



INVITATION TO BID

BID NO NWPL 03/2020/21: THE APPOINTMENT OF EMPLOYEE WELLNESS PROGRAMME PARTNER(S) ON AN AS AND WHEN BASIS, TO THE NORTH WEST PROVINCIAL LEGISLATURE FOR THE PERIOD OF TWO YEARS

1. You are hereby invited to bid for the abovementioned bid. Kindly receive the attached documents for full completion and to be returned with the bid documents as follows:
2. SBD 1. Invitation to bid
3. SBD 2. Tax Clearance Requirements
4. SBD 3. Pricing Schedule
5. SBD 4. Declaration of Interest form
6. SBD 6.1 Claim Form in terms of the Preferential Procurement Regulations Act of 2011
7. SBD 7.2 Contract Form – Rendering of Service
8. SBD 8. Declaration of the bidders past Supply Chain Management Practices
9. SBD 9. Certificate of Independent Bid Determination
10. The conditions contained in the General Conditions of Contract (GCC), as well as any special conditions relating to this bid are applicable.
11. The work procedures the bidder proposes to follow in order to obtain the required results must be clearly outlined and may not conflict with those contained in the General Conditions of Contract.
12. Duly completed and signed documents must be put in a clearly marked envelope with the following information;
Bid No
Closing date
Closing time
13. No telegraphic or facsimile bids will be considered.
14. The NWPL reserves the right to accept the bid in whole or in part and does not bind itself to accept the lowest or any bid.
15. For more information on the specifications please contact

Technical	: Ms S. Tselapedi	018 392 7061
Bid Info	: Ms. T. Mogorosi	018 392 7026
	: Mr. Tiro Setuki	018 392 7300

16. There will be no briefing session
17. The bid will close on 06 April 2021 at 11:00HRS
18. The tender box is situated on the ground floor of the Legislature building at the reception.
19. Bid requirements

16. There will be no briefing session
17. The bid will close on 06 April 2021 at 11hrs.
18. The tender box is situated on the ground floor of the Legislature building at the reception.
19. Bid requirements
 - Late bids will not be considered
 - Validity Period is ninety (90) days.
 - All bids must be quoted in SA Rand value
 - All relevant documents must be completed in ink where applicable.
 - Use of correction pen (tippex) and pencil in the bid document will not be allowed.
 - Where cancellation has been made in the bid documents it should be endorsed by signature.
20. Please ensure that the following documents are attached:
 - Original completed and signed bid document
 - Copy of the Tax Clearance Certificate or a copy of SARS pin code
 - Copy of certified identity Document of the directors/owner within six months
 - Copy of the Company registration Certificates
 - Copy of Certified B-BBEE certificate or original sworn affidavit of the EME certificate
 - Proof of registration with CSD.
 - Active Proof of Professional Membership with the relevant body

THE DATE STAMP ON THE CERTIFIED DOCUMENTS MUST BE ORIGINAL STAMPED AND NOT OLDER THAN THREE MONTHS ON THE DAY OF SUBMISSION.

THE BID DOCUMENT MUST BE SUBMITTED IN SEALED AND MARKED PACKAGE OR ENVELOPE; IF NOT THE BID DOCUMENT WILL BE DECLARED INVALID.

SHOULD THE ABOVE DOCUMENTS NOT BE ATTACHED, YOUR BID WILL BE DECLARED INVALID.



21. Evaluation criteria

- **Functionality:**

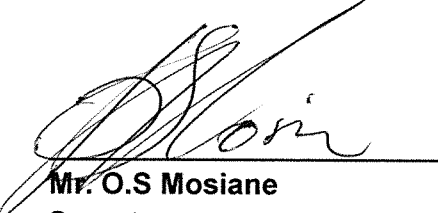
Bidders must score minimum of 70 points on functionality.

- **Evaluation on pricing:**

The bid will be evaluated on 80/20 preference Point System, where 80 points will be allocated for price and 20 points will be for the BBEE Status level of contribution.

1	Price	80
2	B-BBEE Status level of contribution	20
3	TOTAL	100

The North West Provincial Legislature is a National Key Point, and as such the awarded bidder will undergo security screening and vetting.


Mr. O.S Mosiane
Secretary

04/03/2021
Date

North West Provincial Legislature

SPECIFICATION FOR THE APPOINTMENT OF EMPLOYEE WELLNESS PROGRAMME PARTNER(S) FOR THE NWPL FOR A PERIOD OF TWO YEARS.

1. BACKGROUND

- 1.1 The North West Provincial Legislature (NWPL) aim to create an environment that promotes the physical, emotional, financial and legal wellbeing of Employees at all levels.
- 1.2 In so doing, the NWPL seek to appoint an Employee Wellness Partner on an as and when basis, for a period of two years to ensure that the psycho-social challenges Employees are faced with on a day to day basis, are addressed and effectively resolved.
- 1.3 The NWPL continuously strives to ensure a positive, supportive and healthy working environment is inculcated and encouraged in the workplace. This is exemplified through the implementation of various processes aimed at improving the emotional, physical and financial health of its Employees.

2 OBJECTIVE

To appoint a suitable and competent service provider to:

- 2.1 Deliver a comprehensive Employee Wellness Programme to address psycho-social challenges of Employees might be experiencing.
- 2.2 Develop specific interventions, i.e. substance abuse, chronic illness (HIV AND AIDS), mental health, trauma resulting from violence, and marital / family problems.
- 2.3 Submit monthly, quarterly and annual utilisation reports.
- 2.4 Provide an annual Institutional Wellness Programme, aligned to the various stakeholder needs.

3. EXPERTISE REQUIRED/SPECIFICATION

EAP Consultants/ Companies will be required to render services on a wide Employees Assistance Programs, both proactive and reactive pertaining to, inter alia and applicants are therefore required to specify their respective areas of specialization. Active registration with relevant bodies is compulsory

4. THE ROLE OF NORTH WEST PROVINCIAL LEGISLATURE

- 4.1 Provide the service provider with relevant information in relation to the service offering.
- 4.2 Provide the service provider with relevant policies and procedure manuals.
- 4.3 Conduct quarterly meetings with the service provider to measure the quality of service and resolve challenges.
- 4.4 Provide the service provider with relevant support, i.e. coordination of wellness interventions.
- 4.5 Ensure medical information of all Staff across all levels remain confidential.

4.6 To sign Non-Disclosure Agreement with the successful service provider.

5. THE ROLE OF THE SERVICE PROVIDER

5.1 To ensure services are aligned to stakeholder needs.

5.2 To ensure that the services are accessible to NWPL Employees across all levels.

5.3 To ensure services meet the quality standards of the NWPL Employees across all levels.

5.4 To attend quarterly and annual meetings with relevant NWPL Management.

5.5 Ensure medical information of NWPL Employees across all levels. Remain confidential.

5.6 Provide monthly, quarterly and annual reports.

5.7 Support NWPL wellness initiatives.

5.8 To sign Non-Disclosure Agreement with the NWPL.

5.9 To submit evidence of annual registration with relevant Professional Bodies

6. SCOPE OF EXPECTED WORK

Successful bidders will be expected to assist the Legislature Employees in cases related, but not limited to the following areas:

6.1 Service Requirements

6.1.1 To provide a comprehensive Wellness service NWPL Staff Members across all levels.

6.1.2 To implement a solution driven Wellness Programme to improve the overall wellbeing of the NWPL Staff Members across all levels. Solution include, but not limited to:

- Psychosocial services, i.e. physical, emotional, financial and
- Executive Wellness programme including pathology test, adequate assessment environment, assessment report and post assessment support.

6.1.3 To develop specific interventions to improve the overall wellbeing of the NWPL Staff Members across all levels. Interventions include, but not limited to:

- Mental Health
- Stress / Anxiety
- Personal Financial Management
- Relationship Building

6.1.4 Provide sufficient and properly qualified resources to conduct the work.

- Individual and Group Counselling

- Financial Planning
- Psycho Social Services
- Develop and Implement Employee Wellbeing Pro Active Programs
- Trauma debriefing
- Loss and Bereavement Counselling
- Provide any other Employee Assistance Intervention as may be directed by the Legislature.

7. CONDITION OF BID

7.1 Appointment of a Panel

- 7.1.1 Only Professional already practicing within the Employee Assistance Programme/ Wellness Interventions, with active registration with the relevant professional Bodies of the RSA will be considered for this bid.
- 7.1.2 The Professionals referred to above include Social Workers, Psychologists, Psychiatrist, Registered EAP Counsellors, and any other related in the EAP environment.
- 7.1.3 A contract will be signed with each member appointed to the panel.
- 7.1.4 EAP Consultants/ Companies will be required to sign confidentiality and indemnity agreements with the North West Provincial Legislature.
- 7.1.5 The cost of every assignment will be negotiated with the relevant bidding panel member[s] and a letter of appointment will be issued for each assignment awarded.
- 7.1.6 EAP Consultants/ Companies are not guaranteed any work under this bid proposal.
- 7.1.7 The basis of engaging EAP Consultants/ Companies will be on assignment basis [*as and when services are required*] and referrals will either be signed by the
- 7.1.8 The North West Provincial Legislature reserves the right to interview EAP Consultants/ Companies that are short-listed for specific assignments. [*Short-listed bidders will be informed should this be applicable*].
- 7.1.10 The EAP Consultants/ Companies must be available to trace and visit clients at their homes where required.
- 7.1.11 The North West Provincial Legislature may at its sole discretion award an assignment or part thereof to more than one [1] panel member.
- 7.1.12 The North West Provincial Legislature may at its own discretion vary an instruction to include more work.

7.1.13 The EAP Consultants/ Companies may not cede or assign any part of its agreement with the North West Provincial Legislature nor sub-contract any part of the work assigned to them without prior written authorization from the North West Provincial Legislature.

7.1.14 Failure to comply with any condition of this request for a proposal will invalidate the respective bid proposal.

7.1.15 The contract period for this bid is two years.

7.1.16 Assignments awarded in the last three [3] months of the contract period will be allowed to continue after expiry of the contract period.

7.1.17 The EAP Consultants/ Companies must declare any interest it has in an assignment as well as declare any possible conflict of interest with the North West Provincial Legislature in the pursuance of the proposed assignment.

7.1.18 In the event that any conflict of interest is discovered during the assignment, the North West Provincial Legislature reserves the right to summarily cancel the agreement and demand that all information, documents and property of the North West Provincial Legislature be returned forthwith.

7.1.19 Price quoted for assignments should include VAT and disbursements [See *disbursement arrangements under-pricing schedule*].

8. REQUIRED SKILLS AND COMPETENCIES

8.1 **The following requirements will apply:**

- 81.1 Proof of Professional Membership with the relevant body
- 8.1.2 A person or entity in possession of a valid Tax Clearance certificate;
- 8.1.3 The service provider should be a member of a recognised and statutory relevant professional body within South Africa in the EAP Environment
- 8.1.4 The service provider must have extensive experience in the selected area of specialisation and must make available a portfolio of evidence in respect of their proven success record
- 8.1.5 The practice / consultancy must be established for a minimum of three [3] years.
- 8.1.6 Proof that the bidder has been in existence and in practice for a period of at least three [3] years prior to the closing date of this request for proposals.
- 8.1.7 Bidders' Company Profile
- 8.1.8 Record of infrastructure i.e.
- i. Confirmation of the premises from which the bidder conducts its business
 - ii. The bidder's communication and documents service facilities, i.e. [the lead Professional and his/her support staff's e-mail address, telephone and facsimile numbers.]
 - iii. Computer systems used by the bidder

8.1.9 Demonstrable experience in the identified area[s] of service as referred to in paragraph 3 hereof, including the ability to conduct detailed and credible research.

8.1.10 Three [3] reference letters from clients to whom the bidder has provided services similar to the ones listed in the identified areas of service as stated.

8.1.11 Locality, i.e. the business [and postal] address where the bidder conducts its business including other regional offices within the Republic of South Africa if applicable.

9. CONFIDENTIALITY

9.1. The service provider undertakes, at all times during the existence of the contract or any renewal thereof or after termination thereof, not to reveal any confidential or sensitive information or knowledge concerning the North West Provincial Legislature or clients of the Legislature

9.2. Intellectual Property Rights

9.2.1. All copyright and intellectual property rights that may result as consequences of the work to be performed will become the property of the North West Provincial Legislature

9.2.2. EAP Consultants/ Companies must hand over all documents and information in any format, including copies thereof, that it received from the North West Provincial Legislature or that it had access to during the assignment immediately after completion of the assignment to the North West Provincial Legislature

9.2.3. EAP Consultants/ Companies shall deliver to the North West Provincial Legislature, on completion of an assignment, any security devices, passwords or protective mechanisms to the soft versions of documents that were written and the North West Provincial Legislature will have the right to amend and change these without obligation whatsoever to the EAP Consultants/ Companies upon completion of the assignment

10. **DETAILED PROPOSAL**

The proposals presented are to be as comprehensive as possible and the right is reserved to request more details.

11. **EVALUATION CRITERIA**

The bid will be evaluated at two stages, namely functionality and using 80/20 Preference point system in terms of the PPPFA Act no 5 of 2000 as amended.

The evaluation phases are as follows;

Phase 1 - Administrative Compliance

Phase 2 - Paper based Functionality Evaluation 50 points (threshold 35)

Phase 3 - Preference Points 80/20 (BBBEE and Price)

PHASE 1: ADMINISTRATIVE COMPLIANCE EVALUATION

Administrative evaluation will be carried out on all the bids in terms of the following criteria:

- Signed and completed Standard Bid Documents (**SBD FORMS 1, 4, 6.1, 8 & 9**);
- Submission of original Valid Tax Clearance Certificate (TCC)
- Certified copies of ID(s) of Directors or main shareholders.
- Company registration certificate
- Active Proof of Professional Membership with relevant bodies

*Any bidder that does not comply with the above-mentioned criteria will be eliminated from the evaluation process and will not be considered for further evaluation

PHASE 2: FUNCTIONALITY EVALUATION

The following criteria will be used to evaluate bids on functionality:

All bidder/s who scores the minimum threshold of 70 points or above shall advance to Phase 3 of the bidding process. Bids that do not score the specified minimum points for functionality shall be disqualified and not be considered further.

Criteria for Functionality Points

8.1 Service providers are required to submit:

Company Profile including brief CV of Key Personnel (and the area(s) of business operations) as follows:

No.	Technical / functional Requirements	Weight	Value	Score
1.	Previous experience of key personnel on similar task (CV's, Qualifications and minimum of 2 reference letters <ul style="list-style-type: none"> 3 years and above 20 points	20		
2	Expertise <ul style="list-style-type: none"> Active proof of Membership, 10 points	10		
3	Capacity <ul style="list-style-type: none"> Office Infrastructure 10 points	10		
	Turnaround time 2 hours or less 10 points	10		
Total points		50		

BIDDERS MUST SCORE A MINIMUM OF 35 POINTS TO QUALIFY FOR THE NEXT LEVEL OF EVALUATION

PHASE 3: PRICING AND PREFERENTIAL POINTS AS PER PPPFA

- A Valid original or certified copy BBBEE certificate is required for points allocations.

Successful bidders will be required to price in the following manner:

PRICING / FEES

Description of Services	Quantity	Unit Price Rate per hour per consultant	Each Service vat inclusive
<ul style="list-style-type: none">• List services offered E.G Counselling, Presentations, debriefing. e.t.c		Rate Per Hour Per consultant	R
Accommodation Cost for one night(Clients Outside Mahikeng)		Rate Per night	R
Travel Costs per km, using AA rates (Clients Outside Mahikeng)		AA rate	R
Total Cost			R

LITIGATION & CONTRACTS

- Party and party fee scale as applicable and as determined in terms of High Court tariffs.

DISCIPLINARY MATTERS INCLUDING ARBITRATIONS

Party and party fee scale as applicable at the High Court as determined in legislation.

DISBURSEMENTS

- The claim for subsistence (e. g. accommodation) will be submitted with supporting documentation (invoices and receipts), and payment will be based on an objective determinable criterion. Disbursements must be indicated separately and must not form part of the bid price. Only actual costs are recoverable.
- Travelling costs will be reimbursed purely in terms of AA rates.

These prices will apply for the duration of the agreement and will only be reviewed, if necessary and in keeping with any amendments applicable in terms of the law.

12. CONDITIONS APPLICABLE TO APPOINTMENT

- 12.1 Service providers must disclose all cases against the Legislature that they are currently dealing with and undertake not to use any information gained in this process to the prejudice of the Legislature.
- 12.2 Regular quarterly written feedback must be given to the Director: Legal Services on all matters with the service provider at no cost to the Legislature. The Legislature will however reserve the right to request feedback in respect of a matter with the service provider at any given time.
- 12.3 When cases have been postponed at the request of the attorney acting on behalf of the Legislature owing to non-compliance with any procedural requirements, the attorney who was negligent in this regard will bear the costs of postponement, and this amount will not be recovered from the Legislature.

12.4 In the event that a firm of attorneys merges with a firm outside the panel, the participation of the merged company in the Bid will be subject to the approval of the Accounting Officer, or his/her delegate and it will be further subject to the following conditions:

12.1.1 The new firm must submit a letter of acceptance of the Bid conditions,

12.2.2 A profile as per paragraph 6 of this specification must be submitted.

12.3.3 The new firm must meet the pre-evaluation requirements as per paragraph 6.

12.5 Payment of legal fees by the Legislature will be effected within thirty days from date of receipt of an acceptable invoice.

12.6 The Legislature reserves the right not to include any service provider on the Legislature's panel of private legal advisors and further reserves the right to appoint a service provider for matters according to their area of expertise.

12.7 The Legislature further reserves the right to appoint a firm of attorneys outside the approved panel of attorneys' subject to Legislature's procurement process.

12.8 It will be expected from the service provider/supplier to acknowledge receipt of the Legislature's request to render service on any of the specialised areas mentioned in paragraph 4 above within twenty-four (24) hours.

12.9 Successful service providers must be prepared to enter into a service level agreement with the Legislature.

13. DURATION OF CONTRACT:

Successful service providers will be appointed for a period of three (3) years.

14. CANCELLATION:

11.1 The Legislature reserves the right to cancel the contract if the service provider fails to adhere to the conditions of the contract.

11.2 On termination of the contract for whatever reason, the service provider shall on demand deliver, without the right to retention all documents and information gained in terms of this agreement.

15. BRIEFING MEETING

There will be no briefing meeting for the bid.

16. BID ADVERTISEMENT

The bid to be advertised for thirty days as follows:

- **Sunday Times**
- **Citi Press**
- **Sowetan**
- **NW Newspapers**
- **NWPL Website**



NORTH WEST PROVINCIAL LEGISLATURE

PILEDIWA E A LWELWA

INVITATION TO BID

**YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE
NORTH WEST PROVINCIAL LEGISLATURE**

BID NO: NWPL03/2020/21 CLOSING DATE: 06 APRIL 2021 CLOSING TIME: 11:00 am DESCRIPTION: BID NO NWPL 03/2020/21: THE APPOINTMENT OF EMPLOYEE WELLNESS PROGRAMME PARTNER(S) ON AN AS AND WHEN BASIS, TO THE NORTH WEST PROVINCIAL LEGISLATURE FOR THE PERIOD OF TWO YEARS.

The successful bidder will be required to fill in and sign a written Contract Form

BID DOCUMENTS CLEARLY MARKED "NWPL 03/2020/21" ADDRESSED TO:

The Secretary
North West Provincial Legislature
P/Bag X 2018
MMABATHO
2735

MUST BE

Deposited in the Tender Box
situated at The North West
Provincial Legislature Building
Dr James Moroka Drive
Mmabatho, 2735

Bidders must ensure that bids are delivered on time and at the right address as no late documents will be accepted.

ALL BIDS MUST BE SUBMITTED ON OFFICIAL BID FORMS (NOT RE-TYPED OR DUPLICATED).

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC).

**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

Cell phone Number

Facsimile Number

VAT Registration Number

HAS A TAX CLEARANCE CERTIFICATE BEEN SUBMITTED (SBD2)?

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED?
(SBD 6.1).....



NORTH WEST PROVINCIAL LEGISLATURE
PILEDIWA E A LWELWA

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) ☐
A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM
(SANAS) ☐ OR
A REGISTERED AUDITOR ☐
[TICK APPLICABLE BOX]

(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE)

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE
GOODS/SERVICES/WORKS OFFERED?

YES	NO
-----	----

(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER

.....

DATE

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED

.....

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

Failure on the part of the bidder to sign this tender form (SBD1) and thus to acknowledge and accept the conditions in writing or to complete the attached forms, questionnaires and specifications in all respects, may invalidate the bid.

Bids should be submitted on the official forms and should not be qualified by the bidder's own conditions. Failure to comply with these requirements or to renounce specifically the bidder's own conditions of tender, when called upon to do so, may invalidate the bid.

TERMS

I/We hereby tender to supply all or any of the supplies and/or to render all or any of the services described in the attached documents to the Government of the Republic of South Africa on the terms and conditions and in accordance with the specifications stipulated in the bid documents (and which shall be taken as part of, and incorporated into, this bid) at the prices and on the terms regarding time for delivery and/or execution inserted therein.

I/We agree that -

The bid herein shall remain binding upon me/us and open for acceptance during the validity period indicated and calculated from the closing time of the tender;



NORTH WEST PROVINCIAL LEGISLATURE
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If I/we withdraw my/our bid within the period for which I/we have agreed that the bid shall remain open for acceptance, or fail to fulfil the contract when called upon to do so, the State may, without prejudice to its other rights, agree to the withdrawal of my/our bid or cancel the contract that may have been entered into between me/us and the State and I/we will then pay to the State any additional expense incurred by the State having either to accept any less favourable bid or, if fresh bids have to be invited, the additional expenditure incurred by the invitation of fresh bids and by the subsequent acceptance of any less favourable bid, the State shall also have the right to recover such additional expenditure by set-off against moneys which may be due or become due to me/us under this or any other bid or contract or against any guarantee or deposit that may have been furnished by me/us or on my/our behalf for the due fulfilment of this or any other bid or contract and pending the ascertainment of the amount of such additional expenditure to retain such moneys, guarantee or deposit as security for any loss the State may sustain by reason of my/our default;

If my/our bid is accepted the acceptance may be communicated to me/us by letter or order by ordinary post or registered post and that SA Post Office Ltd shall be regarded as my/our agent, and delivery of such acceptance to SA Post Office Ltd shall be treated as delivery to me/us;

The law of the Republic of South Africa shall govern the contract created by the acceptance of my/our bid and that I/we choose domicilium citandi et executandi in the Republic as indicated above.

I/We furthermore confirm that I/we have satisfied myself/ourselves as to the correctness and validity of my/our bid; that the price(s) and rate(s) quoted cover all the work/item(s) specified in the bid documents; and that the price(s) and rate(s) cover all my/our obligations under a resulting contract and that I/we accept that any mistakes regarding price(s) and calculations will be at my/our risk.

ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:

North West Provincial Legislature's Contact Persons:

Technical	: Ms M. Tselapedi	@	018 392 7000
Bid Info	: Ms. Mogorosi	@	018 392 7026
	Mr. T Setuki	@	018 392 7300

I/We hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me/us under this agreement as the Principal(s) liable for the due fulfilment of this contract.

I/We agree that any action arising from this contract may in all respects be instituted against me/us and I/we hereby undertake to satisfy fully any sentence or judgement which may be pronounced against me/us as a result of such action.

I/We declare that I/we have participation*/no participation* in the submission of any other bid for the supplies/services described in the attached documents. If in the affirmative, state names(s) of bidder(s) involved

.....

.....

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

Are you duly authorised to sign the bid? **YES/NO**



NORTH WEST PROVINCIAL LEGISLATURE
PILEDIWA E A LWELWA

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the principal, or persons having a kinship with persons employed by the principal, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favoritism, should the resulting bid, or part thereof, be awarded to persons employed by the principal, or to persons connected with or related to them, it is required that the bidder or his/her authorized representative declare his/her position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest, where-

- the bidder is employed by the principal; 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 Are you or any person connected with the bidder, employed by the principal?

- 2.1.1 If so, state particulars. YES / NO

- 2.2 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the principal and who may be involved with the evaluation and or adjudication of this bid?

- 2.2.1 If so, state particulars YES / NO

.....
.....

- 2.3 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between the bidder and any person employed by the principal who may be involved with the evaluation and or adjudication of this bid?

- 2.3.1 If so, state particulars:

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

DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2.1 TO 2.3.1 ABOVE IS CORRECT.

I ACCEPT THAT THE PRINCIPAL MAY 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

TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

- 1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za.
- 6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

PRICING SCHEDULE – NON-FIRM PRICES (PURCHASES)

SBD 3.2

NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder.....	Bid number.....
Closing Time 11:00	Closing date.....

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

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
<hr/>			
-	Required by:		
-	At:		
-	Brand and model		
-	Country of origin		
-	Does the offer comply with the specification(s)?		*YES/NO
-	If not to specification, indicate deviation(s)		
-	Period required for delivery		
-	Delivery:		*Firm/not firm

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

*Delete if not applicable

A NON-FIRM PRICES SUBJECT TO ESCALATION

- $$Pa = (1 - V)Pt \left(D1 \frac{R1t}{R1o} + D2 \frac{R2t}{R2o} + D3 \frac{R3t}{R3o} + D4 \frac{R4t}{R4o} \right) + VPt$$

P_a	=	The new escalated price to be calculated.
$(1-V)P_t$	=	85% of the original bid price. Note that P_t must always be the original bid price and not an escalated price.
D_1, D_2, \dots	=	Each factor of the bid price eg. labour, transport, clothing, footwear, etc. The total of the various factors D_1, D_2, \dots etc. must add up to 100%.
R_{1t}, R_{2t}, \dots	=	Index figure obtained from new index (depends on the number of factors used).
R_{1o}, R_{2o}	=	Index figure at time of bidding.
$V P_t$	=	15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.

- Index..... Dated..... Index..... Dated..... Index..... Dated.....
Index..... Dated..... Index..... Dated..... Index..... Dated.....

- [illegible]

B PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS

1. Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

2. Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state*, 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 and/or take an oath declaring his/her interest, 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, shareholder etc):
 - 2.4 Company Registration Number:
 - 2.5 Tax Reference Number:
 - 2.6 VAT Registration Number:

* "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.

2.7 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 / shareholder/ member:
Name of state institution to which the person is connected:
Position occupied in the state institution:

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

2.8 Did you or your spouse, or any of the company's directors / 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 the bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? YES / NO

2.10.1 If so, furnish particulars.

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

2.11 Do you or any of the directors /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:

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

DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2.1 TO 2.11.1 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

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

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

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

1. GENERAL CONDITIONS

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

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

1.2

- a) The value of this bid is estimated to exceed/not exceed R50 000 000 (all applicable taxes included) and therefore the preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

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

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

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

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

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

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

5. BID DECLARATION

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

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

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

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

7. SUB-CONTRACTING

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

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

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

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are youth	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are women	<input type="checkbox"/>	<input type="checkbox"/>
Black people with disabilities	<input type="checkbox"/>	<input type="checkbox"/>
Black people living in rural or underdeveloped areas or townships	<input type="checkbox"/>	<input type="checkbox"/>
Cooperative owned by black people	<input type="checkbox"/>	<input type="checkbox"/>

Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of
company/firm:.....

8.2 VAT registration
number:.....

8.3 Company registration
number:.....

8.4 TYPE OF COMPANY/ FIRM

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

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

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

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a

fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

<p>WITNESSES</p> <p>1.</p> <p>2.</p>	<p style="text-align: center;">..... SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p> <p>.....</p>
--	---

CONTRACT FORM - RENDERING OF SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives/ proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid .
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Filled in task directive/proposal;
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
 - Declaration of interest;
 - Declaration of bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES

1

2

DATE:

CONTRACT FORM - RENDERING OF SERVICES
PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I..... in my capacity as.....
accept your bid under reference numberdated.....for the rendering of services
indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract,
within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT ON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1

2

DATE:

CONTRACT FORM - SALE OF GOODS/WORKS

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SUCCESSFUL BIDDER (PART 1) AND THE SELLER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SUCCESSFUL BIDDER AND THE SELLER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE BIDDER)

1. I hereby undertake to purchase all or any of the goods and/or works described in the attached bidding documents from (name of institution)..... in accordance with the requirements stipulated in (bid number)..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the seller during the validity period indicated and calculated from the closing time of bid.
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Declaration of interest;
 - Declaration of bidder's past SCM practices;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) quoted cover all the goods and/or works specified in the bidding documents; that the price(s) cover all my obligations and I accept that any mistakes regarding price(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfilment of this contract.
5. I undertake to make payment for the goods/works as specified in the bidding documents.
6. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
7. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES	
1
2.
DATE:	

CONTRACT FORM - SALE OF GOODS/WORKS

PART 2 (TO BE FILLED IN BY THE SELLER)

1. I..... in my capacity as..... accept your bid under reference numberdated.....for the purchase of goods/works indicated hereunder and/or further specified in the annexure(s).
2. I undertake to make the goods/works available in accordance with the terms and conditions of the contract.

ITEM NO.	DESCRIPTION	PRICE (ALL APPLICABLE TAXES INCLUDED)		

4. I confirm that I am duly authorised to sign this contract.

SIGNED ATON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1.

2.

DATE

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 <input type="checkbox"/>	No <input type="checkbox"/>
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 <input type="checkbox"/>	No <input type="checkbox"/>
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 <input type="checkbox"/>	No <input type="checkbox"/>
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 <input type="checkbox"/>	No <input type="checkbox"/>

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

SBD 9

- 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

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.

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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
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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 for each appropriate unit of the supplied goods;

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

16. Payment

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

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

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

may be due to him

25. Force Majeure

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

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

27. Settlement of Disputes

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

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

- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

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

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

Js General Conditions of Contract (revised July 2010)