



AgriCentre Building
Cnr. Dr. James Moroka
& Stadium Rd
Private Bag X2039,
Mmabatho 2735

CHIEF DIRECTORATE: FINANCIAL MANAGEMENT
DIRECTORATE: SUPPLY CHAIN MANAGEMENT

Tel: +27 (18) 389 5151 / 5297
Fax: +27(18) 389-5994
E-mail: Matshekam@nwpg.gov.za

Ref: 7/1/2/5

EXPRESSION OF INTEREST

13 DARD 022/2021: ESTABLISHMENT OF A LIST OF REGISTERED AND EXPERIENCED SERVICE PROVIDERS FOR PREQUALIFICATION TO BE INCLUDED IN THE DEPARTMENT'S DATABASE FOR SUPPLY, DELIVERY AND CONSTRUCTION OF LIVESTOCK HANDLING FACILITIES FOR A PERIOD OF TWO (2) YEARS

You are invited to submit a bid for the service as indicated in the attached bid documents.

1. The conditions contained in the General Conditions of Contract (GCC), and the attached bid forms, as well as any other conditions accompanying this invitation, are applicable.
2. The work procedure, the bidder proposes to follow in order to obtain the required result must be clearly outlined and its terms may not conflict with those contained in the General Conditions of Contract (GCC).
3. Kindly receive attached the following bid documents:
 - 3.1. SBD 1- Invitation to Bid Form
 - 3.2. SBD 4- Declaration of Interest
 - 3.3. SBD 8 – Declaration of Bidder's past Supply Chain Practices
 - 3.4. SBD 9 – Certificate of independent determination
 - 3.5. Terms of reference
 - 3.6. General conditions of contract (GCC)
4. All the documents accompanying this invitation to bid must be completed in detail, be sealed in an envelope and be deposited in the bid box before the closing date and time as follows:

Location of bid box : Department of Agriculture and Rural Development

Physical Address : AgriCentre, Cnr. Dr. James Moroka and Stadium Road, Mmabatho

Identification details: Supply, Delivery and Construction of Livestock Handling Facilities for a Period of Two (2) Years

Closing Time : **11H00**

Closing Date : **2 September 2021 at 11H00.**

5. Access

Access shall be provided for inspections and testing by personnel acting on behalf of the Department.

6. No Telephonic, telegraphic, telex, facsimile, electronic or e-mailed bids will be considered.

I

13 DARD 022/2021: ESTABLISHMENT OF A LIST OF REGISTERED AND EXPERIENCED SERVICE PROVIDERS FOR PREQUALIFICATION TO BE INCLUDED IN THE DEPARTMENT'S DATABASE FOR SUPPLY, DELIVERY AND CONSTRUCTION OF LIVESTOCK HANDLING FACILITIES FOR A PERIOD OF TWO (2) YEARS

7. The Department of Agriculture and Rural Development reserves the right to accept any bid in whole or in part and does not bind itself to accept the lowest or any bid.

8. For more information please contact the following:

Department : Department of Agriculture and Rural Development

Contact Person : Mr. L.S. Mothibi - 018 389- 5053: Email: smothibi@nwpg.gov.za

9. BID REQUIREMENTS

- a) Late bids will not be considered. Please note that bids are late if they are received at the address given in the bid document after the bid closing date and time.
- b) Bids will be valid for a period of 90 days.
- c) All the relevant forms attached to this bid document must be completed and signed in ink where applicable by a duly authorised official.

10. REQUIRED DOCUMENTATION

The prospective bidders are required to provide the following documentation which will be used for the **phase 1 of the evaluation on Legal Requirements:**

- 10.1. Certified copy of Broad-Based Black Economic Empowerment (BBBEE) Level Verification Certificates SANAS approved
- 10.2. Tax Pin
- 10.3. In case of Joint Venture, a consolidated Original Valid Tax Pin Certificate should be submitted and a consolidated Broad-Based Black Economic Empowerment (BBBEE) Status Level Certificates.
- 10.4. Proof of a Valid CIDB Grade (GB/CE/SL) Certificate
- 10.5. **During this stage, bids that do not comply will be disqualified, and will not be considered for the second stage of evaluation i.e. technical / functional capability and ability.**
- 10.6. All certified copies must not be older than six months

11. EVALUATION METHODOLOGY:

The Evaluation Processes will entail the following phases:

- 11.1. **Phase 1-** Evaluation on Legal requirements as stated in 10 above.



11.2. **Phase 2-** Technical/ functional Requirements and bidders who obtain **70 points** or more will be added to the list of preferred suppliers and will be engaged on an as and when required basis. Kindly note that this phase might be subjected to physical visits to ensure that service providers who are included in the Database have the capacity and capability to render effective services to the Department.

11.2.1. The following must also be attached to enable the evaluation committee to evaluate your bid on technical capabilities (Phase 2):

11.2.1.1. Verifiable proof of business premises

11.2.1.2. Proof of experience and expertise in the Field and proven track records. To this effect, Bidders are required to attach contracts, purchase order numbers, completion certificate or reference letters from previous contracts.

11.2.1.3. Proof of ownership of equipment, machinery and transport in a form of copies of vehicle registration certificates.

11.2.1.4. Letters of intention to lease equipment, machinery and transport.

12. Submission of Annexures A, and B

The following forms incorporated in these documents must be fully completed: -

12.1. **Annexure A** – Previous Similar Experience and customer references

12.2. **Annexure B** - Transport



MOGARI MOMPEI (MR)
ACTING CHIEF FINANCIAL OFFICER



DATE

TERMS OF REFERENCE

13 DARD 022/2021: ESTABLISHMENT OF A LIST OF REGISTERED AND EXPERIENCED SERVICE PROVIDERS FOR PREQUALIFICATION TO BE INCLUDED IN THE DEPARTMENT'S DATABASE FOR SUPPLY, DELIVERY AND CONSTRUCTION OF LIVESTOCK HANDLING FACILITIES FOR A PERIOD OF TWO (2) YEARS

1. INTRODUCTION

- 1.1. The Agricultural Sector Strategy of 2001 refers to a number of reforms that have reshaped the sector over the last ten years and recommends strategic interventions for achieving the vision of a united and prosperous agricultural sector; Comprehensive Agricultural Support Programme (CASP) is a vehicle in the realization of the set vision.
- 1.2. The programme intends to mobilize and introduce competent young farmers who can enter the commercial farming industry or the main stream job market. This will assist in compliance with the Employment Equity Act 55 of 1998 and the requirements.
- 1.3. The mandate of the Agriculture and Rural Development is to ensure that there is agricultural growth and development in the province with the focus on empowerment, poverty alleviation, income generation, unemployment, and job creation through the agricultural sector. Subsequently development programme which include amongst others CASP have been put in place as catalyst or a vehicle in the realization of the set objectives.
- 1.4. The Department is in the process of implementing this action oriented programme (CASP) throughout the province. The program aims to provide agricultural support services to farmers through district services to ensure that there is a sustainable management of agricultural resources, sustainable Agricultural Development and meaningful contribution to the economy of the North West Province.
- 1.5. It is against this background that the Department of Agriculture and Rural Development (DARD), through its Farmer Support and Development Programme wishes to establish a database of approved service providers to implement infrastructural projects in the identified agricultural areas within the province.
- 1.6. The funding for the supply and construction of livestock handling facilities infrastructure will not only be limited to (CASP) but will also include other available funding for infrastructure.

The approved list of service providers can be accessed by all programmes in DARD.

2. REFERENCE TO NATIONAL TREASURY GUIDELINES

2.1. Supply Chain Management "a guide to accounting officers/authorities

February 2004" Clause 4.6 "To stimulate the promotion of BEE and development of HDIs and SMMEs, it is suggested that institutions should advertise in the local media for businesses to register as potential suppliers for goods and services to be obtained by means of quotations. The accounting officer/authority may further categorise the suppliers according to the goods/services they are capable of supplying. Quotations for the required goods/services should be obtained from all potential suppliers in the specific category or on a rotation basis from various suppliers".

2.2. This RFI documents details the scope of work with regard to the procurement of list of suppliers for various agricultural projects. The RFI incorporates, as far as possible, the tasks and responsibilities of the potential service provider, required by the North West Department of Agriculture and Rural Development (DARD) in terms of providing training and development to its employees and providing agricultural support services to farmers through district services.

2.3. Clause 4.9 "Where goods, services or works of a technical/specialised nature are required on a recurring basis, a list of approved suppliers for the supply of the goods, services or works may be established. These lists should be established through the competitive bidding process. DARD has a detailed evaluation methodology premised on 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) and the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

3. PURPOSE OF THIS RFI

The purpose of this Request for Information (RFI) is to invite interested and qualified service providers to submit information to be included in the database of approved suppliers for Supply and Construction of Livestock Handling Facilities for DARD in line with the National Treasury Guidelines "Supply Chain Management for Accounting Officers Authorities for 2004 Section 4.6 and 4.9, Government Institutions are required to establish a list of approved suppliers.

4. APPOINTMENT TERMS AND CONDITIONS

- 4.1.** The Department of Agriculture and Rural Development (DARD) does not guarantee that successful service providers will receive work during the appointment term. However quotations for the required goods/services will be obtained from all potential suppliers. Service providers will be used on an as and when required by the DARD.
- 4.2.** Successful service providers will be appointed for a period of Two (2) years. Once a database of suppliers has been approved, only the successful bidders will be approached, depending on the circumstances, either by obtaining quotations backed by potential onsite compulsory briefings where necessary or according to the bid procedure when the goods, services or works are required with the exception that the requirements will not be advertised in the Government Tender Bulletin again.
- 4.3.** Where an entity forms a joint venture or a consortium with (an) other entities(y), the parties to this agreement must express in the bid proposal what aspect of the scope of work each party would be adding value to and what percentage each party will receive in terms of the proceeds flowing from any assignment.
- 4.4.** All prospective bidders (s) shall have to treat all available data provided by the Department in the process as strictly confidential and not for any form of distribution or use unless an express written approval is obtained from the Head of the Department in advance.
- 4.5.** Successful bidders must be in a position to commence work within two weeks from receipt of an official order.
- 4.6.** Only service providers who meet the minimum requirements in terms of the evaluation will be included in the database.

5. LOGISTICAL ARRANGEMENTS

- 5.1.** Once the list of service providers has been approved, only the successful applicants will be approached, depending on the circumstances, by obtaining quotations and will be expected to complete SBD 6.1 – Preferential Points Claim Form and SBD 9 – Certificate of Independent Determination, or completion of bid documents when services are

required. The quotation or bid will include the details of the assignment and will be evaluated in terms of Preferential Procurement Policy Framework Act 05 of 2000 and Regulations of 2011.

- 5.2.** Successful service providers will be required to sign the site service level agreement with the site engineer before the order is handed over. Such a service provider will be expected to submit a construction program
- 5.3.** No up-front payments will be made. DARD will pay for satisfactory completion of work within 30 days of submission of the invoices.

6. TIME FRAMES

The service providers will be expected to commence with the work within two weeks of receiving the purchase order. If there is a delay, reasons should be provided and agreed upon by both parties. The timeframe for the completion of different projects will be specified in the site service level agreements and must be strictly adhered to.

7. CANCELLATION

DARD reserves the right to cancel the contract if the service provider fails to adhere to the conditions of the contract.

- 7.1.** 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.

8. CONTRACTUAL ARRANGEMENTS

A standard agreement will be drawn up detailing all contractual obligations and it will be expected of the service provider to sign such with the Department. The Department will become the owners of any intellectual property that may be a product or an outcome of these projects.

9. EVALUATION METHODOLOGY

- 9.1.** DARD has set minimum standards that a bidder needs to meet in order to be evaluated and selected as a successful bidder(s). The minimum standards consist of the following:
 - 9.1.1.** Pre-Qualification Criteria (Phase 1) – Evaluation on legal requirements

- 9.1.2. Technical Evaluation Criteria (Phase 2) – Bidder(s) must attain a minimum of 70 out of 100 points to be in the list of approved service providers. This might include physical visits.

9.2. Phase 1- Evaluation on Legal requirements:

This phase will entail initial screening of bid responses received at close of bid. During this phase bid responses are registered and to ascertain the number of bid responses received before the closing date and time and to verify if the bidders submitted all mandatory requirements.

9.3. The prospective bidders are required to ensure that original bid documents are completed and signed where applicable and ensure that the following documents are submitted:

- 9.3.1. Tax Pin.
- 9.3.2. Certified copy of Broad-Based Black Economic Empowerment (BBBEE) Status Level Verification Certificates
- 9.3.3. In case of Joint Venture, an original Valid Tax Clearance Certificate of all partners should be submitted and a consolidated Broad-Based Black Economic Empowerment (BBBEE) Status Level Certificates.
- 9.3.4. Proof of a Valid CIDB Grade (GB/CE/SL) Certificate
- 9.3.5. **During this stage, bids that do not comply will be disqualified, and will not be considered for the second stage of evaluation i.e. technical / functional capability and ability.**
- 9.3.6. All Certified copies must not be older than six (6) months

9.4. Phase 2 – Technical / functional Requirements:

This evaluation will be based on the responses using the resource requirements i.e. previous experience, expertise of resources, infrastructure and financial strength as well as site inspection reports. The threshold values set for the qualification of bid is 70 points or 70 out of 100 and all the bidders who score below this score will be eliminated.

The bidder(s') information will be scored according to the following points system:

NO.	CIRTERIA	MAXIMUM SCORE
1	EQUIPMENT AND MACHINERY	
1.1. Equipment & Machinery	Contractor to provide a written confirmation on their company letterhead for machinery and equipment and copies of certificates for vehicles and TLB's registered and owned by the company.	35
	Hired equipment and machinery (Proof of agreement to hire machinery to be attached) Own equipment and machinery (Proof of ownership to be attached): a) Rammers or Rollers or Compactors Proof of ownership = 5 points Proof of hiring = 3 point	
	b) TLB Proof of ownership = 5 points Proof of hiring = 3 point	
	c) Concrete Mixer Proof of ownership = 5 points Proof of hiring = 3 point	
	d) Utility Vehicle Proof of ownership = 10 points Proof of hiring = 5 point	
	e) Utility Equipment (eg: Welder, Grinder) attach picture as proof Proof of ownership = 10 points Proof of hiring = 5 point	
2. Experience on similar job	- Proof of experience and expertise in the Field and proven track records. To this effect, Bidders are required to attach contracts, invoices, purchase order numbers or reference letters from previous contracts. - Proof of ownership of transport in a form of copies of vehicle registration certificates. - Submission of Annexures A, and B	65
2.1	A Comprehensive Organizational Profile - CV Format with attachments = 20 - None Submission = 0	
2.2	The contractor to provide a list of all previous similar projects bidding undertaken in the last 5 years accompanied by a completion certificate or traceable proof of payment as proof with the following values: Above R 4 000 000 = 20 R 2 000 001-R4 000 000 = 15 R0-R2 000 000 = 10	
2.3	Previous Track Record of similar work done by the contractor : (Proof of reference letters from different clients must be attached)	

	1 Letter = 10	
	2-3 Letters = 15	
	Above three Letters = 25	
TOTAL POINTS	NB: Minimum Threshold: Bidders scoring less than 70 points during this stage would not be considered for the next stage of evaluation	100

Kindly note that the shortlisted bidders may be subjected to site inspection where the information submitted will be verified.

Annexure "A"

PREVIOUS SIMILAR EXPERIENCE AND CUSTOMER REFERENCES

The Bidder must provide a statement of work successfully completed and a list of customer reference in the table provided below. Insert in the space below, the details of successfully completed work.

I / we certify that I / we have successfully carried out the following works in the categories stated:

CLIENT NAME	CONTACT DETAILS	NATURE OF WORKS	VALUE OF WORKS	YEAR COMPLETED

Failure to detail the required information shall signify that an inexperienced bidder submits the bid.

The Bidder must furnish details of customers who will comment on their customer experience with the Bid.

CUSTOMER NAME	CONTRACT	TELEPHONE

ANNEXURE "B"

TRANSPORT

TYPE OF VEHICLE	MADE/ MODEL	ENGINE CAPACITY

Failure to detail the required information shall signify that the bidder does not have capacity.

SIGNATURE OF BIDDER: _____

DATE: _____

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF (DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT)					
BID NUMBER:	13 DARD 022/2021	CLOSING DATE:	2 SEPTEMBER 2021	CLOSING TIME:	11:00
DESCRIPTION	ESTABLISHMENT OF A LIST OF REGISTERED AND EXPERIENCED SERVICE PROVIDERS FOR PREQUALIFICATION TO BE INCLUDED IN THE DEPARTMENT'S DATABASE FOR SUPPLY, DELIVERY AND CONSTRUCTION OF LIVESTOCK HANDLING FACILITIES FOR A PERIOD OF TWO (2) YEARS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Department of Agriculture and Rural Development					
Agricentre Building					
Corner Dr. James Moroka and Stadium Road					
Mmabatho					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Mr. L.S. Mothibi		CONTACT PERSON	Mr R.Du Plessis	
TELEPHONE NUMBER	018 389 5053		TELEPHONE NUMBER	018 299 6608	
FACSIMILE NUMBER	086 646 0925		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	smothibi@nwpg.gov.za		E-MAIL ADDRESS	rduplessis@nwpg.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] ☐ Yes ☐ No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES, ANSWER PART B:3]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				☐ YES ☐ NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				☐ YES ☐ NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				☐ YES ☐ NO	

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

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. ALL BIDS MUST BE SUBMITTED IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4. THE SUCCESSFUL BIDDER WILL BE ENGAGED WITH NEGOTIATIONS BY THE CSIR THAT MIGHT RESULT IN THE ISSUING OF A PURCHASE ORDER.
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 CSIR TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

(Proof of authority must be submitted e.g. company resolution)

.....

DATE:

.....

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
- the bidder is employed by the state; and/or
 - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

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

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

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

2.4 Company Registration Number:

2.5 Tax Reference Number:

2.6 VAT Registration Number:

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

¹"State" means –

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

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

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

2.7.1 If so, furnish the following particulars:

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

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

Position occupied in the state institution:

Any other particulars:

.....

.....

.....

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

- 2.7.2.1 If yes, did you attached proof of such authority to the bid document? YES / NO
(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.
- 2.7.2.2 If no, furnish reasons for non-submission of such proof:

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

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

- 2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? YES/NO
- 2.10.1 If so, furnish particulars.

- 2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract? YES/NO
- 2.11.1 If so, furnish particulars:

3 Full details of Directors / Trustees / Members / Shareholders.

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

4. DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

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? <i>(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 audi alteram partem rule was applied).</i> The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		

CERTIFICATION

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

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS
TRUE AND CORRECT.

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js365bW

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

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.

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.
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

THE NATIONAL TREASURY
Republic of South Africa



GOVERNMENT PROCUREMENT:
GENERAL CONDITIONS OF CONTRACT

July 2010

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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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) 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) 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**
- 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,

insolvency		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.