



cooperative governance

Department:
Cooperative Governance
REPUBLIC OF SOUTH AFRICA



MUNICIPAL INFRASTRUCTURE SUPPORT AGENT (MISA)

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REFERENCE NO: MISA/TSS/TST/005/2021

APPOINTMENT OF A SERVICE PROVIDER FOR PROVISION OF TECHNICAL SKILLS TRAINING COURSES TO MUNICIPAL OFFICIALS

Beneficiary	Municipal Infrastructure Support Agent
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Project Name	Appointment of a service provider for the Provision of Technical Skills Training Courses to Municipal Officials
Reference No.	MISA/TSS/TST/005/2021
Closing Date and Time	29 June 2021 @ 11:00am

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1. INVITATION

- 1.1** The Municipal Infrastructure Support Agent (MISA) hereby invites accredited or validated training service providers to submit proposals for the provision of technical courses to municipal officials. MISA has a mandate to provide infrastructure related technical support to municipalities and assist them in building their technical capacity to sustainably render services to communities.
- 1.2** MISA has to achieve this strategic mandate through the provision of technical support and advice to plan, deliver, operate and maintain service delivery infrastructure. It, therefore, intends to contract qualified, accredited or validated training service providers to offer courses to municipal officials in the following (infrastructure related) technical field or functional area:
- 1.2.1 Infrastructure procurement;
 - 1.2.2 Infrastructure planning, delivery, operation and maintenance;
 - 1.2.3 Property valuation;
 - 1.2.4 Project life cycle management;
 - 1.2.5 Contract Management;
 - 1.2.6 Technical and business report writing;
 - 1.2.7 Infrastructure asset management;
 - 1.2.8 Labour intensive construction methods;
 - 1.2.9 Accounting standards for property plant and equipment;
 - 1.2.10 Revenue enhancement and billing;
 - 1.2.11 Development planning;
 - 1.2.12 Town and regional planning; and
 - 1.2.13 Geographic Information System.

2. BACKGROUND

- 2.1** MISA is a government component, in the Department of Cooperative Governance (DCoG), established in terms of Section 7(5) (c) of the Public Service Act of 1994 (as amended) and in terms of Government Gazette No 36634/2013. It has been established to provide technical support and advice, whilst strengthening the capacity of municipalities to plan, deliver, operate and maintain infrastructure effectively and efficiently.

- 2.2 In the past, MISA technical training courses have been oversubscribed and MISA has been inundated with requests for training courses from provinces. In addition to statutory bodies requiring professionals to acquire Continuous Professional Development (CPD) points to maintain their professional registration, professionals need a platform where they can share experiences and learn about new technologies in their areas of expertise. MISA's assessments confirm the need for individual capacity development in municipalities, whereas MISA has a mandate to ensure the upskilling of municipal officials.
- 2.3 In order to execute its mandate, MISA invites qualified and interested training service providers with capacity to provide training courses in the abovementioned technical fields of functional areas. In evaluating the bids, **preference will be given to bidders who shall have submitted evidence of accreditation or validation by relevant authorities or councils to provide training in the area(s) of interest.**

3. PROJECT OBJECTIVES

- 3.1 The objectives of this capacity development support initiative are to:
- 3.1.1 Develop scarce skills in local government for the eradication of backlogs and improved delivery, operations and maintenance of infrastructure;
 - 3.1.2 Provide in-service technical training courses to municipal officials;
 - 3.1.3 Contribute towards professionalization of the ranks of local government officials in compliance with statutory provisions for technical professions;
 - 3.1.4 Create institutional management capacity;
 - 3.1.5 Apply education and training development initiatives to close the scarce technical skills gaps;
 - 3.1.6 Develop and close skills gaps in low and medium capacity municipalities through skills transfer; and
 - 3.1.7 Provide platforms for municipal officials to share technical skills and insights in the management of municipal infrastructure.
- 3.2 This Terms of Reference (TOR), therefore, seeks the services of a service provider, with requisite accreditation/validation, capability and capacity to submit a proposal for the provision of technical training programmes/courses to municipal officials.

4. SCOPE OF WORK

- 4.1** If appointed, the contracted training service provider will be responsible for the following in order to ensure smooth delivery of training:
- 4.1.1 Planning and design, preparation and organization, and delivery of training sessions;
 - 4.1.2 Development and implementation of appropriate training methodology, including suggestions and ideas for the training events;
 - 4.1.3 Mobilization of participants (municipal officials) and trainers for each event;
 - 4.1.4 Preparation, printing and delivery of all training materials including teaching aids and materials to accompany each training event;
 - 4.1.5 Organizing coordination sessions between the training provider and MISA;
 - 4.1.6 Evaluation of feedback and the training events;
 - 4.1.7 Provision of reports on the evaluation, impact and outcomes of the training events;
 - 4.1.8 Delivery of training through subject matter experts, as facilitators;
 - 4.1.9 Portfolio workshop within one month after the date of training, including preparation of the master Portfolio of Evidence (POE) file;
 - 4.1.10 Assessment of all portfolios of evidence within three weeks of receipt from course attendees (where necessary);
 - 4.1.11 Provision of learner guidance and support during and after the portfolio workshop. This may take the form of post-training hands-on support;
 - 4.1.12 Moderation of POE's within four weeks from the date of training (if necessary).
 - 4.1.13 Certification of learners (competence / attendance certificates);
 - 4.1.14 Proof of capturing of learner achievements on the National Learner Records Database (NLRD) (where necessary); and
 - 4.1.15 Provision of own travel, accommodation and meals for the trainer(s) and facilitator(s) during training.
- 4.2** The training provider is required to take full responsibility for the content and quality of the training material as well as the quality standards and availability of trainers and facilitators. All trainers and facilitators must be fluent in English. The training materials must be made available in English.
- 4.3** Training seminars should include case studies and exercises, where appropriate, with question and answer sessions and panel discussions. Where appropriate, training events, which include computer-based exercises and case studies would be a major plus.
- 4.4** The Training provider should be a specialist in their own field(s) and have in-depth practical insight of the topics.
- 4.5** Sub-contracting of the services to other companies or individuals is not permitted without prior written approval from MISA. A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have equal or higher B-BBEE status level of contributor than the person

concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

4.6 The service provider should have capacity to provide both physical and virtual training sessions.

4.7 ORGANISATION OF TRAINING EVENTS

4.7.1 The training provider will be responsible for the complete organization of each training event. The training provider will therefore be responsible for at least the following tasks:

- a. Recruitment and registration of participants;
- b. Venue identification and recommendation to MISA;
- c. Event preparation, set up and hosting; and
- d. Provision of training material.

4.7.2 The training provider shall solicit prior approval of MISA before a venue is confirmed for any training session. MISA shall, through its Travel Agency, be responsible for booking training venues and catering for all participants. In all cases, the location of the training events should be easily accessible.

4.7.3 The venue for a training event must be adequately equipped, modern and comfortable with proper audio-visual systems. The training provider will always ensure that training venues and material are, conspicuously, MISA branded. Depending on the requirements of the course offered, the training provider will recommend to MISA for syndicate rooms to be made available.

4.8 QUALITY ASSURANCE AND PROJECT MANAGER

4.8.1 The appointed training provider shall ensure that the quality of the events is continuously monitored. Copies of the feedback forms and results of the analysis of the feedback should be provided to MISA, within a month, after each training event.

4.8.2 Each training provider shall appoint a **quality assurer** and a **project manager** who will be responsible for monitoring and management of the project. The project manager shall act as a single point of contact between MISA and the training service provider. The relationship manager should respond to email queries and phone calls within 24 hours and resolve outstanding issues within three working days.

4.8.3 In the event that MISA is not satisfied with the performance or behavior of a facilitator provided by the training service provider, the provider will be obliged to supply a suitable replacement. The training service provider will seek MISA's prior approval of the replacement, based upon an examination of CVs.

4.9 Core Occupations and Project Team

Bidders are expected to have capacity to provide training in the following core occupations;

- Civil Engineering;
- Electrical Engineering;
- Construction and Project Management;
- Town and Regional Planning;
- Solid Waste Management;
- Geographic Information Systems; and
- Property Valuation

4.10 COURSE DURATION, ASSESSMENT AND CERTIFICATION

Each course should be conducted over a minimum period of 2 days of physical and/or virtual classroom attendance. The service provider will also provide feedback on summative assessment, per course conducted, within 30 days from the date of the course. Assessment should include a breakdown of:

4.10.1 Expected group work and class tests (continuous formative assessment) during the 2-day course.

4.10.2 Summative assessment activities that must be completed after the course work within a specific timeframe to demonstrate the participant's ability to apply knowledge and skills gained during the course.

4.10.3 Evidence of post-training hands-on support provided (where necessary and concert has been provided by MISA).

4.10.4 Upon completion of each course work, it is expected that participating municipal officials will receive a certificate of competence or attendance issued by the relevant service provider.

4.10.5 Written prior approval will be sought from MISA, before any training that is anticipated to take more than two days is conducted.

4.10.6 A typical day at the training should be structured as follows:

- 08H30: Registration
- 09H00: Welcome and Introduction
- 09H15: Session 1
- 10H15: Session 2
- 11H15: Coffee/Tea Break
- 11H45: Session 3
- 12H45 Lunch

- 13H45 Session 4 and exercise or case study
- 15H00: Coffee/Tea Break
- 15H30: Session 5 and exercise or case study
- 17H00: End

4.11 SCHEDULE OF TECHNICAL SKILLS TRAINING COURSES

The table below presents the technical fields that are relevant to MISA's support to municipalities. The Service provider is expected to list at least two courses per field, for which they have accreditation or validation to offer from the relevant statutory body or professional association, SETA or Education and Training Quality Assurer (ETQA). Proof of accreditation or validation needs to be attached to assist MISA during the evaluation process. Continuous Professional Development (CPD) points should be indicated per accredited or validated training course or learning programme. The information provided in the table is expected to demonstrate the bidder's capacity to execute the project. Although points will be scored for the number of relevant courses indicated, failure to indicate training courses under a particular technical field will disadvantage the bidder during the evaluation process.

Technical Field/ Functional Area	Name of Accredited / Validated Course ¹	Name of Statutory Body or Professional Association or SETA or ETQA	Name of Accredited Facilitator/ Trainer/ Instructor	CPD Points
Infrastructure Procurement				
Infrastructure Planning, Delivery, Operation and Maintenance				
Property Valuation				
Project Life Cycle Management				
Contract Management				
Technical Business Report Writing				
Infrastructure Asset Management				
Labour Intensive Construction Methods				
Accounting Standards for Property Plant and Equipment				

Revenue Enhancement and Billing				
Development Planning				
Town and Regional Planning				
Solid Waste Management				
Geographic Information System				

5 PROJECT OUTPUTS AND OUTCOMES

- 5.9 The training courses offered should contribute towards the professional development of the participants through continuous professional development (CPD) points.
- 5.10 The training should assist in enhancing technical skills of municipal officials to plan, deliver, operate and maintain service infrastructure for water, sanitation, roads, storm-water drainage, electricity, and solid waste.
- 5.11 The expected strategic outputs of the training include:
- An increase in the technical skills and on-the-job knowledge base of municipal technical managers (Section 56 Managers), as well as their subordinates.
 - An increase in the number of professionally registered municipal officials maintaining their CPD points with their statutory bodies and thus retaining their registration status; and
 - Increased institutional and management capacity of technical and planning departments in municipalities.
- 5.12 Municipal officials should also understand the Infrastructure Asset Management guidelines produced by government through the various custodians of infrastructure norms and standards.

6 PROJECT DURATION AND TIMEFRAMES

- 6.1 The appointed service provider will be contracted to provide training services for a period of 36 months from the date of award. Face-to-face courses will be conducted at venues decided by MISA across all the nine provinces of South Africa. Where there is proven reason that a physical training course cannot be conducted, alternative measures (taking into account financial implications) will be applied, based on MISA's approval. A training schedule, aligned to available budget, will be adopted annual.

7 COMPANY EXPERIENCE AND COMPETENCY

- 7.1 Detailed company profile with the following information:
- 7.1.1. Provide details of the head office location in the company profile.
 - 7.1.2. Provide the year of the establishment of the business in the company profile.
 - 7.1.3. Provide instances of company's experience to provide similar training services and subject matter as detailed in these TOR's.
- 7.2 At least 3 reference letters for enterprise and or public institution detailing the types of training provided and successfully completed in the last 5 years. The letters must be dated, signed on client letterhead.
- 7.3 Copies of qualifications of project team.
- 7.4 Provide an accreditation and/ or validation certificate or letter from the relevant authorities or councils to provide training in the area(s) of interest.
- 7.5 The facilitators that will be assigned to MISA must have a minimum of five (5) years' experience in providing similar training sessions as described in the TORs.

Bidders are expected to use the table below to present the names and credentials of key personnel, namely the project manager, the quality assurer and at least four facilitators. The facilitators should be from different technical fields.

Personnel	Qualifications	Years of Experience	Number of Similar Projects Successfully Undertaken	Registration /Accreditation / Validation by Professional Council
Project Manager				
Quality Assurer				
Facilitator (At least four, listed in order of preference for evaluation/scoring purposes)				

8 EVALUATION OF PROPOSALS

The bid will be evaluated based on three stages:

8.1 FIRST STAGE: PRE-QUALIFICATION CRITERIA

Only those bidders who satisfy the following eligibility criteria and who provide the required evidence in their submissions are eligible to respond to the appointment of a service provider to supply, implement, and migrate servers, storage devices, network infrastructure and related services have their submissions evaluated, otherwise will they be disqualified:

- 8.1.1 Company profile
- 8.1.2 Letters of three verifiable references in respect of similar services rendered to other companies (preferably public entities), within the previous three years. Each letter should be presented on the reference company's letterhead.
- 8.1.3 Notarized agreement for Joint Venture and consortium arrangements
- 8.1.4 If the bidder intends to use subsidiaries, the bidder must submit proof that the bidder is the holding company and that the other companies are its subsidiaries (e.g. corporate agreement between the holding company and its subsidiaries)
- 8.1.5 If a bidder is a subsidiary within a holding company and intends other subsidiaries within the holding company the bidder must submit teaming agreement.
- 8.1.6 Bidders should submit CVs of key members of the project team in a manner that will enable MISA to conduct the evaluation.
- 8.1.7 A detailed work plan and methodology for delivering the project in terms of scope of work and how the required tasks would be executed or undertaken (i.e. Proposal with Project plan and deliverables).
- 8.1.8 Accurately completed and signed the following forms:
 - a) SBD 1 Invitation to Bid;
 - b) SBD 3.3 Price Schedule (Professional Services);
 - c) SBD4 Declaration of Interest;
 - d) SBD 6.1 Preference Points Claim Form;
 - e) SDB 8 Declaration of Bidders past supply chain practices;
 - f) SDB 9 Certificate of Independent Determination; and
 - g) General Conditions of Contracts (GCC).
- 8.1.3. **Non-Mandatory requirements which would not render the bid non responsive in absence of any:**
 - 8.1.3.1. SARS pin
 - 8.1.3.2. CSD Proof of registration
 - 8.1.3.3. BEE certificate / Sworn Affidavit

8.2 SECOND STAGE: TECHNICAL FUNCTIONALITY

The bidder that complies with **ALL** requirements in the first stage will be evaluated for Technical Functionality.

SELECTION CRITERIA	Score	Final Score
1. Company registration, accreditation or validation as a skills training service provider (Provide proof or registration, accreditation or validation by the relevant SETA, Professional Association, Professional Council or Education and Training Quality Assurance (ETQA) body)	10 Points	
The company is not registered or accredited/validated as a skills training service provider by a relevant authority or body. = 0 point The company is registered or accredited/validated by one relevant authority or body as a skills training service provider. = 5 points The company is registered or accredited/validated by more than one relevant authority or body as a skills training service provider. = 10 points		
2. Capacity and Capability to execute the project within allocated timeframe (Submitted project approach, draft work schedule and details of six proposed key personnel). The Project Manager and Quality Assurer can play more than one role.	26 Points	
2.1 Relevant Qualifications as per the core occupations for each of the following six key personnel: National Diploma/Degree = 1, Honours or post graduate Diploma = 2 Masters and above = 3) = 18 (total maximum score) - 1x Project Manager, - 1x Quality assurer - 4x Facilitators, 2.2 Project approach = 5 (maximum score) 2.3 Work schedule = 3 (maximum score)		
3. Total number of relevant training courses accredited or validated by the relevant statutory bodies (ECSCA, SACPCMP, SACPLAN, SACPVP, etc.) or professional associations (SAICE, IMESA, WISA, etc.) or Education and Training Quality Assurer or SETA. Submit proof of course accreditation or validation. The bidder will be scored zero (0) for non-submission of proof of accreditation or validation.	4 Points	
Less than 4 relevant courses accredited/validated = 2 4 or more relevant courses accredited/validated = 4		
4. Company Experience: Relevant company's current and previous skills training project experience in the build and local government environments:	10 Points	
Five to seven years = 3 Points Eight to nine years = 6 Points Ten years and above = 10 Points		

5. Experience of Facilitators (number of facilitators with more than ten years facilitation experience)	10 Points	
Less than 2 facilitators =2 Points 2 to 4 facilitators = 6 Points More than four facilitators =10 Points		
6. Staff registration with or accreditation/validation by relevant professional statutory bodies or professional associations	10 Points	
Less than 50% of the proposed facilitators are registered with or accredited/validated by relevant professional statutory bodies/councils =3 points 50% - 80% of the proposed facilitators are registered with or accredited/validated by relevant professional statutory bodies/councils = 6 points More than 80% of the proposed facilitators are registered with or accredited/validated by relevant professional statutory bodies/councils =10 points		
7. Composition of Project Team (facilitators only) (In relation to the relevant core occupations, viz. Civil and Electrical Engineering, Project and Construction Management, Town and Regional Planning, etc.). Project Managers and Quality Assurers can play more than one role.	10 Points	
Project team (facilitators) comprises of members from only one of the relevant occupations =3 Points Project team (facilitators) comprises of members from two to three of the relevant occupations = 6 Points Project team (facilitators) comprises of members from four or more of the relevant occupations = 10 Points		
8. Project Leadership (Proposed project leader (Manager) has experience of undertaking training projects previously (examples and references to be provided) Failure to submit examples and references will lead to bidder being scored zero (0) points.	10 Points	
Undertaken successfully 1 to 2 projects of a similar nature = 4 points Undertaken successfully 3 to 4 projects of a similar nature =7 points Undertaken successfully 5 or more projects of a similar nature =10 points		
9. Skills Transfer	10 points	
Skills transfer approach/methodology =5 Points Skills transfer plan = 5 Points		
Total	100 Points	

The threshold for this bid is **75 points**. Only bidders who meet and exceed the threshold score will proceed to the next stage of Price and BBEE.

8.3 THIRD STAGE: PRICE AND BBEE

8.3.1. THE 80/20 PREFERENCE POINT SYSTEMS

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

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

8.3.2. Points for B-BBEE Status Level of Contribution (P_p)

Maximum of **20 points** are allocated for Preferential Procurement Goal. Preference point must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the Preferential Procurement Regulations, 2017.

9. SUBCONTRACTING

- 9.1 Sub-contracting of the services to other companies or individuals is not permitted without the prior written approval of MISA. A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

10. COSTING

- 10.1 Costing should be inclusive of VAT and disbursements. Bidders should factor into their bids costs related to branding. The appointed training provider shall provide training material and use MISA watermark on the training material. In instances where MISA banners are required, the appointed bidder shall request them from MISA representatives. Bidders are expected to adopt the below cost structure for costing purposes:

Cost Item	Units	Unit Cost	Total Cost
Course Advertising and Promotion	60 Courses		
Course Delivery for Municipal, Officials (Training Material, Facilitation, Assessment and Certification)	60 Courses		
Branding (Water Marks and Brochures)	60 Courses		
Reporting and Quality Assurance	60 Courses		
Disbursement	Once Off Average Cost		
Sub-Total			
VAT (15%)			
Total			

10.2 Bidders are not expected to include costs for venues and meals, since MISA will make provision for such. Venues for the courses shall be accessible and be arranged by MISA's Travel Agency. Each training course will last for two days.

NB: The appointed training service provider will be expected to conduct 20 training courses in one financial year, with each training course catering for 25 municipal officials. Any additional training course(s) will be per arrangement between MISA and the service provider. 500 municipal officials will be trained per annum, over the thirty six (36) months period.

10.3 The below table is prescribed for presenting all the courses that the service provider has capacity to offer:

Technical Field/ Functional Area	Name of Accredited / Validated Course ²	Name of Statutory Body/Professional Association/SETA/ ETQA	Name of Accredited Facilitator/ Trainer/ Instructor	CPD Points
Infrastructure Procurement				
Infrastructure Planning, Delivery, Operation and Maintenance				
Property Valuation				
Project Life Cycle Management				
Contract Management				
Technical Business Report Writing				
Infrastructure Asset Management				
Labour Intensive Construction Methods				
Accounting Standards for Property Plant and Equipment				
Revenue Enhancement and Billing				
Development Planning				
Town and Regional Planning				
Geographic Information System				

NB: Although a bidder is not bound to bid for all the indicated technical fields / functional areas, preference will be given to bidders with capacity to provide training in infrastructure planning, delivery, operation and maintenance related to Water and Sanitation, Roads and Stormwater, Energy, Town and Regional Planning and Solid Waste Management.

11. MISA'S RIGHTS

- 11.1 MISA reserves the right to cancel this solicitation in whole or in part, at its sole discretion, at any time before the Agreement is fully executed;
- 11.2 This Bid does not commit MISA to award an Agreement, to pay any costs incurred by bidders in the preparation of their proposals submitted in response to this Bid, or to procure or contract for services;
- 11.3 MISA reserves the right to conduct vetting and verify the validity of all certificates.
- 11.4 MISA will reject any proposal as non-responsive that does not provide evidence of the specified mandatory requirements. MISA may or may not request additional information and clarification during the evaluation and selection process from any or all bidders regarding their proposals;
- 11.5 Municipal Infrastructure Support Agent (MISA) reserves the right to request the company's latest audited financial statement in order to ascertain financial stability of the bidder prior to the award of the bid;
- 11.6 Misa reserves the right to verify the authenticity of all documents requested.

12. REPORTING

- 12.1. The appointed bidder will report to the appointed Head: Technical Skills. The detailed reporting requirements will be provided to the successful bidder during the contract negotiation and project inception;
- 12.2. The bidder must submit a written report to the Head: Technical Skills on specific problems, recommendations, improvement methods, work programme, personnel turnover, tenants' complaints, remedial actions taken and all other matter relating to provision of server services.

13. PAYMENTS

- 13.1. MISA does not pay any amount in advance. Only original signed invoices must be submitted for payments. The appointed service will be paid within **30** days after receipt of valid invoice, when the services have been fully rendered to the satisfaction of MISA, and this done by means of electronic transfer directly into the bidder's bank account.

14. BRIEFING SESSION

- 14.1. Bidders are invited to attend a virtual/online briefing session on the **14 June 2021** at **10:00**. The Briefing session link will be available at MISA website on the briefing session date.
- 14.2. Attendance of the virtual/online briefing session is compulsory.

15. SUBMISSION OF PROPOSALS

- 15.1. The Tender Documents must also include a soft copy (DVD or Memory Stick - all in PDF Format) of the proposal, and to reach the offices of the MISA before and must be enclosed in a sealed envelope clearly inscribed on the outside:
- 15.2. Tender documents are to be submitted **to MISA Reception and deposited in the tender box. (At MISA Offices, Letaba House, 1303 Heuwel Road, Riverside Office Park, Centurion, 0046.**
- 15.3. Please note that the tender closes punctually on the **29 June 2021 at 11H00am** No late submissions will be considered under any circumstances.

16. PERIOD FOR ACCEPTANCE OF PROPOSALS

- 16.1. In order to allow for adequate evaluation, MISA requires a response to this solicitation to be valid and irrevocable for 90 working days after submittal date and time.

17. COMMUNICATION WITH MISA OFFICIALS

- 17.1. Bidders and their representatives may not communicate with MISA officials except in writing. Bidders and their representatives must communicate in the manner set forth in this Bid. There shall be no communication with MISA officials except as may be reasonably necessary to carry out the procedures specified in this Bid. Nothing herein prohibits bidders and their representatives from making oral statements or presentations in public to one or more MISA officials during a public meeting.

18. CONFIDENTIALITY

- 18.1 All responses to this Bid become property of MISA and submissions after closing of bid may be subject to public inspection and disclosure in accordance with the MISA SCM Policy and provisions of applicable legislation.

19. QUESTIONS AND REQUESTS FOR CLARIFICATIONS

19.1 Bidders must carefully examine the bid documents and in the event of doubt of anything contained in the documents:

All enquiries should be made at the briefing session and can also be made in writing five (5) working days before the closing date of the Bid. For queries please contact the following person:

Ms L. Tyikwe

E-mail: lumka.tyikwe@misa.gov.za

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/PUBLIC ENTITY)

BID NUMBER: CLOSING DATE: CLOSING TIME: 11:00

DESCRIPTION.....

The successful bidder will be required to fill in and sign a written Contract Form (SBD 7).

BID DOCUMENTS MAY BE POSTED TO:.....

OR

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

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

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THE FOLLOWING PARTICULARS MUST BE FURNISHED
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER

POSTAL ADDRESS

STREET ADDRESS

TELEPHONE NUMBER CODE.....NUMBER.....

CELLPHONE NUMBER

FACSIMILE NUMBER CODE NUMBER.....

VAT REGISTRATION NUMBER

HAS A TAX CLEARANCE CERTIFICATE BEEN SUBMITTED (SBD 2)? YES/NO

ARE YOU THE ACCREDITED REPRESENTATIVE
IN SOUTH AFRICA FOR THE GOODS/SERVICES OFFERED BY YOU? YES/NO
(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER

DATE

CAPACITY UNDER WHICH THIS BID IS SIGNED

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: BID NO.:

CLOSING TIME 11:00 ON

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

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY INCLUSIVE OF VALUE ADDED TAX
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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 VAT for the project.

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

4. PERSON AND POSITION

HOURLY RATE

DAILY RATE

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R.....

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R.....

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R.....

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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.....

TOTAL: R.....

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

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

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

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

2.3 Position occupied in the Company (director, trustee, shareholder²):

2.4 Company Registration Number:

2.5 Tax Reference Number:

2.6 VAT Registration Number:

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

¹"State" means –

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

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

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

2.7.1 If so, furnish the following particulars:

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

Any other particulars:
.....
.....
.....

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

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

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

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

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

2.8.1 If so, furnish particulars:
.....
.....
.....

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

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?

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]

4 DECLARATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

May 2011

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

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

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

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 The value of this bid is estimated to exceed/not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
 - (b) B-BBEE Status Level of Contribution.
- 1.4 The maximum points for this bid are allocated as follows:

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

- 1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE 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) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
 - (b) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
 - (c) **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard

contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

- (d) **"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 services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (g) **"consortium or joint venture"** 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;
- (h) **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;
- (i) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (j) **"Firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (k) **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- (l) **"non-firm prices"** means all prices other than "firm" prices;
- (m) **"person"** includes a juristic person;
- (n) **"QSE"** means a Qualifying Small EEnterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (o) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (p) **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (q) **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (r) **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (s) **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 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 comparative price of bid under consideration

P_t = Comparative price of bid under consideration

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

5. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 5.1 In terms of Regulation 5 (2) and 6 (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	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 5.2 A bidder who qualifies as a EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.
- 5.3 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE

rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

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

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 5.1

- 7.1 B-BBEE Status Level of Contribution: . =(maximum of 10 or 20 points)
- (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or a sworn affidavit.

8. SUB-CONTRACTING

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

(Tick applicable box)

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

- 8.1.1 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.

(Tick applicable box)

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

9. DECLARATION WITH REGARD TO COMPANY/FIRM

- 9.1 Name of company/firm:.....

- 9.2 VAT registration
number:.....
- 9.3 Company registration
number:.....
- 9.4 TYPE OF COMPANY/ FIRM
- ☐ Partnership/Joint Venture / Consortium
 - ☐ One person business/sole propriety
 - ☐ Close corporation
 - ☐ Company
 - ☐ (Pty) Limited
- [TICK APPLICABLE BOX]
- 9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES
-
-
-
-
-
- 9.6 COMPANY CLASSIFICATION
- ☐ Manufacturer
 - ☐ Supplier
 - ☐ Professional service provider
 - ☐ Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]
- 9.7 Total number of years the company/firm has been in business:.....
- 9.8 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 contribution indicated in paragraph 7 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 paragraph 7, 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 contribution 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after 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
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DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

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

SBD 8

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js365bW

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:
(Name of Bidder)

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

SBD 9

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

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

SBD 9

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

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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

General Conditions of Contract

1. Definitions

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

origin and which have the potential to harm the local industries in the RSA.

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

training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

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

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights

arising from use of the goods or any part thereof by the purchaser.

7. Performance security

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

8. Inspections, tests and analyses

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

- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.
- 9. Packing**
- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.
- 10. Delivery and documents**
- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.
- 11. Insurance**
- 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 12. Transportation**
- 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 13. Incidental services**
- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual

- (d) for each appropriate unit of the supplied goods; 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</p> |

or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

terms of the contract or any other contract or any other amount which may be due to him

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

28. Limitation of liability

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

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

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

Js General Conditions of Contract (revised July 2010)