval;
- Training;
- Data migration from the current Excel spreadsheet;
- Go live;
- Support specifying turnaround time;
- Provide Project Implementation Plan and schedule;
- Provide server hardware specifications;
- Working offline capability, and
- User and procedure manuals provided.

19.3 USER REQUIREMENTS

19.3.1 The software should include the following outputs:

Service providers must provide an ERM software solution than can capture the risk management process stages aligned to the various risk management standards and King IV on corporate governance. The service provider must also provide training on the use of the software. Legal Aid SA would prefer the solution to be hosted on their premise, and the service provider must provide the hardware specifications required for hosting the recommended ERP Software. The installation and configuration of the software remains the responsibility of the service provider and therefore their related costing should be included in the pricing. The supplied software must have been tested and be the latest version. Installation of software for all licensed users and access for all other employees in the organisation to do the following:

- Capturing and updating of risks;
- Analysis and evaluation of risks;
- Rating of inherent, current and target residual risks;
- Capturing and updating of controls;
- Update progress on action plans;
- View all risks and actions allocated to the user;
- Cross-cutting risks;
- Risk Dashboard reports for Executive Management/Audit Committee and the Board, and
- Various risk reports for different levels of the organisation.

19.3.2 System Requirements

- Tried and tested automated integrated risk management software solution that is customisable.
- The system should be based on universally accepted best practice methodology, to enable Legal Aid SA to adopt and be compliant with frameworks such as the COSO Framework, ISO31000, KING IV on Corporate Governance.
- The system should be able to cater for additional modules should Legal Aid SA decide to add them in future.

19.3.3 Detailed user requirement list

Requirement Description	Indicate requirement's availability (Yes/No)	Paragraph number and Page Number where the item is addressed in the proposal (i.e. 1.5, Page 8 – 9)
General		
Customisable risk management software system (system should be flexible enough to be aligned with Legal Aid SA's approved Risk Management Framework and strategies).		

Flexible i.e. configurable solution to suit our unique requirements and frameworks without any programmer intervention		
Create user defined fields		
Add new users at marginal cost		
Ability to cater for additional modules should the need arise		
Holds a risk library for all users to access and for administrators to modify		
Ensure the integrity of data and provides an audit trail of all changes to records and changes to user access rights in the system		
Ability to be used by multiple users at the same time and ensure real-time updating		
Email capability within the system		
Export and import data to and from external sources (Excel)		
Provide user audit trail for changes made		
Ability to retire and not delete risks (archive risks that are no longer active)		
System to be used by multiple users at the same time and ensure real-time updating		
Ability to configure a 5 x 5 Heatmap/Matrix		
Risk Management Methodology		
Ability to capture identified risks, root causes, risk owner, risk probability, risk impact, risk evaluation, treatment/response plans, action owner, and monitoring reports (monitoring of treatment plan progress etc.)		
Ability to automatically create a unique risk identification number		
Ability to allocate/appoint risk owners, task owners, escalation and automatically generate an email notification to the appointees		
Cater for Legal Aid SA risk criteria (impact scale, probability scale, heatmap) and be able to select using a drop down or similar		
Able to capture/import existing risk register (from Excel documents)		
Link and view multiple causes and consequences to a risk		

Capture multiple controls (existing and planned) for a particular risk with time frames		
Ability to create new controls and amend existing controls through the risk assessment module (without requiring a user to exit the risk assessment module/process)		
Able to update risk profile in real time once control failures have been detected and captured on the system		
Ability to calculate inherent residual risk, current residual risk, and target residual risk		
Link risks to objectives/outcomes/strategies		
The system must also have the functionality for risk control self-assessments & surveys		
Escalation function from all levels not limited to the following: – Non-achievement of deadlines – Risk above acceptable tolerance – Cross-cutting risks in the organisation Automated reminders on due/overdue action plans and progress updates		
Create a comment for each risk		
Reporting		
Generates a comprehensive risk register at various levels of the organisation incorporating Key Risk Indicators, Risk Appetite, Risk Tolerance, Risk Capacity, KPIs		
Able to generate Risk Control Self-Assessment and survey reports		
Provides an organisation-wide view (helicopter view) of the risk universe at strategic, operational, business unit levels, and project level		
Generate reports for: – Non-achievement of deadlines – Risk above acceptable tolerance – cross-cutting risks in the organisation		
Ability to aggregate risk i.e. by category, risk type		
Provides proactive monitoring,		

including status tracking		
Provides various risk dashboard reports (graphs, tables etc.) for monitoring of risks by management/Audit Committee/Board		
Enables reporting and creation of dashboards to monitor trends (movement of risks from month to month and quarter to quarter)		
System must provide various risk dashboard reports for monitoring of risks by Management/Executives/Audit Committee/the Board		
Opportunities		
Capturing, analysis, evaluation and response to opportunities identified using the same process as the risk but on a positive		
Lesson Learnt		
Ability to capture lessons learnt		

- The software will remain the property of Legal Aid SA even after the tender has lapsed for continuous use by Legal Aid SA.
- Bidders must be prepared to give a demonstration of the proposed solution, at no cost to Legal Aid SA, when requested to do so.

19.4 FINANCIAL PROPOSAL – COST MATRIX

Bidders should provide their cost breakdown in the following format.

Item	Description	Cost	Quantity	Subtotal
Software				
Annual Maintenance And Support				
Installation and Solution Configuration				
End User Training				
20 user licences				
Solution				

Upgrades				
Annual Software Assurance (Licence renewal)				
Other costs, if applicable				

19.5 EVALUATION

19.5.1 PRE-QUALIFICATION

The bidder must provide an index and number each page of the proposal. **Failure to index, number the pages of the proposal and complete annexure A attached hereto will lead to the bid being declared non-responsive and will not be evaluated further.**

Supporting Documents for Technical Specification

	Required Documents	Tick
1	Company Profile	
2	Proof of Business Address per branch	
3	Vendor Partnership Certificate	
4	CV and Qualification certificate of Project Leader	
5	CV and Qualification/Certifications of installation technical resources	
6	Project Implementation Plan (Methodology and timelines)	
7	Reference Letter/s from previous/current clients	
8	Proposed Solution (System Functionalities)	

19.5.2 Functionality evaluation:

The following criteria and weights will be applied:

Focus Area	Max Points	Criteria	Point Allocation	Tick	Verification	For Office Use
Experience in similar Scale Projects	20	Company has successfully implemented similar software in >5 companies	20			

						For Office Use
Focus Area	Max Points	Criteria	Point Allocation		Tick	Verification
		Company has successfully implemented similar software in 4-5 companies	15			
		Company has successfully implemented similar software in 2-3 companies	10			
		Company has successfully implemented similar software in <2 companies	5			
Written references	10	> 5 positive references attached	10			
		4 - 5 positive references attached	8			
		2 - 3 positive references attached	6			
		1 positive references attached	4			
Quality of project leader	10	Project Leader with ND or Degree in IT (Related field) with >5 years' experience in similar projects	10			
		Project Leader with ND or Degree in IT (Related field) with <5 years' experience in similar projects	8			
		Project Leader without qualification but >10 years' experience in similar projects	6			
		Project Leader without qualification but <10 years' experience in similar projects	4			
Quality of project technical team	10	> 5 certified technical resource with > 5 years' experience on similar projects	10			
		4 - 5 certified technical resource with > 5 years' experience on similar projects	8			
		2 - 3 certified technical resource with > 5 years'	6			

						For Office Use
Focus Area	Max Points	Criteria	Point Allocation		Tick	Verification
		experience on similar projects				
		< 2 certified technical resource with > 5 years' experience on similar projects	2			
Proposed Solution	30	Solution offered considered all the key technical functionalities	30			
		70 - 95% compliance to functional specification	20			
		50 - 69% compliance to functional specification	15			
		<50% compliance to functional specification	10			
Project Implementation Plan	10	Project management methodology and a well presented detailed project implementation plan	10			
		Project management methodology and an average project implementation plan	5			
		Poor or no project plan presented	0			
After sales support (maintenance)	10	Bidder has offices in Gauteng	10			
		Bidder does not have offices in Gauteng	5			
Total	100		Total			

Bidders must score a minimum of 80 points on functionality to proceed to the next stage of evaluation. Bidders scoring less than 80 points will not be evaluated further.

Qualifying bidders will be evaluated in terms of the Preferential Procurement Policy Framework Act regulations, on the 80/20 points system, where Price = 80 points and B-BBEE rating = 20 points.

COMPULSORY BID REQUIREMENTS

FAILURE TO COMPLY WITH ALL REQUIREMENTS BELOW WILL IMMEDIATELY DISQUALIFY THE PROPOSAL INSTRUCTIONS FOR THE SUBMISSION OF A PROPOSAL.

SUBMISSION OF BID ORIGINAL (HARD PRINTED COPY)

The Bidder must submit one original copy (hard printed copy) of the technical proposal, separate from the pricing which should be sealed. The Bid Documents MUST be:

- Marked with the Bidder's Name.
- *Signed in ink* by an authorised employee, agent or representative of the bidder and each and every page of the proposal shall contain the initials of same signatories.
- All pages of the submitted proposal must be numbered.
- The Total Bid Amount will be used for the evaluation of bids therefore it must be inclusive of all costs for the duration of the contract.

SUBMISSION OF USB

The Bidder may submit one (1) USB which includes a technical proposal and the pricing saved in separate folders together with the hard copy. The USB MUST:

- Be marked with the bidder's name.
- Have an index page or table of contents listing all documents included in the proposal for easy referencing during evaluation process. Related documents should be grouped in their respective folders).
- Contain the exact documents submitted in the original printed copy. It is the bidder's responsibility to ensure that the USB contains all the pages of the bid document, and they are all accessible.
- Be in PDF format only.
- The Total Bid Amount will be used for the evaluation of bids therefore it must be inclusive of all costs for the duration of the contract.

No Disc or CD will be accepted.

All prices must be VAT inclusive and quoted in South African Rand (ZAR).

All prices must be valid for 120 days.

20. BID CONDITIONS

- 20.1 Bidders may be requested to attend a meeting where they will be given the opportunity to present their proposal to the bid evaluation committee.
- 20.2 **Bids must be submitted in line with any attached annexures and detailed specifications. Failure to bid accordingly shall invalidate the bid.**
- 20.3 Legal Aid SA reserves the right to award the bid to one or more service providers.
- 20.4 Legal Aid SA reserves the right to award the **bid in whole or only partially.**
- 20.5 **LEGAL AID SOUTH AFRICA RESERVES THE RIGHT NOT TO MAKE ANY APPOINTMENT AND SHALL NOT ENTERTAIN ANY CLAIM FOR COSTS THAT MAY HAVE BEEN INCURRED IN THE PREPARATION AND SUBMISSION OF THE PROPOSALS.**
- 20.6 Legal Aid SA will enter into Service Level Agreement(s) with the successful bidder(s) in accordance with acceptable conditions. Any condition which increases the financial liability not included in the costing will not be accepted and Legal Aid SA will have the right to cancel such award.
- 20.7 The General Conditions of Contract as stipulated by the National Treasury will be applicable.