

	BRAND SOUTH AFRICA TENDER NO: BSA/03/24/25
	APPOINTMENT OF A PANEL OF LEGAL SERVICE PROVIDERS FOR A PERIOD OF FIVE (5) YEARS.

REQUEST FOR BIDS

RFB Ref. No:	BSA/03/24/25
Description	APPOINTMENT OF A PANEL OF LEGAL SERVICE PROVIDERS FOR A PERIOD OF FIVE (5) YEARS.
Compulsory Vendor Briefing Session	N/A
Publication date	19 JUNE 2024
RFB Closing Details	Date: 12 JULY 2024 Time: 11:00 (South African Time) Place: Brand South Africa Street: 103 Central Street Houghton, Johannesburg
Public Opening of RFB Responses	Date: 12 JULY 2024 Time: 11:00 (South African Time) Place: Brand South Africa Street: 103 Central Street Houghton, Johannesburg
RFB Validity Period	120 Days from the Closing Date
CSD NUMBER	MAAA

PROSPECTIVE BIDDERS MUST REGISTER ON NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE PRIOR TO SUBMITTING BIDS.

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PART A

1. SBD 1- INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (BRAND SOUTH AFRICA)					
BID NUMBER:	BSA/03/24/25	CLOSING DATE:12/07/2024		CLOSING TIME:	11:00
DESCRIPTION	APPOINTMENT OF A PANEL OF LEGAL SERVICE PROVIDERS FOR A PERIOD OF FIVE (5) YEARS.				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
103 CENTRAL STREET					
HOUGHTON					
JOHANNESBURG					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Velly Thwala		CONTACT PERSON	Remembrance Ntshiyantshiya	
TELEPHONE NUMBER	+27 (0) 11 483-0122		TELEPHONE NUMBER	+27 (0) 11 483-0122	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	tenders@brandsouthafrica.com		E-MAIL ADDRESS	tenders@brandsouthafrica.com	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA) ☐ YES ☐ NO					
DOES THE ENTITY HAVE A BRANCH IN THE RSA? ☐ YES ☐ NO					
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? ☐ YES ☐ NO					
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? ☐ YES ☐ NO					
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? ☐ YES ☐ NO					
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

PART B
TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).

2. TAX COMPLIANCE REQUIREMENTS

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

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

SIGNATURE OF BIDDER:

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

DATE:

2. SBD 3.3- PRICING SCHEDULE

PRICING SCHEDULE (Professional Services)

NAME OF BIDDER:

BID NO.:

CLOSING TIME 11:00

CLOSING DATE: 12/07/2024

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.

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

1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.

R.....

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

4. RESOURCES AND RATES

RESOURCE	RATE PER HOUR
Partner	
Director	
Associate Director	
Senior Associate	
Associate	
Professional Assistant	
Candidate Attorney	

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

- 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.....		

“all applicable taxes” includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies”

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

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

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

Any enquiries regarding bidding procedures may be directed to the -:

Velly Thwala
Tel: [011 483 0122](tel:0114830122)
tenders@brandsouthafrica.com

Brand South Africa
103 Central Street
Houghton
Johannesburg

for technical information -:
Remembrance Ntshiyantshiya
Tel: [Tel: 011 483 0122](tel:0114830122)
tenders@brandsouthafrica.com

3 SBD 4- BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

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

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

Full Name	Identity Number	Name of State institution

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

2.2.1 If so, furnish particulars:

.....
.....

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

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

2.3.1 If so, furnish particulars:

.....
.....

3. DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure.
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect.
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

4 SBD 6.1-PREFERENCE POINTS

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

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

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

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to invitations to tender:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
 - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 **To be completed by the organ of state**
(delete whichever is not applicable for this tender).
- a) The applicable preference point system for this tender is the 80/20 preference point system.
- 1.3 Points for this tender shall be awarded for:
- (a) Price; and
- (b) Specific Goals

The maximum points for this tender are allocated as follows:

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

- 1.4 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.5 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state

2. DEFINITIONS

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

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

80/20

or

90/10

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

Where

- P_s = Points scored for price of tender under consideration
 P_t = Price of tender under consideration
 $P_{\min}$ = Price of lowest acceptable tender

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

3.2.1. POINTS AWARDED FOR PRICE

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

80/20

or

90/10

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

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax= Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below. (Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such. Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
100 % Black owned	N/A	10		
Exempted Micro Enterprise	N/A	10		
100% Youth owned				
100% Women owned				

Local Content Threshold				
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DECLARATION WITH REGARD TO COMPANY/FIRM

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

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM [TICK APPLICABLE BOX]

- ☐ Partnership/Joint Venture / Consortium
- ☐ One-person business/sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company
- ☐ (Pty) Limited
- ☐ Non-Profit Company
- ☐ State Owned Company

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have -
 - (a) disqualify the person from the tendering process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
 - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
 - (e) forward the matter for criminal prosecution

.....
SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME:.....

DATE:

ADDRESS:

.....

.....

5. SECTION 2- TERMS OF REFERENCE

APPOINTMENT OF A PANEL OF LEGAL SERVICE PROVIDERS FOR A PERIOD OF FIVE (5) YEARS.

5.1 INTRODUCTION

International dynamics require South Africa (SA) to be globally competitive to achieve GDP growth, job creation and a better life for all its citizens. Economic decisions to invest in, trade with, or visit a country are not solely based on facts, as they are often emotionally guided on perceptions. For this reason, it is imperative for SA to manage the perceptions that potential foreign investors, traders, and visitors have of the country. This is achieved through active branding strategies and reputation management of the nation brand.

Country branding is the strategic self-presentation of a country with the aim of creating reputational capital through economic, political and social interest promotion at home and abroad. Countries engage in nation branding to achieve the following key objectives:

- shaping the country's image;
- building of reputation/credibility;
- greater economic prosperity and success at home and improved standing abroad;
- remain globally competitive;
- reversal of adverse reputation;
- attract investment & tourism: - stimulate economic growth; creation of jobs; poverty alleviation.

5.1.2 WHO WE ARE

Brand South Africa is a Schedule 3A Public Entity, which was established in terms of the Brand South Africa Trust Deed, which is governed by the Trust Property Control Act No.57 of 1988 and the Public Finance Management Act, No.1 OF 1999.

5.1.3 PURPOSE

The purpose of Brand South Africa is to develop and implement pro-active and coordinated marketing, communication and reputation management strategies that position the country positively for global competitiveness.

5.1.4 MISSION

To achieve our purpose, we will embark on the following execution mission:

- Develop and articulate a South African national brand identity that will advance South Africa's long-term positive reputation and global competitiveness.
- Seek to build individual and institutional alignment as well as support Brand South Africa
- Promote pride and patriotism amongst South Africans.
- Build awareness of the country's brand in other countries.
- Seek the involvement and cooperation of various stakeholders including government departments, civil society, business and the non-governmental sector.

5.2 SCOPE OF WORK

Brand South Africa is requesting experienced and reputable bidders to submit proposals for panel of legal services for a period of five (05) years as per the following scope of work:

Successful bidders will be appointed to the Panel of Legal Services' providers. Bidders will be required to indicate which category they are bidding for and be required to deliver the scope of work outlined below in respect of legal services:-

CATEGORY	FIELD OF APPOINTMENT	Indicate category you are bidding for (Mark with an X)
Category One	Labour Law	
Category Two	Commercial/Corporate Law	
Category Three	Criminal Law	
Category Four	Intellectual Property Law	
Category Five	Administrative/Public Law	
Category Six	Constitutional Law	
Category Seven	Corporate Investigations/ Forensic Law	

NB:

- Bidders must submit proposals in respect of any or a combination of the seven (7) services' categories.
- Bidders must indicate the service categories for which they are bidding by ticking the relevant column.
- Supporting documentation for each category selected must be submitted. (See "technical evaluation" for further details).
- Bidders must indicate in their proposals the relevant experience and exposure as well as the capacity of the bidder in relation to the selected service category.

5.2.1 Category One: Labour Law

- Advise on all disputes that arise from the employment relationship.
- Appear on behalf of Brand South Africa in all employment related forums such as the CCMA, Labour Court.
- Provide litigation services in all areas of labour law.

5.2.2 Category Two: Commercial/Corporate Law

- Contract law.
- Intellectual property law.
- Commercial Law.
- Provide litigation services in all commercial /corporate legal matters.

5.2.3 Category Three: Criminal Law

- Advise on criminal proceedings including the application of the Prevention of Organised Crime Act, Act No. 121 of 1998, and the Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004.

5.2.4 Category Four: Intellectual Property Law

- Provide advice on all intellectual property related matters.
- Provide litigation services on all intellectual property related matters.

5.2.5 Category Five: Administrative/Public Law

- Advice regarding the application of the Public Financial Management Act, Act No. 1 of 1999; Promotion of Administrative Justice Act, Act No.3 of 2000; Promotion of Access to Information Act, Act No.2 of 2000; Preferential Procurement Policy Framework Act, Act No. 5 of 2000 and related legislation.
Provide litigation services in all areas of administrative and public law.

5.2.6 Category Six: Constitutional Law

- Advice on the constitutionality of legislation, policies etc.
- Provide litigation services in all areas of constitutional law.

5.2.7 Category seven: Corporate Investigations/ Forensic Law

- Conducting forensic investigations into allegations of fraud and corruption.

5.3 DURATION

The duration of this contract is five (05) years based on performance, which will be assessed on a quarterly basis and reviewed annually.

5.4 PAYMENT STRUCTURE

- Brand South Africa undertakes to pay in full within thirty (30) days, all valid claims for work done to its satisfaction upon presentation of a substantiated claim/invoice.
- Payments will only be made based on the work completed (milestones/deliverables) as per the project implementation plan to be agreed at the inception of the project.

5.5 TENDER PROCESS

5.5.1 Brand South Africa's tender process consists of the following stages:

1. Invitation to submit information
2. Submission of all Tender documents
3. Evaluation of proposals
4. Selection of Short-listed Bidders
5. Appointment of successful bidders

5.5.2 Bid documents to be completed are as follows:

1. SBD 1 - Invitation to tender
2. SBD 3.1- Pricing schedule - Non-firm prices
3. SBD 4 - Declaration of interest
4. SBD 6.1 - Preference points claim

5.6 IMPORTANT DATES

- Compulsory Clarification Briefing Session - None
- Deadline for questions relating to tender - 08 JULY 2024 at 16h00
- Deadline for submission of tender documents - 12 JULY 2024 at 11h00

5.7 EVALUATION CRITERIA

- The evaluation criteria for the assessment of the proposals will be based on both qualitative and financial aspects of the proposal.
- Service Providers will be evaluated on functionality. The bidders that score points which exceed the minimum threshold provided on functionality will further be

evaluated on price and specific goals provided in terms of the Preferential Procurement Regulations of 2022 (PPR2022).

- The Bid documents will be evaluated individually on a score sheet, by a representative of the evaluation panel according to the evaluation criteria indicated in the Terms of Reference.
- All bidders who score less than 80 out of 100 points for functionality will not be considered further. Service Providers will be shortlisted and may possibly be invited to do a presentation on their proposals at their own cost.
- Evaluation will be conducted in accordance with Brand South Africa Supply Chain Management Policy and Preferential Procurement Regulations of 2022.

NB: In accordance with the Brand South Africa Supply Chain Management Policy, the bid evaluation process shall be carried out in four (4) phases namely:

- Phase I: Administrative Requirements (Legislative);
- Phase II: Mandatory Requirement;
- Phase III: Technical Evaluation; and
- Phase IV: Price and Specific Goals

5.7.1 ADMINISTRATIVE REQUIREMENTS

TABLE 1: PHASE I- ADMINISTRATIVE COMPLIANCE EVALUATION

NO.	DESCRIPTION	YES	NO
1	Completion of all SBD Forms (Declaration Forms)		
2	Valid Tax Compliance pin		
3	Signed General Conditions of Contract (GCC)		
4	Registration with CSD (Central Suppliers Database) attach proof		
5	Signed POPIA Consent form		

5.7.2 TABLE 2: PHASE II- MANDATORY REQUIREMENTS

The service provider shall be automatically disqualified to proceed to the functionality evaluation if the following evidence is not presented or responded upon:

NO.	DESCRIPTION	YES	NO
1.	Formal written proposal		
2.	Bidder(s) must provide a valid Certificate of Good Standing (not older than twelve (12) months at the time of submission) from the appropriate Legal Practice Council in respect of each Attorney who will provide services to Brand South Africa. Please furnish copies of qualifications or certificate(s) of Attorney(s) who will be representing Brand South Africa.		
3.	Submission of a valid copy of the Legal Practitioner's Fidelity Fund Certificate for each Attorney(s) who will be representing Brand South Africa.		
4.	Submission of a Firm's Indemnity Cover Certificate issued for the present year.		
5.	Audited/Reviewed financial statements signed by accredited auditors / registered accountant or a BBBEE Exemption Affidavit.		

5.7.3 PHASE III- TECHNICAL EVALUATION

- 1) The tender documents will be evaluated and ranked using a weighted average scoring system for functionality to all those bidders who were successful from Phase II.
- 2) It is the responsibility of the bidder to understand the scoring system and factor that system into the organisation and content of its tender documents. The top and final shortlisted bidders will be evaluated and ranked using a weighted average scoring system for functionality to all those bidders who were successful from Phase II.
- 3) It should be noted that the technical evaluation will be carried out in three separate stages. Bidders will be evaluated per category to measure their capacity, capability and experience in that particular category in order to facilitate a transparent and fair selection process that will allow equal opportunities to all bidders.
- 4) The technical evaluation of bidders will be carried out in Phase III and will be as follows:-
 - a) Bidders will be evaluated in terms of the prevailing supply chain policy applicable to Brand South Africa.
 - b) A minimum of 80 points out of 100 points on technical capability for Table 3; will be the cut off to qualify for further evaluation. Those who qualify will be assessed using the 80/20 preference points system for Price and specific goals as per the PPR 2022.
 - c) Brand South Africa will analyse and assess technical capability and therefore the bidder should demonstrate the following:

TABLE 3: TECHNICAL EVALUATION CRITERIA

TECHNICAL EVALUATION CRITERIA		
CRITERIA	SUB-CRITERIA	POINTS
Organisational experience and capability	The bidder must attach copies of reference or testimonial letters on a letterhead for similar work done in the past ten (10) years in the public and private sector (per category applied for). A minimum of two (2) relevant, contactable signed client references or testimonial letters not older than ten (10) years must be submitted. Points will be allocated as follows: • 5 signed reference or testimonial letters (10) • 7 signed reference or testimonial letter (20) • 9 signed reference or testimonial letters (30) • 10 or more signed reference or testimonial letters (40)	40
Approach, Methodology and Project Plan	Bidders must submit a detailed approach, methodology and project plan including but not limited to the following: • Describe the ability to meet deadlines without compromising the work output, especially on a short-time frame, and give at least one example of how past tight deadlines have been successfully met. (5 points) • Details of procedure to ensure quality and risks standards will be held and professional association of your organisation. (10 points) • Any value-added services that the bidder may be in a position to offer Brand SA (5 points). • Project Plan to be linked to the deliverables in the field of law applied for and outputs. (10)	30
Key successes in the areas of law	Bidders must provide a summary of a minimum of 3 successful matters. (10) Less than 3 matters (0) 3 - 4 matters (5) 5 or more matters (10) Bidders are to submit verifiable information of the above.	10
Capacity and experience of the Project Lead.	Bidders must demonstrate that the personnel ultimately responsible for the project has relevant experience. Attorneys must be admitted legal practitioners. Attach concise CVs/ Biography of key personnel with at least three (3) contactable references. (10) A Post Graduate degree in Law from a reputable institution (10) (attach certified copy) Failure to provide copies of CV's and qualifications will result in no points being allocated.	20
TOTAL POINTS		100

NB:

- Only bidders who obtain **80 out of 100 points** for the technical evaluation will be shortlisted to the panel for each category.
- Bidders who wish to bid for more than one (1) category need to provide supporting documentation separately for each category according to the scope of work.
- Bidders who meet all the technical requirements will be part of the panel.
- Work will be allocated on rotation basis as and when required, or any other method which is competitive bidding of RFQ.
- Brand South Africa will conduct supplier performance throughout the duration of the contract, and contract for non performing service providers may be terminated.

5.8 PRICE AND SPECIFIC GOALS

- Actual cost price will be determined when the service is required.
- Brand South Africa reserves the right to negotiate prices with the appointed service providers.
- Specific goals will be allocated during the evaluation period, however the appointed service providers must update the organization if there are any changes within the contract duration period. **20 points for specific goals**

6. RESPONSE FORMAT

6.1. Your Tender document must consist of one original hard copy.

6.2. All Tender documents must be delivered by hand in a **sealed envelope**. The following information must appear on the outside of the sealed envelope.

Brand South Africa, 103 Central Street, Houghton; Johannesburg

Name of bidder:

APPOINTMENT OF A PANEL OF LEGAL SERVICE PROVIDERS FOR A PERIOD OF FIVE (5) YEARS.

Tender no: BSA/03/24/25

12 JULY 2024 at 11h00 (Closing date and time).

Attention: Velly Thwala (Supply Chain Administrator)

6.2.1. The Tender document must be lodged in Brand South Africa's Tender Box located in the main reception Brand South Africa's offices at 103 Central Street, Houghton, Johannesburg, on or before 12 JULY 2024 @ 11H00.

6.2.2. The tender box will be accessible from 08h30 - 16h00, Mondays - Fridays.

7. TENDER DOCUMENT TERMS AND CONDITIONS

- 7.1. A service provider may not recruit or shall not attempt to recruit an employee of Brand South Africa for purposes of preparation of the bid or for the duration of execution of this contract or any part thereof.
- 7.2. This tender is subject to Brand South Africa's tender guidelines that have been included as Section 3 of this document.
- 7.3. All standard bidding documents are included in Section 1 of this document.
- 7.4. The assignment of points by Brand South Africa is final and will under no circumstances be open to appeal or protest by the bidders.
- 7.5. The selection of the qualifying proposal will be at the Brand South Africa's sole discretion. The Brand South Africa does not bind itself to accept any particular bid, and the Brand South Africa reserves the right not to appoint the service provider.
- 7.6. The award of the tender may be subjected to price negotiation with the preferred tenderers.
- 7.7. For further information regarding technical matters can be sent via email to: tenders@brandsouthafrica.com or Tel: 011 483 0122.
- 7.8. For further information regarding supply chain matters can be sent via email to: tenders@brandsouthafrica.com or at Tel: 011 483 0122

8. BID SUBMISSIONS

Proposals should be hand delivered and acknowledged in the tender register available at the reception on or before the **12 JULY 2024** by no later than **11H00** the following address:

Brand South Africa

103 Central Street

Houghton, Johannesburg

NB: No Late submissions will be accepted.

9. SECTION 3-TENDER GUIDELINES

9.1. CLARIFICATION REQUIRED BY BRAND SOUTH AFRICA

- 9.1.1 Brand South Africa may request additional information, clarifications and/or validation of information contained in the Tender document. The bidders should endeavour to respond to the clarification request within two (2) working days.
- 9.1.2 To assist in the evaluation and comparison of the Tender document, Brand South Africa may also seek the attendance of the bidders at clarification meetings to be held at Brand South Africa's offices. During the evaluation process, no change in the content of Tender document submission shall be sought, offered or permitted.
- 9.1.3 Should there be a difference of interpretation between the bidders and Brand South Africa, Brand South Africa reserves the right to make a final ruling on such interpretation.

9.2. ASSOCIATION WITH OTHER BIDDERS

- 9.2.1. In the case where a number of bidders form a consortium, principal bidders must be appointed as the Tendering authority to interface directly with Brand South Africa. The consortium may not make any further modifications to the consortium after the submission of the Tender document.
- 9.2.2. Submissions should clearly outline the nature of the relationship, the % shareholding in the association, the reason for the association and the potential benefits to Brand South Africa. Failure to comply with this requirement will result in a bidder's disqualification from the Tender process.
- 9.2.3. Brand South Africa reserves the right to verify members of the respective association and/or consortium.

9.3. MODIFICATION OR SUBSTITUTION OF TENDER INFORMATION

- 9.3.1. Once Tender document have been submitted by the bidder, Brand South Africa will not accept or allow any substitution and/or modification of the information contained in the Tender document submission unless as agreed during negotiations.

10. NOTIFICATION

10.1. Short-Listed Bidders

Brand South Africa shall inform, in writing, the bidders that have been short-listed. It is the intention of Brand South Africa to keep the Tender document and any other further Tender submissions of these bidders open until such time as Brand South Africa has executed an agreement for the required services with one or more of the Short-Listed Bidders.

10.2. Unsuccessful Bidders

Upon selection of the Short-Listed Bidders, Brand South Africa will notify each of the other bidders and inform them that they have not been shortlisted.

Please Note: Brand South Africa's decision on the selection of Short-Listed Bidders is final and Brand South Africa will not enter into any further correspondence and/or negotiations with any unsuccessful bidders.

11. QUERIES

All questions or queries on this Tender document must be communicated by e-mail tenders@brandsouthafrica.com. All questions and queries received will be responded to via email.

Please Note: The questions and responses will be sent to all bidders. Please bear this in mind when asking questions. The name of the bidder asking the question will not be mentioned. The deadline for questions relating to the Tender document is **08 JULY 2024 at 16h00**.

12. COST OF TENDERING

The bidders shall bear all costs and expenses associated with the preparation and submission of the Tender document submission and Brand South Africa shall under no circumstances be responsible or liable for any such costs, regardless of, without limitation to the conduct or outcome of the Tendering, evaluation, and/ or selection process.

13. VALIDITY

The Tender document provided to Brand South Africa in terms of this Tender should be valid for a period of 120 days from the date of submission with the exception of the Tax pin which must still be valid at the time of the closing of the Tender.

14. NEGOTIATIONS

Brand South Africa will enter into negotiations to agree on fees, scope of work, scope of services and other salient commercial terms with the Short-Listed Bidders.

15. COMPLETENESS OF THE TENDER DOCUMENTS

The bidders must complete all documents in full, sign and submit these with the Tender document submission. Failure to comply with these requirements may invalidate the bidders and disqualify the Tender document submission.

Notwithstanding any possible shortcomings and/or inconsistencies in the Tender documents, the bidders must ensure that the solution offered will form a complete, cost-effective and functional proposal.

16. CONTRACTUAL IMPLICATIONS

After awarding the Tender, the Tender document submission, together with an applicable contract to be compiled in line with this completed document, will constitute a binding contract agreement between Brand South Africa and the successful Short-Listed Bidder. The Short-Listed Bidders will assume total responsibility, regardless of any third party or sub-contracting agreements it may enter into.

17. CONDITIONS OF PAYMENT

Brand South Africa will approve all content, reviews and assessments set. No service will be provided to Brand South Africa before an official order has been issued to the supplier and service delivery will be within the specified time scale after the receipt of the official order. Invoices will be payable (30) days after receipt.

An invoice will be submitted to Brand South Africa for certification and must be supported by all relevant documentation and original invoices from additional suppliers.

18. QUALITY ASSURANCE

All deliverables produced by the Short-Listed Bidders, its personnel, agents, or sub-contractors will be subject to ongoing evaluation to determine its effectiveness and will be so guaranteed for the full period of this Tender.

Any lack of, or incorrect delivery which is attributable to poor or negligent work, will be rectified by the Short-Listed Bidder at own cost and time and all costs

relating to the non-delivery will be expressly and separately noted on billing documentation.

19. CONTRACTUAL DETAILS

19.1. AWARDING OF CONTRACT

- Proven relevant experience and success, as well as the ability to deliver reliable
- and effective service will be important considerations.
- By the delivery of a Tender document submission, each bidder warrants that he/she is highly skilled, professional, competent, and experienced in the area for which he/she has bid. Any work performed by successful bidder will be evaluated against these criteria.
- Tender document that are qualified by a bidder's own conditions may be rejected as being invalid, and failure of the bidders to renounce such conditions when called upon to do so may invalidate the Tender document submission.
- Brand South Africa may request clarification or additional information regarding any aspect of the Tender document submission. The bidders must supply the requested information within forty-eight (48) hours after the written request has been made, otherwise the bidders may be disqualified.

19.2. TERMS OF CONTRACT

- The contract will be in terms of the Brand South Africa's standard terms of services and procurement, the national treasurer general conditions of contract.

20. EXECUTION OF CONTRACT

- Upon agreement between one of the Short-Listed Bidders and Brand South Africa, a contract will be given to the Preferred Bidders for signature.
- The Preferred Bidders will be allocated a time period of a maximum of (ten) 10 working days for signature and for the commencement of work on the account.
- Failing this, Brand South Africa reserves the right to disqualify the Preferred Bidder and enter into negotiations with any of the other Short-Listed Bidders.

21. CONFLICT OF INTEREST

- The bidders or bidders group must submit a document (you may include it in your covering letter), stating whether any of its employees have any interest

in Brand South Africa or whether any of Brand South Africa's personnel have any interest in the bidders or affiliated business.

22. DISQUALIFICATION

Any effort by a bidders or bidder's representative to influence Brand South Africa in the process of clarification, determination of compliance, evaluation of TENDER DOCUMENT, or in decisions concerning the award of the Tender, will result in the disqualification of the respective bidders from the process.

23. BRAND SOUTH AFRICA'S DISCRETION

Brand South Africa reserves the right to:-

- 23.1 reject and/or disqualify any Tender document submission that:
 - 23.1.1. fails to follow the letter and spirit of the Tender;
 - 23.1.2. fails the Compliance Criteria;
 - 23.1.3. substantially deviates from the terms and conditions of this Tender;
 - 23.1.4. fails to commit to the key deliverables needed for this Tender; or
 - 23.1.5. contains any information that is found to be incorrect or misleading in any way.
 - 23.1.6. accept one or more Tender document;
 - 23.1.7. reject all Tender documents;
 - 23.1.8. consider any Tender document that may not conform to any aspect of the tender document;
 - 23.1.9. request further information from any bidders after the closing date;
 - 23.1.10. cancel this Tender, tender document or any part thereof at any time;
 - 23.1.11. award this Tender or any part thereof to any one or more bidders; and/or
 - 23.1.12. Increase/decrease the number of Short-Listed Bidders invited to the pitch phase of this Tender.

24. DISCLAIMER

The information presented in this Tender is furnished solely for the purpose of assisting bidders in making their own evaluation of the Tender and does not purport to be all-inclusive or to contain all the information that bidders may require.

25. SECTION 4- GENERAL CONDITIONS OF CONTRACT

Government Procurement: General Conditions of Contract - July 2011

NOTES

The purpose of this document is to:

1. Draw special attention to certain general conditions applicable to government Bids, contracts and orders; and
2. 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 GCC 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 GCC. Whenever there is a conflict, the provisions in the SCC shall prevail.

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General conditions of contract

1. Definitions

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 anything 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 RSA.
- 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, SCC are also laid down to cover specific supplies, services or works.
- 2.3 Where such SCC 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:
 - 7.3.1 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
 - 7.3.2 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 organisation 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 analysed 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

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

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:
- 13.1.1 performance or supervision of on-site assembly and/or commissioning of the supplied goods;

- 13.1.2 furnishing of tools required for assembly and/or maintenance of the supplied goods;
- 13.1.3 furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- 13.1.4 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
- 13.1.5 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:

- 14.1.1 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
- 14.1.2 in the event of termination of production of the spare parts:
 - 1. Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - 2. following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship

(except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in rand unless otherwise stipulated in SCC.

17. Prices

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 authorised in SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

21.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3. No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5. Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time

is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

- 21.6. Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling 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

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:
- 23.1.1. 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;
 - 23.1.2. if the Supplier fails to perform any other obligation(s) under the contract; or
 - 23.1.3. 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:

23.6.1. the name and address of the supplier and / or person restricted by the purchaser;

23.6.2. the date of commencement of the restriction;

23.6.3. the period of restriction; and

23.6.4. the reasons for the restriction.

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

23.8. 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

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

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,

27.5.1. the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

27.5.2. the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

28.1. Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;

28.1.1. the supplier shall not be liable to the purchaser, whether in contract, 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

28.1.2. 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

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

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 SARSs.

33. National Industrial Participation (NIP) Programme

The NIP Programme administered by the DTI shall be applicable to all contracts that are subject to the NIP obligation.

34. Prohibition of restrictive practices

34.1. In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a

decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

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

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

The above General Conditions of Contract (GCC) are accepted by:

Name: _____

Designation: _____

Bidder: _____

Signature: _____

Date: _____

NB:

- **BIDDERS ARE EXPECTED TO QUOTE ACCORDING TO THE SCOPE OF WORKS ABOVE (SECTION 2)**
- **BIDDERS ARE EXPECTED TO PROVIDE A DETAILED BREAK DOWN OF COSTS ON COMPANY LETTER HEAD**
- **THE ABOVE PRICING SCHEDULE IS FOR COMPARISON PURPOSES. AWARD OF THIS CONTRACT WILL BE RATE BASED.**
- **BIDDERS WILL BE USED ON AN “AS AND WHEN” REQUIRED BASIS**

26. (POPI) act

PROTECTION OF PERSONAL INFORMATION ACT, 2013 (POPIA)

I/we as Brand South Africa's potential service provider hereby grant my/our voluntary consent to Brand South Africa to collect, process and use my/our personal information in accordance with the provisions of POPIA;

confirm that I/we understand and acknowledge that my/our personal information may be used by Brand South Africa in order to discharge its public and/or statutory duties;

grant our consent to Brand South Africa that my/our personal information may be disclosed to third parties in consistence with Brand South Africa's statutory duties; and

confirm that I/we are aware that there may be circumstances during which Brand South Africa will not need my/our express consent to process my/our personal information, such as during litigation or the information is already in the public domain.

Should any of my / our personal information change, I/ we shall promptly inform Brand South Africa by contacting accounts@brandsouthafrica.com.

SIGNED AT _____ ON THIS _____ DAY OF
_____ 202_____

FULL NAMES AND SURNAME: _____

CAPACITY OF THE SIGNATORY: _____

SIGNATURE: _____