

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)							
BID NUMBER: DPSA006/2021		CLOSING DATE: 17 SEPTEMBER 2021			CLOSING TIME: 11:00		
DESCRIPTION		APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT A PERSONNEL EXPENDITURE REVIEW IN THE PUBLIC SECTOR.					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)							
Batho Pele House,							
546 Edmond Street,							
(C/O Hamilton Street),							
Arcadia							
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO				TECHNICAL ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON		Lorraine Masenya / Mmapula Kotsokoane		CONTACT PERSON		Mr. Samson Radebe	
TELEPHONE NUMBER		012 336 1126/1389		TELEPHONE NUMBER		012 336 1569	
FACSIMILE NUMBER		N/A		FACSIMILE NUMBER		N/A	
E-MAIL ADDRESS				E-MAIL ADDRESS		samson.radebe@dpsa.gov.za	
SUPPLIER INFORMATION							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER		CODE			NUMBER		
CELLPHONE NUMBER							
FACSIMILE NUMBER		CODE			NUMBER		
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS		TAX COMPLIANCE SYSTEM PIN:			OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE		TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]	
		☐ Yes ☐ No				☐ Yes ☐ No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]							
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES, ANSWER PART B:3]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS							

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 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:

NB: THERE WILL BE A COMPULSORY BRIEFING SESSION ON THE 9TH SEPTEMBER 2021 @10H00 ;3RD FLOOR AUDITORIUM; BATHO PELE HOUSE ;546 EDMOND STREET;(C/O HAMILTON STREET);ARCADIA.

ONLY ONE REPRESENTATIVE PER COMPANY.

FAILURE TO ATTEND THE BRIEFING SESSION WILL RESULT IN YOUR TENDER/PROPOSAL BEING DISQUALIFIED.

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO.: DPSA006/2021
CLOSING TIME 11:00	CLOSING DATE... 17/09/2021

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

DESCRIPTION: APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT A PERSONNEL EXPENDITURE REVIEW IN THE PUBLIC SECTOR.		
NO	BID PRICE IN RSA CURRENCY	**(ALL APPLICABLE TAXES INCLUDED)

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.

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

4. PERSON AND POSITION

.....	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 airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

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

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

Name of Bidder:

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

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

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

SBD 4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes an advertised competitive bid, a limited bid, a proposal or written price quotation). 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 in full and submitted with the bid. Failure to fully complete the questionnaire and duly sign the declaration will result in your bid being disqualified.**
 - 2.1 Full Name of bidder or his or her representative:
 - 2.2 Identity Number:.....
 - 2.3 Position occupied in the Company (director, trustee, shareholder², member):
 - 2.4 Registration number of company, enterprise, close corporation, partnership agreement or trust:
 - 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.

SBD 4

DECLARATION OF INTEREST

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 / NA**

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

(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, 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.

.....

SBD 4

DECLARATION OF INTEREST

.....

.....

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.

[illegible]

SBD 4

DECLARATION OF INTEREST

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 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 000 000.00 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000.00 (all applicable taxes included).

1.2

a) The value of this bid is estimated to not exceed R50 000 000.00 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable;

1.3 Points for this bid shall be awarded for:

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

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

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

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

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

2. DEFINITIONS

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

3. POINTS AWARDED FOR PRICE

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

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

80/20

or

90/10

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

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

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

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

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

5. BID DECLARATION

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

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

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

(Points claimed in respect of paragraph 6.1 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-ontractor.....
- 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

.....

.....

SBD 8: DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

SBD 8: DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

SBD 9: CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) **must** form part of all bids¹ invited. **Failure to fully complete this document and duly sign the declaration will result in your bid being disqualified.**
- 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.

SBD 9: CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.

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.

SBD 9: CERTIFICATE OF INDEPENDENT BID DETERMINATION

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.
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 dpsa

Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

INFORMATION SESSION CERTIFICATE

This is to certify that the company.....
attended a briefing session at **DPSA @ Third Floor, Auditorium on 09 September 2021.**

Signed for the DPSA

Date

Signed for the Bidder

Date

**NB: THIS CERTIFICATE MUST BE SIGNED BY BOTH PARTIES AND
MUST FORM PART OF THE BID DOCUMENT**



the dpsa

Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

BID CHECK LIST

Have you submitted a proof of registration on the Central Supplier Database (CSD) with National Treasury?	YES	NO
In case of consortium, have all parties to the consortium/joint venture submitted a valid Tax Clearance Certificate? (Failure to submit a valid Tax Clearance Certificate for each party of the consortium/joint venture WILL result in the invalidation of your bid)	YES	NO
Is the SBD 6.1 form fully completed and signed by the duly authorized person? (Failure to sign the SBD 6.1 will result in the invalidation of your bid)	YES	NO
Are the following forms fully completed and signed? 1. SBD 1 2. SBD 3.3 3. Declaration of Interest (SBD 4) 4. SBD 6.1 5. SBD 8 6. SBD 9	YES	NO

.....
Signature

.....
Date:



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TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT A PERSONNEL EXPENDITURE REVIEW IN THE PUBLIC SECTOR



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TERMS OF REFERENCE

1. PROJECT TITLE AND PROJECT PURPOSE

- 1.1. The Department of Public Service and Administration (DPSA) is embarking on a project to review personnel expenditure in the public sector. The main purpose of this project is to obtain objective recommendations that will be utilized to develop a new remuneration strategy for the public sector which should include a state wage setting mechanism.

The project title is "The Personnel Expenditure Review 2021".

2. BACKGROUND

- 2.1. Serious concerns have been raised over the last few years about the size of the Public Service wage bill, as well as the size of the wage bill of the broader public sector and its impact on the fiscus. The increasing wage bill is crowding out other types of government expenditure such as operational and capital expenditure. The COVID-19 pandemic that swept across the globe in 2020 has a devastating impact on the South African economy which was already in decline before the pandemic.
- 2.2. In addition to the size and affordability of the wage bill of the public sector, there are also concerns about disparities in terms and conditions of service between the various parts of the public sector (between the Public Service, as defined in the Public Service Act, municipalities, public entities, etc). Some of the reasons for this situation are the decentralized nature of collective bargaining and wage setting across the various parts of the public sector as well as diverse legal regimes governing the determination of remuneration and other conditions of service in the different entities that make up the public sector.
- 2.3. The DPSA conducts a periodic Personnel Expenditure Review (PER), which aims to assess if the current remuneration strategy/policy meets its objectives and if not, provides evidence to inform the development and implementation of a revised remuneration strategy, framework and policy for the Public Service for the subsequent five years.
- 2.4. The PER that is now to be executed will be the fourth PER conducted by the DPSA.



- 2.5. The first PER was conducted in 1999 which resulted in the adoption of a new remuneration policy for the Public Service. The adoption of the remuneration policy supported the recruitment and retention of skills while containing personnel expenditure.
- 2.6. The 2006 PER pointed out some of the weaknesses and shortcomings of the remuneration policy framework that applied at that stage and made recommendations for improvements including the establishment of occupation specific dispensations (OSDs), that were aimed at supporting the recruitment and retention of professional and scarce skills occupations in the Public Service.
- 2.7. The last PER, conducted in 2011 contained a number of recommendations for improvements in the management of compensation as well as other human resource management practices.
- 2.8. A related research project was conducted in 2008 to do a cost/benefit analysis of aligning remuneration and conditions of service between the Public Service and municipalities.
- 2.9. The reports and recommendations emanating from the previous PERs and other related initiatives, will be considered during the next PER. Copies of these documents will be made available to the service provider to be appointed.
- 2.10. In assessing the need for a new PER, it is important to take the current economic situation in South Africa into account. Since the onset of the 2008 financial crisis, the performance of the economy has remained subdued. Current economic growth rates are far below levels envisaged in the National Development Plan (NDP). The economy has continued to grow slower than population growth. The 2020 Covid-19 pandemic has led to a further sharp decline in economic growth.
- 2.11. The Minister of Finance indicated in his Budget Vote speech on 24 February 2021 that the South African economy is expected to grow by 3.3% in 2021. The budget deficit has been revised to 14% of gross domestic product (GDP) in 2020/21 financial year in response to the spending and economic pressures of the COVID-19 pandemic. The 2021 Budget proposes measures to narrow the main budget primary deficit from 7.5 per cent of GDP in the current year to 0.8 per cent in 2023/24. According to the Minister's speech, the spending envelope over the Medium-Term Expenditure Framework is R6.2 trillion which gives expression to the Economic Reconstruction and Recovery Plan.



3. PROJECT SCOPE

3.1. The DPSA seeks to appoint a suitably qualified service provider to perform a review and analysis in the public sector covering the following functional areas:

- (a) Employment trends and personnel expenditure in the public sector and the impact of the current, and projected future state of the South African economy may have on these trends;
- (b) Collective bargaining and wage setting mechanisms/arrangements (including legislated arrangements where applicable);
- (c) Salaries and salary scales (highest and lowest, salaries for specific occupations, salary structure arrangements (total cost to employer, broad banding, benchmarking, performance based pay, etc.);
- (d) Job grading, job evaluation and job classification arrangements including occupational specific dispensations and similar dispensations in other public sector institutions (Potential service providers should note that a separate project is being initiated to develop and implement a job evaluation system for the Public Service. The service provider to be appointed will not be expected to recommend a job evaluation system for the Public Service);
- (e) Allowances;
- (f) Bonuses and other incentives;
- (g) Pension arrangements;
- (h) Medical assistance;
- (i) Leave benefits;
- (j) Other benefits; and
- (k) Payroll arrangements and the utilization of automated HR information systems to support their remuneration and compensation practices.

3.2. Research must be conducted on all the above mentioned topics to determine:

- (i) the “as-is” situation,
- (ii) the national and international best practices;
- (iii) the proposals for change, with specific focus on alignment within the various sectors of the public sector, and
- (iv) the projected cost of implementing the proposals will have to be submitted.



- 3.3. For purposes of this project the 'Public Sector' refers to all national and provincial Public Service departments, government components, all municipalities, staff of legislatures and public entities as defined in the schedules to the Public Finance Management Act, 1999.
- 3.4. Develop a self-sustaining multi-factor index (formula and factors) to determine salary increases in the public sector.

4. DELIVERABLES

- 4.1. The appointed service provider will be expected to deliver the following final products to the DPSA premises at Batho Pele House, 546 Edmond Street, Arcadia, Pretoria, 0083:
- 4.2. A comprehensive/detailed report containing, as a minimum, the following points covering the scope of the project:
 - (a) A review of the implementation of the recommendations that were contained in the previous PERs and whether these achieved the desired results;
 - (b) The results of the "as-is" review conducted across the various institutions in the South African public sector;
 - (c) A comparison of the "as-is" situation with national and international best practices;
 - (d) Detailed recommendations, including options with potential time-frames, for changes to the current terms and conditions of service and related practices in the public sector (as indicated in paragraph 3.1 above) and with a specific focus on achieving alignment in respect of these terms and conditions of service and related practices between the various institutions within the South African public sector;
 - (e) A sustainable multi-factor index to determine salary increases in the public sector; and
 - (f) The costs associated with the various options as indicated in sub-paragraph (d) above.
- 4.3. Potential service providers should note the following that have an important bearing on the way that the work involved in the project is to be executed:
 - (a) The Public Service utilises a largely uniform remuneration framework. Most of the information on this framework can be obtained from a single source (the DPSA).
 - (b) The Public Service utilises a single HR and payroll system (called PERSAL) from which most of the information relating to the Public Service (at national and provincial level) can be obtained.



- (c) In the local government and public entity spheres, different remuneration frameworks and different HR and payroll systems apply. In view of this, information on remuneration and conditions of service practices as well as information required for costing purposes is not available from a single source.

5. DESCRIPTION OF THE FINAL PRODUCT

- 5.1. A comprehensive and detailed report as indicated in paragraph 4.2 above in order to assist the DPSA in drafting a new public sector remuneration framework, including a state wage setting mechanism. Supporting documentation should be included in the report as annexures.
- 5.2. The report should be provided to the DPSA in professionally designed and bound hard copy form, with three hard copies and five electronic copies utilising the MS Office Suite of software products.

6. COMPETENCIES AND EXPERIENCE REQUIRED

- 6.1. Technical knowledge, skills and competence of the project team members must include the following:
 - (a) Advanced expertise in, and understanding of, compensation management, retirement and medical assistance provisioning;
 - (b) Detailed experience and knowledge of remuneration and benefits in the public sector (national, provincial and local government including public entities) executive remuneration, including local and international remuneration practices;
 - (c) Broad experience and knowledge of general HR policies and practices to ensure that remuneration/ reward strategies and policies are complimentary to business/HR strategy and goals;
 - (d) Understanding of the legislative frameworks applicable in the public sector;
 - (e) An understanding of the public sector context and complexities;
 - (f) South African employment and labour law;
 - (g) South African labour relations;
 - (h) A detailed understanding of the South African economy;
 - (i) The ability to gather data across a range of organisations in the public sector, to analyse the data and report on it. If



necessary, the service provider will be requested to conduct face-to-face interviews with relevant stakeholders. The travel and accommodation rates as per the DPSA's Travel Policy and Procedures will be applicable.

- (j) Access to local and international benchmarking information that is relevant to the project;
 - (k) Excellent project management, presentation, report writing and communication skills;
 - (l) Advanced research, policy analysis and development skills; and
 - (m) Ability to function effectively in a team containing public sector resources.
- 6.2. The project manager/leader must demonstrate the ability to organise and engage with stakeholders across the public sector, at management and technical level.
- 6.3. The team must be led by a person with appropriate academic qualifications, extensive research and project management experience as well as strong communication skills.
- 6.4. The curricula vitae of all team members, their envisaged role and level of involvement in the project must be included in the proposal.

7. PROPOSAL REQUIREMENT

- 7.1. The proposals **must be submitted** in the following manner:
- (a) One original document; and
 - (b) Five extra copies.
- 7.2. The original and copies must be clearly indexed.

8. SERVICE LEVEL REPORTING

- 8.1. The service provider shall:
- (a) Report directly to the DPSA's Chief Director: Remuneration, Employment Conditions and HR Systems, who shall be the Project Manager for the project and provide instructions to the service provider. The service provider will also be expected to appoint a project manager/leader.
 - (b) The project will be overseen by a Steering Committee representing key stakeholders in the project.
 - (c) Be required to agree to achieve specific service levels to be outlined in a mutually agreed Service Level Agreement (SLA).
 - (d) Implement the necessary measures, monitoring tools and procedures required for reporting performance of services



against the applicable performance standards as agreed in the SLA.

- (e) Provide the DPSA with the information and access to such tools and procedures upon request, for purposes of verification.
- (f) The DPSA and any relevant stakeholders will liaise with the service provider in person, by telephone or email as the need arises.
- (g) The project will be conducted within a period of 15 months starting from the date of signing of the contract.
- (h) Over and above the high level work-plan that should be included in the bid proposal, the service provider shall within a maximum period of fourteen days of being awarded the contract submit a detailed project plan outlining but not limited to:–
 - (i) a detailed work-plan with clear time frames;
 - (ii) the methodology to be followed;
 - (iii) the specific tasks to be performed, etc.
 - (iv) the service provider must set up a project meeting with the relevant DPSA officials and stakeholders to discuss the high level work plan.
 - (v) should the need arise to discuss possible concerns/changes to the high level work plan thereafter; these will be discussed during regular project meetings or special meetings if necessary.

9. PROJECT MANAGEMENT

- 9.1. The DPSA requires that the service provider actively participates in project management during the life cycle of the project. The DPSA will establish the necessary project management mechanisms, inclusive of the reporting schedules and formats stipulated in the Service Level Agreement.

10. TRANSFER OF SKILLS

- 10.1. The service provider must demonstrate which opportunities it would utilise to transfer and/or enhance skills of specified members of the project team and the mode in which the transfer of skills will take place. Skills Transfer Plan must be developed in line with the Terms of Reference.



11. APPOINTMENT, COMMENCEMENT AND DURATION OF ASSIGNMENT

- 11.1. The service provider will be expected to commence with the project after the signing of a Service Level Agreement and the appointment letter has been issued and accepted. The project is expected to be completed within a period of 15 months. Dates for specific deliverables will be contained in the Service Level Agreement.
- 11.2. The printing of the final products (refer to paragraph 5 and 7) once the DPSA has reviewed, commented on and accepted the single comprehensive report. It is expected that there may be various draft versions / draft parts of the report that will require review and consultation with public sector stakeholders prior to the final version being accepted.

12. PAYMENT SCHEDULE

- 12.1. The DPSA shall within a period of 30 days of the receipt of a valid invoice and having assured itself of the quality of the deliverables, effect the payment to the identified banking account of the service provider.
- 12.2. The deliverables against which payment will be effected will be specified in the service level agreement.

13. LATE BIDS

- 13.1. Bids received late will not be considered. Service providers are therefore strongly advised to ensure that bids are dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid.
- 13.2. The official Telkom time (Dial 1026) will be used to verify the exact closing time.
- 13.3. Bids sent via any other means other than hand delivery shall be deemed to be received on the date and time of arrival at the DPSA premises.
- 13.4. Bids received at the physical address after the closing date and time of the bid, shall therefore be deemed to have been received late.

14. WITHDRAWAL OR MODIFICATION OF BIDS

- 14.1. A service provider who submits a proposal in response to the terms of reference will have the right to withdraw, modify or correct a proposal



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after delivery thereof provided that the request for such withdrawal, modification or correction, together with the full details of such modification or correction are received by the DPSA at the address provided before the closing date stipulated for the receipt of proposals. Failure to do so before the closing date and time as stipulated will result in the original (pre-modified) bid being considered.

15. INTELLECTUAL PROPERTY

- 15.1 The successful bidder may not disclose any information, documentation or products received or generated during this project to any other person without the written consent from the DPSA. DPSA has a right to own any intellectual property pertaining to this project. All rights, including, without limitation, copyrights, patents, trade secret rights, and other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, confidential information or trade secrets, prepared or developed during this project, belongs to the DPSA.

16. ACCEPTANCE/REJECTION OF BIDS

- 16.1. The DPSA reserves the right not to award the bid/project/contract.

17. PROPOSAL COST

- 17.1. Respondents shall bear all costs incurred in the process of responding to the ToR and in any subsequent negotiations.
- 17.2. Rates of remuneration will be subject to negotiation taking into consideration DPSA hourly fee rates for consultants.

18. PRESENTATION

- 18.1. If required, shortlisted service providers may be expected to make presentations of a maximum of thirty (30) minutes to the Bid Evaluation Committee. The presentation should be focused solely on the requirements of the ToR.
- 18.2. The DPSA will notify the service provider, in the event where such need arises, of the date, time and venue where the presentation must be made.



19. EVALUATION PROCESS

19.1. The evaluation process comprises of the following stages:

A) Phase I: Minimum Mandatory Criteria Evaluation Phase Initial Screening Process

During this phase bid documents will be reviewed to determine compliance with tax matters and submission of the mandatory submission requirements outlined below. **Failure to submit any of the mandatory submission requirements will lead to the disqualification of the bid during the bid evaluation process.**

- (i) The service provider must submit a detailed cost breakdown for the project.
- (ii) Letter confirming that the proposal is valid for at least three (3) months.
- (iii) Proposal signed by the designated responsible person;
- (iv) List of clients for whom projects of a similar nature have been conducted;
- (v) At least three (3) references of clients for whom projects of this nature and magnitude have been conducted;
- (vi) One original document and five extra copies which must be clearly indexed.
- (vii) High Level implementation plan included;
- (viii) A Company profile;
- (ix) Evidence of work previously completed in this area;
- (x) Compliance with sub-contracting rules defined in the Standard Bidding Document (SBD);
- (xi) Fully completed and signed SBD forms; and
- (xii) Evidence of registration on the Central Supply Database of Government (CSD) must be provided.

NB: Prospective bidders responding to this bid must be registered as a service provider on the Central Supplier Database (CSD). If your company is not registered on the CSD, proceed to complete the registration of your company prior to submitting your proposal. Refer to <https://secure.csd.gov.za/> to register your company. Ensure that all documentation on the database is updated and valid.
No bid will be awarded to a Supplier/Service Provider who has not registered on the CSD.



B) Phase II: Functionality Evaluation

- (i) The Bid Evaluation Committee (BEC) will conduct the functional evaluation.
- (ii) Bids will be evaluated strictly according to the bid evaluation criteria stipulated in this section of the terms of reference. During this stage bidders' responses will be evaluated for functionality based on achieving a minimum score of 65 out of 100.
- (iii) Bidders must, as part of their bid documents, submit supporting documentation for all technical requirements as indicated hereunder. The panel responsible for scoring the respective bids will evaluate and score all bids based on their submissions and the information provided.
- (iv) Bidders will not rate themselves, but need to ensure that all information is supplied as required. The BEC will evaluate and score all responsive bids and will verify all documents submitted by the bidders.
- (v) If required, the short listed service providers may be contacted to conduct a presentation on their bid to the BEC. The BEC shall score the presentations of the service providers.
- (vi) If a need is identified, the BEC may assign a team to conduct a site visit to the offices of all short listed service providers.
- (vii) The panel members will individually evaluate the responses received against the following criteria as set out below:

20. FUNCTIONALITY EVALUATION CRITERIA

The applicable values that will be utilised when scoring each criteria are reflected in the table below:

1. Proven experience and capability of the Service Provider in conducting similar projects		Weighting: 60%
Criteria	Scoring Indicators	Score
1.1	Organisational/company track record	
	13 and more years in operation	(5)
	10 – 12 years in operation	(4)
	7 – 9 years in operation	(3)
	4 – 6 years in operation	(2)
	1 – 3 years in operation	(1)



	Note: In the case of joint ventures and consortia, the combined years of operation will be taken into account		
1.2	Qualifications and experience of team members including comprehensive CVs of all Practitioners/ Team Members	Team members possess qualifications with 30 years collective experience in the relevant field of expertise. At least one team member/lead has a minimum of 10 years' experience in the relevant field of expertise. (5) Team members possess qualifications and 25 years collective experience in the relevant field of expertise. At least one team member/lead has a minimum of 8 years' experience in the relevant field of expertise. (4) Team members possess qualifications and 20 years collective experience in the relevant field of expertise. At least one team member/lead has a minimum of 5 years' experience in the relevant field of expertise. (3) Team members possess qualifications and 15 years collective experience in the relevant field of expertise. At least one team member/lead has a minimum of 3 years' experience in the relevant field of expertise. (2) Team members possess qualifications and 10 years collective experience in the relevant field of expertise. At least one team (1)	



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		member/lead has a minimum of 2 years' experience in the relevant field of expertise.	
2.	Understanding and conceptualization of the assignment (technical approach and procedures)		Weighting : 40%
Criteria		Scoring Indicators	Score
2.1	Appropriateness and quality of proposed work plan	A comprehensive high level work plan describing all activities in logical sequence with clear time frames commensurate with the terms of reference. (5) Work plan describes all high level activities, supplemented with further sub-activities in logical sequence with clear time frames commensurate with the terms of reference. (4) Work plan describes all high level activities in logical sequence with clear time frames commensurate with the terms of reference. (3) Work plan describes high level activities with timeframes not compatible with the terms of reference. (2) Work plan activities do not commensurate with the deliverables in the terms of reference. (1)	
2.2	Proposed methodology and approach to achieve required outputs	The methodology and approach includes a high level exposition and motivation in support of the proposal. It includes the full scope of the deliverables (outputs) in the ToR and clearly unpacks the anticipated risks, challenges and appropriate mitigating strategies. (5) The methodology and approach includes a high level exposition and (4)	



		motivation in support of the proposal. It includes the full scope of the deliverables (outputs) in the ToR and touches on anticipated risks, challenges and mitigating strategies. The methodology and approach includes the exposition and motivation in support of the proposal. It includes the full scope of the deliverables (outputs) in the ToR and touches on anticipated risks, challenges and mitigating strategies. The proposed methodology and approach is a verbatim repeat of the ToR Failed to align the proposed methodology with the required outputs of the project.	(3) (2) (1)
Total functionality score			100%
Minimum threshold for function			65%

- 20.1. Each panel member will rate each individual criterion on a score sheet using the above scoring guideline;
- 20.2. The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- 20.3. This score will be converted to a percentage and only bidders that have met or exceeded the minimum threshold of 65 percent for functionality will be evaluated and scored in terms of pricing and Broad-based Black Economic Empowerment Status Level Certificates provided in terms of the Preferential Procurement Policy Framework Act, Act 5 of 2000 and the Preferential Procurement Regulations of 2017.

A proposal not meeting a minimum score of 65 percent for their technical proposal will not be considered further.



21. PRICE AND B-BBEE EVALUATION CRITERIA

21.1. In terms of Regulation 5 of the Preferential Procurement Regulations pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated by the Department on the 80/20-preference point for Broad-Based Black economic empowerment in terms of which points are awarded to bidders on the basis of:

- (a) The lowest price (maximum 80 points)
- (b) Broad-based black Economic Empowerment (maximum 20 points)

21.2. The following formula will be used to calculate the points for price in respect of bidders with a Rand value below R50 000 000:

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

Where

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

$P_{\min}$ = Comparative price of lowest acceptable bid

21.3. **Broad-based Black Economic Empowerment and/or subcontracting with a Broad-based Black Economic Empowerment**

21.3.1. A maximum of 20 points may be awarded to a bidder who meets requirements for Broad-based Black Economic Empowerment and/or subcontracting with a Broad-based Black Economic Empowerment stipulated in the Preferential Procurement regulations. For this bid, the maximum number of Broad-based black Economic Empowerment status points that could be allocated are indicated in the table below.

B-BBEE level of contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8



B-BBEE level of contributor	Number of points (80/20 system)
6	6
7	4
8	2
Non-compliant contributor	0

- 21.3.2. Failure to capture the required status level and to submit the required B-BBEE status level certificates will lead to a zero (0) status level for non-compliant Service Providers.
- 21.3.3. The points scored by a bidder in respect of the points indicated above will be added to the points scored for price.
- 21.3.4. Bidders are requested to complete the various preference claim forms in order to claim preference points.
- 21.3.5. Only a bidder who has fully completed and signed the declaration part of the preference claim form will be considered for B-BBEE status.
- 21.3.6. Supply Chain Management may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to B-BBEE status.
- 21.3.7. Points scored will be rounded off to the nearest 2 decimals.
- 21.3.8. In the event that two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for B-BBEE status. Should two or more bids have equal points, including equal preference points for B-BBEE, the bidder scoring the highest points for functionality will be awarded the bid. In the event that two or more bidders are equal in all respects, the award shall be decided by drawing of lots.
- 21.3.9. A contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points.



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22. ENQUIRIES

For further information, service providers are welcome to contact the DPSA Chief Directorate: Remuneration, Employment Conditions and HR Systems. Information can also be accessed via the DPSA website (www.dpsa.gov.za).

FOR TECHNICAL ENQUIRIES, PLEASE CONTACT:

Mr. Cornel Uys
Tel. 012 336 1171
cornel@dpsa.gov.za

FOR SUPPLY CHAIN MANAGEMENT ENQUIRIES, PLEASE CONTACT:

Mr. Michael Jackson
012- 336 1189
Michaelj@dpsa.gov.za

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
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21. Delays in the supplier's performance
22. Penalties
23. Termination for default
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25. Force Majeure
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27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

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

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

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

may be due to him

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

28. Limitation of liability

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

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

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