

## REQUEST FOR PROPOSALS

<b>YOU ARE HEREBY INVITED TO SUBMIT A BID TO MEET THE REQUIREMENTS OF UMALUSI</b>	
<b>BID NUMBER:</b>	UMALUSI (18-19) T0005
<b>DATE OF ADVERTISING</b>	01 March 2019
<b>COMPULSORY BRIEFING SESSION DATE:</b>	08 March 2019
<b>COMPULSORY BRIEFING SESSION TIME:</b>	10:00 <b>Precisely (Bidders will not be permitted to enter the compulsory session after the set time)</b>
<b>CLOSING DATE:</b>	29 March 2019
<b>CLOSING TIME:</b>	12:00 <b>Precisely (Bidders will not be permitted to submit the proposals after the set time)</b>
<b>CLOSING DATE FOR BID ENQUIRIES</b>	15 March 2019 at 12:00 <b>precisely</b> All enquiries must be directed to <a href="mailto:tenders@umalusi.org.za">tenders@umalusi.org.za</a>
<b>PERIOD FOR WHICH BIDS ARE REQUIRED TO REMAIN OPEN FOR ACCEPTANCE:</b>	180 days (submissions must be valid for 180 days after the closing date)
<b>DESCRIPTION OF BID:</b>	<b>APPOINTMENT OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES AND LEGAL SUPPORT TO UMALUSI FOR A PERIOD OF (5) FIVE YEARS.</b>
<b>BID DOCUMENTS DELIVERY ADDRESS:</b>	UMALUSI 37 GENERAL VAN RYNEVELD STREET PERSEQUOR TECHNOPARK PRETORIA
<b>NAME OF BIDDER:</b>	
<b>CONTACT PERSON:</b>	
<b>E-MAIL ADDRESS:</b>	
<b>TELEPHONE NUMBER:</b>	
<b>FAX NUMBER:</b>	

<b>BIDDER'S STAMP OR SIGNATURE</b>	
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**PART A: CHECKLIST OF COMPULSORY RETURNABLE SCHEDULES AND DOCUMENTS**

**Please adhere to the following instructions**

- Tick in the relevant block below.
- Use the prescribed sequence in attaching the annexures when completing the Bid Document.
- Ensure that the following documents are completed and signed where applicable:

**NB:** Should any of these documents not be included, the bidders **may** be disqualified on the basis of non-compliance.

YES	NO	
		Original Bid and a Copy – (both hard copies clearly marked as either original and copy) and one Electronic Copy.  <b>Important:</b> Kindly note that every document that is submitted as part of the original submission, must be <u>duly authorised with the required signatures or initials on each and every page</u> . Failure to comply will result in the bid being noted as incomplete.
		<b>Part A:</b>
		Specifications, Conditions of BID and Undertakings by Bidder
		Certificate of Authority for Joint Ventures
		<b>Part B:</b>
		<b>Annexure A:</b> Statement of Works
		<b>Annexure B:</b> SBD 1 - Invitation to Bid
		<b>Annexure C:</b> SBD 3.2 – Pricing Schedule – Non-Firm Prices (Purchases)
		<b>Annexure D:</b> SBD 2 - Tax Clearance Certificate Requirement
		<b>Annexure E:</b> SBD 4 - Declaration of Interest
		<b>Annexure F:</b> SBD 6.1 and B-BBEE status level certificate
		<b>Annexure G:</b> SBD 8 - Declaration of Bidder's Past Supply Chain Practices
		<b>Annexure H:</b> SBD 9 - Certificate of Independent Bid Determination
		<b>Annexure I:</b> General Conditions of Contract
		<b>Annexure J:</b> Bidder's Company Profile.
		<b>Annexure K:</b> Expertise of Key Personnel

## **PART B: SPECIFICATIONS, CONDITIONS OF BID AND UNDERTAKINGS BY BIDDER**

### **1. DEFINITIONS**

In this Request for Proposals, unless a contrary intention is apparent:

- 1.1 **B-BBEE** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003.
- 1.2 **B-BBEE Act** means the Broad-Based Black Economic Empowerment Act, 2003.
- 1.3 **Business Day** means a day which is not a Saturday, Sunday or public holiday.
- 1.4 **Bid** means a written offer in the prescribed or stipulated form lodged by a Bidder in response to an invitation in this Request for Proposal, containing an offer to provide goods, works or services in accordance with the Specification as provided in this Bid.
- 1.5 **Bidder** means a person or legal entity, or an unincorporated group of persons or legal entities that submit a Bid.
- 1.6 **Bidding Process** means the process commenced by the issuing of this Request for Proposals and concluding upon formal announcement by Umalusi of the selection of a successful Bidder(s) or upon the earlier termination of the process.
- 1.7 **Companies Act** means the Companies Act 71 of 2008, as amended.
- 1.8 **Closing Time** means the time, specified as such under the clause 3 (Bid Timetable) in Part C, by which BIDs must be received.
- 1.9 **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 Broad-Based Black Economic Empowerment Act.
- 1.10 **PFMA** means the Public Finance Management Act 1 of 1999, as amended.
- 1.11 **PPPFA** means the Preferential Procurement Policy Framework Act 5 of 2000, as amended.
- 1.12 **PPPFA Regulations** means the Preferential Procurement Regulations 2017, published in terms of the PPPFA.
- 1.13 **Proposed Contract** means the agreement including any other terms and conditions contained in or referred to in this BID that may be executed between Umalusi and the successful Bidder.

- 1.14 **Request for Proposal** or **BID** means this document (comprising each of the parts identified under Part A, Part B, Part C and Part D) including all annexures and any other documents so designated by Umalusi.
- 1.15 **SARS** means the South African Revenue Service.
- 1.16 **Services** means the services required by Umalusi, as specified in this Bid Part D.
- 1.17 **SLA** means Service Level Agreement.
- 1.18 **Specification** means the conditions of bid set and any specification or description of Umalusi's requirements contained in this BID.

**2. SUPPLY CHAIN MANAGEMENT UNIT**

- 2.1 Only questions, queries clarifications which are submitted to this e-mail address, [tenders@umalusi.org.za](mailto:tenders@umalusi.org.za) will be addressed.
- 2.2 Bid documents must be submitted as follows:
  - 2.2.1 Original BID and a Copy – (both hard copies clearly marked as original or copy) and
  - 2.2.2 One Soft Copy.
- 2.3 **Canvassing of any Umalusi employee will result in an immediate disqualification of the bidder.**

**3. BID TIMETABLE**

- 3.1 This timetable is provided as an indication of the timing of the bidding process. It is indicative only and subject to change by Umalusi. Bidders are to provide proposals that will allow achievement of the intended commencement date.

Activity	Date
Advertisement of bid	01 March 2019
Bid document available	01 March 2019
Briefing session	08 March 2019 @ <b>10:00 precisely</b> <b>(Bidders will not be permitted to enter the compulsory session after the set time)</b> <b>Venue:</b> <b>Umalusi</b> <b>37 General Van Ryneveld Street</b> <b>Persequor Technopark</b> <b>Pretoria</b>

Closing date for bid enquiries	15 March 2019 <b>at 12:00</b> All enquiries must be directed to: <a href="mailto:tenders@umalusi.org.za">tenders@umalusi.org.za</a>
Closing date and time	29 March 2019 <b>at 12:00 precisely</b> <b>(Bidders will not be permitted to submit their proposal after the set time)</b>

#### 4. SUBMISSION OF BIDS

4.1 Hardcopies of bids are to be submitted to:

Physical address of bid box	UMALUSI 37 GENERAL VAN RYNEVELD STREET PERSEQUOR TECHNOPARK PRETORIA
Hours of access to bid box	Monday to Friday: 08:00 to 16:00
Information to be marked on package containing bid	Umalusi Supply Chain Management Unit BID Ref. <b>UMALUSI (18-19) T0005</b>

4.2 **Important:** Kindly note that every document that is submitted as part of the original submission, must be duly authorised with the authorised signature or initials on each and every page. Failure to comply will result in the bid being noted as incomplete.

#### 5. RULES GOVERNING THIS BID AND THE BIDDING PROCESS

- 5.1 Participation in the bidding process is subject to compliance with the rules contained in Part C of this bid.
- 5.2 All persons (whether or not a participant in this bidding process) having obtained or received this bid may only use it, and the information contained herein, in compliance with the rules contained in this bid.
- 5.3 All bidders are deemed to accept the rules contained in Part C of this bid.

#### 6. STATUS OF REQUEST FOR PROPOSAL

6.1 This bid is an invitation for person(s) to submit a proposal(s) for the provision of the services as set out in the scope contained in this bid. Accordingly, this bid must not be construed, interpreted, or relied upon, whether expressly or implicitly, as an offer capable of acceptance by any person(s), or as creating any form of contractual, promissory or other rights. No binding contract or other understanding for the supply of services will exist between Umalusi and any bidder unless and until Umalusi has executed a formal written contract with the successful bidder.

## **7. ACCURACY OF REQUEST FOR PROPOSAL**

- 7.1 Whilst all due care has been taken in connection with the preparation of this bid, Umalusi makes no representations or warranties that the content in this bid or any information communicated to or provided to bidders during the bidding process is, or will be, accurate, current or complete. Umalusi, and its officers and employees will not be liable with respect to any information communicated which is not accurate, current or complete.
- 7.2 If a bidder finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by Umalusi, the bidder must promptly notify Umalusi in writing of such discrepancy, ambiguity, error or inconsistency in order to afford Umalusi an opportunity to consider what corrective action is necessary (if any).
- 7.3 Any actual discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by Umalusi will, if possible, be corrected and provided to all bidders without attribution to the bidder who provided the written notice.

## **8. ADDITIONS AND AMENDMENTS TO THE BID**

- 8.1 Umalusi reserves the right to change any information in, or to issue any addendum to this bid before the closing time. Umalusi and its officers or employees will not be liable in connection with either the exercise of, or failure to exercise, this right.
- 8.2 If Umalusi exercises its right to change information in terms of clause 8.1, it may seek amended bids from all bidders.

## **9. REPRESENTATIONS**

No representations made by or on behalf of Umalusi in relation to this bid will be binding on Umalusi unless that representation is expressly incorporated into the contract ultimately entered into between Umalusi and the successful bidder.

## **10. CONFIDENTIALITY**

- 10.1 The information contained in this document is of a confidential nature, and must only be used for purposes of responding to this bid. This confidentiality clause extends to supplier partners and / or implementation agents, whom you may decide to involve in preparing a response to this bid.
- 10.2 For purposes of this process, the term "Confidential Information" shall include all technical and business information, including, without limiting the generality of the foregoing, all secret knowledge and information (including any and all financial, commercial, market, technical, functional and scientific information, and information relating to a party's strategic objectives and planning and its past, present and future research and development), technical, functional and scientific requirements and specifications, data concerning business relationships, demonstrations, processes, machinery, know-how, architectural information, information contained in a party's software and associated material and

documentation, plans, designs and drawings and all material of whatever description, whether subject to or protected by copyright, patent or trademark, registered or unregistered, or otherwise disclosed or communicated before or after the date of this process.

- 10.3 The receiving party shall not, during the period of validity of this process, or at any time thereafter, use or disclose, directly or indirectly, the Confidential Information of Umalusi (even if received before the date of this process) to any person whether in the employment of the receiving party or not, who does not take part in the performance of this process.
- 10.4 The receiving party shall take all such steps as may be reasonably necessary to prevent Umalusi's Confidential Information coming into the possession of unauthorised third parties. In protecting the receiving party's Confidential Information, Umalusi shall use the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorised use or disclosure of the Confidential Information as the receiving party uses to protect its own Confidential Information.
- 10.5 Any documentation, software or records relating to Confidential Information of Umalusi, which comes into the possession of the receiving party during the period of validity of this process or at any time thereafter or which has come into its possession before the period of validity of this process:
  - 10.5.1 Shall be deemed to form part of the Confidential Information of Umalusi;
  - 10.5.2 Shall be deemed to be the property of Umalusi;
  - 10.5.3 Shall not be copied, reproduced, published or circulated by the receiving party unless and to the extent that such copying is necessary for the performance of this process and all other processes as contemplated herein; and
  - 10.5.4 Shall be surrendered to Umalusi on demand, and in any event on the termination of the investigations and negotiations, and the receiving party shall not retain any extracts.

## **11. REQUESTS FOR CLARIFICATION OR FURTHER INFORMATION**

- 11.1 All communications relating to this bid and the bidding process must be directed to [tenders@umalusi.org.za](mailto:tenders@umalusi.org.za) e-mail address only.
- 11.2 Any communication by a bidder to Umalusi will be effective upon receipt by the Supply Chain Management Unit.
- 11.3 Umalusi has restricted the period during which it will accept questions or requests for further information or clarification and reserves the right not to respond to any enquiry or request, irrespective of when such enquiry or request is received.
- 11.4 A bidder may, by notifying the Supply Chain Management Unit in writing, withdraw a question submitted in accordance with this clause, in circumstances where the bidder does not wish Umalusi to publish its response to the question to all bidders.

## **12. UNAUTHORISED COMMUNICATIONS**

- 12.1 Communication (including promotional or advertising activities) with staff of Umalusi is not permitted during the bidding process, or otherwise without the prior consent of the Bid Adjudication Committee.
- 12.2 Bidders must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the bidding process in any way.

## **13. IMPROPER ASSISTANCE, FRAUD AND CORRUPTION**

- 13.1 Bidders may not seek or obtain the assistance of employees of Umalusi in the preparation of their bid responses.
- 13.2 Umalusi may in its absolute discretion, immediately disqualify a bidder that it believes has sought or obtained such improper assistance.
- 13.3 Bidders are to be familiar with the implications of contravening the Prevention and Combating of Corrupt Activities Act, 2004 and any other relevant legislation.

## **14. CONFLICT OF INTEREST**

- 14.1 A Bidder must not, and must ensure that its officers, employees, agents and advisors do not, place themselves in a position that may give rise to actual, potential or perceived conflict of interest between the interests of Umalusi and the bidder's interests during the bidding process.
- 14.2 The Bidder is required to provide details of any interests, relationships or clients which may or do give rise to a conflict of interest in relation to the supply of the services under any contract that may result from this bid. If the Bidder submits its bid and a subsequent conflict of interest arises, or is likely to arise, which was not disclosed in the bid, the Bidder must notify Umalusi immediately in writing of that conflict.
- 14.3 Umalusi may immediately disqualify a Bidder from the Bidding Process if the Bidder fails to notify Umalusi of the conflict as required.

## **15. LATE BIDS**

- 15.1 Bids must be delivered by Closing Time.
- 15.2 Bids delivered after the Closing Time or lodged at a location or in a manner that is contrary to that specified in this bid will be disqualified from the Bidding Process and will be ineligible for consideration.

## **16. PREPARATION OF BIDS**

- 16.1 Bidders must ensure that:
  - 16.1.1 their Bid is submitted in the required format as stipulated in this bid; and
  - 16.1.2 all the required information fields in the Bid are completed in full and contain the information requested by Umalusi.
- 16.2 Umalusi may in its absolute discretion reject a bid that does not include the information requested or is not in the format required.



- 16.3 Unnecessarily elaborate responses or other representations beyond that which is sufficient to present a complete and effective Bid proposal are not desired or required. Elaborate and expensive visual and other presentation aids are not necessary.
- 16.4 Where the Bidder is unwilling to accept a specified condition, the non-acceptance must be clearly and expressly stated. Prominence must be given to the statement detailing the non-acceptance. It is not sufficient that the statement appears only as part of an attachment to the Bid, or be included in a general statement of the Bidder's usual operating conditions.
- 16.5 An incomplete Bid may be disqualified or assessed solely on the information completed or received with the bid.

## **17. ILLEGIBLE CONTENT, ALTERATION AND ERASURES**

- 17.1 Umalusi may disregard any content in a Bid that is illegible and will be under no obligation whatsoever to seek clarification from the Bidder.
- 17.2 Umalusi may permit a Bidder to correct an unintentional error in its Bid where that error becomes known or apparent after the Closing Time, but in no event will any correction be permitted if Umalusi reasonably considers that the correction would materially alter the substance of the Bid or affect the fairness of the Bidding Process.

## **18. RESPONSIBILITY FOR BIDDING COSTS**

- 18.1 The Bidder's participation or involvement in any stage of the Bidding Process is at the Bidder's sole risk, cost and expense. Umalusi will not be held responsible for, or pay for, any expense or loss that may be incurred by Bidders in relation to the preparation or lodgement of their Bid.
- 18.2 Umalusi is not liable to the Bidder for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Bidder's participation in the Bidding Process, including without limitation, instances where:
  - 18.2.1 the Bidder is not engaged to perform under any contract; or
  - 18.2.2 Umalusi exercises any right under this bid or at law.

## **19. DISCLOSURE OF BID CONTENTS AND BID INFORMATION**

- 19.1 All Bids received by Umalusi will be treated as confidential. Umalusi will not disclose the contents of any Bid and Bid information, except:
  - 19.1.1 as required by law;
  - 19.1.2 for the purpose of investigations by other government authorities having relevant jurisdiction;
  - 19.1.3 to external consultants of Umalusi engaged to assist with the Bidding Process; or for the general information of Bidders required to be disclosed as per

19.1.4 National Treasury Regulations, Guidelines, Instruction Notes or Practice Notes.

## 20. BID ACCEPTANCE

All Bids received must remain open for acceptance for a maximum period of 180 (One hundred and eighty) days from the Closing Time. This period may be extended by written mutual agreement between Umalusi and the Bidder.

## 21. EVALUATION PROCESS

21.1 The Bids will be evaluated and adjudicated as follows:

### 21.1.1 **Phase 1 Pre-Qualification – evaluation of compliance with Qualifying Criteria**

Only those Bidders which satisfy all of the Qualifying Criteria will be eligible to participate in the bidding Process further. Bids which do not satisfy all of the Qualifying Criteria will not be evaluated further.

21.1.2 Each bidder must conform to these conditions to be eligible for further evaluation. An offer that fails to meet these conditions may be disqualified.

21.1.3 **Phase 2: Mandatory Qualification-** Evaluation of bid responses as per the evaluation criteria specified in the RFB documents, i.e Mandatory Evaluation (Bidder/s who meet the mandatory requirements will be further evaluated for functional evaluation).

### 21.1.4 **Phase 3– Functional evaluation**

Bidders are evaluated based on the functional criteria set out in this tender. Only those Bidders that score **70 points or higher (out of a possible 100)** during the functional evaluation will be evaluated in Phase 4. The functional evaluation may include a presentation by the Bidders, Umalusi will advise bidders in advance should a presentation be required.

### 21.1.5 **Phase 4: Price and preferential points**

21.1.5.1 Those Bidders which have passed the initial and first stages of the bidding Process will be scored on the basis of price and preference point allocation in accordance with the applicable legislation.

21.1.5.2 The successful Bidder will typically be the Bidder that scores the highest number of points on Phase 4 of the Bid evaluation, unless Umalusi exercises its right to cancel the TENDER or finds that there are valid business or transformative reasons that justify the award to a company that did not obtain the highest score.

21.1 **Pre-Qualification: Qualifying Criteria**

21.1.1 The following Pre-Qualifying Criteria will be applied in the initial stage of the evaluation. **Bidders who do not meet the Pre-Qualifying Criteria may not be considered for the next stage of evaluation.**

21.1.2 Bidders are required to complete the table below by indicating whether they comply with the requirement by marking the appropriate column with an 'X' on the table below. Bidders are required to corroborate each requirement, where applicable.

Requirements	Non-Compliant	Compliant	Comment or reference to section in the bid Document
1. Attendance of compulsory Information Session.			
2. Correctly completed tender signed and initialed by authorized signatories.			
3. Include board resolution for delegation of authority. The following proof MUST be produced: Proof that the person who signed the proposal has the authority to do so.			
4. A valid SARS Tax Status Certificate / SARS tax pin.			
5. Central Supplier Database proof of registration.			
6. Companies and Intellectual Property Commission, Company Registration.			

Requirements	Non-Compliant	Compliant	Comment or reference to section in the bid Document
7. The above stated requirements (4-6) are also applicable to all members of consortia or joint venture who submit joint Bids.			
8. Bidder has submitted all returnable documentation to Umalusi (Annexures and SBD forms) (SBD1; SBD 2; SBD 3.1 or 3.2; SBD 4; SBD 6.1; SBD 8 & SBD 9)			
9. Certificate of Authority for Joint Ventures/Joint Venture agreement			
10. Company profile(s) indicating expertise of key personnel			
11. General Conditions of Contract – signed or Initialled on all pages			

## 21.2 Mandatory Requirement

Bidder(s) shall provide full and accurate answers to the mandatory questions posed in this document, and, where required, explicitly state either Yes or No regarding compliance or non-compliance with the requirements.

The following requirements must be met by the Bidder(s) and it will be expected of the Bidder(s) to supply proof or confirm their commitment where applicable.

The Bidder(s) must meet the following mandatory technical criteria. The Bidder(s) who do not meet all the technical and functional mandatory criteria shall be disqualified.

21.2.1	Comply	Not Comply
The Bidder(s) must have a physical presence in Gauteng Province in the form of		

<p>site/branch or partnership arrangement/ working relationship with a firm based in Gauteng Province</p> <p>Proof must be submitted in the form of a lease agreement, rental office agreements, sale agreement, or municipal statements, which will be verified accordingly. The municipal statement must not be older than three (3) months</p>		
Substantiate/ comments		

21.2.2	Comply	Not Comply
<p>The Bidder(s) must provide a Certificate of Good Standing not older than six (6) months at the time of submission, from the relevant Law Society in respect of <b>Director and Lead Attorney</b> who will represent Umalusi</p> <p><b>Please furnish copies of certificate(s) of Director and Lead Attorney(s) who will be representing Umalusi</b></p>		
Substantiate/ comments		

21.2.3	Agree	Not Agree
<p>The Bidder(s) may not act against Umalusi in any way whatsoever after entering into the Service Level Agreement. <b>(Conflict of interest must be avoided at all times)</b></p>		
Substantiate/ comments		

21.2.4	Comply	Not Comply
<p>The Bidder(s) must furnish a valid Fidelity Fund Certificate for the Firm. Certificate(s) to be provided for Gauteng Province</p>		
Substantiate/ comments		

21.2.5	Accept	Not Accept
<p>The Bidder(s) accept that Umalusi may distribute or redistribute instructions in any manner that will ensure equitable file allocation to the panellists</p>		
Substantiate/ comments		

**21.3 Functional Evaluation**

- Only those Bidders which **score 70 points or higher (out of a possible 100)** during the functional evaluation will be evaluated on Phase 4 of the Bid i.e. price and B-BBEE.
- Bidders must substantiate their responses to all the criteria. All documents, as indicated, must be supplied as part of the submission.

The Functional Criteria that will be used to test the capability of Bidders is as follows

Functional Criteria	Scoring	Points	Comment or reference to section in the BIB document
<p><b>References</b></p> <p>A proven track record substantiated by reference letters for which legal services have been rendered during the past five (5) years. This shall include the following information for each project undertaken:</p> <p>a) Entity name;            b) Contact name and telephone number;            c) Date when service was rendered;            d) Description of service;</p> <p>Reference Letters must be submitted on a letterhead of the entity/company. reference will be verified and negative references will not be considered</p>	<p>5 letters &amp; above = 15</p> <p>Less than 5 letters = 0</p>	<p><b>15</b></p>	

Functional Criteria	Scoring	Points	Comment or reference to section in the BIB document
<p><b>Qualifications and experience of lead Attorney</b>            Attorney qualifications: Provide certified copies (not older than 3 months) of qualifications.</p> <ul style="list-style-type: none"> <li>▪ Attorney must be registered with the relevant Law society.</li> </ul> <p><b>NB: Please attach CV and qualifications of lead Attorney</b></p>	<ul style="list-style-type: none"> <li>• Admission as Attorney and with a minimum of 10 years' post admission experience = 20 points</li> <li>• Admission as Attorney and with a minimum of 5 years' experience post admission but less than 10 years = 15 points</li> <li>• Attorney and experience below 5 years =0 points</li> </ul>	<b>20</b>	
<p>Summary of judgement/evidence of engagement for services rendered in the past 5 years in the following areas:</p> <ul style="list-style-type: none"> <li>• Litigation</li> <li>• Corporate &amp; Commercial law</li> <li>• Constitutional, Administrative law</li> <li>• Information and Technology (POPI)</li> <li>• Legislative drafting</li> </ul>	<p>(judgement /evidence of engagement in the past 5 years)</p> <p>5 fields = 35            4 fields = 30            3 fields = 27            2 fields = 25            1 field = 5            No field = 0</p>	<b>35</b>	
<p>Firm Letter of good standing with the relevant Law Society of South Africa.</p>	<p>Proof submitted=15            No proof submitted=0</p>	<b>15</b>	

Functional Criteria	Scoring	Points	Comment or reference to section in the BIB document
Fidelity fund certificate issued in terms of the Attorneys Act, 1979. <b>(certificate has to be valid at the time of submission)</b>	Proof submitted=15 No proof submitted=0	<b>15</b>	
<b>Total Points</b>		<b>100</b>	
<b>Minimum points</b>		<b>70</b>	

**NB:** A minimum of **70 points out of 100** for the functional evaluation will qualify the Bid to move on to the Phase 4 of evaluation, which is price and preferential points evaluation. Bidders that do not score **70 points** or higher at this stage of the evaluation will not be evaluated during the Phase 4 of the evaluation, which is Price and B-BBEE.

#### 21.4 Price and Preferential Points Evaluation

21.4.1 Subsequent to the evaluation of Pre-Qualifying Criteria, Mandatory criteria and functional criteria, Points will be allocated to Bidders at this stage of the evaluation in accordance with PPPFA Regulations, as follows:

Price points **80**  
Preferential procurement points **20**

##### 21.4.2 Price points

The following formula will be used to calculate the points for price:

$$P_s = 80(1 - (P_t - P_{min}) / P_{min})$$

Where:

$P_s$  = Points scored for comparative price of Bid or offer under consideration;

$P_t$  = Comparative price of Bid or offer under consideration; and

$P_{min}$  = Comparative price of lowest acceptable Bid or offer

##### 21.4.3 Preferential procurement points

A maximum of 20 points may be awarded in respect of preferential procurement, which points must be awarded to a bidder for attaining their B-BBEE Status Level in accordance with the table below:



B-BBEE Status Level	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

An unincorporated trust, consortium or Sub-contractors will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate Bid.

## 22 NOTE TO BIDDERS

**22.1** As part of evaluation process Umalusi will conduct a reference check on the provided referee. **Bidders who do not meet all of the Criteria will not be considered for award.**

## 23 STATUS OF BID

**23.1** Each Bid constitutes an irrevocable offer by the Bidder to Umalusi to provide the Services required and otherwise to satisfy the requirements of the specification as set out in this BID.

**23.2** A Bid must not be conditional on:

**23.2.1** the Board approval of the Bidder or any related governing body of the Bidder being obtained;

**23.2.2** the Bidder conducting due diligence or any other form of enquiry or investigation;

**23.2.3** the Bidder (or any other party) obtaining any regulatory approval or consent;

**23.2.4** the Bidder obtaining the consent or approval of any third party; or

**23.2.5** the Bidder stating that it wishes to discuss or negotiate any commercial terms of the contract.

**23.3** Umalusi may, in its absolute discretion, disregard any Bid that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other relevant conditions).

**23.4** Umalusi reserves the right to accept a Bid in part or in whole or to negotiate with a Bidder in accordance with the provisions of this Bid and the applicable laws and regulations.

## **24 SUCCESSFUL BIDS**

**24.1** Selection as a successful Bidder does not give rise to a contract (expressed or implied) between the successful Bidder and Umalusi for the supply of the Services. No legal relationship will exist between Umalusi and a successful Bidder for the supply of the Services until such time as a binding contract is executed by them.

**24.2** Umalusi may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Bidder.

**24.3** A Bidder is bound by its Bid and all other documents forming part of the Bidder's Response and, if selected as a successful Bidder, must enter into a contract on the basis of the Bid with or without further negotiation.

## **25 NO OBLIGATION TO ENTER INTO CONTRACT**

**25.1** Umalusi is under no obligation to appoint a successful Bidder or Bidders (as the case may be), or to enter into a contract with a successful Bidder or any other person, if it is unable to identify a Bid that complies in all relevant respects with the requirements of Umalusi, or if due to changed circumstances, there is no longer a need for the services requested, or if funds are no longer available to cover the total envisaged expenditure. For the avoidance of any doubt, in these circumstances Umalusi will be free to proceed via any alternative process.

**25.2** Umalusi may conduct a debriefing session for all Bidders (successful and unsuccessful). Attendance at such debriefing session is optional.

## **26 BIDDER WARRANTIES**

**26.1** By submitting a Bid, a Bidder warrants that:

**26.1.1** it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of Umalusi, its officers, employees, or advisers other than any statement, warranty or representation expressly contained in the BID;

**26.1.2** it did not use the improper assistance of Umalusi 's employees or information unlawfully obtained from them in compiling its Bid;

**26.1.3** it is responsible for all costs and expenses related to the preparation and lodgement of its Bid, any subsequent negotiation, and any future process connected with or relating to the Bidding Process;

**26.1.4** it accepts and will comply with the terms set out in this BID; and

**26.1.5** it will provide additional information in a timely manner as requested by Umalusi to clarify any matters contained in the Bid.

**27 UMALUSI 'S RIGHTS**

- 27.1** Notwithstanding anything else in this Bid, and without limiting its rights at law or otherwise, Umalusi reserves the right, in its absolute discretion at any time, to:
  - 27.1.1** cease to proceed with, or suspend the Bidding Process prior to the execution of a formal written contract;
  - 27.1.2** alter the structure and/or the timing of this Bid or the Bidding Process;
  - 27.1.3** vary or extend any time or date specified in this Bid;
  - 27.1.4** terminate the participation of any Bidder or any other person in the Bidding Process;
  - 27.1.5** require additional information or clarification from any Bidder or any other person;
  - 27.1.6** provide additional information or clarification;
  - 27.1.7** negotiate with any one or more Bidders;
  - 27.1.8** call for a new Bid;
  - 27.1.9** Reject any Bid received after the Closing Time; or
  - 27.1.10** Reject any Bid that does not comply with the requirements of this Bid.

**28 GOVERNING LAWS**

- 28.1** This Bid and the Bidding Process are governed by the laws of the Republic of South Africa.
- 28.2** Each Bidder must comply with relevant laws in preparing and lodging its Bid and in taking part in the Bidding Process.
- 28.3** All Bids must be completed using the English language and all costing must be in South African Rand.

**29 MANDATORY QUESTIONS**

**29.1** Bidders shall provide full and accurate answers to all (including mandatory) questions posed in this document, and, are required to explicitly state "**Comply/Accept**" or "**Do not comply/Do not accept**" (with a ✓ or an X) regarding compliance with the requirements. Where necessary, the Bidders shall substantiate their response to a specific question.

**NOTE: *It is mandatory for Bidders to complete or answer this part fully; If you do not accept please provide reasons.***

**29.1.1**

This Bid is subject to the Umalusi Standard Terms and Conditions of Procurement Contract stipulated in this BID document.	<b>Accept</b>	<b>Not accept</b>
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**29.1.2**

The laws of the Republic of South Africa govern this BID and the Bidders hereby accept that the courts of the Republic of South Africa have jurisdiction over any legal disputes.	<b>Accept</b>	<b>Not accept</b>

**29.1.3**

Umalusi shall not be liable for any costs incurred by the Bidder in the preparation of response to this BID.	<b>Accept</b>	<b>Not accept</b>

**29.1.4**

In the case of Consortium, Joint Venture or subcontractors, Bidders are required to provide copies of signed agreements stipulating the work split and Rand value.	<b>Accept</b>	<b>Not accept</b>

**29.1.5**

In the case of Consortium, Joint Venture or subcontractors, all Bidders are required to provide mandatory documents; this includes a BEE certificate for the individual companies as well as a consolidated B-BBEE certificate for the Joint Venture (company).	<b>Accept</b>	<b>Not accept</b>

**29.1.6**

Umalusi reserves the right to cancel or reject any proposal and not to award the proposal to the lowest Bidder or award parts of the proposal to different Bidders, or not to award the proposal at all.	<b>Accept</b>	<b>Not accept</b>

**29.1.7**

By submitting a proposal in response to this BID, the Bidders accept the evaluation criteria as it stands.	<b>Accept</b>	<b>Not accept</b>

**29.1.8**

Should the parties at any time before and/or after the award of the proposal and prior to,	<b>Accept</b>	<b>Not accept</b>

<p>and/or after conclusion of the contract fail to agree on any significant product price or service price adjustments, change in technical specification, change in services, etc. Umalusi shall be entitled within 14 (fourteen) days of such failure to agree, to revoke the letter of award and cancel the proposal by giving the Bidder not less than 14 (fourteen) days written notice of such cancellation, in which event all fees on which the parties failed to agree increases or decreases shall, for the duration of such notice period, remain fixed on those fee/price applicable prior to the negotiations. Such cancellation shall mean that Umalusi reserves the right to award the same proposal to next best Bidder as it deems fit.</p>		
--	--	--

**29.1.9**

<p>Any amendment or change of any nature made to this BID shall only be of force and effect if it is in writing, signed by Umalusi signatory and added to this BID as an addendum.</p>	<b>Accept</b>	<b>Not accept</b>

**29.1.10**

<p>Bidders who make use of subcontractors: The proposal shall be awarded to the Bidder as a primary contractor who shall be responsible for the management of the awarded proposal. A Bidder awarded the contract may not subcontract more than 25% of the value of contract to any enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concern, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.</p>	<b>Accept</b>	<b>Not accept</b>

**29.1.11**

Evaluation of Bids shall be performed by an evaluation panel established by Umalusi. Bids shall be evaluated on the basis of conformance to the required specifications as outlined in the BID. Points shall be allocated to each Bidder, on the basis that the maximum number of points that may be scored for price is 80, and the maximum number of preference points that may be claimed according to the (PPPFA) is 20.	Accept	Not accept

**29.1.12**

Should the Bidder change any wording or phrase in this document, the Bid shall be evaluated as though no change has been effected and the original wording or phrasing shall be used.	Accept	Not accept

Signature(s) of Bidder or assignee(s)		Date
Name of signing person (in block letters)		
Capacity		
Are you duly authorised to sign this Bid?		
Name of Bidder (in block letters)		
<p><i>Domicilium citandi et executandi</i> in the RSA (full street address of this place) (in block letters)</p> <p>.....</p> <p>.....</p> <p>Telephone number: .....</p> <p>Fax number: .....</p> <p>Cell phone number: .....</p> <p>E-mail Address.....</p>		

**CERTIFICATE OF AUTHORITY FOR ENTITY OR JOINT VENTURES**

This returnable schedule is to be completed by entity or joint ventures. We, the undersigned, are submitting this tender offer in joint venture and hereby authorize Mr/Ms ....., authorized signatory of the company, close corporation or partnership ..... acting in the capacity of lead partner, to sign all documents in connection with the tender offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY AUTHORISED SIGNATORY
		Signature..... Name..... Designation.....
		Signature..... Name..... Designation.....
		Signature..... Name..... Designation.....

**Note:**

A copy of the Joint Venture Agreement showing clearly the percentage contribution of each partner to the Joint Venture shall be appended to this schedule



## **ANNEXURE A: STATEMENT OF WORK**

### **30 INTRODUCTION**

Umalusi is a Schedule 3A Public Entity that sets and monitors standards for general and further education and training in South Africa in accordance with the National Qualifications Framework Act No. 67 of 2008 and the General and Further Education and Training Quality Assurance Act No 58 of 2001. The Council is tasked with the development and management of a sub-framework of qualifications for general and further education and training and for the attendant quality assurance. More information can be obtained from [www.umalusi.org.za](http://www.umalusi.org.za)

Bidders must acquaint themselves with the exact location, boundaries and areas, as well as the diversity of the building thereon. It is therefore a requirement that Bidders attend the compulsory briefing session.

#### **30.1 PURPOSE**

Umalusi would like to appoint a panel of attorneys to provide legal services and legal support to Umalusi. The areas of expertise and skills required include, but are not limited to, the requirements listed in the scope of work below

#### **30.2 SCOPE OF WORKS**

The successful bidders will be required to provide legal services and legal support for a period of 60 months in, amongst others, the following areas (categories):

**30.2.1** The firm of attorneys must be able to conduct a detailed and credible research on legislation applicable to public and independent schools, public and private colleges for Continuing Education and Training, and public and private assessment bodies assessing qualifications registered on the General and Further Education and Training Qualifications Sub-framework, including but not limited to the:

- National Qualifications Framework Act No. 67 of 2008, as amended.
- General and Further Education and Training Quality Assurance Act No. 58 of 2001, as amended.
- South African Schools Act No. 84 of 1996,
- Provincial regulations relating to registration of independent schools
- Norms and Standards relating to public schools
- NEPA Act No. 27 of 1996, as amended
- Continuing Education and Training Act No. 16 of 2006, as amended
- Higher Education Act No. 101 of 1997, as amended
- Policies and regulations pertaining to accreditation of independent schools, private colleges, private assessment bodies,

- Regulations pertaining to the Conduct, Administration and Management of the National Senior Certificate Examinations, and other qualifications registered on the GFETQSF
- Policies relating to the qualifications registered on the GFETQSF

**30.2.2** Public law - Constitutional and administrative law - inter alia the Constitution of the Republic of South Africa, 1996, the Promotion of Access to Information Act 2 of 2000, the Prevention of Organised Crime Act 121 of 1998, the Promotion of Administrative Justice Act 3 of 2000, Public Finance Management Act 1 of 1999, Treasury Regulations and Directives;

**30.2.3** Law of Contract - drafting and vetting of contracts.

**30.2.4** Litigation - Magistrates Court, High Court, CCMA etc.

**30.2.5** Commercial Law –commercial Law transactions.

**30.2.6** Legislative drafting.

**30.2.7** Policy drafting.

**30.2.8** Provide legal opinions as and when required by Umalusi.

**30.2.9** Drafting of policies

Area of work	Scope of work	Skills required
<p><b>Litigation</b></p>	<ul style="list-style-type: none"> <li>• Conduct litigation on behalf of UMALUSI.</li> <li>• Develop and review appropriate litigation strategy in each matter.</li> <li>• Ensure that effective and efficient litigation process is followed.</li> <li>• Collect litigation costs.</li> <li>• Provide custody of all pleadings and documents in litigation matters.</li> <li>• Provide oral and written legal advice throughout litigation process.</li> <li>• Avoid prescription, barring</li> </ul>	<ul style="list-style-type: none"> <li>• Knowledge of litigation processes and procedures in various forums including, but not limited to, the High Court, Supreme Court of Appeal, Constitutional Court and Magistrate Court.</li> <li>• Comprehensive and coherent understanding of laws and regulations that determine and shape the role and responsibility of the UMALUSI and all stakeholders reporting to it.</li> </ul>

<p><b>Corporate &amp; Commercial law</b></p>	<ul style="list-style-type: none"> <li>• Advice on projects / transactions such as restructuring, reorganisation within UMALUSI.</li> <li>• Advice on legal issues arising from asset, risk and debt management by stakeholders</li> <li>• Draft, review and advise on broad range of complex contracts.</li> <li>• Drafting and vetting service level agreements, general conditions of Contracts, procurement contracts, confidentiality agreements, agreements with independent contractors, building contracts, etc.</li> <li>• Provide legal opinions of corporate law / corporate governance, etc.</li> <li>• Company law advisory work pertaining to public entities.</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in working in transactions of a corporate law in nature.</li> <li>• Experience in public entities restructuring exercises.</li> <li>• Experience in drafting construction contracts, financial laws.</li> <li>• Excellent research and drafting skills, for purposes of preparing legal opinions of a corporate law nature.</li> <li>• Ability to work and deliver specific output on time.</li> <li>• Experience in providing advice in general commercial law.</li> <li>• Understanding public sector debt management.</li> <li>• Understanding legal and regulatory framework governing financial and fiscal affairs i.e. PFMA, Treasury regulations etc.</li> <li>• Knowledge of public sector procurement law.</li> </ul>
<p><b>Constitutional, Administrative law</b></p>	<ul style="list-style-type: none"> <li>• Provide legal opinions in respect of constitutional, administrative and international law matters.</li> <li>• Provide legal opinions in respect of Appeals from stakeholders, clients and the general public</li> <li>• Ensure technical quality, adherence to the best practice and consistency with the constitution and other acts of Parliament.</li> <li>• Advise on the legal interpretation and legal implications of existing</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in providing opinion in constitutional, administrative law and understanding of regulatory framework governing educational laws.</li> </ul>

	or proposed public or private international agreement to be entered into by Government	
<b>Legislative drafting done in terms of the NQF Act and GENFETQA Act</b>	<ul style="list-style-type: none"> <li>• Draft and review of original and subordinate legislation.</li> <li>• Ensure the technical quality adherence to the best practice and consistency with the constitution and other legislation.</li> <li>• Legal advice during the drafting of Legislation, policies and regulations.</li> </ul>	<ul style="list-style-type: none"> <li>• Advanced legislative drafting skills and experience through drafting and scrutiny of draft legislation, advising during drafting process and working in multi-disciplinary or institutional teams responsible for the development of draft legislation.</li> <li>• Knowledge of modern drafting techniques and drafting rules and style.</li> <li>• Good command of English.</li> </ul>
<b>Information and Technology</b>	<ul style="list-style-type: none"> <li>• Advise on all aspects of IT law such as service level agreements pertaining to system integration software and website development.</li> </ul>	<ul style="list-style-type: none"> <li>• Experience in IT law and cyber law.</li> </ul>

## **ANNEXURE A: PRICING SCHEDULE**

Levels	Rates per hours (vat inclusive)
Lead Attorneys	
Associates	
Candidate Attorneys	

- Bidders are required to indicate rate per each level inclusive of all applicable taxes for the legal services
- Bidders are required to indicate if prices are fixed or not, if not firm for the full period, provide details of the basis on which adjustments will be applied for e.g. consumer price index

## **DISBURSEMENT COSTS**

<b><u>Description</u></b>	<b><u>Rates including VAT</u></b>	<b><u>Comments</u></b>
Vehicle per kilometre		
Printing per page		

a) Black and white		
b) Colour		
Fax per page		
a) Local		
b) National		
c) 086 numbers		
Photocopies per page		
a) A4 black and white		
b) A3 black and white		
c) A4 colour		
d) A3 Colour		
Telephone		
Email		
Other		
<b>Sub-Total</b>		
<b>15% VAT</b>		
<b>Total</b>		
<b>Grand Total</b>		



**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>					
BID NUMBER:	<b>T0005</b>	CLOSING DATE:	<b>29/03/2019</b>	CLOSING TIME:	<b>12:00</b>
DESCRIPTION	<b>APPOINTMENT OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES AND LEGAL SUPPORT TO UMALUSI FOR A PERIOD OF (5) FIVE YEARS.</b>				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
<b>UMALUSI 37 GENERAL VAN RYNEVELD STREET PERSEQUOR TECHNOPARK PRETORIA</b>					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	<b>Supply Chain Management</b>		CONTACT PERSON	<b>SCM</b>	
TELEPHONE NUMBER	<b>012 349 1510</b>		TELEPHONE NUMBER	<b>012 349 1510</b>	
FACSIMILE NUMBER	<b>012 349 1511</b>		FACSIMILE NUMBER	<b>012 349 1511</b>	
E-MAIL ADDRESS	<b>tenders@umalusi.org.za</b>		E-MAIL ADDRESS	<b>tenders@umalusi.org.za</b>	
<b>SUPPLIER INFORMATION</b>					
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:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	<b>MAAA</b>
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE FROM AN	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	



AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS )			
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**[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]**

<b>1</b> 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]		<b>2</b> ARE YOU A FOREIGN BASED SUPPLIER FOR <b>THE GOODS /SERVICES /WORKS OFFERED?</b> <input type="checkbox"/> Yes <input type="checkbox"/> 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**

<b>1. BID SUBMISSION:</b>
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b>
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. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS 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:  
.....

**PRICING SCHEDULE – NON-FIRM PRICES  
(PURCHASES)**

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

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

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

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

ITEM NO. <b>**</b> (ALL APPLICABLE TAXES INCLUDED)	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY
--	----------	-------------	---------------------------

- Required by: .....
- At: .....
- Brand and model .....
- Country of origin .....
- Does the offer comply with the specification(s)? \*YES/NO
- If not to specification, indicate deviation(s) .....
- Period required for delivery .....
- Delivery: \*Firm/not firm

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

\*Delete if not applicable

**PRICE ADJUSTMENTS**

**A NON-FIRM PRICES SUBJECT TO ESCALATION**

1. IN CASES OF PERIOD CONTRACTS, NON FIRM PRICES WILL BE ADJUSTED (LOADED) WITH THE ASSESSED CONTRACT PRICE ADJUSTMENTS IMPLICIT IN NON FIRM PRICES WHEN CALCULATING THE COMPARATIVE PRICES
2. IN THIS CATEGORY PRICE ESCALATIONS WILL ONLY BE CONSIDERED IN TERMS OF THE FOLLOWING FORMULA:

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

Where:

- Pa = The new escalated price to be calculated.
- (1-V)Pt = 85% of the original bid price. **Note that Pt must always be the original bid price and not an escalated price.**
- D1, D2.. = Each factor of the bid price eg. labour, transport, clothing, footwear, etc. The total of the various factors D1, D2...etc. must add up to 100%.
- R1t, R2t..... = Index figure obtained from new index (depends on the number of factors used).
- R1o, R2o = Index figure at time of bidding.
- VPt = 15% of the original bid price. This portion of the bid price remains firm i.e. it is not subject to any price escalations.

3. The following index/indices must be used to calculate your bid price:

Index..... Dated.....      Index..... Dated.....      Index..... Dated.....  
 Index..... Dated.....      Index..... Dated.....      Index..... Dated.....

4. FURNISH A BREAKDOWN OF YOUR PRICE IN TERMS OF ABOVE-MENTIONED FORMULA. THE TOTAL OF THE VARIOUS FACTORS MUST ADD UP TO 100%.

FACTOR (D1, D2 etc. eg. Labour, transport etc.)	PERCENTAGE OF BID PRICE

**B PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS**

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

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

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

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

## **ANNEXURE D – SBD 2 – Tax Clearance Certificate Requirements**

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

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

**Note: Valid Original Tax Clearance Certificate is mandatory**

## ANNEXURE E – SBD4 – Declaration of Interest

1. Any legal person, including persons employed by the state<sup>1</sup>, 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, shareholder<sup>2</sup>):

.....

2.4 Company Registration Number: .....

2.5 Tax Reference Number: .....

2.6 VAT Registration Number:

.....

---

<sup>1</sup>“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.

2.6.1 The names of all directors / trustees / shareholders<sup>2</sup> / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

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 "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.



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

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?

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.

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

**2 Full details of directors / trustees / members / shareholders.**

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

**3 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

## **ANNEXURE F – 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 million (all applicable taxes included); and
  - the 90/10 system for requirements with a Rand value above R50 million (all applicable taxes included).
- 1.2 The value of this bid is estimated not to exceed R50 million (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
  - (b) B-BBEE Status Level of Contribution.
- 1.4 The maximum points for this bid are allocated as follows:
- |  | <b>POINTS</b> |
|--|---------------|
| <b>PRICE</b>   | <b>80</b>     |
| <b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>               | <b>20</b>     |
| <b>Total points for Price and B-BBEE must not exceed</b> | <b>100</b>    |
- 1.5 Failure on the part of a bidder to submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- (g) **“consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- (h) **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- (i) **“EME”** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (j) **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the service provider and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- (k) **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- (l) **“non-firm prices”** means all prices other than “firm” prices;
- (m) **“person”** includes a juristic person;
- (n) **“QSE”** means a Qualifying Small Enterprise as defined by Codes of Good

Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

- (o) **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- (p) **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- (q) **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- (r) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (s) **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### 3. **ADJUDICATION USING A POINT SYSTEM**

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

#### 4. POINTS AWARDED FOR PRICE

##### 4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & & P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)
 \end{array}$$

Where

$P_s$  = Points scored for comparative price of bid under consideration

$P_t$  = Comparative price of bid under consideration

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

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

5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5.2 A bidder who qualifies as an EME in terms of the B-BBEE Act must submit a sworn affidavit confirming Annual Total Revenue and Level of Black Ownership.

5.3 A Bidder other than EME or QSE must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

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

**6. BID DECLARATION**

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

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

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

**8. SUB-CONTRACTING**

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

**(Tick applicable box)**

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

8.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor .....
- iii) The B-BBEE status level of the sub-contractor .....
- iv) Whether the sub-contractor is an EME.

**(Tick applicable box)**

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

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

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

**9. DECLARATION WITH REGARD TO COMPANY/FIRM**

9.1 Name of company/firm:

.....

9.2 VAT registration number

.....

9.3 Company registration number:

.....



9.4 TYPE OF COMPANY/ FIRM

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

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
.....

9.6 COMPANY CLASSIFICATION

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

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

9.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the service provider may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

WITNESSES
1. ....
2. ....

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

## ANNEXURE G – 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'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	<p><b>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?</b> (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury’s website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for BID Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No. 12 of 2004)?</p> <p><b>The Register for BID Defaulters can be accessed on the National Treasury’s website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		

4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

**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**

## **ANNEXURE H – SBD 9 - Certificate of Independent Bid Determination**

- 1 This Standard Bidding Document (SBD) must form part of all bids<sup>3</sup> 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).<sup>4</sup> Collusive bidding is a per 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:

---

<sup>3</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>4</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

---

(Bid Number and Description)

in response to the invitation for the bid made by:

---

(Name of Institution)

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

I certify, on behalf of: \_\_\_\_\_ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder.
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any

competitor. However communication between partners in a joint venture or consortium<sup>5</sup> 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

---

<sup>5</sup> 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.

## ANNEXURE I – General Conditions of Contract

**THE GENERAL CONDITIONS OF THE CONTRACT WILL FORM PART OF ALL BID DOCUMENTS AND MAY NOT BE AMENDED**

### **THE NATIONAL TREASURY Republic of South Africa**



#### **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 anything of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 "Day" means calendar day
  - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
  - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
  - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or



depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

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

- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
  - 1.21 "Purchaser" means the organization purchasing the goods
  - 1.22 "Republic" means the 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 Bid Bulletin. The Government Bid Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection**
- 5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and

- shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.
- 6. Patent rights** 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
- 7. Performance security** 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms.
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
- (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.
- 8. Inspections, tests and analyses** 8.1 All pre-bidding testing will be for the account of the bidder.

- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

**9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration

during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC

**11. Insurance**

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

**12. Transportation**

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

**13. Incidental services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

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

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

**14. Spare parts**

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

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

**15. Warranty**

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

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

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

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable

speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

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

**16. Payment**

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

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

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

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

**17. Prices**

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

## **22. Penalties**

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

## **23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part.
  - (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;



- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
  - (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction;
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

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

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

**24. Anti-dumping and countervailing duties and rights**

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

**25. Force Majeure**

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

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all

- reasonable alternative means for performance not prevented by the force majeure event.
- 26. Termination for insolvency** 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
- 27. Settlement of Disputes**
- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.
- 28. Limitation of liability** 28.1 Except in cases of criminal negligence or wilful 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.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

## **ANNEXURE J – Company profile of the bidder**

This document(s) is to be prepared and submitted by the bidders as **Annexure J** to their Bid.

