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**REQUEST FOR PROPOSAL FOR THE APPOINTING OF A PANEL OF LEGAL FIRMS TO
PROVIDE LEGAL SERVICES TO INSETA FOR A PERIOD OF THREE (3) YEARS**

Tender Number : Proj/2019/02
Planned publication date : 30 August 2019
Submission closing date : 02 October 2019
Submission closing time : 11H00



SBD 1

PART A

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE INSETA

BID NUMBER:	Proj/2019/02	CLOSING DATE:	02 October 2019	CLOSING TIME:	11H00
DESCRIPTION:	REQUEST FOR PROPOSAL FOR THE APPOINTING OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES TO INSETA FOR A PERIOD OF THREE (3) YEARS				
VALIDITY PERIOD:	Offer to be valid for 90 days from the closing date of bid				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).					

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID OX SITUATED AT:

INSETA

Ground Floor

37 Empire Road, Parktown, Johannesburg, 2193

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					
		TCS PIN:		OR	CSD No:
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]		<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT <input type="checkbox"/> Yes <input type="checkbox"/> No	
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?					
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX		<input type="checkbox"/>		AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)	
		<input type="checkbox"/>		A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)	
		<input type="checkbox"/>		A REGISTERED AUDITOR	
		NAME:			
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT (FOR EMEs& QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					



ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW]
SIGNATURE OF BIDDER	DATE		
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE (ALL INCLUSIVE)	
ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO: Contact Person: Ms Lebogang Phaleng Department: Supply Chain Management E-mail address: Supplychain@inseta.org.za			



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 ONLINE
1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.5. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.
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 VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS
3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO



IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

RESPONSE FORMAT

Bidders must submit their response (bids) in accordance with the response format specified below:

BID SUBMISSION CHECKLIST	Tick if submitted
Part 1: <ul style="list-style-type: none"> • Completed & signed SBD forms • Initialed General Conditions of Contract (GCC) 	<input type="checkbox"/>
Part 2: <ul style="list-style-type: none"> • Valid and original Tax Clearance Certificate and/or Tax Status Compliance Report with pin 	<input type="checkbox"/>
Part 3: <ul style="list-style-type: none"> • Certified copy of BBBEE Certificate from SANAS accredited agency or an original sworn affidavit in line with the DTI requirements 	<input type="checkbox"/>
Part 4: <ul style="list-style-type: none"> • Information required as compulsory requirements of the Terms of reference 	<input type="checkbox"/>

1. LEGISLATIVE FRAMEWORK OF THE BID

- a) All bidders are to take note of the implications of contravening the Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004 and any other Act applicable.
- b) This bid is premised on all Acts and Regulations relevant to public Supply Chain Management in South Africa. These include, inter alia, Treasury Regulation 16A3 promulgated under Section 76 of the Public Finance Management Act, 1999 (Act, No. 1 of 1999), the Preferential Procurement Policy Framework Act 2000 (Act, No.5 of 2000), the Broad-Based Black Economic Empowerment Act, 2003 (Act, No. 53 of 2003), Promotion to Access of Information Act, 2 of 2000, Protection of Personal Information Act, 4 of 2013, Preferential Procurement Regulations 2017, Treasury Regulations and Value Added Tax Act, 1991 (Act No. 89 of 1991).



2. GENERAL CONDITIONS OF CONTRACT

The General Conditions of Contract will be applicable to this bid and must be accepted, duly signed or initialled by the authorised representative of the bidder. They are attached herein as **Annexure A**.

3. SPECIAL CONDITIONS OF THE BID

- a) This bid will only be awarded to the successful bidder/s after INSETA has verified that the supplier is registered as a prospective supplier on the Central Supplier Database (CSD).
- b) INSETA reserves the right:
 - i. Not to award or cancel this tender at any time and shall not be bound to accept the lowest or any Bid.
 - ii. To award contract or any part thereof to one or more bidders.
 - iii. To accept part of a tender rather than the whole tender.
 - iv. To carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the services offered by the bidder(s), whether before or after adjudication of the Bid.
 - v. To correct any mistakes at any stage of the tender that may have been in the Bid documents or occurred at any stage of the tender process.
 - vi. To cancel and/or terminate the tender process at any stage, including after the Closing Date and/or after presentations have been made, and/or after tenders have been evaluated and/or after the preferred bidder(s) have been notified of their status as such.
 - vii. To award a tender based on which bidder is offering the best value for money, even if such Tender is not the lowest priced tender.
 - viii. Award to multiple bidders to spread the risk.
- c) INSETA will reject a Bidder's Tender without any further consideration where that Bidder makes culpable misrepresentation to INSETA in its Tender or at any stage during this RFP process.
- d) The Board and employees of INSETA shall not do any business with INSETA
- e) No faxed or e-mailed bids will be accepted

4. COMMUNICATION WITH BIDDERS

During evaluation of the bids, explanatory information may be requested in writing from bidders. Replies to such request must be submitted, within three (three) working days or as otherwise indicated. Failure to comply, may lead to your bid being disregarded.



5. CONFIDENTIALITY

- a) Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s) will be disclosed by any bidder or other person not officially involved with INSETA's examination and evaluation of a Tender.
- b) No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a Tender. This bid and any other documents supplied by INSETA remain proprietary to INSETA and must be promptly returned to INSETA upon request together with all copies, electronic versions, excerpts or summaries thereof or work derived there from.
- c) Throughout this bid process and thereafter, bidder(s) must secure INSETA's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this bid relates; or (ii) the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.
- d) No confidential information relating to the process of evaluating or adjudicating tenders or appointing a bidder will be disclosed to a bidder or any other person not officially involved with such process.

6. SUBMISSION OF PROPOSALS

- a) **One (1) original and one (1) copy of the bid document**, i.e. two (2) documents in total should be handed in/delivered for attention to:

Tender Box (On Ms. Lebogang Phaleng, Supply Chain Management guidance)
INSETA
Ground Floor
37 Empire Road, Parktown
Johannesburg

NB: Bidders are to indicate on the cover of each document whether it is the original or a copy

- b) Bids should be submitted in a sealed envelope, marked with:

Bid number: **Proj/2019/02**

Closing date and time: **02 October 2019 at 11H00.**

The name and address of the bidder

- c) Bid documents will only be considered if received by the INSETA before the closing date and time, regardless of the method used to send or deliver such documents to the INSETA.



- d) Bids can be delivered between 08h30 and 16h00, Mondays to Fridays, prior to the closing date and between 08h30 and 11h00 on the closing date.
- e) All bids must be submitted on the official forms (not to be re-typed).

7. LATE BIDS

- a) A bid will not be considered if it arrives a second after 11h00 or any time thereafter. Bids arriving late will not be considered under any circumstances.
- b) Bids received late will be left unopened in our premises and bidders will arrange to collect them.
- c) Bidders are therefore strongly advised to ensure that bids be despatched allowing enough time for any unforeseen events that may delay the delivery of the bid.

8. CLARIFICATIONS & COMMUNICATION

- a) Any clarification required by a bidder regarding the meaning or interpretation of the Terms of Reference, or any other aspect concerning the bid, is to be requested in writing (e-mail) from Ms Lebogang Phaleng at supplychain@inseta.org.za not later than by **15 September 2019 at 16H00**
- b) The bid number should be mentioned in all correspondence. All communication between the Bidder(s) and INSETA must be done in writing. **Telephonic requests for clarification will not be accepted.** If appropriate, the clarifying information will be made available to all bidders by e-mail only.
- c) Any communication to an official or a person acting in an advisory capacity for INSETA, other than the official whose name, and contact details is specified in the RFB document, in respect of the bid between the closing date and the award of the bid by the Bidder(s) is discouraged.
- d) Whilst all due care has been taken in connection with the preparation of this bid, INSETA makes no representations or warranties that the content of the bid or any information communicated to or provided to Bidder(s) during the bidding process is, or will be, accurate, current or complete. INSETA, and its employees and advisors will not be liable with respect to any information communicated which may not be accurate, current or complete.
- e) If Bidder(s) finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by INSETA (other than minor clerical matters), the Bidder(s) must promptly notify INSETA in writing of such discrepancy, ambiguity, error or inconsistency in order to afford INSETA an opportunity to consider what corrective action is necessary (if any).
- f) Any actual discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by INSETA will, if possible, be corrected and provided to all Bidders.



9. DUE DILIGENCE

INSETA reserves the right to conduct due diligence on the information submitted by the bidders prior to final award or at any time during the contract period.

10. FORMAL CONTRACT

This RFB, all the appended documentation and the proposal in response thereto read together, forms the basis for a formal contract to be negotiated and finalised between INSETA and the successful bidder/s in whole or in part.



11. TERMS OF REFERENCE FOR THE APPOINTING OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES TO INSETA FOR A PERIOD OF THREE (3) YEARS

11.1 BACKGROUND

- Insurance Sector Education Training and Authority (INSETA) is a schedule 3A Public Entity in terms of the Public Finance Management Act (PFMA). INSETA must perform in accordance with the Skills Development Act (SDA), the Skills Development Levies Act (SDLA), PFMA, any other relevant legislation and the INSETA Constitution. (Read more on www.inseta.org.za).
- INSETA is inviting accredited and qualified law firms to be enlisted on the INSETA panel of law firms for a period of three (3) years for the provision of Professional Legal Services to represent INSETA during mediation processes and possible court processes between current or past service provider/s and provide other related legal services as listed in **table 1**.
- The successful law firm(s) will be required to work hand in hand with the office of the Chief Executive Officer (CEO) of INSETA and sign a confidentiality declaration due to the nature of service to be rendered.

11.2 PURPOSE

- INSETA hereby invites legal firms to submit proposals to be listed in the INSETA panel of legal service providers in the area of specialisation for a period of three (3) years from the date of appointment.
- Bidders must choose maximum of 5 categories from the **table 1** and submit relevant supporting documentation with proof of required experience and qualifications for each of the selected categories of legal specialisation.

11.3



11.4 SCOPE OF WORK

- The appointed law firm(s) will be required to represent INSETA on any dispute between INSETA and the service provider(s) during the mediation process up to the court of law if need arise.
- Law firm(s) will attend to legal matters on behalf of the INSETA including litigations either in the court of law or through arbitrations. Legal firms are required to have an in-depth practical knowledge of civil litigation procedures through arbitration or in the High Court and Magistrates' Court.
- INSETA has current cases of contractual dispute/s with its service provider(s) and the Service Level Agreement (SLA) therefore makes provision for mediation processes in the first instance, before any litigation.

The appointed legal firm(s) will be required to immediately commence with the mediation and possible litigation processes on these cases in order to finalise the current dispute/s.

- The appointed Legal firms will be further expected to provide general legal services and will represent INSETA on legal matters as-and-when required. The appointed legal firms will be utilised on a rotational basis with respect to their areas of specialisation as listed under table 1 for a period of three (3) years.

The appointed law firms will be expected to cover a minimum of 1 to a maximum of 5 of the following legal specialisations;

Table 1

NO 1	CATEGORY	TICK AREA OF SPECIALIZATION
1	Corporate Law	
2	Commercial Law	
3	Common Law	
4	Criminal Law	



5	Contract law (covering PFMA and PPPFA etc.)	
6	Labour law and alternative dispute resolution,	
7	Litigations,	
8	Administrative law	
9	Other legislations relevant to the public sector environment.	

NB - Bidders must choose maximum of 5 categories from the table above and submit relevant supporting documentation with proof of required experience and qualifications for each of the selected legal specialisation/s.

- 11.4.1 The appointed legal firm(s) will provide legal advisory services, vet all contracts and any legal correspondences affecting INSETA.
- 11.4.2 The appointed legal firm(s) must have the capacity to represent INSETA in all South African courts. The relevant experience of both the personnel and the company must be provided under the functionality criteria.
- 11.4.3 The appointed legal firm(s) will be expected to attend disciplinary or appeal hearings of registered persons as either a Chairperson or Pro-forma complainant (prosecutor).
- 11.4.4 The appointed legal firm(s) must demonstrate experience of professional excellence as an adjudicator in criminal and civil cases.
- 11.4.5 The appointed legal firms will prepare judgements specifically for disciplinary and appeal hearings.
- 11.4.6 The appointed legal firm(s) must have capacity and experience in considering written and oral evidence in order to provide informed legal advice to INSETA.
- 11.4.7 As pro-forma complainant (prosecutor), the legal firms will be expected to;
- Demonstrate experience of professional excellence as a prosecutor in criminal, civil and or quasi-judicial proceedings.
 - Consult with expert witnesses in order to draft charge sheets.
 - Consult with witnesses/experts in preparation of disciplinary hearings.
 - Conduct a pre-trial conference.



11.4.8 The appointed legal firm(s) will be expected to provide advisory services and updates on new legislation affecting the public sector environment.

11.5 COMPULSORY REQUIREMENTS

Bidder must provide the following:

- (a) The law firms must provide a certificate/letter of compliance with the law society of South Africa.

NB! Failure to provide the above-mentioned compulsory requirements, will lead to proposals being disqualified and the submission will not be evaluated further on Functionality, Price and BBEE.

11.6 PRICING

- (a) Pricing must be proposed as per the table below for the three (3) year period and must be inclusive of all applicable taxes (e.g. VAT):

NO	POSITION/LEVEL	RATE PER HOUR	PERCENTAGE INCREASE OVER 3 YEARS.
1	Advocate		
2	Attorney		
3	Candidate Attorney		
4	Other costs as follows:		
4.1	Copy per page		
4.2	Telephone call per minute		
4.3	Preparing a letter		
4.4.	Document perusal per page		
4.5.	Travel Costs per kilometer		
4.6.	Fax per page		



NO	POSITION/LEVEL	RATE PER HOUR	PERCENTAGE INCREASE OVER 3 YEARS.
4.7.	Email per Page		
5	Disbursement costs (Supporting Schedule to be provided).		

12 BID EVALUATION

12.1 Evaluation process

Functionality

Bidders that score less than 70 out of 100 points for functionality/technical will be considered as submitting a non-responsive bid and will be disqualified.

No	Description of functional/quality area	Maximum Weight	Points allocation value
1	<p>Experience and track record in rendering similar services as evidenced by reference letters</p> <p>The bidder must provide reference letters, per the legal specialisation (as indicated in paragraph 2.1.) for Satisfactory service provided for the past three (3) years from the closing date of the bid. Reference letters will only be considered VALID if they meet the following criteria:</p> <ul style="list-style-type: none"> • If on an official referees' letterhead where such similar work was done; • Includes a brief description of similar work undertaken; • It must be signed and dated • Include the relevant contact person with e-mail address and contact number; 	30 Points	<p>0 – Did not submit any reference letters 10 – Submitted only ONE (1) compliant reference letter. 20 - Submitted TWO (2) compliant reference letters. 30 – Submitted THREE (3) or more compliant reference letters.</p>
2	Bidders experience	10	<p>0 - non submission 5 – Demonstrated five (5) to ten (10) clients for</p>



No	Description of functional/quality area	Maximum Weight	Points allocation value
	<p>Bidders must demonstrate experience in providing legal services, as per legal specialisation and must submit the following sources of evidence:</p> <p>A list of clients where the bidder has been providing similar services for confirmation of number of years of experience and must cover the following.</p> <ul style="list-style-type: none"> • Name • Number of years in providing the service • Legal Specialisation/s of service contracted for. • Contract Value and • Contract details of the reference person 		<p>providing relevant services.</p> <p>10 – Demonstrated more than ten (10) clients for providing relevant services.</p>
3	<p>Lead Attorney: Knowledge and expertise; The bidder must show experience, expertise and competence of not less than 5 (five) years (post admission as an attorney) of the lead attorneys in each legal specialisation that the bidder is bidding for.</p> <ul style="list-style-type: none"> - A CV of the lead attorney must be provided. - a certified copy of qualifications must be provided (including proof of admission as an attorney) 	30 Points	<p>30 - More than ten (10) years experience.</p> <p>20 - More than seven (7) to ten (10) years' experience</p> <p>10 - Between five (5) and seven (7) years' experience.</p>
4	<p>Project Team:</p> <p>The bidder must demonstrate experience, expertise and competence of lawyers in the current bidder's employ, in the service category the bidder is bidding for:</p> <ul style="list-style-type: none"> • Experience (including years), expertise and competencies, CV of team members must be provided; • Certified copies of qualifications and submission as attorney or advocate must be provided (LLB degree for the candidate attorney. 	30 Points	<p>30 - Team members consist of the following and meet the qualifications and experience requirements</p> <ul style="list-style-type: none"> - Advocate, with more than ten (10) years post admission experience - Attorney, with more than eight (8) years post admission experience



No	Description of functional/quality area	Maximum Weight	Points allocation value
	<p><u>The team should consist the following minimum members:</u></p> <ul style="list-style-type: none"> - Advocate - Attorney and - Candidate attorney 		<ul style="list-style-type: none"> - Candidate attorney, with more than one (1) year experience 20 - Team members consist of the following and meet the qualifications and experience requirements <ul style="list-style-type: none"> - Advocate, has more than five (5) to ten (10) years post admission experience - Attorney, has more than five (5) to eight (8) years post admission experience - Candidate attorney, has less than one (1) year experience 10 - Team members consist of the following and meet the qualifications and experience requirements <ul style="list-style-type: none"> - Advocate, has three (3) to five (5) years post admission experience - Attorney, has three (3) to five (5) years post admission experience - Candidate attorney, has less than one (1) year experience
	TOTAL	100 Points	

13 EVALUATION PROCESS



13.1 COMPLIANCE, COMPULSORY REQUIREMENTS, PRICE AND BBEE EVALUATION

- a) The 80/20 preferential points system shall be applicable.
- b) All bids received will be evaluated as follows:

- i. Phase 1 – Compliance requirements**

- All bids will be examined to determine compliance with bidding requirements and conditions. Bidders who do not fulfil all the requirements or do not submit the required documents will be disqualified.

- ii. Phase 2 – Compulsory requirements**

- Bidders must meet the compulsory requirements in order to be evaluated further on price and BBEE.

- iii. Phase 3 – Functionality**

- a) Bids that score less than 70% of the 100% available for functionality will be eliminated from further consideration. Points will therefore not be awarded for their cost proposals or for B-BBEE Status Level of Contribution
 - b) The percentage scored for functionality should be calculated as follows:
 - i. Each panel member shall award values for each individual criterion on a score sheet.
 - c) The percentages of each panel member shall be added together and divided by the number of panel members to establish the average percentage obtained by each individual bidder for functionality.

- iv. Phase 4 – Price and BBEE evaluation**

- Bidders must achieve the minimum functionality requirements in order to qualify for Price and Preference Points Evaluation. Evaluation will be conducted on an 80/20 preferential procurement principle.

13.2 AWARDING OF POINTS FOR PREFERENCES/GOALS

Points for B-BBEE Status Level of Contribution will be awarded according to the table indicated in the preference points claim form (SBD 6.1).



13.3 COMBINING PRICE AND PREFERENCE MARKS

- a) The B-BBEE Status Level of Contribution points for each bid will now be added to the price points for that bid
- b) The Evaluation Committee may recommend that the contract be awarded to the bidder obtaining the highest aggregate mark or to a lower scoring bid based on firm, verifiable and justifiable grounds.

13.4 ADJUDICATION OF BID

The Adjudication Committee will consider the recommendations and make the final award. The successful bidder will usually be the service provider scoring the highest number of points or it may be a lower scoring bid based on firm, verifiable and justifiable grounds or no award at all.

14 EVALUATION CRITERIA

The following criteria and weights will be used to evaluate the bid for price and preference points

PRICE AND PREFERENCE POINTS	MAXIMUM POINTS TO BE AWARDED
1. Price	
<input type="checkbox"/> Relative competitiveness of proposed price	80
2. B-BBEE Status Level of Contribution	20
TOTAL FOR PRICE AND PREFERENCE	100

SBD 4

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 an advertised competitive bid, a limited bid, a proposal or written price quotation). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorized representatives declare his/her position in relation to the evaluating/adjudicating authority where-

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

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

2.1 Full Name of bidder or his or her representatives:

2.2 Identity Number:

2.3 Position occupied in the Company (director, trustee, shareholder, member):
.....

2.4 Registration number of company, enterprise, close corporation, partnership agreement or trust:
.....

2.5 Tax Reference Number:

2.6 VAT Registration Number:

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

1“state means-

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

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

2.7 Are you or any person connected with the bidder presently employed by the state?

YES/NO

2.7.1 If so, furnish the following particulars:

Name of person /director /trustees /shareholder /member:

.....

Name of state institution at which you or the person connected to the bidder is employed:

.....

Position occupied in the state institution:

.....

Any other particulars:

.....

.....

.....

2.7.2 If you are presently employed by the state, did you obtain

YES/NO

the appropriate authority to undertake remunerative work outside employment in the public sector?

2.7.2.1 If yes, did you attach proof of such authority to the bid

YES/NO

document?

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

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

.....

.....

.....

2.8 Did you or your spouse, or any of the company's directors/

YES/NO

trustees/ shareholders / members or their spouse conduct business with the state in the previous twelve months?

2.8.1 If so, furnish particulars:

.....

.....

.....

2.9 Do you, or any person connected with the bidder, have

YES/NO

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?

2.9.1 If so, furnish particulars:

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

2.10 Are you, or any person connected with the bidder,

YES/NO

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

2.10.1 If so, furnish particulars:

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

2.11 Do you or any of the directors / trustees / shareholders / members

YES/NO

of the company have any interest in any other related companies whether or not they are bidding for this contract?

2.11.1 If so, furnish particulars:

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

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

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

--	--	--	--

4 DECLARATION

I, THE UNDERSIGNED (NAME).....
 CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPH 2 and 3 ABOVE IS CORRECT.
 I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME SHOULD THIS DECLARATION PROVES TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

SBD 8

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 supply chain management system
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failure 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>audialterampartem</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 of law outside 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:		

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

SBD 6.1

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 not to exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.

1.3 Points for this bid shall be awarded for:

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

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

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

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

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

2. DEFINITIONS

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

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

80/20

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{min} = Price of lowest acceptable bid

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

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

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

- What percentage of the contract will be subcontracted.....%
- The name of the sub-contractor.....
- The B-BBEE status level of the sub-contractor.....
- Whether the sub-contractor is an EME or QSE

(Tick applicable box)

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

- 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 least 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

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

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

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

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

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

WITNESSES
1.
2.

..... SIGNATURE(S) OF BIDDERS(S)
DATE:
ADDRESS

**CERTIFICATE OF
INDEPENDENT BID DETERMINATION**

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

- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

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

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

SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;

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

Annexure A

THENATIONALTREASURY

Republic of South Africa



GOVERNMENTPROCUREMENT: GENERALCONDITIONSOFCONTRACT

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.

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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 transactionally recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.6 **“Day”** means calendar day.
- 1.7 **“Delivery”** means delivery in compliance of the conditions of the contract or order.
- 1.8 **“Delivery ex stock”** means immediate delivery directly from stock actually on hand.
- 1.9 **“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.
- 1.10 **“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.
- 1.11 **“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.
- 1.12 **“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.
- 1.13 **“GCC”** means the General Conditions of Contract.
- 1.14 **“Goods”** means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.15 **“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.

- 1.16 **“Local content”** means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.17 **“Manufacture”** means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.18 **“Order”** means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.19 **“Project site,”** where applicable, means the place indicated in bidding documents.
- 1.20 **“Purchaser”** means the organization purchasing the goods.
- 1.21 **“Republic”** means the Republic of South Africa.
- 1.22 **“SCC”** means the Special Conditions of Contract.
- 1.23 **“Services”** means those functional services ancillaries 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 6 obligations of the supplier covered under the contract.
- 1.24. **“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. 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

- 5.3. 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

- 18.1. All pre-bidding testing will be for the account of the bidder.
- 18.2. 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.
- 18.3. 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.
- 18.4. 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.
- 18.5. 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.
- 18.6. 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.
- 18.7. 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.
- 18.8. 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

- 1.25. 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.
- 1.26. 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 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 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 12-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 antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

- 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

- 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

31. Notices

- 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme

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

34. Prohibition of Restrictive practices

- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.