



human settlements

Department:
Human Settlements
REPUBLIC OF SOUTH AFRICA

Private Bag X644 Pretoria 0001 RSA Tel (012) 421 1311 Fax (012) 341 8512
Private Bag X9057 Cape Town 8000 RSA Tel (021) 466 7600 Fax (021) 465 3610
<http://www.housing.gov.za> Fraud Line: 0800 701 701 Toll Free Line: 0800 1 46873 (0800 1 HOUSE)

REFERENCE : VA49/736
ENQUIRIES : MS K MALEKA
TELEPHONE : 012 444 9245

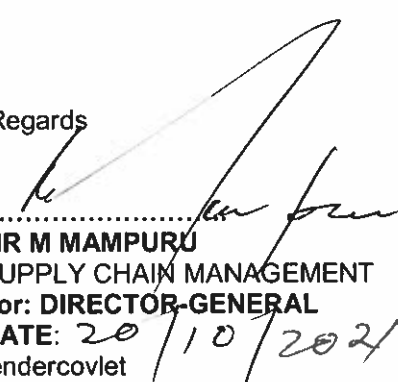
BID VA49/736: TERMS OF REFERENCE FOR THE APPOINTMENT OF THE POLICY, RESEARCH AND LEGISLATIVE RESOURCE PANEL. (PORLERT)

- 1 The closing date for the submission of applications/bid documents is **16 November 2021 @ 11:00**. No late applications/bid documents will be considered. All bids must please be placed in the Tender Box situated at the main entrance of (DR. RUTH MOMPATI BUILDING, 260 JUSTICE MAHOMED STREET, SUNNYSIDE, PRETORIA)
- 2 **It is compulsory** that an original proposal/bid documents together with a copy of the proposal /bid document to be handed in on the closing date of the bid. Please clearly mark by writing "Original" and "Copy" on the relevant bid documents.
- 3 You are invited to bid for the services as specified in the attached forms.
- 3.1 The conditions contained in General Conditions of Contracts (GCC) and the attached SBD1, SBD 3.3, SBD4, SBD 6.1, SBD8, and SBD9 as well as any other conditions accompanying this request are applicable.

4. **NATIONAL TREASURY CIRCULAR NO 3 OF 2015/2016**

- 4.1 From 1 April 2016, institutions/departments may not award any bid to a supplier who is not Registered on the Central Supplier Database (CSD).
- 5 **Compulsory**: Please attach a most recent copy of CSD registration report
- 6 **No Briefing Session Will be Held.**

Regards


MR M MAMPURU
SUPPLY CHAIN MANAGEMENT
For: DIRECTOR-GENERAL
DATE: 20/10/2021
tendercovlet

*igoro ya tsa Madulo * Lefapha la Bodulo * Lefapha la tsa Manno * Umyango Wezindawo Zokuhlala * Isebe leeNdawo zokuHlala
* Likho Letekwikhela Lunfu * Mensi/ke Nedersettings * Umyango weeNdawo zokuHlala * Muhahla wa zwa Vhudzulo * Ndzawulo ya swa Vutshamo

THE DEPARTMENT OF HUMAN SETTLEMENTS

BID NUMBER: BID VA49/736

DESCRIPTION: PROFESSIONAL SERVICE

CLOSING DATE and TIME: 16/11/2021 @11:00

CHECKLIST TO BE COMPLETED BY BIDDERS

<u>TABLE OF CONTENTS:</u>	Yes	No
➤ Invitation Letter/ Cover Letter		
➤ (TOR) Terms of Reference		
➤ SBD1 Invitation To Bid		
➤ SBD3.3 Pricing Schedule		
➤ SBD4 Declaration of Interest		
➤ SBD6.1 Preference Point: Purchases		
➤ SBD8 Declaration of Bidders Past Supply Chain Management Practices		
➤ SBD9 Certificate of Independent Bid Determination		
➤ General Conditions of Contract		
<u>SUPPORTING DOCUMENTS:</u>		
➤ Company Profile		
➤ ID Copies of Directors		
➤ Certificate issued by Registrar of Companies & Close Corporation, issued by CIPRO.		
➤ Certified/Original Valid B-BBEE Status Level Verification Certificate – 07 December 2011		
➤ CSD Status Report		
*** 1 ORIGINAL and 1 COPY OF THE WHOLE BID DOCUMENT***		

COMPANY NAME: _____

SIGNATURE _____

DESIGNATION: _____ **DATE:** _____

Bid invitation check list: Compiled: K Maleka



human settlements

Department:
Human Settlements
REPUBLIC OF SOUTH AFRICA

**TERMS OF REFERENCE FOR THE APPOINTMENT OF THE POLICY,
RESEARCH AND LEGISLATIVE RESOURCE PANEL
(PORLERT)**

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1. INTRODUCTORY BACKGROUND

- 1.1 The Constitution of South Africa is the source of all legislation in the country. The Constitution lays the foundation for all legislation, policies and programmes informing the provision of adequate housing to citizens. Section 26, the Housing Chapter, of the Constitution fully delineates the parameters of housing rights. It stipulates that every citizen has the right to access to adequate housing. In this chapter the Constitution calls upon government institutes and agents to undertake effective legislative measures, whilst utilizing available resources efficiently, to ensure this right is progressively realised.
- 1.2 Adequate housing was recognized as part of the right to an adequate standard of living in the 1948 Universal Declaration of Human Rights and in the 1966 International Covenant on Economic, Social and Cultural Rights. Schedule 4A of the Constitution lists housing function as a concurrent national and provincial legislative competence.
- 1.3 The Presidential Proclamation in 2009, established the Department of Human Settlements, and by so doing, it signalled a shift from housing being just a roof over people's heads, to providing sustainable and integrated human settlements where people can work, pray, play and have access to amenities required for their day-to-day living. The mandate for the Department of Human Settlements also changed to ensure or facilitate the creation of sustainable human settlements and the improvement of the quality of household life. And its core functions are to determine, finance, promote, communicate and monitor the implementation of housing and sanitation programmes, among others.
- 1.4 The mandate of the Department is set out in the Housing Act. Section 2 of the Housing Act compels all three spheres of government to give priority to the needs of the poor in respect of housing development. In addition, all three spheres of government must ensure that housing development:
 - a) Provides as wide a choice of housing and tenure options as is reasonably possible;
 - b) Is economically, fiscally, socially and financially affordable and sustainable;
 - c) Is based on integrated development planning; and
 - d) Is administered in a transparent, accountable and equitable manner, and upholds the practice of good governance.

- 1.5 The mandate of the national government, in this case, the National Department of Human Settlements (NDoHS) is to: (i) determine national policy (and programmes) on human settlements, (ii) set goals and targets for human settlements, (iii) fund human settlements development, (iv) conduct monitoring and evaluation of the delivery of human settlements nationally, and most importantly (v) account for human settlements delivery and fund spent in the process, the Department makes a call for nominations of persons/individuals to serve in the policy and legislative resource team.
- 1.6 The legislative mandate of the Department remains the same except for the inclusion of the few legislative frameworks and it is inconsistent with some of the sector reforms.
- 1.7 The formulation of South Africa's Housing Policy commenced prior to 1994, as an outcome of a multi-stakeholder initiative which resulted in the promulgation of the Housing White Paper in December 1994, and the Housing Act, 1997 (Act 107 of 1997).
- 1.8 The Housing Act (1997), sought to align the National Housing Policy with, and to give effect to the right of access to housing in terms of Section 26 of the Constitution of the Republic of South Africa, 1996. At the time, South Africa's Housing Policy was in its infancy, and much of subsequent development was spurred on by the Act.
- 1.9 These developments were further expanded upon by, among others, the:
- 1.9.1 The Housing Act Amendments effected in 1999 and 2002, the legislative mandate of the Department has virtually remained the same. The Housing Act requires substantive adjustments to ensure effective implementation of the extended mandate of the Department and alignment to legislation supportive of reforms.
- 1.9.2 The Twenty Year Review report of the housing and human settlements sector substantiated the overarching principle that policy shifts in how housing is understood, approached and responded to should correspond with a consistent maturation of the democratic processes of the country.
- 1.9.3 The Draft White Paper on Human Settlements, 2016 establishes the significance of re-configuration in delivering sustainable and integrated human settlements and had diagnosed that sustainable and integrated human settlements are embedded by effective planning, design, typologies and development fundamentals.

- 1.9.4 The National Development Plan (NDP) SA's blueprint for eliminating poverty and reducing inequality by 2030 requires planning coordination and integration at all levels to advance for the creation of liveable, equitable, sustainable spaces including supporting economic opportunities and social cohesion.
- 1.9.5 There have also been evaluation studies and one review study that, were commissioned by the Department in partnership with the Department of Planning, Monitoring and Evaluation (DPME), and were focused largely on programme design and programme implementation. The evaluations that were synthesised include, inter alia, the following:
 - 1.9.6 The Design and Implementation of the Integrated Residential Development Programme (IRDP);
 - 1.9.7 Impact and Implementation of the Social Housing Programme (SHP);
 - 1.9.8 Baseline Assessment and Future Impact Evaluation of Informal Settlements (UISP) Targeted for Upgrading;
 - 1.9.9 Evaluation of the Urban Settlement Development Grant (USDG);
 - 1.9.10 The Synthesis Evaluation of Whether the Provision of State Subsidised Housing Addresses Asset Poverty for Households and Local Municipalities (Subsidised Housing Programmes for Ownership),
 - 1.9.11 The Impact Evaluation of Government's Approach to Affordable Housing,
 - 1.9.12 The Synthesis Report on the Alignment of the Human Settlements Sector with South Africa's Public-Sector Reform Agenda and so forth.
- 1.10 The historical context highlights the fact that the meaning of housing has advanced over the past two and half decades yet the scale of shifts have remained inconsistent with the Housing Act principles.
- 1.11 Accordingly, the implementation of the extended mandate of the Department should be a reflection of contemporary shifts in the greater human settlements value chain expressed through policy instruments and legislative frameworks.

2. RATIONALE

- 2.1 The meaning of housing has advanced over the past two decades and the scale of evolution remains inconsistent with the Housing Act policy principles with respect to a shift from housing to human settlements. The twenty-year review report of the housing and human settlement sector measuring the period 1994-2014 substantiate that overarching story of the housing and human settlement sector demonstrate significant changes and evolution in how housing is understood, approached and responded to and corresponds with a consistent maturation of the democratic processes of the country.
- 2.2 The Housing Act through its overall statutory function remains the premier legislation as it is premised on the basis of anchoring all secondary policies and legislative instruments in human settlements and must respond comprehensively to contemporary reforms. A human settlement macro policy framework must therefore demonstrate harmonious integration or co-ordination of a wide variety of components, including, for example, population growth and distribution, employment, shelter, land use, infrastructure and services. Human settlement policies and programmes should define and strive for progressive minimum standards for an acceptable quality of life.
- 2.3 The Presidency twenty-year review report of the housing and human settlement sector revealed the following constraining factors to delivering sustainable human settlements:(i) Spatial concerns (ii) Fragmentation: vertical/horizontal (iii) Service costs and affordability (iv) Better leverage of the private sector (v) Decreasing benefit for cost and (vi)Challenges of participation and development.
- 2.4 Furthermore, the sector had changed significantly with a diversified National Housing Code while the Housing Act remains inconsistent with the widened mandate of the Department. The macro-planning environment also demonstrated significant changes as the state relooked in the manner in which it developed targets and assigned responsibilities. The misalignment of the Act to housing programmes, policies and legislation frameworks presents implementation shortcomings and needless misconceptions.
- 2.5 All these policy review reforms, policy formulation, legislative review and development including the Housing Act, programme assessment programme design and the new thematic focus necessitate for additional capacities and expertise and the Panel of Policy and Legislative Resource Team (POLERT) is the responsive intervention. Furthermore, the Department is cited on a series of Court judgments that have fundamentally advanced the

construal of the right to housing and the Department's position on such matters of jurisprudence becomes an imperative.

- 2.6 While the POLERT technical support will contribute greatly to enabling the Department, Branch and the Chief Directorate to achieve its strategic objectives, urgent priorities and targets, it is envisaged that it will also contribute towards building and strengthening the capacity of the Chief Directorate where there are skills gaps.
- 2.7 The Department had in the past appointed the POLERT within the Human Settlements Development Branch (HSDF). The POLERT has been appointed to assist with the objectives review of policies, programmes and legislation with an overarching goal of developing a macro policy framework on housing and human settlements.
- 2.8 During the period under review the POLERT had made a significant progress towards the achievement of the stated objectives of policy and legislative reviews. These include a number of policy frameworks reviewed and developed, namely, the Informal Settlements Upgrading Macro Policy Framework and Draft UISP Programme, Policy on Land for Human Settlements, Draft Rental Framework, Asbestos Removal Policy, Owner Builder Subsidy Voucher scheme, Finance Linked Individual Subsidy Programme (FLISP) policy framework *etc.*
- 2.9 In addition, a number of legislative review and development have also been realised; these include the Sectional Titles Schemes Management Act, the Community Services Ombud Scheme (CSOS) Act; the Human Settlements Development Bank Bill; the Housing Act review and preliminary work on Human Development Settlements Act.
- 2.10 The bulk of the work remains incomplete and still require the services of external experts plus the additional tasks to be undertaken. The imminent termination of contracts for panel members by expiry of the contract period means that these macro policy initiatives and legislative frameworks might not be successfully completed. Thus the Department seeks the services of the expert panel members due to capacity constraints to deliver competently and timeously on some of its key research assignments and projects and urgent Departmental priorities.

3. PURPOSE OF THE PANEL

- 3.1 The Department has in the past appointed Policy and Legislative Review Team (POLERT) panel members which have been in place to do research, policy, legislation, and streamline sector transformation issues.
- 3.2 As indicated above, during the period under review the Panel has contributed significantly and made progress in various areas of the business with respect to conducting operational research, drafting policies, and key prepared legislative proposals enabling the Department to achieve its targets from a Branch's perspective. The workload remains massive and scope of work is increasingly demanding and present the Department and Chief directorate with underlying capacity constraints. For instance, the Department has embarked on a process of undertaking research to support policy development and worked towards enhancing the White Paper on Human Settlements. The enhanced White Paper will outline the policy path for the development trajectory and assist if required in the amendment of the Housing Act of 1997. This process will also contribute to the development of the National Human Settlements Code that will have reformed policy programmes. The planned policy initiatives for this period include:
 - 3.2.1 Enhancing the policy foundation for the development of Human Settlements
 - 3.2.2 The development of the Human Settlements Code
 - 3.2.3 The refinement of the upgrading of Informal Settlements Programme,
 - 3.2.4 The drafting of a Comprehensive Rental Policy
 - 3.2.5 The crafting of the Affordable Housing Policy
 - 3.2.6 Drafting of the policy on Property Transactional Support Centres
 - 3.2.7 The development of an owner-builder housing Voucher Scheme
 - 3.2.8 Finalising the Urban Land Policy that supports housing and human settlements.
 - 3.2.9 The drafting of the Empowerment Policy Framework,
 - 3.2.10 The reviewing and remodelling of the HSDB policy, legislation and business case;
 - 3.2.11 Reviewing and reconciling the Sectional Title Scheme Management Act and the CSOS Act
- 3.3 All of these series of policy proposals, frameworks, legislative reviews and frameworks still necessitate the mobilisation of pertinent external technical expertise as the current POLERT cohort has made strides and covered a lot of ground.

- 3.4 The constraining factor which presents operational risk is the imminent termination of contracts of Panel members as a result of the expiry of the contract period at the end of September 2021 which may place most of the projects in jeopardy.

4. GENERAL WORK APPROACH

- 4.1 For the purposes of the policy and legislative review, the Policy, Research and Legislative Review Team (**PORLERT**), will be divided into the following **Workstreams**:

- 4.1.1 Informal Settlements Upgrading Programme (UISP) with PHP/EH Policy Programme Review.

- 4.1.2 IRDP Reform per Catalytic Projects/ PHDAs/ BEPPs.

- 4.1.3 Social/ Rental Housing Interventions/ Policy Reform.

- 4.1.4 Affordable Housing Policy Reform.

- 4.1.5 Inclusionary Housing/ Rapid Land Reform.

- 4.1.6 Legal and Legislative Workstream.

- 4.1.7 Research Workstream.

- 4.2 The Workstreams will be expected to, *inter alia*:

- 4.2.1 Action the workplans developed by the Department and panel members according to the key activities and deliverables against target dates, and in line with their specific briefs;

- 4.2.2 Develop policy and programme review, research and other related reports,

- 4.3 The expected output for POLERT Workstreams, will be a Chapter that will form part of the Macro Policy Framework *i.e.* /White Paper, and for the Legislative Review Workstream, it will be the Macro Policy Framework and draft Bill on Housing in Human Settlements or Human Settlements Development Act.

5. SCOPE OF WORK

5.1 The **scope of work** for the Panels will be comprised of the following:

Table 1: Scope of Panel

PANEL	SCOPE/ MANDATE
PORLERT Workstreams	a) Conduct research on housing and human settlements issues as determined by the needs of the Department b) Carry out Built environment related research, policy and programme work c) Undertake micro, macro and socio economic analysis d) Chapters for the Macro Policy Framework on Housing and Human Settlements. e) Programme review and development, as per Workstream Brief. f) Research and develop legislation underpinning Housing in Human Settlements programmes

5.2 The scope of the Panel will not only be confined to the above defined scope and mandate, but where applicable will also include undertaking of other priority research, policy legislative matters as referenced in section 3.2, as well as any other urgent tasks. The scope of work will be linked to workplans developed by the Department and the panel member of the workstream. Specific deliverables, time (duration of the assignment) and budget will be calculated according to a specified hourly rate, as referenced in section 10.

6. QUALITY OF DELIVERABLES

6.1 It is expected that all deliverables shall be delivered in the manner that shows a high degree of professionalism, quality, competence and good report writing skills.

6.2 All documents must be language edited, and final reports must be submitted in both MS Word and PDF versions.

7. SERVICES TO BE RENDERED BY THE DEPARTMENT

7.1 The Branch: Research, Policy, Strategy and Planning in particular, Workstream Co-ordinators will provide, subject to each area of expertise of the panel members, information pertaining to, *inter alia*:

7.1.1 All relevant policy, programme, framework documents that are crucial to the workstream's assignment, and

7.1.2 Legal opinions, key court judgments, relevant legislation and Amendments to support the development of a new macro policy and a new Bill on Housing in Human Settlements, etc.

8. DURATION

8.1 The duration of this project shall be two (2) years from the date of commissioning of Service Level Agreement.

9. INSTITUTIONAL ARRANGEMENTS

9.1 A project steering committee will be responsible for the oversight management and accountability and will be chaired by the responsible senior manager.

9.2 Directors, as co-ordinators of workstreams will be responsible for, among others: Developing specific Terms of Reference (ToR) and briefs for each workstream, accompanied by an appropriate memorandum for approval; Ensuring that a workplan per panel member is developed and submitted for approval; Co-ordinating meetings of the workstream, minutes-taking and performance reports, as may be required from time-to-time; Monitoring and assessing performance achieved with respect to contractual, administrative, financial and governance responsibilities of the workstreams and panel members to ensure quality outputs are produced.

9.3 The workstream co-ordinators will also be responsible for setting up internal accountability structures such as the Bid Specification and Bid Evaluation Committees constituted by officials within the Department, and which will serve as a platform for panel members to present their concluded drafts of, *inter alia*, research reports, policy proposals, programmatic changes and draft macro policies.

10. BUDGET AND PAYMENT SCHEDULE

10.1 Payments to panel members will be linked to project deliverables, and will be accessed by panel members upon concluding valid and signed contractual agreements.

10.2 The applicable hourly fee rate for the Panel members will be linked to Level 13 salary band.

10.3 Claims will be limited to a maximum of eight (8) hours per day, subject to the allocated task per brief and workplan.

10.4 Payments will be done against the goods and services budget allocation.

11. KNOWLEDGE AND EXPERTISE OF PANEL MEMBERS

11.1 Panel members, in their applications, are expected to demonstrate the following knowledge, characteristics, and expertise in the required areas of responsibility/assignment:

Table 2: Knowledge and expertise of panel members

PANEL	WORKSTREAM	SKILLS/EXPERIENCE/QUALIFICATIONS
POLERT	Legal	1. A minimum of five (5) years' experience in the field of legislative drafting; 2. Extensive and demonstrable experience in the drafting of legislation, particularly in the housing and human settlements environment; 3. Extensive knowledge of housing legislation and other relevant legislative instruments; 4. Proven programme management experience on projects of a similar nature; 5. Proven written and oral communication ability; 6. Proven capacity to successfully carry out the expected assignments.
	Research (all encompassing)	1. A Minimum of five (5) years of relevant experience in applied research and modelling 2. Extensive and demonstrable experience in conducting applied operational in human settlements; 3. Proven programme management experience on projects of a similar nature; 4. Ability to multitask, work under pressure and time management skills; 5. Excellent verbal and written communication skills;

	Affordable Housing	1. A minimum of five (5) years of experience in the affordable housing market, housing finance, public policy and human settlements policy; 2. Advanced analytical skills in reviewing, conceptualizing, and developing policies, legislation and regulations and its interrelations with the financial sector, 3. In-depth knowledge in economics, housing finance, development finance and real estate market; 4. Ability to multitask, work under pressure and time management skills
	Policy development and review;	1. A minimum of five (5) years of relevant experience 2. In-depth knowledge in housing finance, development finance and real estate market; 3. Extensive knowledge of pertinent legislative frameworks, policy instruments and regulatory measures; 4. Ability to multitask, work under pressure and time management skills; 5. Excellent verbal and written communication skills
	All Workstreams	1. Understanding of housing and human settlements programmes. 2. Knowledge of intergovernmental responsibilities in housing and human settlements, including the Constitution and Intergovernmental Relations Framework. 3. Extensive experience in human settlements environment. 4. Knowledge of development planning, including town and regional planning. 5. Understanding of the HSS application and migration.

12. EVALUATION CRITERIA

- 12.1 The following criteria and associated sub-criteria as depicted in the table below will be used to evaluate the suitability and qualification of a panel member in accordance with the weightings outlined in the table and a **minimum score of 70 points** and above will qualify the respondents to be on the panel, whereas any score **below 70 points** will render the application non- responsive.

NB: Panel members will be appointed in their individual professional capacities which shall not extend, or be interpreted to include a juristic person they work for, or are associated with.

Table 3: Qualifications of panel members

CRITERIA	SUB-CRITERIA	SUB-POINTS	TOTAL POINTS
1. Experience and qualifications	(a) Combined or extensive experience and exposure in human settlements especially in areas of: (i) Policy research, development, review, and analysis, (ii) legislative drafting, review, and analysis, and (iii) property development finance and economic analysis (iv) Publications track record in peer reviewed journals NB: 1. 5-10 yrs = 5 points 2. 11-20 yrs = 10 points 3. 21 yrs and above = 15 points	15	50
	(b) Master's degree in any of the following: Social Sciences, Economics, Law, Development Finance, Housing Studies, Public/Social Policy, Property Finance, Development Studies, Econometrics, Public Management, Public Administration, Civil Engineering, Quantity Surveying, and Town Planning. NB: 1. National Diploma/Degree = 10 points 2. B-Tech/Honours/Post-Graduate Diploma = 15 points 3. Masters Degree/M-Tech/PHD = 20 points	20	
	(c) Professional registration.	5	
	(d) Track record in leading similar projects.	5	
	(e) Specific experience in handling projects such mergers and acquisitions, valuations, project management, human resources, organisational development, project finance, and project audits etc.	5	

2. Understanding of the brief/ assignment and deliverables as contained in the TORs.	(a) Interpretation of the project objectives and implementation methods.	10	45
	(b) Provision of a clear methodology and detailed approach;	15	
	(c) Workplan with clear time deliverables and timeframes with key defined aspects of the assignment, and	10	
	(d) Clear understanding of scope of work with respect to the Terms of Reference and technical requirements.	10	
3. General relevant issues	(a) Reference letters of previous work done.	5	5
Total points			100

13. COPYRIGHT

13.1 Copyright of any materials, deliverables, research, and all reports produced by panel members, individually and/or as part of the workstream, shall be the property of the Department, and that only the Department's logo shall appear on the works whose usage is subject to prior consent by the Department.

13.2 Panel members are prohibited from using and/or publishing research reports and documents produced as part of the scope and brief of the workstream, including presentation at Conferences and/or other fora without the written consent of the Department.

14. CONTRACT DOCUMENT

14.1 Apart from the General Conditions of Contract as prescribed by the National Treasury, successful panel applicants will be required to sign a Service Level Agreement (SLA) with the Department, vetted by the Chief Directorate: Legal Services.

15. COORDINATION/ ENQUIRIES

15.1 Further enquiries and general information regarding the administrative and procedural aspects relating to this assignment will be available from the Departments' Supply Chain Management Section.

15.2 For technical support, kindly contact one of the following officials:

Adv. Monwabisi Nkohla Director: Sector Policy & Programmes Development Email: Monwabisi.Nkohla@dhs.gov.za	Dr. Vuyisani Moss Director: Rental, Social & Affordable Housing Policy Development Email: Vuyisani.Moss@dhs.gov.za	Mr. Gilbert Khathi Director: Research Email: Gilbert.Khathi@dhs.gov.za
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PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)							
BID NUMBER: VA49/736		CLOSING DATE: 16 NOVEMBER 2021		CLOSING TIME: 11:00			
DESCRIPTION		TERMS OF REFERENCE FOR THE APPOINTMENT OF THE POLICY, RESEARCH AND LEGISLATIVE RESOURCE PANEL (PORLERT)					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)							
THE NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS,							
DR RUTH MOMPATI BUILDING							
260 JUSTICE MAHOMED STREET,							
SUNNYSIDE, PRETORIA							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO				TECHNICAL ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON		MS K MALEKA		CONTACT PERSON		MR GILBERT KHATHI	
TELEPHONE NUMBER		012 444 9243		TELEPHONE NUMBER			
FACSIMILE NUMBER				FACSIMILE NUMBER			
E-MAIL ADDRESS		khazeka.maleka@dhs.gov.za		E-MAIL ADDRESS		Gilbert.Khathi@dhs.gov.za	
SUPPLIER INFORMATION							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER		CODE		NUMBER			
CELLPHONE NUMBER							
FACSIMILE NUMBER		CODE		NUMBER			
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS		TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE		TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]	
		☐ Yes ☐ No				☐ Yes ☐ No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]							
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS							
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?						☐ YES ☐ NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?						☐ YES ☐ NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?						☐ YES ☐ NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?						☐ YES ☐ NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?						☐ YES ☐ NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.							

PART B

TERMS AND CONDITIONS FOR BIDDING

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

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

SIGNATURE OF BIDDER:

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

DATE:

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO.: VA49/736
CLOSING TIME 11:00	CLOSING DATE 16/11/2021

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

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

BID VA49/736: TERMS OF REFERENCE FOR THE APPOINTMENT OF THE POLICY, RESEARCH AND LEGISLATIVE RESOURCE PANEL (PORLERT)

1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project. R.....
3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

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

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

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

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

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

TOTAL: R.....

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

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

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

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

*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

THE NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS, 240 JUSTICE MAHOMED STREET, GOVAN MBEDI HOUSE, SUNNYSIDE, PRETORIA, 0002

MS M HITGE / MS K MALEKA

Tel: 012 444 9239 or 012 444 9245

DECLARATION OF INTEREST

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

¹"State" means –

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

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

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

2.7.1 If so, furnish the following particulars:

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

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

Position occupied in the state institution:

Any other particulars:

.....

.....

.....

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

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

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

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

.....

.....

.....

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

2.8.1 If so, furnish particulars:

.....

.....

.....

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

.....

.....

.....

YES/NO

.....

.....

.....

YES/NO

.....

.....

.....

[illegible]

4 DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF
PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION
PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

May 2011

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

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

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

1. GENERAL CONDITIONS

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

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

1.2

a) The value of this bid is estimated **not to exceed** R50 000 000 (all applicable taxes included) and therefore the **.....80/20.....** preference point system shall be applicable; or

b) The 80/20 preference point system will be applicable to 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

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

P_{min} = Price of lowest acceptable bid

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

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

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
------------------------------------	---------------------------------	---------------------------------

1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

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

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

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

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

7. SUB-CONTRACTING

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

(Tick applicable box)

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

- 7.1.1 If yes, indicate:

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

(Tick applicable box)

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

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

Designated Group: An EME or QSE which is at 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 OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		

4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		

SBD 8

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

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

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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

General Conditions of Contract

1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.
- 14. Spare parts
 - 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
 - (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. Warranty
 - 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
 - 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
 - 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
 - 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
 - 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

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

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| 16. Payment | <p>16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.</p> <p>16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.</p> <p>16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.</p> <p>16.4 Payment will be made in Rand unless otherwise stipulated in SCC.</p> |
| 17. Prices | <p>17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.</p> |
| 18. Contract amendments | <p>18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.</p> |
| 19. Assignment | <p>19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.</p> |
| 20. Subcontracts | <p>20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.</p> |
| 21. Delays in the supplier's performance | <p>21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.</p> <p>21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.</p> <p>21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.</p> <p>21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the</p> |

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

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

22. Penalties

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

23. Termination for default

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

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

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

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

23.4 If a purchaser intends imposing a restriction on a supplier or any

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.