

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	DOH(FS)07/2026/2027	CLOSING DATE:	14 AUGUST 2026	CLOSING TIME:	11H00
DESCRIPTION	INVITATION OF PROPOSALS FROM SUITABLY QUALIFIED PRIVATE LAW FIRMS FOR INCLUSION IN A PANEL OF LEGAL SERVICE PROVIDERS TO RENDER COMPREHENSIVE LEGAL SERVICES ON AN AS AND WHEN THE NEED ARISES BASIS FOR THE FREE STATE DEPARTMENT OF HEALTH WITH A PRIMARY FOCUS ON LITIGATION MANAGEMENT AND MEDICO-LEGAL CLAIMS. PERIOD: DATE OF SIGNING OF CONTRACT FOR FIVE (05) YEARS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
DEPARTMENT OF FREE STATE HEALTH.					
GROUND FLOOR, BOPHELO HOUSE, BLOCK C-WEST, OPPOSITE MAIN DOOR.					
C/O CHARLOTTE MAXEKE STREET AND HARVEY ROAD, BLOEMFONTEIN.					
DEPARTMENT OF FREE STATE HEALTH.					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Me. C.J.B Naicker		CONTACT PERSON	Adv. S.A Moshodi	
TELEPHONE NUMBER	051 408 1152		TELEPHONE NUMBER	051 408 1483/066 303 7289	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	NaickerCJB@fshealth.gov.za		E-MAIL ADDRESS	MoshodiSA@fshealth.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] ☐ Yes ☐ No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?			☐ YES ☐ NO		
DOES THE ENTITY HAVE A BRANCH IN THE RSA?			☐ YES ☐ NO		
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?			☐ YES ☐ NO		
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?			☐ YES ☐ NO		
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?			☐ YES ☐ NO		
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, 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 (SBD7.1).
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:

.....

EXPLANATORY MEETING CERTIFICATE

BID NUMBER: DOH (FS)07/2026/2027

Attendance list number: _____

DOH(FS)07/2026/2027: INVITATION OF PROPOSALS FROM SUITABLY QUALIFIED PRIVATE LAW FIRMS FOR INCLUSION IN A PANEL OF LEGAL SERVICE PROVIDERS TO RENDER COMPREHENSIVE LEGAL SERVICES ON AN AS AND WHEN THE NEED ARISES BASIS FOR FREE STATE DEPARTMENT OF HEALTH WITH A PRIMARY FOCUS ON LITIGATION MANAGEMENT AND MEDICO-LEGAL CLAIMS.

PERIOD: DATE OF SIGNING OF CONTRACT FOR FIVE (05) YEARS.

Attendance of the explanatory meeting is NON-COMPULSORY

An official of the Department must sign this certificate at the explanatory meeting. No certificate will be signed outside the meeting. The original certificate must be included in the bid document and will not be accepted after the closing time and date of the bid.

NON-COMPULSORY EXPLANATORY MEETING DATE: 28 JULY 2026

TIME: 10H00

VENUE: Auditorium, First Floor
Bophelo House, C/O Charlotte
Maxeke Street and Harvey Road
Bloemfontein
9301

CONTACT PERSON/S: Adv. S.A Moshodi
051 408 1483 / 066 303 7289

This is to certify that _____ in his/her capacity as
_____ of the company _____ has attended the
Compulsory Explanatory meeting on the _____ day of _____ 2026 and is
therefore familiar with circumstances and the scope of the items to be supplied.

**SIGNATURE /DEPARTMENTAL
OFFICIAL**

RANK

**SIGNATURE OF REPRESENTATIVE
OF COMPANY**

DATE

OFFICIAL DATE
STAMP

*** Note: Only one certificate per company**



health

Department of
Health
FREE STATE PROVINCE

INVITATION OF PROPOSALS FROM SUITABLY QUALIFIED PRIVATE LAW FIRMS FOR INCLUSION IN A PANEL OF LEGAL SERVICE PROVIDERS TO RENDER COMPREHENSIVE LEGAL SERVICES ON AN “AS-AND-WHEN THE NEED ARISES” BASIS FOR THE FREE STATE DEPARTMENT OF HEALTH (FSDOH), WITH A PRIMARY FOCUS ON LITIGATION MANAGEMENT AND MEDICO-LEGAL CLAIMS.

**PERIOD: FROM DATE OF SIGNING OF CONTRACT
FOR FIVE YEARS**

ENQUIRIES:

Name: Adv. SA Moshodi
Tel: 051 408 1483
Fax: 051 408 1763
Cell: 0663037289

1. INTRODUCTION

The Department of Health, Free State is an organ of state as contemplated in terms of the Constitution of the Republic of South Africa. The Department's mandate in terms of the Constitution, the National Health Act and other statutes is to *inter alia* provide health care services to the Free State population. It currently has 32 Hospitals and 224 clinics spread across the province.

Litigation must be handled effectively and efficiently. The process of handling litigation matters is done via the Legal Services unit and State Law Advisors by instructing and liaising with the Office of the State Attorneys (OSA), which office has been established by law to represent the state in court. The outcome of the litigation matters referred to the State Attorneys depends mostly on the manner, efficiency and the speed in which matters are handled.

Medical negligence is a specialised field and thus require a dedicated team, which is well skilled in the field and has the necessary resources. Further to the aforementioned, with an influx of litigation against the Department, it is essential that litigation be given the attention it deserves to safe guard the interests of the state. The Department is therefore desirous to appoint a panel of external legal firms to provide litigation support to the Department in medico-legal matters on an "as-and-when" basis, in collaboration with the OSA.

2. SCOPE OF WORK

It will be expected of the service providers on the panel to provide expert litigation support by acting as attorneys for the Free State Department of Health to advise on and defend cases against the Department based on alleged medical negligence. This panel will be utilized when the direct utilization of the OSA's internal capacity proves insufficient and specialized expertise or urgent litigation requirements dictate.

3. PROJECT TEAM

- 3.1 The bidder must provide a list of persons (attorneys) who will be dedicated to this project. For each attorney, a curriculum vitae and letter of good standing from the Legal Practice Council and fidelity fund certificate (where applicable) must be submitted.

- 3.2 The curriculum vitae must give clear demonstration of experience in management of personal injury claims, contract law, labour law, administrative law and medical negligence cases, e.g. cerebral palsy, surgical and retinopathy of prematurity cases.
- 3.3 The bidder must be conscious of the empowerment objectives of government and endeavour to include women and persons from previously disadvantaged groups in their list.
- 3.4 The bidder will be required to establish a well-resourced local office by a director / partner within the radius of 15 km of the Bloemfontein high court. It is expected that the office will be established within a period of 30 days of the letter of appointment. Establishment of the office and locality is therefore a condition for appointment.

4. TIME FRAMES

- 4.1 The service shall commence on the signing of the service level agreement for a period of five (5) years.
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- 4.2 In an event where the contract expired and the successful bidder has not concluded a case, the bidder will be required to handover the case to the department accompanied by the detailed status report of each case and the supporting documents.

5. PROJECT MANAGEMENT ARRANGEMENTS

The service provider will report directly and handover all deliverables to the Director: Legal Services Department of Health Free State in collaboration with the State Law Advisers.

6. CONTRACTUAL ARRANGEMENTS

An agreement will be drawn up detailing all contractual obligations and it will be expected of the service provider to sign a contract document with the Department. Conclusion of a Service Level Agreement is a condition for appointment. In an event that the appointed service provider failed to comply with the terms and conditions of the contract and the department is left with no choice but to terminate the contract. The Department will

consider to appoint the second recommended bidder at the time of bidding for the remaining contract period.

7. PRICE

7.1 The bidder must indicate an hourly rate as per Rules Board for Courts of Law guidelines that will be charged by each resource. The quoted rates should be for the following categories.

- 7.1.1. Director / equivalent;
- 7.1.2. Senior associate / equivalent
- 7.1.3. Associate / equivalent
- 7.1.4. Consultants
- 7.1.5. Candidate attorney / equivalent

7.2 Allocation / spread of hours per matter will be finalized in the service level Agreement after the award.

7.3 Disbursement and expenses will be as per Legal Practice Council guidelines and thus need not be quoted.

7.4 The appointment of private legal practitioners will be subject to strict financial controls, including the application of prescribed court and/or DOJ tariffs, negotiation of capped fee structures, and verification of invoices prior to payment.

8. FINANCIAL MANAGEMENT

8.1 Once appointed, an order number will be issued to the service provider / company, which must be used in all future financial related correspondence.

8.2 Payment will be made only after completion, review and approval of each deliverable received from the service provider/ company the bill of costs must detail specific activities performed.

8.3 No up-front payments will be made. The Department shall pay for satisfactory completion of work within 30 days of submission of invoice.

8.4 It will be expected of the service provider to keep costs at minimum and book affordable flight, transport and accommodation when so required. The Department reserve the right to provide the successful bidder with the flat rate for

Department reserve the right to provide the successful bidder with the flat rate for the accommodation. In event that the bidder uses his own transport the AA tariffs will apply. If the successful bidder wishes to lease the vehicle or use own transport in the performance of his or her duties, the department will decide on the type and capacity of the vehicle to be used.

9. GENERAL TERMS

9.1 The following general terms and conditions apply to this project:

- a. The successful bidder shall accept appointment on the understanding that for the purpose of their appointment they will represent and protect the interests of The Free State Department of Health on any allocated work;
- b. Successful bidders must be in a position to commence work as and when required. Particular projects will be initiated by means of written instructions to the successful bidder(s) on a random basis, backed by verbal briefings, when required.
- c. In all cases, it is important that the staff of The Free State Department of Health is empowered in the process of carrying out the assignment. The staff must develop appropriate skills and expertise in their interaction with the relevant consultants which will decrease the necessity in the need for future assignments of this nature.
- d. Once work has been allocated, the successful bidder will proceed with its instructions in accordance with and in strict adherence to the terms of agreement with The Free State Department of Health, applicable law, best practices and each applicable instruction letter issued to the service provider by The Free State Department of Health.
- e. The successful bidder shall, at all times, provide the services diligently, in a professional manner and in compliance with the applicable legislation and court rules.

- f. The successful bidder shall only accept instructions from, and shall only liaise with The Free State Department of Health legal services in collaboration with The Free State Provincial State Law Advisers and the Office of the State Attorney when providing services to The Free State Department of Health. If the successful bidder is in any doubt regarding the authority of a legal advisor it shall contact the Director: Legal Services for confirmation.
- g. The successful bidders are strictly prohibited from accepting instructions from the Free State Department of Health employees or officials who are not legal advisers from either the Department or the State Law Advisers.
- h. The Free State Department of Health still retain the discretion to decide which matters will be handled by any of the Successful bidders on the panel.
- i. Mandatory conflict-of-interest declarations will be required or any confirmation that the Office of the State Attorney is not in a position to assist on the specific matter.
- j. CSD print-out must be submitted with the bid document to ensure that the correct CSD number is used throughout the bidding process
- k. Bidders are expected to be registered with SARS and tax compliant.

10. INTELLECTUAL PROPERTY RIGHTS

Copyrights and all other intellectual property rights in any document, ideas, software, other information developed and / or written, pursuant to these Terms of Reference, or any other contract / sub-contract to which these Terms of Reference refers, shall vest jointly in the party originating them and / or the party /s directly / indirectly financing the development of the same.

In addition, no development shall be deemed to be a joint development, and therefore jointly owned, unless, identified as such in writing. If each party contributes to the development of a work product, and such work product is not identified as a joint work

product, each party's ownership rights shall be limited to the portion of work developed and / or financed by it. Each party will, however, negotiate the transfer of the licensing of its ownership rights, where applicable, to the other party upon mutually acceptable terms.

All information generated, communication produced and data acquired under the auspices of this project remains the intellectual property of The Free State Department of Health.

11. FORMAT OF SUBMISSION OF BIDS

Each bid shall comprise of at least the following, bound and clearly indexed:

Section 1	Standard bidding documents.
Section 2	Company profiles with full particulars to infrastructure, skills and previous experience and expertise and proven track record in personal injury claims, contract law, labour law, administrative and constitutional law and medico-legal litigation as well the contact details of the references.
Section 3	Provide a list attorney that will be dedicated to the project; provide a Curriculum Vitae, recent (2026) letter of good standing from Legal practice Council and fidelity fund certificate (where applicable)
Section 4	Litigation strategy, which states clearly the specific personnel responsible, milestones and the overall delivery time.

12. EVALUATION CRITERIA

The following criteria will be used to score the functionality points.

Technical Proposal:

CRITERIA	Criteria	Points Allocated
1.1. ORGANISATION & METHODOLOGY Logical Scheduling of activities (Do your activities follow a sensible order). Please attach a detailed litigation strategy detailing your understanding of project	> Excellent = 10 > Acceptable = 5 > Poor = 0	10
1.2 CAPACITY TO DELIVER - The firm must provide proof of registration with legal practice council and fidelity fund. - Please provide a list of attorneys that are currently committed to litigation and will be involved in the project and attach CV's. - CV of lead attorney(s) includes reference to litigation matters the attorney was involved in.	> Excellent = 20 > Acceptable = 10 > Poor = 5	20

The firm must provide a list of medical experts (with contactable numbers) they or the lead attorneys (s) has worked with in the last 2 (two) years for medico legal matters.		
EXPERIENCE IN MEDICAL NEGLIGENCE MATTERS The firm shall provide a list of cases (with case numbers) of medical negligence cases e.g. cerebral palsy, surgical and retinopathy of prematurity cases not limited to the above handled by the law firm and/or lead attorney(s) in the last 2 (two) years.	20 or more cases =40 10 or more =30 Less than 10= 10	40
EXPERIENCE IN PERSONAL INJURY MATTERS The firm shall provide a list of cases (with case numbers) of personal injury cases handled by the law firm and/or lead attorney(s) in the last 2 (two) years.	15 or more cases =20 10 or more cases=10 Less than 10= 5	20
1.3. EXPERIENCE IN RELATED MATTERS- LABOUR, CONTRACT AND ADMINISTRATIVE LAW MATTERS - Organization rating from previous projects or work of the same nature. - Number of similar work previously done and success rate. Please attach evidence, e.g. Appointment letters, outcome of the case, work previously drafted, contracts from clients.	5 or more projects = 10 1 to 4 projects = 5 0 projects = 0	10
TOTAL		100
Minimum threshold for functionality		75

NB: Bidders who score below the minimum threshold of **75 out of 100** points on technical evaluation will be eliminated.

A bidder that scores less than 75 points out of 100 in respect of functionality will be regarded as submitting a non-responsive proposal and will be disqualified. Bidders who score the minimum points or more will qualify for further evaluation.

N.B. Bidders to indicate hereunder on which "Page/Section/Annexure" of their proposal the following information can be traced:

CRITERIA	Page / Section / Annexure
ORGANISATION & METHODOLOGY	
DELIVERY CAPACITY	
EXPERIENCE IN PERSONAL MEDICAL NEGLIGENCE MATTERS	
EXPERIENCE IN PERSONAL INJURY MATTERS	
EXPERIENCE IN RELATED MATTERS.	

13. BID DECLARATION

I/We the undersigned hereby declare that I/We have read and understood the above and agree to be bound by the stated terms and conditions.

Name of Bidder: _____

Name of contact person: _____

Capacity: _____

Signature.....

Date

14. CONTACT DETAILS:

Free State Health Department can be contacted at the following numbers for clarity or information required:

Adv. SA Moshodi

Tel: 051 408 1483
Cell: 0663037289
Email: MoshodiSA@fshealth.gov.za
Address: Free State Department of Health
Bophelo House
4th Floor Block A West
Cnr Harvey and Charlotte Maxeke Street
BLOEMFONTEIN

SPECIFIC GOALS

Specific goal	Applicable weight	The weight/s is to be broken down as follows:	Evidence to be submitted by the supplier to substantiate the points allocated per specific goal (NB: Any of the evidence submitted per specific goal should be regarded as sufficient)
Woman	4	100% Woman ownership = 4 points 50%-99% Woman ownership = 3 points 1%-49% Woman ownership = 2 points 0% Woman ownership = 0 points	- RSA identity document OR - Valid RSA driver's license issued by the relevant authority NB: together with the company registration documentation, which contains the % of ownership or shareholding certificate with the percentage of shares owned by the individual Director/s.
Youth	4	100% Youth ownership = 4 points 50% -99% Youth ownership = 3 points 1%-49% Youth ownership = 2 points 0% Youth ownership = 0 points	- RSA identity document OR - Valid RSA driver's license issued by the relevant authority NB: together with the company registration documentation, which contains the % of ownership or shareholding certificate with the percentage of shares owned by the individual Director/s.
People with disability	2	100% Ownership = 2 points 0% Ownership = 0 points	Sworn affidavit signed by the company representative and attested by the Commission of Oaths
Free State based company	10	- Free State based company = 10 points - Not Free State based company = 0 points	- Municipal Account (if the Municipal account is not in the name of the company but rather in that of the Director, a Sworn Affidavit confirming that the company is operating on the premises of one of the Directors must be attached) OR - Lease agreement OR - Title deeds OR - Permission to occupy land signed by the traditional authority OR - A letter of confirmation of the address signed by the ward councillor

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

- 1.1 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, 1996 (Constitution), and further expressed in the various applicable legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.
- 1.2 If a person is 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. DECLARATION ON EMPLOYMENT BY ORGAN OF STATE

- 2.1 Is the bidder, or any of the directors / trustees / shareholders / members / partners of the bidder employed by an organ of state, as defined in section 239 of the Constitution? **YES/NO**
- 2.2 If YES, furnish particulars of the names, individual identity numbers, in the table below:

Full Name	Identity Number	Name of organ of state

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.

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

2.3.1 If so, furnish particulars:

.....

2.4 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**

2.4.1 If so, indicate all companies registered in the CSD in the table below:

Supplier registration number (MAAA)	Status (active/inactive/deleted)

Failure to disclose all CSD-registered active companies linked to all Directors will lead to disqualification.

3 GENERAL DECLARATION

I,, the undersigned, 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 to be false.
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor.
- 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.

- 3.5 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.6 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.
- 3.7 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, 1998 (Act No. 89 of 1998) and or may be referred to law enforcement agencies for criminal investigation and or may be restricted from conducting business with the state for a period not exceeding 10 years in terms of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004) or any other applicable legislation.

I CERTIFY THAT THE ABOVE IS CORRECT.

I ACCEPT THAT THE PROCURING INSTITUTION MAY REJECT THE BID OR TAKE APPROPRIATE ACTION AGAINST ME IF THIS DECLARATION IS FALSE.

.....
Signature

.....
Date

.....
Designation

.....
Name of bidder

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE
PREFERENTIAL PROCUREMENT REGULATIONS 2022
(FOR ALL SPECIFIC GOALS)**

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

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

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 To be completed by the organ of state

(delete whichever is not applicable for this tender).

- ~~a) The applicable preference point system for this tender is the 90/10 preference point system.~~
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- ~~c) Either the 90/10 or 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.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

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

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

80/20	or	90/10
$Ps = 80 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)$	or	$Ps = 90 \left(1 - \frac{Pt - P_{min}}{P_{min}} \right)$

Where

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

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

3.2.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc} 80/20 & \text{or} & 90/10 \\ P_s = 80 \left(1 + \frac{P_t - P_{\max}}{P_{\max}} \right) & \text{or} & P_s = 90 \left(1 + \frac{P_t - P_{\max}}{P_{\max}} \right) \end{array}$$

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 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

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

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

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	The weight/s to be broken-down as follows:	Number of points claimed (80/20 system) (To be completed by the tenderer)
GENERAL			
Women	4	100% Woman ownership = 4 points 50%-99% Woman ownership = 3 points 1%-49% Woman ownership = 2 point 0% Woman ownership = 0 points	
Youth	4	100% Youth ownership = 4 points 50%-99% Youth ownership = 3 points 1%-49% Youth ownership = 2 point 0% Youth ownership = 0 points	
People with disability	2	100% Ownership = 2 points 0% Ownership = 0 points	
Free State based company (NB: the institutions must ensure that this specific goal is aligned to the district they are situated in.	10	- Free State based company = 10 points - Not Free State based company = 0 points	

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 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:

.....

.....

.....



SWORN AFFIDAVIT

I, the undersigned,

Full Name & Surname	
Identity Number	
Number of shares (percentage) owned by the person	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I have a Disability and I am a Member / Director / Owner of the following enterprise and am duly authorized to act on its behalf.

Enterprise Name:	
Trading Name (If Applicable):	
Registration Number:	
Enterprise Physical Address:	
Type of Entity (Cc, (Pty) Ltd, Sole Prop etc.):	
Nature of Business	

3. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the Owners of the Enterprise which I represent in this matter.
4. The sworn affidavit will be valid for a period of 12 months from the date signed by the commissioner.

Deponent Signature: _____

Date: _____

Commissioner of Oaths (Signature & Stamp)

SPECIAL CONDITIONS OF CONTRACT
DEPARTMENT OF HEALTH

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THE FOLLOWING SPECIAL CONDITIONS OF CONTRACT WILL APPLY TO THIS BID / QUOTATION:**1) INVITATION OF QUOTATIONS**

Quotations with the value above R500 000 may not be invited for the period less than 7 days before closing.

If due to circumstances that there is a need to close the quotation within the period less than 7 days, the intention to invite the supplier for the lesser period should be indicated in the Demand Form. **Minimum of three quotations must still be obtained in this regard.**

2) EVALUATION CRITERIA

The following preference point system is applicable to the bid/quotation 80/20.

The preference points for this bid/quotation are allocated as follows and will be applied when adjudicating the bid / quotation:

Price	=	80 points
Specific goals	=	20
Total points	=	100 points

3) THE APPLICATION AND IMPLEMENTATION OF THE PRERERENTIAL PROCUREMENT SPECIFIC GOALS

- 3.1 The institutions must apply the 80/20 Preferential Point System to all the quotations above R30 thousand. The following Specific goals are applicable to all the requests for quotations within the Department

GENERAL			
Specific goal	Applicable weight	The weight/s to be broken-down as follows	Evidence to be submitted by the supplier to substantiate the points claimed/allocated per specific goal (NB: Any of the evidence indicated below per specific goal should be regarded as sufficient)
Woman	10	100% Woman ownership = 10 points 75%-99% Woman ownership = 8 points 60%-74% Woman ownership = 6 points 50%-59% Woman ownership = 5 points 1%-49% Woman ownership = 1 point 0% Woman ownership = 0 points	- RSA identity document OR - Valid RSA driver's license issued by the relevant authority. NB: together with the company registration documentations which contains the % of ownership or shareholding certificate with the percentage of shares owned by the individual Director/s.
Youth	4	100% Youth ownership = 4 points 75%-99% Youth ownership = 3 points 60%-74% Youth ownership = 2 points 50%-59% Youth ownership = 1 point 0%-49% Youth ownership = 0 point	- RSA identity document or - Valid RSA driver's license issued by the relevant authority. NB: together with the company registration documentations which contains the % of ownership or shareholding certificate with the percentage of shares owned by the individual Director/s. (Youth is defined as any south African

			citizen with the age between 18 and 35 years)
People living with disability.	2	100% Ownership = 2 points 51%-99% Ownership = 1 point	Sworn affidavit signed by the company representative and attested by the Commission of oaths
Free State based company (NB: the institutions must ensure that this specific goal is aligned to the district they are situated in. e.g. suppliers situated in Thabo Mofutsanyane District	4	- Free State based company = 4 points - Not FS based company = 0 points	- Municipal Account, not older than (3) months (If the Municipal account is not in the name of the company but rather in that of the Director, a Sworn Affidavit confirming that the company is operating in the premises of one of the Directors must be attached) OR - Lease agreement OR - Title deeds OR - Permission to occupy land signed by the traditional authority OR - A letter of confirmation of the address signed by the ward councilor
WOMEN AND YOUTH			
		100% Woman ownership = 10 points 75%-99% Woman ownership = 8 points 60%-74% Woman ownership = 6 points	- RSA identity document OR - Valid RSA driver's license issued by the relevant authority
Woman	10	50%-59% Woman ownership = 5 points 1%-49% Woman ownership = 1 point 0% Woman ownership = 0 points	NB: together with the company registration documentations which contains the % of ownership or shareholding certificate with the percentage of shares owned by the individual Director/s.
Youth	10	100% Youth ownership = 10 points 75%-99% Youth ownership = 8 points 60%-74% Youth ownership = 6 points 50%-59% Youth ownership = 5 points 1%-49% Youth ownership = 1 point 0% Youth ownership = 0 points	- RSA identity document OR - Valid RSA driver's license issued by the relevant authority NB: together with the company registration documentations which contains the % of ownership or shareholding certificate with the percentage of shares owned by the individual Director/s.
WOMEN ONLY			
Woman	20	100% Woman ownership = 20 points 75%-99% Woman ownership = 18 points 60%-74% Woman ownership = 16 points 50%-59% Woman ownership = 10 points 1%-49% Woman ownership = 5 points 0% Woman ownership = 0 points	- RSA identity document OR - Valid RSA driver's license issued by the relevant authority NB: together with the company registration documentations which contains the % of ownership or shareholding certificate with the percentage of shares owned by the individual Director/s.

YOUTH ONLY			
Youth	20	• 100% Youth ownership = 20 points • 75%-99% Youth ownership = 18 points • 60%-74% Youth ownership = 16 points • 51%-59% Youth ownership = 14 points • 1%-50% Youth ownership = 10 points • 0% Youth ownership = 0 points	• RSA identity document OR • Valid RSA driver's license issued by the relevant authority NB: together with the company registration documentations which contains the % of ownership or shareholding certificate with the percentage of shares owned by the individual Director/s.

4) Once-off bid prices

4.1 Firm prices:

Prices for once-off bids must be firm. No application for price adjustment will be considered except in the case where rate of exchange is applicable. All the necessary documentary proof must be submitted.

Where the exchange rate is applicable the bidder is expected to complete the SBD 3.2 in full at the time of bidding.

5) Period Contract Prices

5.1 1st year of the contract period:

Prices must be firm for the 1st (first) year of the contract period. No price adjustments will be allowed during the 1st year of the contract period except in the case where rate of exchange is applicable. The request for price adjustment due to rate of exchange will be considered per consignment. All the necessary documentary proof must be submitted.

5.2 2nd year and rest of the contract period – Prices subject to escalation

5.2.1 A request for price adjustment due to statutory increases on period contracts will be considered **after** the 1st year of the contract period if the bid/quotation is qualified as such and with the necessary documentary proof.

5.2.2 **In order to be considered for price increases from the 2nd year** of the contract period (statutory increase) and where the rate of exchange is applicable (on request per consignment), the price escalation form SBD 3.2 **must** be completed in full.

5.2.3 Submitting of price adjustment claims:

Claims for statutory increases must be submitted within 90 days of the change in price. If a claim is received after 90 days, the adjusted price will only be considered from the date the claim was received by the Department.

Delivery of goods and/or services must not be withheld as a result of the price adjustment not being finalized or as a result of any dispute.

Companies must indicate in the bid document the amount to be remitted abroad as well as the rate of exchange applied in the conversion of that amount into SA currency, when calculating the bid price. Proof from the bank for rate of exchange applicable to the bid at time of bidding **must** be attached to the bid document.

Price adjustments based on Rate of Exchange will only be applied per consignment delivered to the applicable institution of the Department due to the continuous fluctuation.

5.2.4 Documentary proof for price adjustments:

- (i) All claims must be properly substantiated by documentary evidence to the satisfaction of the Head of Health.
 - (ii) The following information must be supplied when claims for rate of exchange variations are lodged:
 - Documentary evidence of currency and amount paid to foreign supplier
 - Supplier's invoice
 - Bill of entry/landing
 - Copy of institutions order, delivery note and invoice
- 5.2.5 Failure to comply with the conditions as per par. 5.2.2 to 5.2.4 **will invalidate** the claim.

6) Qualification of bid / quotation documents

- 6.1 The invitation form (SBD 1 / Quotation Invitation Form) must be **completed in full, stamped where it is required and signed originally** (in black pen ink) by the person in the company who is authorised to do so. **Failure to sign the offer will invalidate the offer.**
- 6.2 The SBD forms and all other bid forms must be submitted in the original format. The Office will only consider the original bid documents issued by the Office and signed by the company. Bid documents that are retyped, transmitted by facsimile, electronic mail or changed in any other way, will invalidate the bid. Scanned documents, which are completed in the original, will be acceptable.

7) Applicable Declarations – SBD 4, SBD 6.1:

All declarations must be **originally completed** in full and duly signed by the bidder and where required, two witnesses.

7.1 SBD 4 – Declaration of Interest

All the state employees are not allowed to do a business with the Free State Department of Health.

8) Corrections to documents:

- 8.1 Correction fluid (like Tippex for example) must not be used in bid documents in order to correct mistakes. Where a company wishes to correct a mistake, a single line must be drawn through it and the company must place his/her signature and date next to the correction, so that the original entry is still visible and legible. Failing to rectify mistakes in this manner will invalidate the bid or the relevant item, or the relevant clause.
- 8.2 In all other cases of alterations/corrections a full signature and date must be attached above, next to or below the said alteration or correction. If not signed in full at the correction the specific item/bid/quotation will not be taken into consideration.
- 8.3 Companies must check the numbers of the pages on the bid document and should satisfy themselves that the document is complete and that none of the pages are missing or duplicated before the closing date of the bid. No liability shall be accepted with regard to claims arising from the fact that pages are missing or duplicated.
- 8.4 Where **specific goal points** are claimed on the SBD 6.1 form, the form must be completed in full, must be signed by the company and both witnesses otherwise the points claimed will not be considered.
- 8.5 The bid must be submitted in a sealed envelope. The **correct** bid number and closing date must be clearly indicated on the front of the envelope and the bidder's details on the back. The envelope must be placed in the bid box as indicated, before or on the closing date and time of the bid. On failure to comply the bid will not be considered. Bids, which are **received after the closing date and time**, will not be accepted and will be returned to the bidder.

9) Tax Clearance Certificates

- 9.1 **Original valid Tax Certificates must be attached** to the bid documents. Where the Tax Clearance Certificate is not attached the information will be verified on the Central Supplier database. The Department will not accept a bid from a bidder, whose tax matters were not declared to be in order by SARS.

- 9.2 Each party to a Consortium/Sub-contractor/Joint Venture must submit a separate original valid Tax Clearance Certificate. If the Tax Clearance certificates are not attached such information will be verified on the Central Supplier Database. Each party's Tax matters must be declared to be in order by SARS.
- 9.3 Period Contracts: Should the bid be accepted; the contractor must provide the Department (Compliance Office) throughout the contract period with a valid Tax Clearance Certificate on or before the expiry date of each certificate in the possession of the Office.
- 9.4 The Department has the right to verify the Tax Clearance Certificate submitted by a company at any SARS branch office nationwide.

10) Compulsory Explanatory Meeting and / or Site Visit

- 10.1 A compulsory explanatory meeting and/or site visit if so required in the bid documents and bid advertisement must be attended. Failure to attend will invalidate the bid. In case of a joint venture, consortium all companies must attend the meetings and submit their own attendance certificate in the company's name.
- 10.2 An attendance certificate per company must be signed and stamped by an official of the Department with registration at the meeting. The document/s must be attached in its original to the bid document. Copies of the document will not be accepted.
- 10.3 Information already provided at the meeting will not be repeated to late attendees.
- 10.4 A copy of the minutes of the meeting can be made available to companies on request.

11) Payment to suppliers

Payments will be handled as prescribed by the PFMA and will normally be effected within 30 days of receipt of all the required documentation, which should be correct in every respect.

12) Legislation / Laws

Companies must comply with the provisions of current Labour Legislation as well as any other relevant legislation or legal requirement.

13) Validity period of bid

The period for which offers are to remain valid and binding (in order for the Department to finalize it), is indicated in the bid documents (SBD 3.1 / 3.2) and is calculated from the closing day with the understanding that offers are to remain in force and binding until the close of business on the last day of the period calculated and if this day falls on a Saturday, Sunday or Public Holiday, the bid is to remain valid and binding until the close of business on the following working day.

14) Quantities

Where quantities are specified in the bid documents the Department cannot guarantee that they will be ordered as such, as it depends on Departmental needs. The Department is not liable for any losses the contractor might suffer for not ordering specific quantities.
Where quantities are specified, "as required" the quantities will be ordered as and when needed.

15) Samples

- 15.1 Samples to be submitted (if so required in the bid documents), must be clearly marked with the bid and item number as well as the company's name.

UNDER NO CIRCUMSTANCES SAMPLES SHALL BE INCLUDED IN THE BID DOCUMENTS. SAMPLES INCLUDED IN BID DOCUMENTS WILL NOT BE CONSIDERED

- 15.2 The samples must be delivered to the addressee mentioned in the bid documents so as to reach him/her not later than the closing date and time of the bid.
- 15.3 Samples shall be supplied by the bidder at his/her own expense and risk.
- 15.3.1 Samples of the successful company will be kept with the Department until the end of the contract period and will be returned to the company only if so stated in the bid/quotation documents.
- 15.4 All samples provided, which must be returned to the company must be removed on request of the Department at the company's own expense and risk within the specified period. On failing to comply with, the company will forfeit ownership and the sample shall forthwith be disposed of at the discretion of the Department.

16) Bid prices

- 16.1 Prices of bids must be provided for the specific units as required per SBD 3 forms. The packaging may vary and will be considered unless specific packaging is required.
- 16.2 Bid prices must be all inclusive and no additional cost will be paid for e.g. delivery, VAT, etc.
- 16.3 Bid prices must be indicated on the relevant SBD 3 form/s unless otherwise requested by the Department.

17) Price lists

Price lists **will not be considered** for acceptance of the bid unless it was specifically requested in the bid / quotation documents.

18) Specification – company's response

Where a specification provides for the company's response to the different points of specification, the bidder's part must be properly completed or the bid or the relevant item will be disqualified. Where items deviate from the requirement, the deviation must be indicated.

19) Adjudication of bid

- 19.1 Chapter 6 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), that deals with the Register for Tender Defaulters, as well as Regulations made by the Minister of Finance in this regard, are applicable when adjudicating a bid/quotation.
- 19.2 The Department may terminate the bid/contract in whole or in part if representatives of the Department, in the judgement that the bidder has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 19.3 In the event of a bid being awarded as a result of specific goal points claimed in terms of the revised Preferential Procurement Regulations 2022, the contractor may be required to furnish documentary proof to the satisfaction of the Department.
- 19.3.1 The Department will act against the bidder or person awarded the contract upon detecting that the specific goal points for B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.
- 19.3.2 The Department may, in addition to any other remedy that it may have against the bidder or person:
- 19.3.3 Disqualify the bidder or person from the bidding process;
- 19.3.4 Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- 19.3.5 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;

19.3.6 Restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after applying the *audi alteram partem* (hear the other side) rule; and

19.3.7 Forward the matter for criminal prosecution.

20) Restriction of business interest of employees conducting business with the Provincial Government

An employee may not have a business interest in any entity conducting business with the Provincial Government.

21) Compliance to contract

21.1 The Department will monitor compliance to the contract after adjudication of the bid that include, but need not be limited to, site inspections and the request for documentary proof of compliance with the PFMA and relevant legislation.

21.2 Where services are rendered, which involves minimum wages for employees in terms of the sectoral wage determination, the Department reserves the right to request copies of payslips of employees during the period of the contract.

22) Contract signing

In response to an invitation to bid, companies must submit bid which in terms of the law represent offers. Once an offer is accepted and a bid is awarded to a successful company, a legal contract comes into existence.

The Department **will not** enter into any other contract than the SDB 7.1 or 7.2 form to be concluded as a result of acceptance of the bid.

23) Financial schedules

~~The financial schedule and annexure(s) for breakdown on salaries/wages where applicable, must be fully completed and submitted with the bid.~~

24) Declaration of Interest

Failure to declare interest on the part of the company or officials from the Department is unacceptable, which **will** lead to the bid/quotation not being considered.

25) Descriptive literature / brochures / pamphlets

If so required, the company must supply descriptive literature, brochures or pamphlets. Descriptive literature is regarded as text and photos as issued by the original manufacturer.

26) Performance Security / Surety

A Performance Security / Surety is not applicable to all bid. Where it is a requirement in a specific bid, it will be indicated in the bid documents as well as the period in which the performance security / surety must be submitted. If so required, it must be provided to the Department within the required period or the Department will have the right to cancel the contract and to claim any damages suffered from the contractor.

27) Accredited representative

If you are an accredited representative in South Africa for the goods/services offered written proof from the original supplier must be enclosed. (Refer to the SDB 1 form). Failure to do so will result in the offer not being considered.

28) Equipment exceeding specifications

There might be cases where the specifications do not address latest developments in technology. Where this is the case, the company must indicate next to the specific requirement in the specification to what extent the improved technology is offered. The Department may consider such offers in the adjudication process on condition that full details are provided for comparison purposes.

29) Delivery and documents

If so required, details of shipping and/or other documents to be furnished by the supplier are specified in the bid document

30) Insurance

Insurance as prescribed in the GCC par. 11 is applicable. Specific requirements over and above GCC par. 11 will be specified in the bid/quotation document.

31) Incidental services

Incidental services if so required will be handled as specified in the bid document.

32) Spare parts

Spare parts forms part of the specification of the bid/quotation and must be dealt with as such.

33) Warranty

32.1 Only new, unused goods must be supplied unless otherwise stated in the bid document.

32.2 The General Conditions of Contract par. 15 will apply unless otherwise stated in the bid documents.

32.3 Suppliers must remedy defect(s) on goods delivered within the period stated in the bid/quotation document or within the period as required by the Department.

34) Penalties

Penalties will be imposed as per current prime interest rate as prescribed by the General Conditions of Contract par. 22 unless otherwise stated in the bid/quotation document.

35) Settlement of disputes

The parties hereby agree that in the case of a dispute that cannot be resolved mutually, the dispute will be referred for settlement to the Secretary of the Law Society in the Free State, and in the case of the said Society's unwillingness to hear the dispute, such dispute will be referred to the Chairperson of the Bar Council for the Society for Advocates and/or his/her nominee.

The parties agree that the decision of the presiding officer in the dispute settlement procedure will be final and that neither of the parties will institute legal action against the other following the dispute settlement.

36) Termination of contracts: Unfulfilled orders

On termination of the contract, unfulfilled orders will automatically be cancelled and where appropriate, be supplied in terms of any subsequent contract.

37) Cession of contracts

The supplier shall not cede, in whole or in part, its obligations to perform under the contract or payments made/or to be made by the Department to the supplier, except with the Department's prior written consent.

38) Acceptance of the Special Conditions of Contract and General Conditions of Contract

Failure to accept the Special Conditions of Contract and the General Conditions of Contract or any part thereof, may result in the bid/quotation not being considered.

39) THE COMPANY MUST COMPLETE THE FOLLOWING:

I,in my capacity as of the company, hereby certifies that I took note and accept the above-mentioned Special Conditions of Contract.

.....
SIGNATURE

.....
CAPACITY

Contact person of company:

Tel. of Company: (.....) Fax of Company: (.....)

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)