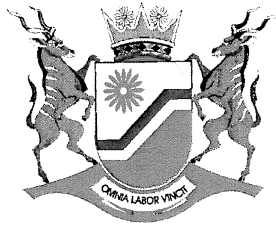


MPUMALANGA PROVINCIAL GOVERNMENT



DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND & ENVIRONMENTAL AFFAIRS

BID NUMBER: ALA/532/24/MP

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

ISSUED BY:

Department of Agriculture, Rural Development, Land & Environmental Affairs
Private Bag X11219
Mbombela
1200

NAME OF BIDDER:

TOTAL BID PRICE (all inclusive) :.....

(Also in words):

.....

PART A — INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND & ENVIRONMENTAL AFFAIRS					
BID NUMBER:	ALA/532/24/MP	CLOSING DATE:	02 DECEMBER 2024	CLOSING TIME:	12H00
DESCRIPTION	APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
MBOMBELA , Riverside Government Complex, Building No 9, Government Boulevard, Mbombela, 1200, PIET RETIEF , No. 11 Measroch Street, Piet Retief Office, KWAMHLANGA , KwaMhlanga Government Complex, Department of Finance, Building No. 12, Computer Centre EVANDER , 10 Cornell Road (previously occupied by Evander Home Affairs Offices), Evander, 2280, BUSHBUCKRIDGE , Bushbuckridge Advice Centre, Department of Finance, Protea building (old Telkom building), MIDDELBURG , Department of Public Works, Cnr. Lillian Ngoyi and Dr Beyers Naudé Streets – Old TPA Building, Upper ground floor, Office numbers A20, 21 and 25, MALELANE , 24 Air Street, Malelane, ELUKWATINI , Elukwatini Sub Regional offices, Office numbers A49 and A50 (opposite Elukwatini Community Hall) Stand number 12 Extension A, Elukwatini and SIYABUSWA Old Parliament Building, Building No1, Job Skhosana Street, Siyabuswa, 0472.					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Ms NI Mbuyane / Ms TV Dhludhlu		CONTACT PERSON	Ms. T Tanda / Ms. SS Molefi	
TELEPHONE NUMBER	013 766 6118 / 6674		TELEPHONE NUMBER	013 766 6070/6471	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	<u>nimbuyane@mpg.gov.za</u> / <u>tvmanana@mpg.gov.za</u>		E-MAIL ADDRESS	<u>TTanda@mpg.gov.za</u> / <u>MolefiSS@mpg.gov.za</u>	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				☐ YES ☐ NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				☐ YES ☐ NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				☐ YES ☐ NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

PART B
— TERMS AND CONDITIONS FOR BIDDING —

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

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

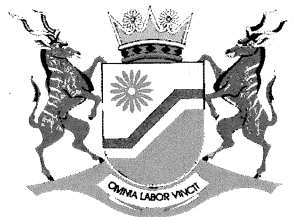
.....

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

DATE:

.....

MPUMALANGA PROVINCIAL GOVERNMENT



**DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND
ENVIRONMENTAL AFFAIRS
(DARDLEA)**

ALA/532/24/MP

BID DOCUMENT

**APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES
TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND
ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS**

NAME OF BIDDER : _____

TEL NUMBER : _____

FAX NUMBER : _____



**HEAD OF DEPARTMENT
MPUMALANGA DEPT OF AGRICULTURE, RURAL
DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS
PRIVATE BAG X11219
MBOMBELA,
1200**

**CONTACT: MS. T. TANDA / MS. S.S. MOLEFI
PHONE: 013 766 6070 / 013 766 6471**

CLOSING DATE: AS PER BID BULLETIN AT 12H00

THE BID IS VALID FOR 90 DAYS

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

1. BID NOTICE AND INVITATION TO BID

Bidders are hereby invited for the **appointment of a panel of Legal Practitioners to provide legal services for the Department of Agriculture, Rural Development, Land and Environmental Affairs for a period of three (03) years.**

Bid documents will be obtainable from the Bid offices, **Mbombela Riverside Government Complex, Malelane 24 Air Street, Siyabuswa Old Parliament Building, Middleburg Department of Public Works, Kwamhlanga Government Complex Department of Finance, Piet Retief no. 11 Mearsorch Street, Evander 10 Cornell Road, Elukwatini Sub-Regional Offices and Bushbuckridge Advice Centre, Department of Finance**, on payment of a non-refundable levy of **R100.00** or can be downloaded at **<http://www.etenders.gov.za>**. Only bank guaranteed cheques or cash will be accepted and documents can be collected between 7:45 and 16:00 Cheques shall be made payable to Mpumalanga Provincial Government.

The closing date for receipt of this bid is As Per Bid Bulletin.

Duly completed tenders enclosed in a sealed envelope marked "**Appointment of a panel of Legal Practitioners to provide legal and advisory services for the Department of Agriculture, Rural Development, Land and Environmental Affairs for a period of three (03) years**" with the name of the Bidder, shall be deposited in the clearly marked bidder boxes provided **at the following Supply Chain Offices:** Mbombela, Malelane, Bushbuckridge, Kwamhlanga, Middleburg, Siyabuswa, Piet Retief, Elukwatini and Evander. The Bid will be open in public.

Telegraphic, telephonic, telex, facsimile, e-mail and late bids WILL NOT be accepted.

Bidders should ensure that bids are delivered on time to the correct address. If the bid is late, it will not be accepted for consideration.

All documentation submitted in response to this bid must be in English, unless otherwise indicated under technical specification.

NB: COMPULSORY BRIEFING SESSION will be held as follows:

Bidder must attend at least or only one briefing session.

Date	Time	Venue	Location
22 November 2024	11h00	Riverside Office Park, Cycad Building Block 4 , DARDLEA Ehlanzeni District Office	Mbombela
21 November 2024	11h00	Kwamhlanga Governmen Complex	Kwamhlanga

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

2. INTRODUCTION

The Department of Agriculture, Rural Development, Land and Environmental Affairs hereby invites prospective bidders who have the necessary skills and capacity to serve on a panel of Legal Practitioners who will provide legal and advisory services to the Department of Agriculture, Rural Development, Land and Environmental Affairs for a period of three (03) years.

The legal practitioners include the following:

- Advocates or Attorneys admitted and enrolled as such in terms of section 24 and 30 of the Legal Practice Act No. 28 of 2014

3. BACKGROUND

The Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs in contributing to compliance to laws and regulations in the Public Service is currently seeking to appoint a panel of Legal Practitioners to render legal and advisory services for the Department of Agriculture, Rural Development, Land and Environmental Affairs in the Mpumalanga Province for a period of three (3) years.

4. PURPOSE

The purpose of the project is to appoint service providers who will render professional legal services to the Department of Agriculture, Rural Development, Land and Environmental Affairs in the Mpumalanga Province for a period of 36 months through suitably qualified service providers.

5. PROBLEM STATEMENT

The DARDLEA's Legal Service and Labour Relations Directorates are responsible for providing objective, value adding and legal services to the DARDLEA. The section ensures that DARDLEA's legal risks are managed adequately thereby reducing DARDLEA's exposure to litigation. To this end, DARDLEA seeks to establish a panel of Legal Practitioners from whom assistance shall be sought on a need basis. Therefore, DARDLEA requests proposals from capable Legal Practitioners in good standing within the legal fraternity.

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

6. OBJECTIVE

To appoint a panel of Legal Practitioners who will provide legal services to the Department of Agriculture, Rural Development, Land and Environmental Affairs (DARDLEA).

7. TERMS OF REFERENCE

7.1 The required legal services have been categorized into different categories as reflected below;

- Civil and Criminal Litigation;
- Environmental Law;
- Labour Law;
- Contract and Procurement Law;
- Forensic Investigations and other related legal services;

7.2 The successful Legal Practitioners:

- Must be able to conduct detailed and credible legal research in identifying and applying the applicable laws to the given set of facts in appropriate cases and providing solutions thereto within the specified time frame; and
- Provide legal opinions in all areas as and when required.

8. SPECIFIC PROJECT OUTPUTS

In carrying out the above functions, the service provider shall be required:

- 8.1 To receive formal written instructions from DARDLEA.
- 8.2 To consult with DARDLEA's responsible officials at their convenience.
- 8.3 To file a preliminary report detailing prospects of success of the matter and the best way to provide services required.
- 8.4 To file a project execution plan with stages, activities, milestone and timeframe.
- 8.5 To file compulsory monthly reports on the progress of the referred matters and/or file reports as and when requested to do so.
- 8.6 To submit compulsory monthly invoices for any work done and or services rendered.

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

- 8.7 To perform all necessary administrative functions as required in each case.
- 8.8 To enter into a service level agreement with DARDLEA and comply with the terms thereof.
- 8.9 To secure written approval from DARDLEA before deviating from the mandate as detailed in the instruction as no payment will be made to the panelist for any work or services rendered without prior written approval.
- 8.10 To secure written approval before defending and or instituting any interlocutory application.
- 8.11 To diligently attend to cases allocated to them and to ensure the provision of quality services, ensuring that there is no deviation from the mandate without prior written approval by DARDLEA.
- 8.12 To identify case trends and hotspots for the attention of DARDLEA.
- 8.13 To submit a certified copy of a valid Fidelity Fund certificate by no later than 31 December of the preceding year of the three-year contract, failure to submit the above-mentioned documents may result in suspension within 30 days of notice and or removal from the panel within 60 days of notice.
- 8.14 To submit a closeout report at the finalization of a case.

9. PROJECT MANAGEMENT

- 9.1 The Department's Legal Services and Labour Relations officials will be responsible for the overall management of the cases as assigned to the panelist.
- 9.2 Each case will be managed in accordance with case implementation plan dealing with stages, activities, milestone and timeframe of the case, which must be developed by the panelist and must be in line with the target dates set by DARDLEA.
- 9.3 DARDLEA will conduct quarterly reviews for the duration of the contract to assess the performance of the panelists, and
- 9.4 DARDLEA may cancel the contract should the performance be found to be unsatisfactory during the reviews

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

10. SPECIAL CONDITION OF CONTRACT

- 10.1 The Department reserves the right to appoint the bidders to provide legal services to the Department in Mpumalanga Province for a period of 36 months according to its own discretion and needs;
- 10.2 To negotiate with one or more preferred bidder(s) identified in the evaluation process, regarding any terms and conditions, including price without offering the same opportunity to any other bidder(s) who has not been awarded the status of the preferred bidder(s);
- 10.3 The Department reserves a right to appoint service providers on the agreed negotiated rates.
- 10.4 This proposal is not an offer to purchase any service or material, and DARDLEA will not incur or be liable of any cost associated with the preparation of this proposal.
- 10.5 The department reserves a right NOT to appoint any service provider if it deems fit that the bid is non-responsive.
- 10.6 The Department reserves the right to invite the preferred bidder(s) for further clarity on their bids if necessary.
- 10.7 Awarding of a bid will be subject to the Service Provider's acceptance of the Fee Agreement, Tariff, Terms and Conditions;
- 10.8 The department is not obliged to request service from the contracted service provider if the condition of the contract is no longer in the best interest of the department.
- 10.9 Being on the panel does not guarantee work from the Department;
- 10.10 To accept part of a bid rather than the whole tender;
- 10.11 To carry out site inspections, product or services evaluations or explanatory meetings in order to verify the nature and quality of the services offered by the bidder(s), whether before or after adjudication of the Bid;
- 10.12 To correct any mistakes at any stage of the bid that may have been in the Bid documents or occurred at any stage of the tender process;
- 10.13 To cancel and/or terminate the tender process at any stage, including after the Closing Date and/or after presentations have been made, and/or after bids have been

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

evaluated and/or after the preferred bidder(s) have been notified of their status as such;

10.14 The Department will pay rates per kilometre up to a limit of 2.0-liter engine capacity;

10.15 Panelists are expected to understand the languages as per the allocated instruction.

The Department will not incur any costs for interpretation/ translation services.

10.16 Work will be allocated to panelist members using rotational system based on the nature of the case, experience of the Legal Practitioner and field of specialization;

10.17 Bidders may be rotated as per the departmental rotation register depending on the nature of the case, experience of the Legal Practitioner and field of specialization;

10.18 No service or delivery shall be accepted or received without written instruction.

10.19 The overall execution of instructions shall operate within the period which will be agreed upon with the service provider and recorded in the service level agreement;

10.20 DARDLEA reserves the right to subject the service providers' invoices for assessment;

10.21 DARDLEA will assume full ownership of the reports, data and information obtained during the execution of instructions by the panelist and reserves the right to use them as it deems fit;

10.22 All such materials are and remain the property of DARDLEA at all times and no document or part thereof may be reproduced, copied or distributed without the prior written consent of DARDLEA;

10.23 The contractual agreement relating to instructions issued may not be amended without agreement by both parties;

10.24 The services of the panelists will be requested as and when required by DARDLEA;

10.25 During specific case, panelist will be expected to respond within timeframe to be specified in the case allocation instruction letter;

10.26 A panelist may apply for her/his replacement from the panel with similar or more experienced individual(s) and such changes must be approved by the Department;

10.27 Briefing of counsel may only be done in consultation with DARDLEA;

10.28 The appointed Service Provider will enter into service level agreement (SLA) with DARDLEA, prior to commencement of the contract;

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

- 10.29 DARDLEA reserves the right to terminate the contract in the event there is clear evidence of non-performance, misrepresentation and gross dishonesty and/or any other behavior which then cause irreparable breakdown of the relationship;
- 10.30 The original Bid documents should be completed in black ink and any use of correction pen (tippex) on the bid document shall nullify the bid.
- 10.31 Any blank spaces or use of a correction pen (tippex) on the bid document will result in a disqualification.
- 10.32 The Pricing Schedule must be fully completed.
- 10.33 Any alteration or use of own designed bill of quantity will result in a disqualification.
- 10.34 Bidders should note that quantities and grand totals referred to in the bill of quantities are for bid evaluation purposes and do not reflect real quantities to be bought neither the total amount to be paid to the supplier annually nor after the duration of the contract.

11. PROPOSAL FORMAT

The following must be contained in detailed and comprehensive proposal to be submitted by potential panelists:

- 11.1 Capacity: A Legal Practitioner with three years' (or more) of experience post admission to the relevant profession (Attach CV and Admission certificates);
- 11.2 Submit a certified copy of a valid Fidelity Fund Certificate;
- 11.3 Submit a letter of good standing with the relevant Legal Practice Council relating to the Legal Practitioner that will be involved;
- 11.4 Provide the details of the firm's address, infrastructure, resources and confirmation of the premises from which it conducts its business;
- 11.5 The successful Legal Practitioners shall communicate directly with the Senior Managers responsible for Legal Services and Labour Relations depending on the services (instructions) required;

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

11.6 The Legal Practitioners must disclose to DARDLEA any conflict of interest that may have an impact on them providing any of the legal services referred to above, irrespective of when it may arise.

12. EVALUATION PROCESS

The evaluation process comprises of the following phases:

Phase I: Initial screening process

During this phase bid documents will be reviewed to determine compliance with the following:

- Attendance of compulsory briefing session and signing of attendance register;
- All SBD forms (SBD 1, SBD 4 and SBD 6.1) should be fully completed and signed;
- The Bill of Quantities (BoQ) must be fully completed and signed;
- Certified copy of a valid Fidelity Fund Certificate (Certification should not be more than 6 months by the closing of bid;
- Signed Joint Venture Agreement and Power of Attorney in case of Joint Ventures;
- Company Profile, including previous contract work done, value of the work and contactable references per contract;

All bidders must be registered with the Central Supplier Database (CSD) failure to do so will be automatically disqualified.

NB: It is the responsibility of the bidder to ensure that the following key information is in order to avoid any disqualification during the bid evaluations:

- The Business registration status
- Bid restrictions and defaulters status
- Identification number and the service of the state status

A bidder must comply with all Phase one (I) requirements in order to qualify for the next phase of evaluation process.

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

Phase II: Functionality evaluation as per attached Terms of Reference

- a) Bids will be evaluated strictly according to the bid evaluation criteria stipulated in the terms of reference.
- b) Bidders must as part of their bid documents, submit supportive documentation for all technical requirements as indicated hereunder. The panel responsible for scoring for the respective bids will evaluate and score all bids based on their submissions and the information provided.
- c) Bidders will not rate themselves, but need to ensure that all information is supplied as required. The Bid Evaluation committee (BEC) will evaluate and score all responsive bids and will verify all documents submitted by the bidders.
- d) The panel members will individually evaluate the responses received against the following criteria as set out below:

BID EVALUATION CRITERIA FOR PREFERENCE AND PRICE			
Criteria	EVIDENCE	Weight	Points (100)
Profile of Key Personnel considering ability & capability: Legal practitioner with 3 years and above' post admission experience. (The bidder must be in good standing to act as a legal practitioner) <i>Certification should not be more than 6 months by the closing of bid.</i>	Certified Admission certificates for legal practitioners and Fidelity Fund Certificates: 0-2 years	1	20
	Certified Admission certificates for legal practitioners and Fidelity Fund Certificates: 3-5 years	2	
	Certified Admission certificates for legal practitioners and Fidelity Fund Certificates: 5-7 years	3	
	Certified Admission certificates for legal practitioners and Fidelity Fund Certificates: 7-9 years	4	
	Certified Admission certificates for legal practitioners and Fidelity Fund Certificates: 10 and above	5	
	No proof	1	

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

Proven work experience to be demonstrated. (Attach letter(s) of appointment, instructions and reference letters demonstrating work experience in the field of law)	appointment letter, 1 instruction and reference letter	2	40
	appointment letter/s , 2 instructions and reference letters	3	
	appointment letter/s, 3 instructions and reference letters	4	
	appointment letter/s, 4 instructions and reference letters	5	
Court Decision / Order obtained The bidder must have successfully managed or litigated and obtained written court decision / order in any of the courts on any of the following fields: 1. Civil and Criminal Litigation; 2. Environmental Law; 3. Labour Law; 4. Contract and procurement law; (Attach portfolio of evidence; written court decision / order - Magistrate Court, High Court of South Africa and or Labour Court reflecting your firm's name.)	No court decision / order obtained	1	40
	Proof of 1 court decision / order obtained in any of the courts on any of the fields:	2	
	Proof of 2 court decisions / orders obtained in any of the courts on any of the fields:	3	
	Proof of 3 court decisions / orders obtained in any of the courts on any of the fields:	4	
	Proof of 4 court decisions / orders obtained in any of the courts on any of the fields:=	5	
TOTAL		100	

Only bidders who attain a minimum of 70 percent on Functionality will qualify to proceed for further evaluation on Price and Preference points.

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

THE BID EVALUATION COMMITTEE MAY CONDUCT PHYSICAL VERIFICATION DURING THE EVALUATION PROCESS.

- e) Each panel member will rate each individual criterion on the score sheet using the following scale:

1-Poor, 2- Below average, 3- Good, 4- Very good, 5- Excellent

- f) Individual value scores will be multiplied with the specified weighting for the criterion to obtain the marks scored for all elements. These marks will be added and expressed as a fraction of the best possible score for all criteria. This score will be converted to a percentage and only bidders that have met or exceeded the minimum threshold of 70% for functionality will be evaluated and scored in terms of pricing and socio-economic goals as indicated hereunder.
- g) The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- h) This score will be converted to a percentage and only bidders that have met or exceeded the minimum threshold of 70 percent for functionality will be evaluated and scored in terms of pricing and socio economic goals as indicated hereunder.
- i) Any proposal not meeting a minimum score of 70% functionality will be disqualified.
- j) The price will not be evaluated at this stage

Phase III: Price / Financial stage

- a) Price / Financial proposal must be submitted in South African Rand.
- b) The following formula will be used to calculate the points for price in respect of this bid:

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

Where

Ps= Points scored for the comparative price of bid under consideration

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

Pt= Comparative price of bid under consideration

P min = Comparative price of lowest acceptable bid

- c) The responsive bids will be adjudicated by the State on the 80/20-preference point system based on price points and preference point:
- The bid price (maximum 80 points)
 - Broad-based black Economic Empowerment as well as specific goals (maximum 20 points)
- d) The department reserves the right to arrange contracts with more than one contractor.
- e) The Preferential Procurement Policy Framework Act 2000 (PPPFA) Preferential Procurement Regulations 2022, Regulations were gazetted on 4 November 2022 (No. 47552) Vol.689 and effective from 16 January 2023. These bid will be evaluated as per above mentioned regulations. Bidders are required to submit evidence by which preference points can be claimed based on the specific goals determined by the Department. In case of a Joint Venture, the average score of the joint companies will be considered for determining preference point score.
- f) A maximum of 20 points may be awarded to a bidder for full complying with specific goals requirements stipulated in the table below. For this bid the maximum number preference points that could be allocated to a bidder are indicated below:

Specific Goal	Maximum Preference Points Allocated	Minimum Proof required for claiming preference points
An Enterprise owned by at least 51% black people	5	CIPC enterprise registration certificate, certified ID copies of company owners and Accredited B-BBEE status level contributor certificate or certified and signed sworn affidavit
An Enterprise owned by at least 51% women	5	CIPC enterprise registration certificate, certified ID copies of company owners and Accredited B-BBEE status level contributor certificate or certified and signed sworn affidavit
An Enterprise owned by at least	5	Proof of disability (Certificate from a medical doctor that specifies the nature of the disability)

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51% persons with disability		
An Enterprise practicing within Mpumalanga Province	5	Proof of address (Municipal bills which is in the name of the bidder or Permission to occupy from local chief in case of rural areas or Lease Agreement which is in name of the bidder)
TOTAL	20 POINTS	

NB: Failure to capture the required status level on the SBD 6.1 and to submit the required B-BBEE status level certificates will lead to a zero (0) status level for non-compliant service providers.

Failure to submit the required evidence will lead to allocation of zero (0) preference

- a) The points scored by a bidder in respect of the points indicated above will be added to the points scored for price.
- b) Supply Chain Management may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to B-BBEE status.
- c) Points scored will be rounded off to the nearest 2 decimals.
- d) In the event that two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for B-BBEE status. Should two or more bids be equal in all respects, the award shall be decided by drawing of lots.
- e) The contract will be awarded to the highest scored bidders or unless on reasonable and justifiable grounds, be awarded to a bid that did not score the highest number of points. The bidder must submit copies of identity documents of all directors or shareholders of the company with the bid documents at the closing date and time of the bid.

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NB: It is the responsibility of the service provider to ensure that tax is compliant during the appointment stage and have a valid bank account.

- Where the recommended bidder is not tax compliant, the bidder will be notified by email or in writing of their non-compliant status and the bidder will be requested to provide written proof from SARS on their compliance status or proof that they have made an arrangement to meet their outstanding tax obligation, within 7 working days. The bidder should thereafter provide the Department with proof of their tax compliance status which should be verified via the Central Supplier Database.
- Should the recommended bidder fail to provide written proof of their tax compliance status within seven (7) working days for bids; the Accounting Officer or Accounting Authority must reject the bid submitted by the bidder.
- Where goods and services have been delivered satisfactory without any dispute the department must not delay the processing of payments as a result of outstanding tax matters.
- A bidder must register for Value Added Tax (VAT) if the total value of taxable goods or services awarded is more than R1 million in a 12-month period or is expected to exceed this amount.

13. CLIENT BASE

The information submitted concerning the experience may be verified in terms of contactable references which are on the company profile. The references may include the names of relevant persons as well as their phone numbers and email addresses.

DARDLEA may utilize this data to obtain information during the evaluation and adjudication process.

14. INDEMNITY IMPLICATIONS

Successful service providers must be prepared to enter into a service-level agreement with the DARDLEA.

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DARDLEA reserves the right to award this bid on a non-exclusive basis, i.e. DARDLEA may procure similar services outside this bid with the view of securing the best service and value for money.

15. COMMUNICATION

Supply Chain Management will communicate with bidders for, among others. Where bid clarity is sought, to obtain information or to extend the validity period. Any communication either by facsimile, letter or electronic mail or any other form of correspondence to any government official, department or representative of a testing institution or a person acting in an advisory capacity for DARDLEA in respect of this bid between the closing date and the award of the bid by the bidder is prohibited.

16. COUNTER CONDITIONS

Bidders' attention is drawn to the fact that amendments to any of the Special Conditions by bidders will result in invalidation of such bids.

17. PROHIBITION OF RESTRICTIVE PRACTICES

- a) In terms of section 4(1) 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:
- Directly or indirectly fixing a purchase or selling price or any other trading condition;
 - Dividing markets by allocation customers, suppliers, territories or specific types of goods or services; or
 - Collusive bidding.
- b) If a bidder(s) or contractor(s), in the judgment of purchaser, has/have engaged in any of the restrictive practices referred to above, the purchaser may, without prejudice to

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any other remedy provided for, invalidate the bid(s) for such items(s) offered or terminate the contract in whole or in part and refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Completion Act no.89 of 1998.

- c) Persons and Legal entities bidding shall at all times demonstrate integrity, objectivity and independence, as they will have powers and authority to enforce market rules on all stake holders including but not limited to Market Agents.
- d) The bidders shall not be subject to any incompatible practices, including but not limited to those described in section 4 of the Rules in Respect of Fresh Produce Agents (APAC Rules in terms of, Agricultural Produce Agents Act, No. 12 of 1992) read in conjunction with section 2 of the said Rules in that:
- *The bidder(s) shall be legal entities that are not conflicted and have direct interest in the products sold and or suppliers thereof.*
 - *The bidder(s) shall not have relationships or interest that, either directly or indirectly, impair or threaten his capacity to act with integrity, objectivity and independence.*
 - *The bidder(s) shall have the capacity maintain such integrity and objectivity in the practicing of his occupation as is necessary to enable him to apply unbiased judgment and objective consideration in forming an opinion or arriving at decisions.*
 - *The bidder(s) shall not hold decision making positions, controlling interests or offices for whatever nature, or engage in any venture, business, or occupation, which results or could result in a conflict of interest or an impairment of his independent judgement in the execution of this role.*

18. FRONTING

DARDLEA supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conduction themselves in accordance with the Constitution and in an honest,

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fair, equitable, transparent and legally compliant manner. Against this background, DARDLEA condemns any form of fronting.

DARDLEA, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry be established during such enquiry/investigation, the onus will be on the bidder / contractor to prove that fronting does not exist.

Failure to do so within a period of 14 days from date of notification may invalidate the bid/contract and may also result in the restriction of the bidder/contractor to conduct business with public sector for a period not exceeding ten years, in addition on any other remedies DARDLEA may have against the bidder/contractor concerned.

Fronting is prohibited. Any bidder found to have fronted shall automatically be disqualified. For contracts already awarded, the contract shall be cancelled and any costs borne shall be for the account of the defaulting Bidder. These costs shall include the costs of appointing another Bidder to complete the work.

19. COMPLETION PERIOD

The successful Bidder(s) will be expected to offer the services as and when required for a period of 36 months.

The service providers are expected to deliver the required goods within 30 days after the receipt of an order or unless agreed upon with the Department within the duration of the contract.

20. MONITORING

Bidders are to note that the Department will monitor and evaluate the project through its delegated officials. All payment claims are to be certified by the delegated official, before payment can be effected.

21. TAXES

Value Added Tax at 15% must be included in the agency fees. If a bidder is not registered with SARS for VAT purposes and is awarded a bid that is above the threshold required for registration, proof for VAT registration application must be submitted within 14 days of the signing of the contract with the Department. **Failure to submit the above-stated shall result in the VAT not been paid to the Bidder.**

22. PRICE NEGOTIATION

- a) The market-related prices as gazetted by the Legal Practice Council (LPC) are used as a basis to negotiate agreed market rates.
- b) Rates will be negotiated whereby negotiated agreed market rates will apply to all ten successful bidders in terms of the market-related price.
- c) If the market-related price is not agreed to as envisaged by the ten bidders the department shall cancel the bid.
- d) Service providers quoted above the market-related prices will be offered the market-related prices as rates offered by the department. If all bidders do not agree, they are requested to provide reasons for rejecting the offer, and reasons may be supported by proof of relevant market rates.
- e) Service providers quoted below the market-related prices and confirmed that they will deliver the goods and services as per the quoted prices will be appointed based on their quoted prices.

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- f) The department will prepare individual bills of quantity for each bidder, which will be used during service delivery: service providers who quoted below the market rate may sign a BoQ which may be different from the panel rates.
- g) The department and the bidders may negotiate items as and when required by the market.

23. RIGHT OF DARDLEA TO INVESTIGATE AND SEEK CLARIFICATION

- The Department may, in its sole discretion, seek clarification, during the process. In the process of clarification, no change in the substance of the Technical Section or in the Financial Section shall be sought, offered or permitted.
- The Department shall, seek all clarifications in writing and the bidder's responses shall also be in writing. Without limiting the information above, the Department may, in its sole discretion;
- Investigate evidence of the ability and experience of a Bidder under consideration, including joint venture partners, proposed sub-contractors, and parties otherwise related to the Bidder or the Bidder's Proposal; and
- Require or seek out confirmation from other parties of information furnished by a Bidder.

24. ARITHMETICAL ERRORS

Check responsive Bid offers for arithmetical errors, correcting them in the following manner:

- Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.
- If a bill of quantities (or schedule of rates) apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross

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misplacement of the decimal point in the unit rate, the line item total as Bided shall govern, and the unit rate will be corrected.

- Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the service provider's addition of prices, the total of the prices shall govern and the service provider will be asked to revise selected item prices (and their rates if a bills of quantities applies) to achieve the Bided total of the prices.
- Consider the rejection of a Bid offer if the service provider does not correct or accept the correction of his arithmetical errors in the manner described above.

25. SIGNATURE OF AUTHORITY

Only persons duly authorized by a company shall sign the documents that are to be submitted to the Department. A letter of authorization must accompany bid documents. In terms of joint ventures, a document of establishment of the venture must accompany bid documents. Representatives of all the parties in the joint venture shall sign the establishment document.

26. ACCEPTANCE AND REJECTION

The Department may reject any bid document if it deviates from the set criteria and reserves the right to accept or reject any bid if it does not meet the necessary requirements.

27. TIME SCHEDULE

All bids will be valid for 90 days after closing date. In cases where the bidder fails to sign the contract of agreement or produce the required security within the required time, be unable to undertake work given or withdraw during the appointment period, the bidder shall repay the full expenses of re-advertising and preparing of new bids. This shall not apply if the Department accepts another bidder from the list.

28. JURISDICTION

The applicable legislation of the Republic of South Africa shall apply to each contract on its acceptance as *domicilium citandiet executandi*, where any legal process may be resumed on the contractor.

Each bidder binds itself to the jurisdiction and the stipulated laws of the Republic of South Africa.

29. PAYMENTS

Payments shall be as stipulated in the Service Level Agreement entered into between the department and the successful bidder.

30. MEDIATION AND ARBITRATION

Mediation and Arbitration proceedings shall be in terms of rules laid by the Law Society of South Africa.

31. PROJECT MANAGEMENT

- a) The Department officials will be responsible for the overall management of the cases as assigned to the panelist;
- b) Each case will be managed in accordance with case implementation plan dealing with stages, activities, milestone and timeframe of the case which must be developed by the panelist and must be in line with the target dates set by the DARDLEA;
- c) DARDLEA will conduct quarterly reviews for the duration of the contract to assess the performance of the panelist; and
- d) DARDLEA may cancel the contract should the performance be found to be unsatisfactory during the reviews.

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32. ENQUIRIES AND CLOSING DATE

No visit to the respective persons will be entertained to ensure fairness to all prospective bidders and for audit ability purposes.

Technical Enquiries	:	Ms. T. Tanda OR Ms. S.S. Molefi
Contact	:	013 766 6070 / 013 766 6471
Administrative Enquiries	:	Ms NI MBUYANE or Ms TV Dhludhlu
Contact	:	013 766 6118 / 013 766 6674
Email	:	TTanda@mpg.gov.za / MolefiSS@mpg.gov.za
	:	<u>nimbuyane@mpg.gov.za / vmanana@mpg.gov.za</u>

_CLOSING DATE : AS PER BID BULLETIN

NB: NO LATE SUBMISSIONS WILL BE ACCEPTED

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BILL OF QUANTITIES

NO	PANELIST	QTY	RATE
1	20 years and more	Hour	
2	15 — 20 years	Hour	
3	10— 15 years	Hour	
4	5— 10 years	Hour	
5	3--- 5 years	Hour	
6	Candidate Attorneys	Hour	
7	Paralegals	Hour	
8	Perusal of documents	Hour	
9	Drafting of pleadings, affidavits and reports	Hour	
10	Drafting of letters and formal notices	Hour	
11	Traveling time	Hour	
12	Faxes per page	Page	
13	Photocopies per page	Page	
14	Travelling costs — use of own car per KM	KM	
15	Accommodation	Night	
16	Cell/Phone Call costs	Minute	
TOTAL RATES VAT EXCLUSIVE			
VAT at 15 %			
TOTAL RATES VAT INCLUSIVE (TOTAL BID OFFER)			

Name of the bidder: _____ **Date :** _____

Signature: _____



TAX CLEARANCE

TCC 001

Application for a Tax Clearance Certificate**Purpose**Select the applicable option Tenders ☐ Good standing ☐

If "Good standing", please state the purpose of this application

Particulars of applicantName/Legal name
(Initials & Surname
or registered name)Trading name
(if applicable)

ID/Passport no

Company/Close Corp.
registered no

Income Tax ref no

PAYE ref no 7

VAT registration no 4

SDL ref no L

Customs code

UIF ref no U

Telephone no

Fax no

E-mail address

Physical address

Postal address

Particulars of representative (Public Officer/Trustee/Partner)

Surname

First names

ID/Passport no

Income Tax ref no

Telephone no

Fax no

E-mail address

Physical address

Particulars of tender (If applicable)Tender number Estimated Tender amount — R Expected duration of the tender year(s)**Particulars of the 3 largest contracts previously awarded**

Date started	Date finalised	Principal	Contact person	Telephone number	Amount
--------------	----------------	-----------	----------------	------------------	--------

Audit

Are you currently aware of any Audit investigation against you/the company? YES NO
 If "YES" provide details

Appointment of representative/agent (Power of Attorney)I the undersigned confirm that I require a Tax Clearance Certificate in respect of Tenders or Goodstanding.I hereby authorise and instruct to apply to and receive from SARS the applicable Tax Clearance Certificate on my/our behalf.

Signature of representative/agent

Date

Name of representative/agent

Declaration

I declare that the information furnished in this application as well as any supporting documents is true and correct in every respect.

Signature of applicant/Public Officer

Date

Name of applicant/
Public Officer**Notes:**

- It is a serious offence to make a false declaration.
- Section 75 of the Income Tax Act, 1962, states: Any person who
 - fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
 - without just cause shown by him, refuses or neglects to-
 - furnish, produce or make available any information, documents or things;
 - reply to or answer truly and fully, any questions put to him ...
 As and when required in terms of this Act ... shall be guilty of an offence ...
- SARS will, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.**
- Your Tax Clearance Certificate will only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

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

Full Name	Identity Number	Name of institution	State

2.2 Do you, or any person connected with the bidder, have a relationship

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

SBD4

with any person who is employed by the procuring institution? YES/NO

2.2.1 If so, furnish particulars:

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

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

2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 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.

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

SBD4

- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....
.....
Signature

.....
.....
Date

.....
.....
Position

.....
.....
Name of bidder

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

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

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

1. GENERAL CONDITIONS

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

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

1.2 **To be completed by the organ of state**

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

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

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

1.4 **To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

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

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

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

2. DEFINITIONS

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

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20

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

Where

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

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

3.2.1. POINTS AWARDED FOR PRICE

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

80/20

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

Where

- P_s = Points scored for price of tender under consideration
 P_t = Price of tender under consideration
 P_{max} = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

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

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

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

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The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
An Enterprise owned by at least 51% black people	5	
An Enterprise owned by at least 51% women	5	
An Enterprise owned by at least 51% persons with disability	5	
An Enterprise practicing within Mpumalanga Province	5	

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium

One-person business/sole propriety

Close corporation

Public Company

Personal Liability Company

(Pty) Limited

Non-Profit Company

State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any

APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS TO PROVIDE LEGAL SERVICES TO THE DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT, LAND AND ENVIRONMENTAL AFFAIRS FOR A PERIOD OF THREE (3) YEARS

of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –

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

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

THE NATIONAL TREASURY

Republic of South Africa



**GOVERNMENT PROCUREMENT:
GENERAL CONDITIONS OF CONTRACT**

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

16. Payment

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

17. Prices

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract amendments

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

19. Assignment

- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

20. Subcontracts

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

21. Delays in the supplier's performance

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

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

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

	—may be due to him
25. Force Majeure	25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure. 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.
26. Termination for insolvency	26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
27. Settlement of Disputes	27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation. 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party. 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law. 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC. 27.5 Notwithstanding any reference to mediation and/or court proceedings herein, (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and (b) the purchaser shall pay the supplier any monies due the supplier.
28. Limitation of liability	28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6; (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

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

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

Js General Conditions of Contract (revised July 2010)