human settlements

Department:
Human Settlements
REPUBLIC OF SOUTH AFRICA

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REFERENCE : VA49/691
ENQUIRIES : MR MC CAMAGU
TELEPHONE :{012} 444 9240

BID VA49/691: TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO DEVELOP A FUNDING AND FINANCING MODEL FOR THE DEVELOPMENT OF HUMAN SETTLEMENTS.

1 **The closing date for the submission of applications/bid documents is 23 September 2021 @ 11:00. No late applications/bid documents will be considered. All bids must please be placed in the in the Tender Box at the main entrance of the building (DEPARTMENT OF HUMAN SETTLEMENTS, DR RUTH S MOMPATI, 260 JUSTICE MAHOMED STREET, SUNNYSIDE, PRETORIA).**

2 It is compulsory that an original proposal/bid documents be **handed in on/before the closing date of the bid.**

3 You are invited to bid for the services as specified in the attached forms.

4 The conditions contained in General Conditions of Contracts (GCC) and the attached SBD1, SBD3.3, SBD4, SBD6.1, SBD8, and SBD9 as well as any other conditions accompanying this request are applicable.

5 **NATIONAL TREASURY CIRCULAR NO 3 OF 2015/2016**
From 1 April 2016, institutions/departments may not award any bid to a supplier who is not registered on the Centralised Supplier Database (CSD).

MR M MAMPURU
DIRECTOR: SUPPLY CHAIN MANAGEMENT
For DIRECTOR-GENERAL
DATE: 31/08/2021
Tendercovlet

THE DEPARTMENT OF HUMAN SETTLEMENTS

BID NUMBER: VA49/691

DESCRIPTION: PROFESSIONAL SERVICES

CLOSING DATE: 23 SEPTEMBER 2021

CHECK LIST TO BE COMPLETED BY THE BIDDER:

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Certified/Original Valid B-BBEE Status Level Verification Certificate - 07 December 2011(IF AVAILABLE)		
Compulsory: Please attach a copy of CSD registration report (not later than a month).		

BIDDER NAME IN FULL: ______________________________

SIGNATURE: ______________________________

CAPACITY: ______________ DATE: ______________

Bid invitation check list: Compiled: MR MC CAMAGU human settlements

Department:
Human Settlements
REPUBLIC OF SOUTH AFRICA

TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO DEVELOP A FUNDING AND FINANCING MODEL FOR THE DEVELOPMENT OF HUMAN SETTLEMENTS

08 July 2021

Draft V4.2

1. INTRODUCTION

1.1 The Department of Human Settlements (DHS) seeks to utilise the expertise of a service provider to assist with the development of a viable and carefully considered funding and finance model for implementing human settlements policies and programmes. The development of this model must be viewed with an understanding that human settlements are the totality of human community (whether a city, town, or a village) with all social, material, organisational, spiritual and cultural elements that sustains it. Furthermore, the Guidelines for the Planning and Development of Neighbourhoods (CSIR, 2019) characterises a typical settlement as consisting of (a) the built environment which includes houses, engineering infrastructure and facilities; (b) the natural environment which includes vegetation, rivers, hills and valleys; (c) services which are related to healthcare, welfare, education, culture, recreation and administration; and the residents (i.e., people).

1.2 The DHS has been examining the question of how the finance and funding model must respond to the requirements of sustainable and integrated human settlements while also overcoming the persisting challenges. In addition, DHS recognizes that the development of human settlements is a catalyst for spatial transformation, thus the funding model must support spatial restructuring and integration through the upgrading of informal settlements, responding to the housing needs of a range of households and ensure access to amenities and infrastructure that contribute to the development of viable neighbourhoods. More importantly, considerations must be made on how the new funding model will contribute to promoting coordination and alignment of development while ensuring accountability.

1.3 To fulfil its mandate, the Department of Human Settlements have, over the last twenty-five years, been utilising a specific model of funding that is predicated on capital grant transfers linked to household needs. Over this period, the operational environment has changed, and the mandate has become more pronounced, which requires a review of the existing financing and funding model along with other delivery instruments. The goal is to ensure that funding and financing the development of human settlements neighbourhoods is geared towards ensuring achieving a meaningful and measurable progress in reviving rural areas and in creating more functionally integrated, balanced and vibrant urban settlements by 2030, whereby all human settlements are transformed into equitable and efficient spaces with citizens living in close proximity to work and access to social facilities and necessary infrastructure by 2050. Therefore, the funding and finance model must support the establishment and maintenance of a sustainable public and private residential environments that ensures viable communities within various neighbourhoods with access to economic opportunities, health, educational and social amenities as well as access to adequate housing on a progressive basis.

1.4 In 2019, the Department of Human Settlements reported an accumulative 25-year delivery of about 5 million housing opportunities, while this is admirable achievement, the increased demand from household and the continued changing environment requires sharpened finance and funding instruments. Stats SA (2018) in their General Household Survey also found that while 81.1% of households in South Africa reside in formal dwellings, housing projects are not reducing the percentage of households in informal dwellings. The State of the Cities Report of 2016 (SACN, 2016) reported that this phenomenon is as a result of rapid urbanisation that is experienced throughout Africa which is projected at about 70% by 2030 and 80% by 2050. Furthermore, South Africa is experiencing a decrease in household size and scarcity in job opportunities which means increase expectations for government intervention. Secondly, South Africa's 25 Year Review (2019) as well as the National Development Plan (2013) found that despite a remarkable housing delivery achievement, South Africa continues to be confronted with apartheid spatial form as well as challenges related to the alignment of human settlements development funding instruments. In addition, DHS has also recognised that facilitating alignment between human settlements development plans and funding within and among various sectors is central to restructuring and transforming human settlements. The difficulty has been on how the funding and financing model should respond to emerging demands and how it must be configured to respond to the 2030 vision.

2. THE HUMAN SETTLEMENTS FUNDING & FINANCING INSTRUMENTS

The development of human settlements is mainly financed through the Human Settlements Development Grant (HSDG) and the Urban Settlements Development Grant (USDG).

2.1. **About the Human Settlements Development Grant (HSDG)**

2.1.1. The objective of the HSDG is to provide funding for the creation of sustainable and integrated human settlements, to facilitate the provision of adequate housing opportunities and improved quality living environments, create a functionally equitable and integrated residential property market and enhanced institutional capabilities for effective coordination of spatial investment decisions. The HSDG seeks to establish habitable, stable and sustainable human settlements in which all citizens have access to social and economic amenities. The grant is determined using an allocation formula that is mainly informed by the latest Census data and the following three components[1]:

2.1.1.1. **Component 1**: 70% of the total allocation is determined by calculating the total number of households living in inadequate housing in each province. These include households living in informal settlements, shacks in backyards and traditional dwellings with damaged roofs and walls.

2.1.1.2. **Component 2:** 20% of the allocation is determined by calculating the total share of poor households in each province. This is computed by allocating a weighting of 80% to the total number of households earning less than R1500 per month and a weighting of 20% to households earning between R1501 – R3500

2.1.1.3. **Component 3:** 10% of the total allocation is determined by the total population of each province.

2.1.2. In collaboration with National Treasury, allocations for HSDG are published annually in the Division of Revenue Act. On approval of business plans and the payment schedule the HSDG is transferred to provinces quarterly where it is utilised to provide subsidies informed by

[1] Division of Revenue Bill, 10 February 2017, p87

the various housing programmes as outlined in the Code. The provinces utilise about 95% of the grant for capital expenditure which includes the provision of houses and serviced sites, purchasing of land, provision of some social and economic amenities and infrastructure, etc.; and about 5% is used for operational expenditure which includes the procurement of professional services. Rigorous accountability mechanism is exercised on ensuring synergy between expenditure and outputs and when this is lacking the grant can be reallocated or other interventions are adopted.

2.1.3. In addition to the use of the above allocation formula, a portion of the HSDG may be apportioned to address specific areas such as mining towns, title deeds, repair of neighbourhoods affected by natural disasters, etc. that are deemed as priority by the Minister of Human Settlements. In such cases, the utilisation of the grant is governed by additional rubrics.

2.2. About the Urban Settlements Development Grant (USDG)

2.2.1. The USDG is a Division of Revenue Act (DORA) schedule 4 supplementary grants aimed at improving the living environment of poor households in urban areas. The objective is to supplement the capital revenues of the 8 metropolitan municipalities in order to support the national human settlements development programme. The USDG was introduced in the financial year 2011/12 to support Metropolitan Municipalities that have been accredited. The USDG is aimed to...

2.2.1.1. provide the municipalities with funds to supplement their Capital Investment Programmes in order to address the nexus and alignment between human settlement development and economic growth.

2.2.1.2. contribute towards the achievement of sustainable human settlements and improved quality of household life.

2.2.2. The USDG provides supplementary funding for purchasing of land; development of bulk infrastructure and public & socio-economic amenities; and provision of basic services and serviced sites. This grant is transferred directly to metropolitan municipalities on approval of business plans and payment schedule. Unlike HSDG, the USDG does not provide subsidies, but a total infrastructure project development approach is adopted. However, similar accountability measures as in HSDG are adopted by the DHS.

3. PURPOSE OF THE ASSIGNMENT

3.1. This assignment is aimed at developing the best possible funding and financing model that will enable the achievement of the human settlements mandate and vision of sustainable human settlements and improved quality of life. The new funding and finance model must provide a framework to address a lack of coherence found in multitudes of funding frameworks geared towards the development of various neighbourhoods. An implementation framework must also be proposed. The debate is how development grants must be configured to achieve the envisaged outcomes of human settlements that includes addressing the following:

- 3.1.1. Investment in priority development areas or area-based development
- 3.1.2. Investment in integrated developments
- 3.1.3. Investment in upgrading of informal settlements
- 3.1.4. Investment in public spaces and requisite infrastructure
- 3.1.5. Investment in the provision of services
- 3.1.6. Ensuring access to various forms of housing assistance to qualifying households

3.2. In the development of the funding and financing model considerations must be made on how government could leverage its resources as part of infrastructure and housing development in a public-private partnership.

4. SCOPE OF WORK

The service provider is expected to develop a financing and funding model for the development of sustainable human settlements. More specifically, the service provider will deliver the following outputs:

4.1. **Develop analytical reports** focusing on the following:

4.1.1. An analysis of literature, theories and documents on funding and financing models or frameworks for human settlements.

4.1.2. An analytical framework for reviewing funding and funding models or mechanism or frameworks

4.1.3. A review of the current funding and financing model for human settlement. This includes all finance and funding as well as related legislative framework geared towards the development of neighbourhoods from the Department of Human Settlements as well as other government departments and entities. The report must provide a critical analysis of the current model not merely cut and paste of policies and legislation. The analysis must include the role of private sector in funding and financing human settlements.

4.1.4. A comparative analysis of international practices for funding and financing various aspects of human settlements which includes housing and other supporting infrastructure and services. The report must not merely report what is happening but highlight trends and best practice in the funding and financing of human settlements.

4.2. **A comprehensive report on the proposals** (at least three) for human settlements development funding and financing options for consideration by the human settlements sector. Highlight their mechanism as well as pros and cons of each. Note that these options must be viewed within the current legislative, financial and economic frameworks of RSA. The proposals must be informed by...

4.2.1. Financial & economic modelling

4.2.2. Forecasting

4.2.3. Scenario analysis & planning

4.2.4. Cost benefit analysis

4.2.5. Best investment model for government

4.3. Develop **a funding and financing model for human settlements development in South Africa**

4.3.1. Determine the most feasible alternative for the Department of Human Settlements.

4.3.2. Include a cost benefit analysis of the revised model.

4.3.3. Motivate reasons for the choice.

4.4. **Develop a feasible implementation framework**

4.4.1. Indicate the changes (if any) in the current legal framework the new model would require.

4.4.2. Reflect on any policy shifts and institutional arrangements.

4.4.3. Investigate and advise on institutional arrangements required to implement the improved human settlements financing model in South Africa.

4.4.4. Indicate the requirements for a successful implementation

4.5. Undertake **stakeholder consultation**

4.5.1. Propose a stakeholder consultation plan

4.5.2. Report on stakeholder consultation at all the stages of the assignment

4.5.3. Develop a comprehensive report on stakeholder consultation

4.6. Develop **a final comprehensive report** that include all the key issues that emerged from all reports in 4.1 – 4.5 above.

5. KEY QUESTIONS INFORMING THE SCOPE OF WORK

The above scope of work is informed by a need to respond to certain questions that must guide this assignment. Therefore, this work calls for the service provider to respond to and take into consideration the following:

5.1. What are the best characteristics and the challenges of the current finance and funding for human settlements? The response must also give attention to, but not limited to the following...

5.1.1. Administrative aspects

5.1.2. Value for money

5.1.3. Accountability

5.1.4. Addressing the outcomes of human settlements

5.1.5. Link between planning and funding

5.1.6. Coordinating multitude of funds for human settlements

5.1.7. Resources leveraging

5.2. What is the best practise internationally regarding funding and financing various aspects of human settlements? What mechanisms are adopted for implementation?

5.3. What are the funding and financing options for the Department of Human Settlements and for South Africa in general? These options must address but not limited to the following...

5.3.1. Propose at least three funding and financing options that are informed by South African context as well as the pros and cons of each.

5.3.2. Explain how these options may assist in addressing household level financial interventions in...

5.3.2.1. Leveraging government resources to adequately respond to growing demand for shelter.

5.3.2.2. Determine how to ensure diversity in product and finance options that would allow for more household choice.

5.3.2.3. Leveraging private sector finance into providing increased levels of finance to the lower end of the market and ensure that this investment is also directed to well-located areas.

5.3.2.4. Supporting the growth of housing delivery in the gap market by addressing affordability constraints and reducing the cost of products so that they are made more affordable

5.3.3. Indicate how these options will assist in addressing area-based financial and funding interventions. Areas for consideration include but not limited to the following...

5.3.3.1. Area-based development approach and project-based development.

5.3.3.2. Investing in public realm (public spaces and public infrastructure).

5.3.3.3. Supporting municipalities in developing capital and operational financing strategies that will allow them to provide the bulk and link infrastructure required for large developments.

5.3.3.4. Prioritising development in inner cities and in other areas of economic opportunity such as around transport hubs and corridors.

5.3.3.5. How to manage pooling of funds for infrastructure development.

5.3.3.6. Leveraging capital and leveraging resources by all spheres of government.

5.4. What is the most suitable proposed funding and financing model?

5.4.1. What should government mainly focus on? Why?

5.4.2. What are the reasons for the choice of this model?

5.4.3. What are the pros and cons of the proposed model?

5.5. What should be the implementation framework for this model?

5.5.1. The framework must focus on both households and area-based development.

5.5.2. Explain whether there is a need to shift state support from only providing top structures to investing in public space and public infrastructure?

5.5.3. What are the roles and responsibilities? How to ensure accountability?

5.5.4. What are the required changes (institutionally, legal, etc.)?

5.5.5. How to establish the best way to coordinate financing planning and development of human settlements projects in an approach that is coherent and manageable?

5.5.6. What are (if any) the various opportunities for funding development through public-private partnerships that should be sought?

5.6. What are the responses of stakeholders in various phases of this assignment?

6. METHODOLOGY

The service provider must propose the methodology to be utilised to complete the assignment and adequately respond to the scope of work and the questions guiding the enquiry. The methodology outlined must reflect the credibility of the work, the relationship between the theoretical framework, the information sources used and the analysis.

7. QUALITY OF DELIVERABLES

7.1. It is expected that all outputs are delivered in a manner that shows a high degree of professionalism and good report writing skills. Thus, the service provider should be able to illustrate a process that will be rigorous and stand up to high level of conceptual scrutiny.

7.2. The report should include a clear reference to the theory that informed the analysis. The connection between proposals, South African context, best practice and what emerge from the literature should be clear throughout the report.

7.3. The methodology should be detailed and reflect the credibility of the process undertaken to complete the assignment.

7.4. All the key sub reports called for in this assignment must be clear and address the expected subject matter. It is expected that the sub reports must include a presentation in MS PowerPoint that will be delivered by the service provider in agreed forums.

7.5. The **final report** must be a comprehensive report that responds to the scope of work and the outlined questions. Thus, final report should contain various aspects that include but not limited to the following…

7.5.1. Background to and purpose of the assignment;

7.5.2. The methodology used in the completion of the assignment;

7.5.3. A comprehensive review of literature and documents selected highlighting best practice emerging from the readings;

7.5.4. An analysis of various financing and funding models;

7.5.5. Key proposals for financing and funding human settlements in South Africa; and

7.5.6. Recommended implementation model.

7.6. **Organisation of the final report**

7.6.1. The report should contain an executive summary (± 10 pages), index, references, etc.

7.6.2. The final report must be submitted with MS PowerPoint presentation outlining the methodology; key findings; proposal and key arguments supporting the proposal; and the implementation framework.

7.6.3. The final reports should be submitted in three (4) compact disks and 4 bound copies printed in colour.

7.6.4. The document must be written in 12 pts Arial, 1½ spacing, justified and in both PDF and MS Word formats.

7.6.5. The document submitted must be language edited

7.6.6. No branding of the service provider shall be allowed in any of the documents submitted.

8. QUALIFICATION CRITERIA

This assignment requires a service provider with high level of skills and knowledge in the following areas...

8.1. Finance
  - 8.1.1. Financial modelling
  - 8.1.2. Understanding of financing and funding mechanisms for development of human settlements
  - 8.1.3. Infrastructure funding and financing mechanisms
  - 8.1.4. Total project financing

8.2. Economics

8.3. Policy analysis (PFMA; MFMA; Real Estate, Housing, Human Settlements; etc.)

8.4. Built environment

8.5. Good report writing and communications

8.6. Project management

9. THE CRITERIAL FOR EVALUATING PROPOSALS

9.1. The proposals will be evaluated using a two-step process.
  - 9.1.1. In the first step, all proposals will be evaluated on functionality.
  - 9.1.2. In the second step, only qualifying proposals will be evaluated on the 80/20 preference point system.

9.2. The functionality will be evaluated as follows:

Criteria	Sub Criteria	Sub points	Total points
Expertise of the Project Team	70% of the team members consisting of a combination of skills including Financial Modelling, Economists, and professionals in the Built Environment or related fields	15	**15**
	50% of the team members consisting of a combination of skills including Financial Modelling, Economists, and professionals in the Built Environment or related fields	7	
	30% of the team members consisting of a combination of skills including Financial Modelling, Economists, and professionals in the Built Environment or related fields	5	

Criteria	Sub Criteria	Sub points	Total points
Experience of the team in development finance, human settlements financing, research fields and housing policy environment as well as developmental economic operations in the country.	50% of the team members with 10 and more years' experience	10	**10**
	30% of the team members with between six (6) and nine (9) years of experience	7	
	20% of the team members with between three (3) and five (5) years' experience	4	
	Less than 20% of team members with 1 – 2 years' experience	0	
Delivery of similar or related assignments [2]	Delivery of 4 or more similar or related assignments	10	**10**
	Delivery of between 3 similar or related assignments	7	
	Delivery of between 2 similar or related assignments	4	
	Delivery of 1 similar or related assignment	1	
Understanding of the scope of work	Detailed and logical project proposal with clear arguments on how the research questions will be responded to and the scope of work achieved	30	**65**
	Clear methodology to be followed	15	
	Use of at least 5 significant relevant literature	15	
	Project plan with milestones and timeframes	5	
Total Points for Functionality			**100**

9.3. A service provider that scores less than seventy-five (75) points out of one hundred (100) points in respect of functionality would be considered having submitted a non-responsive proposal and will thus be disqualified. Bidders that score seventy five (75) points and above on functionality will be further evaluated using the 80/20 Preference Point System.

10. RECOMMENDED TIMEFRAMES

[2]Please provide a list of projects, stating the name of the client and contact person for reference

10.1. The service provide is expected to complete this assignment within a period of **12 months (52 weeks)** after appointment. As part of the inception report, the service provider is expected to provide a plan with specific completion dates that is informed by the timeframes proposed below…

OUTPUTS	INDICATIVE PERIOD
a. Inception report with detailed methodology and project plan	2 weeks after signing the SLA
b. An analysis of literature on funding and financing models and the implication for South Africa and an analytical framework for reviewing funding and funding models or mechanism	4 weeks after approval of the inception report
c. A review of the current funding and financing model for human settlement. This include all finance and funding geared towards the development of neighbourhoods from the Department of Human Settlements as well as other government departments and entities. The analysis must include the role of private sector in finding and financing human settlements.	5 weeks after approval of the analytical report
d. A comparative analysis of international practices for funding and financing various aspects of human settlements which includes housing and other supporting infrastructure and services. The report must not merely report what is happening but highlight trends and best practice in the funding and financing of human settlements. A report must include a comprehensive review of national & international literature and documents selected highlighting best practice emerging from the reading	6 weeks after submission of the report highlighted in C above
e. A report on proposed options for financing and funding	6 weeks after approval of the report best practice report
f. Stakeholder engagements reports and a comprehensive report	A report must be submitted at each stage and an overall report consolidated. In total about 10 weeks are set aside for consultations throughout the life span of the assignment
g. A proposal for funding and financing model for the development of human settlements	10 weeks approval of the proposed options
h. An implementation framework	4 weeks after approval of funding and financing model
i. A comprehensive report based on the above deliverables approved	5 weeks after approval of the

OUTPUTS	INDICATIVE PERIOD
	implementation framework

10.2. The service provide is expected to propose a project plan informed by the above timeframes and any additional activities that demonstrate the understanding of the assignment.

11. PROPOSED PAYMENT SCHEDULE

Payment for the delivery of the work will be conducted in the following manner:

a. 10% of the total amount shall be paid upon the submission and approval of the inception report with detailed methodology and a project plan
b. 20% of the total amount will be disbursed on approval of the comprehensive review of literature and documents
c. 10% of the total amount will be paid on approval of the proposed finance and funding options
d. 20% of the total amount will be paid on approval of the proposed finance model
e. 20% of the total amount will be paid on approval of the implementation framework
f. 20% of the total amount will be paid on approval of the final comprehensive report

12. PROVISIONS FOR THE MANAGEMENT OF THE ASSIGNMENT

12.1. Project management arrangements

12.1.1. The National Department of Human Settlements (DHS) will manage the project (content and administration). This includes logistical arrangements as well as payment of conferencing and meeting for participants. The service provider logistics will be borne by the service provider. The service provider must note that due to Covid-19 meetings, conferences and interviews would be conducted virtually.

12.1.2. The service provider will be expected to make presentation regarding various aspects of the projects such as the inception report, and draft report(s). In addition, all reports must be submitted to the project management team for both written and verbal comments and inputs

12.1.3. The DHS will appoint a project manager that the service provider will report to as well as the steering committee, which comprise of DHS, Provinces, Municipalities and other relevant stakeholders. The steering committee will serve as an advisory body. The DHS reserve the right to appoint an external moderator to review the quality of submitted work.

12.1.4. The Service Provider will submit bi-weekly (or when requested) progress reports to the project manager at the DHS. All communication between the Service Provider and the Departments shall be made through the project manager.

12.2. Reporting arrangements

12.2.1. Bi-weekly progress report should be submitted to the Project Manager indicating the key developments in the time period reported on, future activity schedule, and obstacles if any that are being encountered together with the suggested solutions to the challenges.

12.2.2. It is expected that any urgent matters that affect the service provider's ability to meet the deadlines should be brought to the attention of the Project Manager immediately.

12.2.3. It is expected that the service provider will make oral presentations using Microsoft PowerPoint, of the work to the Department, whenever required.

13. General Conditions

13.1. The bid will be valid for a period of 90 days. The prices quoted in the tender remain applicable unless and until the national DHS is notified to the contrary by the service provider;

13.2. The service provider must furnish the following information as comprehensively as possible:

13.2.1. Full details of the service provider

13.2.2. Head office address

13.2.3. Email address and telephone numbers

13.2.4. Level of technical competency

13.2.5. Company profile

13.2.6. Full details of the individuals to be involved, their expertise, track record and roles in the assignment;

13.2.7. A detailed cost breakdown of the tender prices. Preference will be given to fixed price contracts linked to clearly identifiable deliverables;

13.2.8. Clearly defined milestones, correlating to the sections outlined in this invitation; and

13.2.9. A detailed explanation of the process to be followed to provide the required service.

13.3. The successful service provider would be expected to submit a detailed project proposal indicating methodology to be employed and work break down schedule, which will be presented to the DHS within ten (10) days after appointment.

13.4. The successful service provider would be expected to sign a service level agreement. Both the service level agreement and the terms of reference will be equally binding in the administration and management of the project.

14. Copyright

14.1. The copyright of all data collected; finance and funding; and the final report to be delivered by the service provider will rest with the National Department of Human settlements.

14.2. The service provider will not publish (including presentation to conferences and all other forums), whether in part or whole, the submitted report without a written permission of the DHS.

15. Enquiries

Enquiries regarding this Terms of Reference should be directed to Lucy Bele at e-mail address: lucy.bele@dhs.gov.za

PART A
INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (*NAME OF DEPARTMENT/ PUBLIC ENTITY*)			
BID NUMBER:	VA49/691	CLOSING DATE: 23 SEPTEMBER 2021	11:00
DESCRIPTION	PROFESSIONAL SERVICES		

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (*STREET ADDRESS*)

THE NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS,

DR RUTH MOMPATI BUILDING

260 JUSTICE MAHOMED STREET,

SUNNYSIDE, PRETORIA

BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO		TECHNICAL ENQUIRIES MAY BE DIRECTED TO:	
CONTACT PERSON	MR M CAMAGU	CONTACT PERSON	Ms Lucy Bele
TELEPHONE NUMBER	012 444 9240	TELEPHONE NUMBER	
FACSIMILE NUMBER		FACSIMILE NUMBER	
E-MAIL ADDRESS	mbulelo.camagu@dhs.gov.za,	E-MAIL ADDRESS	Lucy.bele@dhs.gov.za

SUPPLIER INFORMATION

NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE			NUMBER	
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE			NUMBER	
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] ☐ 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, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4.	**THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

2.	**TAX COMPLIANCE REQUIREMENTS**
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6	WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7	NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER: ……………………………………………

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

DATE: …

……………………………………………

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: ....BID NO.: **VA49/691**

CLOSING TIME **11:00** CLOSING DATE: **23 SEPTEMBER 2021**

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

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

BID VA49/691: TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO DEVELOP A FUNDING AND FINANCING MODEL FOR THE DEVELOPMENT OF HUMAN SETTLEMENTS.

1. The accompanying information must be used for the formulation of proposals.

2. Bidders are required to indicate a **ceiling price** based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project. **R**..

3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

4. PERSON AND POSITION

PERSON AND POSITION	HOURLY RATE	DAILY RATE
--	R----------------------------	-------------------------------
--	R----------------------------	-------------------------------
--	R----------------------------	-------------------------------
--	R----------------------------	-------------------------------
--	R----------------------------	-------------------------------

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

--	R----------------------------	------------------------- days
--	R----------------------------	------------------------- days
--	R----------------------------	------------------------- days
--	R----------------------------	------------------------- days

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

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

Bid No: VA49/691

Name of Bidder: ………

--	…………………	………………	R…………………
--	…………………	………………	R…………………

TOTAL: R………………………………………………………

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

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

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
--	…………………	………………	R…………………
--	…………………	………………	R…………………
--	…………………	………………	R…………………
--	…………………	………………	R…………………

TOTAL: R………………………………………………………

6. Period required for commencement with project after Acceptance of bid ………………………………………………………………

7. Estimated man-days for completion of project ………………………………………………………………

8. Are the rates quoted firm for the full period of contract? *YES/NO

9. If not firm for the full period, provide details of the basis on which Adjustments will be applied for, for example consumer price index. ………………………………………………………………
………………………………………………………………

*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

THE NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS, DR RUTH S MUMPATI, 260 JUSTICE MAHOMED STREET, SUNNYSIDE, PRETORIA

Department: THE NATIONAL DEPARTMENT OF HUMAN SETTLEMENTS

MR M CAMAGU
Tel: 012 444 9240
Fax:
E-mail address: mbulelo.camagu@dhs.gov.za,

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Contact Person: Ms Lucy Bele
E-mail address: lucy.bele@dhs.gov.za

SBD 3.3

PRICING SCHEDULE
(Professional Services)

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state[1], or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

   - the bidder is employed by the state; and/or

   - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

2.1 Full Name of bidder or his or her representative: ....

2.2 Identity Number: ....

2.3 Position occupied in the Company (director, trustee, shareholder[2]): ....

2.4 Company Registration Number: ....

2.5 Tax Reference Number: ....

2.6 VAT Registration Number: ....

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

[1]"State" means –

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

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

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

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member: ……………………………………………
Name of state institution at which you or the person connected to the bidder is employed : ……………………………………………
Position occupied in the state institution: ……………………………………………

Any other particulars:
………………………………………………………………
………………………………………………………………
………………………………………………………………

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

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

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

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

………………………………………………………………
………………………………………………………………
………………………………………………………………

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

2.8.1 If so, furnish particulars:
………………………………………………………………
………………………………………………………………
………………………………………………………………

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

2.9.1 If so, furnish particulars.

………………………………………………………………
………………………………………………………………
………………………………………………………………

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

2.10.1 If so, furnish particulars.

………………………………………………………………
………………………………………………………………
………………………………………………………………

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract? **YES/NO**

2.11.1 If so, furnish particulars:

………………………………………………………………………………
………………………………………………………………………………
………………………………………………………………………………

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

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

4 DECLARATION

I, THE UNDERSIGNED (NAME)……………………………………………………………………………

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

……………………………………… ………………………………………………………
Signature Date

……………………………………… ………………………………………………………
Position Name of bidder

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

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

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

---

1. GENERAL CONDITIONS

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

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

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

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

1.2 Points for this bid shall be awarded for:

(a) Price; and

(b) B-BBEE Status Level of Contributor.

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

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

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

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

2. DEFINITIONS

(a) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

(b) **"B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

(c) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;

(d) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(e) **"EME"** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;

(f) **"functionality"** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.

(g) **"prices"** includes all applicable taxes less all unconditional discounts;

(h) **"proof of B-BBEE status level of contributor"** means:

1) B-BBEE Status level certificate issued by an authorized body or person;

2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;

3) Any other requirement prescribed in terms of the B-BBEE Act;

(i) **"QSE"** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;

(j) **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

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

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

80/20 **or** **90/10**

$$Ps = 80\left(1 - \frac{Pt - P\min}{P\min}\right) \quad \text{or} \quad Ps = 90\left(1 - \frac{Pt - P\min}{P\min}\right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

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

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

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

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

5. BID DECLARATION

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

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

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

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

7. SUB-CONTRACTING

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

(***Tick applicable box***)

YES		NO	

7.1.1 If yes, indicate:

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

YES		NO	

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

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

Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. **DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:...

8.2 VAT registration number:...

8.3 Company registration number:...

8.4 TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium
One person business/sole propriety
Close corporation
Company
(Pty) Limited
[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

Manufacturer
Supplier
Professional service provider
Other service providers, e.g. transporter, etc.
[*TICK APPLICABLE BOX*]

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

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

i) The information furnished is true and correct;

ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;

iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;

iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

(a) disqualify the person from the bidding process;

(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

(e) forward the matter for criminal prosecution.

WITNESSES 1. .... 2.	.... SIGNATURE(S) OF BIDDERS(S) DATE: .... ADDRESS ....

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

1 This Standard Bidding Document must form part of all bids invited.

2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.

3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-

a. abused the institution's supply chain management system;
b. committed fraud or any other improper conduct in relation to such system; or
c. failed to perform on any previous contract.

4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

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

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

CERTIFICATION

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

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

…………………………………………..	……………………………..
Signature	**Date**
…………………………………….….	……………………………..
Position	**Name of Bidder**

CERTIFICATE OF INDEPENDENT BID DETERMINATION

1 This Standard Bidding Document (SBD) must form part of all bids[1] invited.

2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).[2] Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.

3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:

a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.

b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.

4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

____

(Bid Number and Description)

in response to the invitation for the bid made by:

____

(Name of Institution)

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

I certify, on behalf of:____that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:

    (a) has been requested to submit a bid in response to this bid invitation;

    (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and

    (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium[3] will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
   - (a) prices;
   - (b) geographical area where product or service will be rendered (market allocation)
   - (c) methods, factors or formulas used to calculate prices;
   - (d) the intention or decision to submit or not to submit, a bid;
   - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
   - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

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

………………………………………………	………………………………
Signature	Date
………………………………………………	………………………………
Position	Name of Bidder

Js914w 2

THE NATIONAL TREASURY

Republic of South Africa

GOVERNMENT PROCUREMENT:

GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

- The General Conditions of Contract will form part of all bid documents and may not be amended.

- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if (applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

TABLE OF CLAUSES

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 (NIP) Programme

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

34 Prohibition of Restrictive practices

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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