



**BID NO: SAMSA/023/2021/22: APPOINTMENT OF A PANEL OF FIVE (5) FORENSIC INVESTIGATION FIRMS FOR THE SOUTH AFRICAN MARITIME SAFETY AUTHORITY FOR A PERIOD OF THREE (3) YEARS.**

**PART 1**

**1.1 LETTER OF INVITATION TO THE SERVICE PROVIDER:**

**BIDS TO BE SUBMITTED TO:**

South African Maritime Safety Authority  
146 Lunnon Road  
Cnr Jan Shoba & Lunnon Road  
Hillcrest  
0183

Attention: I Mothoane

Tel: 012 366 2600

email: [imothoane@samsa.org.za](mailto:imothoane@samsa.org.za)

**ISSUE DATE: 19 MAY 2021**

**VENUE:**

South African Maritime Safety Authority  
146 Lunnon Road  
Cnr Jan Shoba & Lunnon Road  
Hillcrest  
0183

**CLOSING DATE: 10 JUNE 2021**

**TIME: 11H00 AM**

A service provider will be selected under the procedures described in this Request for Proposal (RFP) document.

**The RFP consists of the following documents:**

- **Part 1** - Letter of Invitation
- **Part 2** - Instructions
- **Part 3** - RFP Requirements
- **Part 4** - Financial Proposal (Pricing Schedule (SBD 3.3 Professional Service));
- **Part 5** - Evaluation Criteria
- **Part 6** - Required Documents

**Annexure A:** Confidentiality and Non-disclosure Agreement (Annexure A);

**Annexure B:** Standard Bidding Documents

- Invitation to Bid (**SBD 1**);
- Declaration of Interest (**SBD 4**);
- The National Industrial Participation Programme (**SBD 5**)
- Preference Points Claims Form in terms of the Preferential Procurement Regulations 2017 (**SBD 6.1**);
- Declaration of Bidder's Past SCM Practices (**SBD 8**); and
- Certificate of Independent Bid Determination (**SBD 9**).

**N.B.** Failure to provide any one of the documents required in **Part 6** will lead to an immediate disqualification of the service provider from the tender process.

In submitting any information or documentation requested above, or any other information that may be requested pursuant to this RFP, you are consenting to the processing by SAMSA or its stakeholders of your personal information and all other personal information contained therein, as contemplated in the Protection of Personal Information Act, No.4 of 2013 and Regulations promulgated thereunder ("POPI Act"). Furthermore, you declare that you have obtained all consents required by the POPI Act or any other applicable law. Thus, you hereby indemnify SAMSA against any civil or criminal action, administrative fine or other penalty or loss that may arise because of the processing of any personal information that you submit.

## **PART 2 - INSTRUCTIONS**

### **2. INTRODUCTION SAMSA**

2.1. The South African Maritime Safety Authority (SAMSA) was established on the 1st April 1998 under the SAMSA Act 5 of 1998. The objectives of the Authority are:

- To ensure safety of life and property at sea;
- To prevent and combat pollution from ships in the marine environment; and

- To promote the Republic's maritime interests.

SAMSA has also been charged with the responsibility of executing the following:

- Administration of the Merchant shipping (National Small Vessel Safety) Regulation, 2007, as amended (the Regulations). The Regulations extends SAMSA's Core mandate to include inland waterways (only waterways accessible to the public) within the Republic. That is to ensure boating safety on our waters.
- Implementing and executing the Long-Range Identification and Tracking (LRIT) of vessels along the South African coastline. The Long-Range vessels monitoring system assist in securing South Africa's coastal waters in the midst of the rising lawlessness at sea, with particular reference to the worrying scourge of pirate attacks along the east coast of Africa.
- SAMSA's head office is based in Pretoria, while there are 8 other offices based along the South African coastline.

## **2.2. Contractual commitment**

No commitment of any kind, contractual or otherwise, shall exist unless and until a formal written agreement has been executed by or on behalf of SAMSA. Any notification of preferred bidder status by SAMSA shall not give rise to any enforceable rights by the Bidder. SAMSA may cancel this RFP at any time prior to the formal written agreement being executed by or on behalf of SAMSA.

SAMSA reserves the right at its sole discretion, and at any time, to amend, deviate from, postpone, discontinue or terminate the transaction/procurement process, without incurring any liability whatsoever to any other party.

SAMSA reserves the right not to award this tender to the highest ranked or highest scoring bidder, as it needs to align its procurement practices to governance practices that are in line with its own growth path. These may include but are not limited to, driving socio-economic development objectives that are enshrined in various government policies.

## **2.3. Confidentiality**

All bidders to this RFP will be required to sign the confidentiality and non-disclosure agreements outlined on **Annexure A** in this document.

## **2.4. Submission Format (Returnable Schedules)**

Bidders are required to submit a comprehensively detailed and clearly indexed bid response, in accordance with the submission format specified below (each schedule must be clearly marked):

#### **2.4.1 Cover Page**

- The cover page must clearly indicate the Bid Number, Bid Description and the Bidder's Name.

#### **2.4.2 Schedule 1**

- Executive Summary (explaining how you understand the requirements of this RFP, summary of your proposed solution and the summary of your experience relevant to the requirements of this RFP)

#### **2.4.3 Schedule 2**

- All documents listed on Part 6 of this RFP Document (duly completed and signed);
- Valid Tax Clearance Certificate(s) (TCC);
- Valid Certificate of Incorporation i.e. CIPC company registration documents or a CSD report; and
- Valid B-BBEE verification certificate, indicating the contribution level of the bidding entity. An Exempted Micro Enterprise (EME) with an annual turnover less than R10 million, is only required to obtain an affidavit confirming the annual total revenue and level of black ownership. A Qualifying Small Enterprise (QSE) that has 51% or more black beneficiaries may obtain an affidavit confirming the annual total revenue and level of black ownership.

**Note:** If a bidder is a Consortium, Joint Venture or Prime Contractor with Subcontractor(s), the documents listed above must be submitted for each Consortium/JV member or Prime Contractor and Subcontractor(s).

- Copy of Joint Venture/Consortium/Subcontracting Agreement duly signed by all parties (if applicable).

#### **2.4.4 Schedule 3**

- Technical Proposal in line with the Evaluation Criteria in Part 5 of this RFP document.

#### **2.4.5 Schedule 4**

- Financial/ Price Proposal of this RFP document (**in a separate envelope**).

**Note:** Bidders are requested to submit 1 original copy and 1 hardcopy of their printed proposals and one electronic copy on portable media.

## 2.5. Submission of Proposals

- The closing date for the submission of proposals is **10 June 2021** at 11h00am.
- Duly completed proposals must be sealed in an envelope that is endorsed with the words **“SAMSA/023/2021/22: “Appointment of a panel of Forensic Investigators”**.
- The envelope must be posted in the tender box at SAMSA reception desk located at: Physical address **146 Lunnon Road, Cnr Jan Shoba & Lunnon Road, Hillcrest, Pretoria 0183**.
- Bidders must ensure that they sign the **Receipt register** at the Reception.
- Late or incomplete tender proposals will not be accepted or considered, and any proposal delivered to any address other than the address mentioned above will not be accepted.
- E-mailed, posted or faxed proposals will **NOT** be accepted.

**Note:** SAMSA will not be responsible for bids delivered by courier services which are not in the tender box at the closing date and time.

## 2.6. Queries and clarifications

Any additional information required, which is not clarified in the specifications, must be addressed in writing to ([jchilopo@samsa.org.za](mailto:jchilopo@samsa.org.za)) by **27 May 2021**. Additional information may be provided at SAMSA's discretion, who reserve the right to provide the same information to all other interested parties, should this enhance the submission. SAMSA reserves the right to request meetings with Bidders to clarify responses or seek additional information to refine assessments.

SAMSA reserves the right to conduct supplier due diligence, prior to final award or any time during the contract period. This may include site visits, verification of information and requests for additional information.

## 2.7. Automatic Disqualification

SAMSA reserves the right to disqualify any bidder which has done one or more of the following, and such disqualification may take place without prior notice to the offending bidder:

- Failed to provide proof that they are tax compliant with SARS;
- Submitted incomplete information and documentation according to the requirements of this RFP document;
- Submitted information that is fraudulent, factually untrue or inaccurate information;
- Received information that is not available from other potential bidders through fraudulent means;
- Failed to comply with mandatory requirements if stipulated in the RFP document;
- Misrepresented or altered material information in whatever way or manner;

- Promised, offered or made gifts, benefits to any SAMSA employee;
- Canvassed, lobbied in order to gain unfair advantage;
- Committed fraudulent acts; and
- Acted dishonestly and/or in bad faith etc.

## 2.8. SAMSA's rights

SAMSA reserves the right to:

- Amend any conditions, bid validity period, RFP specifications, or extend the bid closing date, all before the bid closing date. Such amendments will be posted on SAMSA's website under the relevant tender information. All prospective bidders should therefore ensure that they visit the website regularly, before they submit their bid response to ensure that they are kept updated on any amendments in this regard.
- Award this bid in whole or in part not to make an award at all.
- Award this bid to more than one bidder.
- Negotiate with all or some of the shortlisted bidders.
- Not accept the lowest priced bid or award the bid to a bidder other than the highest
- Conduct site visits at bidder's offices and /or at client sites if so required
- Request any relevant information and /or documents to verify or clarify information supplied in the bid response, in relation to but not limited to, the structure of the bidding entity, bidder's capacity, proposed solution, proposed timelines etc.
- By submitting a bid, the bidder hereby gives consent to SAMSA to conduct any form of vetting or due diligence on the bidding entity and /or any of its directors/trustees/shareholders/members.

## 2.9. Proposal costs

All costs and expenses incurred by the bidder relating to their participation in, and preparation of this proposal process shall be borne by the bidder exclusively.

## 2.10. Validity period

The proposals should remain valid for **120** days after the closing date.

## 2.11. Important dates

Activity	Date
Release of RFP	19 May 2021
Last day of queries	27 May 2021

<b>Responses to queries</b>	<b>31 May 2021</b>
<b>Closing date for submission of proposals</b>	<b>10 June 2021</b>

SAMSA reserves the right to amend any date specified above. Any changes will be communicated to the interested parties.

## **2.12. Transformation**

- SAMSA promotes transformation within the maritime services sector of the South African economy and as such, bidders are encouraged to partner with majority black owned entities (51% black owned and controlled). Such partnerships may include the formation of a Joint Venture and/or subcontracting agreement etc., where a portion of the work under this tender would be undertaken by black owned entities.
- To give effect to this requirement, bidders are required to submit a partnership/subcontracting proposal detailing the portion of work to be outsourced, level of involvement of the black owned partner and where relevant, submit a consolidated B-BBEE scorecard, in line with the provisions of the PPPFA Regulations, which will be considered as part of the B-BBEE scoring.

### **3. PART 3 - RFP REQUIREMENTS**

#### **3.1. OBJECTIVES**

The firms appointed to the panel of Forensic Investigators will be required to provide end to end forensic investigations, as and when requested by SAMSA on an, as and when basis, for a period of three (3) years.

The service providers on the panel will be selected on a rotation basis as and when required, to investigate matters related to illicit and unethical situations, such as bribery, corruption, theft, defrauding or fraud committed against the company, in order to protect SAMSA from any actual or potential loss, and any maladministration.

The firms appointed to the panel of Forensic Investigators will be limited to five (5) members.

#### **3.2 BACKGROUND**

In its efforts to augment its corporate governance initiatives, to limit risks associated with non-compliance and further be capacitated to implement appropriate consequence management initiatives, SAMSA seeks to appoint suitably qualified and experienced Forensic Investigation firms to a panel, which will conduct forensic and specialised investigations for and on behalf of SAMSA as and when required.

#### **3.3. PROPOSED SCOPE OF WORK**

The forensic investigation firm appointed will be required to inter alia:

- a) Conduct preliminary interviews with SAMSA staff members to understand the SAMSA systems and processes;
- b) Utilise the latest available technology or specialised systems to image relevant computers, interrogate SAMSA systems, download and analyse the relevant electronic data;
- c) Experience in supporting departments, public entities, parastatals and municipalities etc. with litigation processes emanating from forensic investigations, including but not limited to presenting evidence in disciplinary enquiries, arbitrations in the CCMA and Bargaining Councils, Criminal and Civil Courts;
- d) Identify system and internal control deficiencies (if any) giving rise to reported incidents;
- e) Engage with the relevant person/s as determined by investigations;
- f) Advise on researched and strategic interventions in order to proactively mitigate risk to SAMSA;
- g) Provide support, where required to SAMSA in disciplinary, civil and criminal proceedings;
- h) Advise SAMSA of remedial / corrective action available;



- i) Supply any further assistance as may be required and directed by SAMSA i.e. Participation in disciplinary hearings and communication with law enforcement agencies;
- j) To assist with the investigation emanating from on-going transactional data analytics with suspicions of fraud in line with SAMSA policies and procedures and the public sector at large;
- k) Quantify any possible/actual losses and recommend actions against parties responsible for the irregularities;
- l) Compile detailed forensic investigation reports that are suitable for use in disciplinary, civil and criminal proceedings;
- m) Compile evidence file/s supporting the investigation reports; and
- n) Conduct lifestyle audits on SAMSA staff, Executives and Board as and when required.

### **3.4. CRITERIA**

The functions to be performed by the service providers who are appointed on the database or panel and allocated cases as per the quotation process for Forensic Investigations will, inter alia, include the following:

- a) Conduct preliminary investigation into identified transitions/cases and determine investigation strategy or advice for reporting to SAMSA;
- b) Develop an investigation plan to be reviewed and approved by SAMSA;
- c) Investigation assignments are to be performed using the appointed firm's investigation approach/methodology, which should be in line with the Public Service Code of Conduct; the Professional Standards set by the Association of Fraud Examiners/Institute of Commercial Forensic Practitioners and other related Legislation, Regulations and other best practice applicable to forensic investigations. The above includes investigation reports. (Cases as per the Allegations Register include amongst others, irregular awarding of tenders, conflict of interest, misuse of vehicles, fronting, cover quoting, financial misconduct, abuse and misuse of state assets, resources procurement fraud, fraud through misrepresentation, etc.
- d) The investigation scope should, amongst others cover the following: -
  - Determine whether irregularities occurred with regard to the allegations reported;
  - Determine and identify officials of SAMSA and/or other parties involved in irregularities that occurred;
  - Recommend appropriate action to be instituted by the SAMSA where irregularities have been confirmed.
- e) A declaration of Conflict of Interest is required per specific assignment (Independence and Objectivity of the investigation team) in carrying out its work. The successful bidder must ensure that its staff maintains its independence from the activities they perform;
- f) The service provider shall therefore:-
  - Have no executive or managerial powers, functions or duties except those relating to the project;
  - Not be involved in the day-to-day operations of SAMSA; and

- Declare any conflict of interest on each investigation assignment; and make formal written disclosures to the management should they have potential impairments to independence or objectivity relating to their responsibilities.

### **3.5. OBJECTIVES**

The functions to be performed by the service providers who are appointed on the database or panel and allocated cases as per the quotation process for the Forensic Investigations will, inter alia, include the following:

- a) Write and present comprehensive reports to Management and the Audit and Risk Committee, through the office of the CEO of SAMSA;
- b) All investigation reports must be accompanied by an evidence file and must be made available within three working days after completion of the investigation assignment to SAMSA;
- c) The evidence file must be made available to SAMSA and will remain the property of SAMSA. The evidence will be for supporting Investigation Report findings and shall also be made available to the Audit and Risk Committee and the Auditor-General of South Africa, on request;
- d) Maintain a high standard of integrity and confidentiality during forensic investigations in line with investigation protocols, standards and applicable legislation;
- e) Collect and evaluate all evidence pertinent to investigations (documentary, electronic & other);
- f) Assist in the development of charge sheets where disciplinary actions have been recommended and, lead evidence during the process and in court if required;
- g) Attend planned meetings with the relevant SAMSA managers and relevant managers in SAMSA during the duration of the contract and subsequent to the period where relevant i.e. leading evidence in the disciplinary processes or court matters as relevant;
- h) Service providers will be expected to develop and implement strategies for training in order to build capacity and transfer skills to the in-house staff on identified cases where feasible;
- i) The above objectives are expected to be applied on current cases recorded to be investigated as per the Allegations Register and as per quotation competitive process that will be applied;
- j) Project Manager/Engagement Director exiting the project, should serve at least a period of 30 days to ensure continuity, parallel to the next lead that will be appointed. Junior investigation resources, who will be part of the team, must possess appropriate skills, experience and qualifications; and
- k) Demonstrate knowledge of the forensic investigation, and an understanding of Public Service Regulatory Framework such as, but not limited to: the Public Finance Management Act (PFMA) and its regulations; Treasury Regulation, Public Services Procurement Policies, South African Constitution, Minimum Information Security Standards (MISS), Labour Legislation, Criminal Procedures Act, Promotion of Access to Information Act, Public Service Anti-Corruption Strategy;

Code of Conduct for the Public Service, Protected Disclosure Amendment Act (PDA) and Protection of Personal Information Act (POPI).

### **3.6. IMPLEMENTATION PLAN**

The appointed panel member will be required to develop an implementation plan for each investigation assignment before execution, for review and approval by SAMSA and/or the SAMSA Project Team.

Implementation will cover the following;

- The scope and objectives of the phase;
- The proposed timeframes to conduct the phase;
- Team members to execute the phase;
- The deliverables of the phase; and
- Estimated fees.

### **3.7. DELIVERABLES PER ASSIGNMENT**

The forensic investigation firm appointed shall include but not be limited to:

- a) Provide a detailed activity plan and costing schedule for the approval by SAMSA, prior to the commencement of all engagements;
- b) Commence forensic investigation engagements in accordance with the instructions of SAMSA, subsequent to agreement of the scope and cost of the engagement;
- c) Complete all agreed tasks in a timely manner with the level of quality acceptable by SAMSA;
- d) Provide on-going updates in the form and manner required by SAMSA, when required to do so;
- e) Provide a detailed forensic investigation report at the end of the assignment;
- f) Provide a forensic investigation file, containing supporting evidence at the end of the assignment;
- g) Develop strategies for training in order to build capacity and transfer skills to SAMSA staff on identified cases where feasible;
- h) Assist in the development of a charge sheet, where disciplinary action has been recommended, and lead evidence during the internal processes and in court if required; and
- i) Provide support as required by SAMSA in disciplinary, civil and criminal proceedings.

### **3.8. CONTRACT DURATION**

The Forensic Investigations Panel shall be appointed for a period of three (3) years, subject to annual review of service provider's performance during the contract period.

## PART 4: PRICING MODEL

All rates must be VAT inclusive and be quoted in South African Rand (ZAR).

SAMSA reserves the right to consider the guidelines on consultancy rates, as set out in the National Treasury Instruction 03 of 2017/2018 Cost Containment Measures, where relevant.

The bidder must indicate if their proposed rates are in line with the provisions of the referenced National Treasury Instruction: Cost Containment Measures.

### 4.1 PRICING MODEL

The respondent should stipulate the hourly rate of the following team members:

#	Description	Rate per hour	Estimated weighting % of hours per project	Weighted average rate (Rate per hour x weighting %)
	Engagement Director			
	Partner			
	Senior Manager			
	Manager			
	Junior consultant			
	<b>Total</b>		<b>100%</b>	

**Price Declaration Form**

**Dear Sir / Madam,**

Having read through and examined the Request for Proposal (RFP) Document, RFP number: SAMSA/023/2021/22 the General Conditions and all other Annexures to the RFP document, we offer to provide Forensic Investigation Services, as outlined in our proposal, at the rates quoted above.

We undertake to hold this offer open for acceptance for a period of **120 days** from the date of submission. We further undertake that, upon final acceptance of our offer, we will commence providing services when required to do so by the SAMSA.

We understand that SAMSA are not bound to accept the lowest or any offer, and that we must bear all costs which we have incurred in connection with preparing and submitting this bid.

We hereby undertake for the period during which this bid remains open for acceptance, not to divulge to any persons, other than the persons to whom the bid is submitted, any information relating to the submission of this bid or the details therein except where such is necessary for the submission of this bid.

**SIGNED** \_\_\_\_\_ **DATE** \_\_\_\_\_

**(Print name of signatory)** \_\_\_\_\_

**Designation** \_\_\_\_\_

**FOR AND ON BEHALF OF:**

**COMPANY NAME** \_\_\_\_\_

**Tel No** \_\_\_\_\_

**Fax No** \_\_\_\_\_

**Cell No** \_\_\_\_\_

## **PART 5. EVALUATION CRITERIA**

### **PHASE 1 – Pre-qualification criteria**

#### **5.1 Administrative compliance**

The following evaluation process and criteria will be used to evaluate all bids submitted:

- All bids duly lodged will be examined to determine compliance with bidding requirements and conditions. Bids with obvious deviations from the requirements/conditions, will be eliminated from further evaluation.

#### **5.2 Evaluation and Selection Criteria**

SAMSA has set minimum standards that a bidder is required to meet, to be evaluated and selected as a successful bidder. The minimum standards consist of the following:

- Without limiting the generality of SAMSA's other critical requirements for this Bid, bidder(s) must submit all Standard Bid Documents (SBD documents) attached herein. All documents must be completed and signed by the duly authorised representative of the prospective bidder(s). During this phase, Bidders' responses will be evaluated based on compliance with the listed administration and mandatory bid requirements.
- All bids must be submitted in the original/official form. Bidders are required to submit a bid for providing the whole works, services or supply identified in the bid advertisement or document, unless stated otherwise as an additional condition in the conditions of the bid.
- Non-adherence to this requirement will result in the elimination of the bid.
- Bid documents must be completed using non-erasable ink, preferably black ink. Bids that are received contrary to this requirement will be eliminated.
- SAMSA reserves the right to award or not to award contracts and tenders at its discretion.

***The evaluation during this stage is to review bid responses for purposes of assessing compliance with RFP requirements, which requirements include the following:***

- a. Submission of a valid Tax Clearance Certificate;

- b. Submission of a valid Certificate of Incorporation i.e. CIPC company registration documents or a CSD report as referenced;
- c. Submission of a valid B-BBEE verification as referenced;
- d. Submission of duly completed Standard Bidding Documents and other requirements;
- e. Certification with the relevant forensic body of both the Firm and Engagement Partner/Director, such as the Institute of Commercial Forensic Practitioners (ICFP), the South African Academy of Forensic Sciences (SAAFS) or other relevant body.

**Note:** Failure to comply with the requirements assessed in Phase 1, will lead to a disqualification of bids.

#### **PHASE 2 –Technical Evaluation Criteria**

- a) Bids will be evaluated strictly according to the bid evaluation criteria stipulated in the terms of reference. During this stage individual CV's will be evaluated for functionality;
- b) Bidders must as part of their bid documents, submit supportive for all technical requirements as indicated hereunder. The Bid Evaluation Committee (BEC) will be responsible for scoring the respective and score all bid based on their submissions and the information submitted;
- c) Bidders will not rate themselves, but need to ensure that all information is supplied as required. The BEC will evaluate and score all responsive bids and will verify all documents submitted by bidders;
- d) The BEC will individually evaluate the responses received against the following evaluation criteria as set out below;
- e) Scores will be tabulated to 100 points. Respondents must score 75 points and over to be assessed on their financial offer and preference score.

The allocation of points for the evaluation of quality/functionality is set out in Table 1 below:

### Functionality Evaluation Criteria

NO	EVALUATION CRITERIA	EVALUATION GUIDELINE	TOTAL
1	<p><u>Methodology</u></p> <p>The Service Provider should provide a detailed outline of the project deliverables.</p> <ul style="list-style-type: none"> <li>• Approach, methodology and tools: By demonstrating their understanding of the requirements and expectations of SAMSA as outlined in the scope of work; and</li> <li>• Deliverables: Provide in relation as outlined in the scope of work, a complete list of services the forensic investigator is able to provide.</li> </ul>	<p>Excellent = 30 Good = 25 Average = 15 Poor = Less than 10</p> <p>Excellent = 20 Good = 15 Average = 10 Poor = Less than 5</p>	<p>30</p> <p>20</p>
2	<p><u>Previous Experience</u></p> <ul style="list-style-type: none"> <li>• Four signed reference letters are required;</li> <li>• Provide the nature and scope of the investigation, supported by a signed letter of appointment or an official order form;</li> <li>• It is further recommended at least one of the letters be from a public sector.</li> <li>• The list of references to not be older than three years.</li> <li>• SAMSA is entitled to validate the reference letters provided.</li> </ul>	<p>Four reference letters = 5 points each</p>	<p>20</p>
3	<p><u>Qualifications</u></p> <ul style="list-style-type: none"> <li>• Qualification of the Engagement Director/Partner;</li> <li>• Qualification of Team Members, that will be directly engaged in the execution of the project; and</li> <li>• Attach high level CV's of all who will be included in the execution of the project.</li> </ul>	<p>10 to 15 years' experience = 30</p> <p>5 to 10 years' experience =25</p> <p>Less than 5 years' experience = 15</p>	<p>30</p>
	<b>Total</b>		<b>100</b>



### PHASE 3 – PREFERENCE POINT SYSTEM

Bidders that achieve a minimum score of 75 points in the technical evaluation, will progress to this phase and will be evaluated in accordance with the preference point system.

In accordance with the Preferential Procurement Regulations, 2017 pertaining to the Preferential Procurement Policy Framework Act (No. 5 of 2000), the 80/20 point system will be applied in evaluating proposals that qualify for further consideration, where price constitutes 80 points and a maximum of 20 points will be awarded based on the bidder's B-BBEE Status Level Certificate.

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

The following formula will apply

Price Evaluation

$$BBBEE = Ps = 80 \left\{ \frac{1 - Pt - P \min}{P \min} \right\} = 80 \text{ points and Price} = 20 \text{ points}$$

The following conditions will apply:

1. Points scored will be rounded off to the nearest 2 decimal places.
2. In the event that two or more tenders have scored equal total points, the successful tender must be the one scoring the highest number of preference points for B-BBEE.
3. Should two or more tenders be equal in all respects, the award shall be decided by the drawing of lots.

## **6. PART 6 – REQUIRED DOCUMENTS**

### **6.1 STANDARD BIDDING DOCUMENTS**

In addition to the Annexures listed below, the following documents must be completed, signed and submitted together with the bid response:

- Confidentiality and Non-disclosure Agreement (**Annexure A**);
- Invitation to Bid (**SBD 1**);
- Pricing Schedule (**SBD 3.3 Professional Service**);
- Declaration of Interest (**SBD 4**);
- The National Industrial Participation Programme (**SBD 5**)
- Preference Points Claims Form in terms of the Preferential Procurement Regulations 2017 (**SBD 6.1**);
- Declaration of Bidder's Past SCM Practices (**SBD 8**); and
- Certificate of Independent Bid Determination (**SBD 9**).

**ANNEXURE A: NON-DISCLOSURE AGREEMENT**

**MEMORANDUM OF AGREEMENT**

**Entered into between:**

**SAMSA**

A company duly incorporated under the laws of Republic of South Africa, having its main place of business at 146 Lunnon Road, Cnr Jan Shoba & Lunnon Road, Hillcrest 0183 registered under Act 5 of 1998

*(Hereinafter referred to as "the Discloser")*

And

---

A company duly incorporated under the laws of Republic of South Africa,  
having its main place of business at

---

with registration number \_\_\_\_\_

*(Hereinafter referred to as "the Recipient")*

## PREAMBLE

Whereas the Discloser will disclose certain confidential information to the Recipient, for purposes of a Forensic Investigation;

And whereas the Recipient wishes to receive confidential information on the condition that the Recipient will not disclose the same to any third party or make use thereof in any manner except as set out below.

The Discloser and the Recipient hereby agree to the following:

### 1. Definitions

Unless the contrary is clearly indicated, the following words and/or phrases, when used in this Agreement, shall have the following meaning:

- 1.1 **"Agreement"** shall mean this written document together with all written appendices, annexures, exhibits or amendments attached to it from time to time;
- 1.2 **"Commencement Date"** shall mean the date of last signature of this agreement,
- 1.3 **"Confidential Information"** shall mean all information which:
  - 1.3.1 pertains to the Disclosing Purpose, disclosed, revealed or exchanged by the Discloser to the Recipient, and which pertains to, but is not limited to all intellectual property rights, all trade secrets, all agreements (whether in writing or not) which exist at the time of revealing the content thereof to the Recipient, the content of all possible future agreements which the Discloser intends to enter into with any other party, all knowledge obtained by way of research and development, irrespective of whether the aforementioned information that is revealed is applicable to technical, business or financial aspects of the Discloser; and/or
  - 1.3.2 any information of whatever nature, which has been or may be submitted by the Discloser to the Recipient, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, business or financial data, know-how, formulae, processes, specifications, sample reports, models, customer lists, computer software, inventions or ideas; and/or
  - 1.3.3 Any dispute between the Parties resulting from this Agreement; and/or
  - 1.3.4 Any fault or defect in any aspect of the business of the Discloser, irrespective of whether the Discloser knows about such a fault or defect.
- 1.4 **"Notice"** shall mean a written document;
- 1.5 **"Parties"** shall mean both the Discloser (SAMSA) and the Recipient.
- 1.6 **"Board"** shall mean Board of Directors of the Discloser.

## **2. Obligations of the Recipient**

The Recipient shall:

- 2.1 use the confidential information disclosed to it solely for the purposes of conducting a forensic investigation per the scope of each project as detailed and for no other purpose whatsoever (“Disclosing Purpose”);
- 2.2 treat and safeguard the Confidential Information as private and confidential;
- 2.3 ensure proper and secure storage of all Confidential Information;
- 2.4 not at any time without the prior written consent of the Discloser or another employee of the disclosure from which he received the information:
  - 2.4.1 disclose or reveal to any person or party either the fact that discussions or negotiations are taking, or have taken place between the Board, employee and another employee or the content of any such discussions or other facts relating to the Disclosing Purpose, except where required by law or any governmental, or regulatory body;
- 2.5 not create the impression with or lead any third party to interpret or construe any condition contained in this Agreement, that this Agreement is an Agency Agreement and/or Partnership Agreement and/or a Joint Venture and/or any other similar arrangement;
- 2.6 not allege that this Agreement grants it, either directly, or by implication, or by estoppel or otherwise a license under any patent or patent application, or that it is entitled to utilize the Confidential Information in any way contrary to the stipulations contained in this Agreement;
- 2.7 on termination of this Agreement act with the Confidential Information in accordance with a Notice delivered to it by the Discloser and if no such Notice was delivered, the Recipient shall destroy the Confidential Information in a similar manner to which it would destroy information that it would consider to be its own Confidential Information.

## **3. Obligations of the Discloser**

Subject to clause 2, the Discloser shall:

- 3.1 disclose to the Recipient, in writing any relevant information in their possession or under their care; and
- 3.2 furnish the Recipient at least 7 (seven) calendar days prior to this Agreement being terminated, for whatever reason, with a Notice instructing the Recipient about what it should do with the Confidential Information once the Agreement has been terminated.

## **4. Exclusions**

The provisions of Clause 3 above will not apply to any Confidential Information which:

- 4.1 is at the time of disclosure to the Recipient, within the public domain and could be obtained by any person with no more than reasonable diligence;
- 4.2 come into the public domain and could be obtained after such disclosure, otherwise than by reason of a breach of any of the undertakings contained in this Agreement;
- 4.3 is subsequently provided to the Recipient by a person who has not obtained such information from the Discloser, provided that, in any such case, such information was not obtained illegally or disclosed by any person in breach of any undertaking or duty as to confidentiality whether expressed or implied;
- 4.4 is disclosed with the written approval of the Discloser; is or becomes available to a third party from the Discloser on an unrestricted basis; and
- 4.5 is obliged to be reproduced under an order of court or government agency of competent jurisdiction.

## **5. Commencement**

This Agreement shall commence on the Commencement Date.

## **6. Cancellation**

- 6.1 The Agreement shall not terminate automatically. Either party must be able to terminate on written notice to the other party once the Disclosing Purpose is completed. The obligations of confidentiality under this Agreement shall continue to apply after assignment or termination of this Agreement;
- 6.2 The Parties further agree that either Party shall have the right at any time to give notice in writing to terminate this Agreement forthwith in the event of a material breach of any of the terms and conditions of the Agreement. If the breach in question is one which can effectively be remedied, the Parties shall endeavour to jointly try to remedy such breach, failing which, the Agreement shall be terminated.

## **7. Interpretation**

- 7.1 The clause headings in this Agreement have been inserted for convenience only and will not be taken into consideration in the interpretation of this Agreement;
- 7.2 Any reference in this Agreement to the singular includes the plural and vice versa;
- 7.3 Any reference in this Agreement to natural persons includes legal persons and references to any gender include references to the other genders and vice versa.

## **8. Dispute Resolution**

- 8.1 A dispute concerning or arising out of this Agreement exists once a party notifies the others in writing of the nature of the dispute and requires it to be resolved under this clause. The parties must refer any dispute to be resolved by –
- 8.1.1 negotiation; failing which
  - 8.1.2 mediation; failing which
  - 8.1.3 arbitration.
- 8.2 Within ten (10) Business Days of notification, the parties must seek an amicable resolution to the dispute by referring it to designated and authorized representatives of each of the parties to negotiate and resolve it by the parties signing an agreement resolving it within fifteen (15) Business Days;
- 8.3 If negotiation fails, the parties must refer the dispute for resolution by mediation under the rules of the Arbitration Foundation of Southern Africa (or its successor or body nominated in writing by it in its stead) ("AFSA");
- 8.4 If mediation fails, the parties must refer the dispute within fifteen (15) Business Days for resolution by arbitration (including any appeal against the arbitrator's decision) by one arbitrator (appointed by agreement between the parties) as an expedited arbitration in Pretoria under the then current rules for expedited arbitration of AFSA;
- 8.5 If the parties cannot agree on any arbitrator within a period of ten Business Days after the referral, the arbitrator will be appointed by the Secretariat of AFS;
- 8.6 The periods for negotiation or mediation may be shortened or lengthened by written agreement between the parties;
- 8.7 This clause will not preclude any party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process, for which purpose the parties irrevocably submit to the jurisdiction of a division of the High Court of the Republic of South Africa;
- 8.8 This clause is a separate, divisible agreement from the rest of this Agreement and must remain in effect even if the Agreement terminates, is nullified, or cancelled for any reason or cause.

## **9. Domicilium and Notices**

The Parties elect the following addresses as their respective *domicilium citandi et executandi*, at which all notices and other communications must be delivered for the purposes of this Agreement:

9.1 Discloser:

- 9.1.1 **by hand:** at 146 Lunnon Road, Cnr Jan Shoba and Lunnon Road, Hillcrest, Pretoria 0183, marked for the attention of the CEO;
- 9.1.2 **by post:** a P.O. Box 13286, Hatfield, Gauteng, Republic of South Africa 2010, marked for the attention of the CEO;
- 9.1.3 **by telefax** at (012) 366 2602, marked for the attention of the CEO.

9.2 Recipient:

- 9.2.1 **by hand** at \_\_\_\_\_,  
marked for the attention of \_\_\_\_\_.
- 9.2.2 **by post** to: \_\_\_\_\_,  
marked for the attention of \_\_\_\_\_.
- 9.2.3 by telefax at \_\_\_\_\_, marked for the attention of \_\_\_\_\_.

9.3 Any notice or communication required or permitted to be given in terms of this agreement shall only be valid and effective if it is in writing;

9.4 Any notice addressed to either of the Parties and contained in a correctly addressed envelope and sent by registered post to it at its chosen address or delivered by hand at its chosen address to a responsible person on any day of the week between 09h00 and 16h00, excluding Saturdays, Sundays and South African public holidays, shall be deemed to have been received, unless the contrary is proved, if sent by registered post, on the 14th (fourteenth) calendar day after posting and, in the case of hand delivery, on the day of delivery;

9.5 Any notice sent by telefax to either of the Parties at its telefax number shall be deemed, unless the contrary is proved, to have been received:

- 9.5.1 if it is transmitted on any day of the week between 09h00 and 16h00, excluding Saturdays, Sundays and South African public holidays, within 2 (two) hours of transmission; and
- 9.5.2 if it is transmitted outside of these times, within 2 (two) hours of the commencement any day of the week between 09h00 and 16h00, excluding Saturdays, Sundays and South African public holidays, after it has been transmitted.

## 10. Entire Agreement and Variations

10.1 This Agreement constitutes the whole agreement between the Parties and supersedes all prior verbal or written agreements or understandings or representations by or between the Parties regarding the subject matter of this Agreement, and the Parties will not be entitled to rely, in any



dispute regarding this Agreement, on any terms, conditions or representations not expressly contained in this Agreement.

10.2 No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties. Neither party to this Agreement has given any warranty or made any representation to the other party, other than any warranty or representation which may be expressly set out in this Agreement.

## **11. Data Security**

11.1 The Recipient shall, at all times, ensure compliance with any local and international laws, regulations, policies or codes that may be enacted from time to time and put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risk to any information that may be shared or accessed through a computer or any other form of electronic communication pursuant to the Agreement.

11.2 For purposes of this clause: "Information" shall mean, but not be limited to:

11.2.1 all cyber related information, including data; a computer program; output of a computer program; a computer system; article; data message; a computer data storage medium; output of a computer program and output of data;

11.2.2 Personal Information as defined in section 1 of the Protection of Personal Information Act No. 4 OF 2013 ("**POPIA**") read with Section 1 of the Promotion of Access to Information Act No. 2 of 2000; and

11.2.3 Any other information that may be shared or accessed pursuant to the Agreement.

11.3 The Recipient shall notify the Discloser in writing of any cybercrimes or any suspected cybercrimes in its knowledge and to report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, within 10 days of becoming aware of such crime or suspected crime.

## **12. Protection of Personal Information**

12.1 For purposes of this clause:

12.1.1 the following terms shall bear meanings contemplated in Section 1 of the POPIA: consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.

12.1.2 "binding corporate rules" means personal information processing policies, within a group of undertakings, which are adhered to by a responsible party or operator within that group of undertakings when transferring personal information to a responsible party

or operator within that same group of undertakings in a foreign country; and “group of undertakings” means a controlling undertaking and its controlled undertakings.

- 12.2 The Parties acknowledge and agree that, in relation to personal information that may be processed pursuant to the Agreement, the Discloser is the responsible party and the Recipient is the operator.
- 12.3 The Recipient must process such personal information only with the knowledge or authorisation of the Discloser and treat personal information which comes to its knowledge as confidential and must not disclose it, unless so required by law.
- 12.4 The Recipient must secure the integrity and confidentiality of personal information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of personal information and unlawful access to or processing of personal information. In order to give effect to the obligations set out in this clause 11.2, the Recipient must take reasonable measures to:
  - 12.4.1 identify all reasonably foreseeable internal and external risks to personal information in its possession or under its control;
  - 12.4.2 establish and maintain appropriate safeguards against the risks identified;
  - 12.4.3 regularly verify that the safeguards are effectively implemented; and
  - 12.4.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 12.5 The Recipient shall have due regard to generally accepted information security practices and procedures which may apply to it generally or be required in terms of specific industry or professional rules and regulations.
- 12.6 The Recipient shall notify the Discloser immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.
- 12.7 The Recipient shall appoint an information officer and an appropriate number of deputy information officers as may be required by the POPIA, and must provide the Discloser with the details of such officers, whose responsibilities shall include:
  - 12.7.1 the encouragement of compliance, by the Recipient, with the conditions for the lawful processing of personal information;
  - 12.7.2 dealing with requests made to the Recipient pursuant to the POPIA;
  - 12.7.3 working with the Regulator in relation to investigations conducted under the POPIA;
  - 12.7.4 otherwise ensuring compliance by the Recipient with the provisions of the POPIA; and
  - 12.7.5 as may be prescribed by the POPIA.
- 12.8 The Recipient shall not transfer personal information about a data subject to a third party who is in a foreign country without Prior written consent of the Discloser. The Discloser will not grant such consent unless:

- 12.8.1 the third party who is the recipient of the information is subject to a law, binding corporate rules or binding agreement which provide an adequate level of protection that:
  - 12.8.1.1 effectively upholds principles for reasonable processing of the information that are substantially similar to the conditions for the lawful processing of personal information relating to a data subject who is a natural person and, where applicable, a juristic person; and
  - 12.8.1.2 includes provisions, that are substantially similar to this section, relating to the further transfer of personal information from the recipient to third parties who are in a foreign country;
- 12.8.2 the data subject consents to the transfer;
- 12.8.3 the transfer is necessary for the performance of a contract between the data subject and the responsible party, or for the implementation of pre-contractual measures taken in response to the data subject's request;
- 12.8.4 the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the responsible party and a third party; or
- 12.8.5 the transfer is for the benefit of the data subject, and:
  - 12.8.5.1 it is not reasonably practicable to obtain the consent of the data subject to that transfer; and
  - 12.8.5.2 if it were reasonably practicable to obtain such consent, the data subject would be likely to give it.

12.9 The Recipient shall process personal information of data subjects in accordance with the conditions for the lawful processing of personal information as contemplated in the POPIA, and shall at all times put sufficient measures in place to ensure compliance with the POPIA, including compliance with any compliance notices and information notices served on the Recipient under the POPIA.

### **13. Assignment, Cession and Delegation**

Neither of the Parties shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.

#### **14. Relaxation**

No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

#### **15. Waiver**

No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

#### **16. Severability**

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

#### **17. Governing Law**

The validity and interpretation of this Agreement will be governed by the laws of the Republic of South Africa.

### **SIGNATURES**

I, the undersigned, \_\_\_\_\_, herewith confirm that my position within the Recipient is that of \_\_\_\_\_ and state that I am duly authorised to enter into this Agreement, which I herewith do, on this the \_\_\_\_\_ day, of \_\_\_\_\_ for and on behalf of the Recipient.

I, the undersigned \_\_\_\_\_, herewith confirms that my position within the Discloser is that of \_\_\_\_\_ and state that I am duly authorised to enter into this Agreement, which I herewith do, on this the \_\_\_\_\_ day, of \_\_\_\_\_ by signing this Agreement, for and on behalf of the Discloser.

\_\_\_\_\_  
**Signature for and on behalf of Discloser**

\_\_\_\_\_  
**Signature for and on behalf of Recipient**

## ANNEXURE B: STANDARD BIDDING DOCUMENTS

## PART A

## SBD 1

## INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE SOUTH AFRICAN ARITIME SAFETY AUTHORITY (SAMSA)					
BID NUMBER:	SAMSA/023/2021/22	CLOSING DATE:	10 JUNE 2021	CLOSING TIME:	11 H00 am
DESCRIPTION	BID NO. SAMSA/023/2021/22: APPOINTMENT OF A PANEL OF FIVE (5) FORENSIC INVESTIGATION FIRMS FOR THE SOUTH AFRICAN MARITIME SAFETY AUTHORITY FOR A PERIOD OF THREE (3) YEARS.				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
SOUTH AFRICAN MARITIME SAFETY AUTHORITY					
146 LUNON ROAD					
CNR JAN SHOBA & LUNNON ROAD, HILLCREST					
HATFIELD, 0183					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	JEANETTE CHILOPO				
TELEPHONE NUMBER	012 366 2600				
FACSIMILE NUMBER	012 366 2601				
E-MAIL ADDRESS	jchilopo@samsa.org.za				
<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:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	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
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</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]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?

YES  NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA?

YES  NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?

YES  NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?

YES  NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?

YES  NO

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

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

**1. BID SUBMISSION:**

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED – (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

**2. TAX COMPLIANCE REQUIREMENTS**

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

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

SIGNATURE OF BIDDER: .....

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

DATE: .....

**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 favoritisms, 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: .....

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



<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.

<sup>2</sup>“Shareholder” means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

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

2.7.1 If so, furnish the following particulars: Name of person / director / trustee / shareholder/ member:

.....

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

.....  
.....

Position occupied in the state institution: .....

Any other particulars:

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

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

2.7.2.1 If yes, did you attached proof of such authority to the bid document?

**YES / NO**

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

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

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

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months?

**YES / NO**

2.8.1 If so, furnish particulars:

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

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

**YES / NO**

2.9.1 If so, furnish particulars.

.....  
.....

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between

**YES/NO**

any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

2.10.1 If so, furnish particulars.

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

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

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

Full details of directors / trustees / members / shareholders.

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

**4 DECLARATION**

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF  
PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION  
PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

## **THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME**

### **INTRODUCTION**

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

### **1 PILLARS OF THE PROGRAMME**

1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million will have a NIP obligation. This threshold of US\$ 10 million can be reached as follows:

(a) Any single contract with imported content exceeding US\$10 million.

or

(b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$10 million.

or

(c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$10 million.

or

(d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.

1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30 % of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a pro-rata basis.

1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.

1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

## **2 REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY**

2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of R10 million (ten million Rands), submit details of such a contract to the DTI for reporting purposes.

2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

## **3 BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)**

2.3 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.

3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:

- Bid / contract number.
- Description of the goods, works or services.
- Date on which the contract was accepted.
- Name, address and contact details of the government institution.

- Value of the contract.
- Imported content of the contract, if possible.

3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at [Elias@thedti.gov.za](mailto:Elias@thedti.gov.za) for further details about the programme.

**4 PROCESS TO SATISFY THE NIP OBLIGATION**

4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:

- a. the contractor and the DTI will determine the NIP obligation;
- b. the contractor and the DTI will sign the NIP obligation agreement;
- c. the contractor will submit a performance guarantee to the DTI;
- d. the contractor will submit a business concept for consideration and approval by the DTI;
- e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
- f. the contractor will implement the business plans; and
- g. the contractor will submit bi-annual progress reports on approved plans to the DTI.

4.2 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number .....Closing date:.....

Name of bidder.....

Postal address .....

Signature.....

Name (in print)..... Date.....



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

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

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

**1. GENERAL CONDITIONS**

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

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

1.2

a) The value of this bid is estimated to **not exceed** R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.

1.3 Points for this bid shall be awarded for:

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

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

	<b>POINTS</b>
<b>PRICE</b>	
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</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 proof of B-BBEE Status level of contributor together with

the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

## 2. DEFINITIONS

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

## 3. POINTS AWARDED FOR PRICE

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

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

**80/20**

**or**

**90/10**

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

Where

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

$P_t$  = Price of bid under consideration

$P_{\min}$  = Price of lowest acceptable bid

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

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

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

### 5. BID DECLARATION

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

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

**4.1**

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

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

**7. SUB-CONTRACTING**

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

*(Tick applicable box)*

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

7.1.1 If yes, indicate:

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

*(Tick applicable box)*

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

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

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

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

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to

any other remedy it may have –

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

WITNESSES

- 1. ....
- 2. ....

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

.....

**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>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?</p> <p><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).</b></p> <p>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.</p>	<p>Yes</p> <p><input type="checkbox"/></p>	<p>No</p> <p><input type="checkbox"/></p>
4.1.1	If so, furnish particulars:		

4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p><b>The Register for Tender 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>	<p>Yes</p> <p><input type="checkbox"/></p>	<p>No</p> <p><input type="checkbox"/></p>
4.2.1	If so, furnish particulars:		
4.3	<p>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?</p>	<p>Yes</p> <p><input type="checkbox"/></p>	<p>No</p> <p><input type="checkbox"/></p>
4.3.1	If so, furnish particulars:		
4.4	<p>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?</p>	<p>Yes</p> <p><input type="checkbox"/></p>	<p>No</p> <p><input type="checkbox"/></p>
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 Bid**



## CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids<sup>1</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>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</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**

**SBD 9**

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>3</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.

**<sup>3</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.**

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

## **GENERAL CONDITIONS OF CONTRACT**

6.1 The purpose of this document is to:

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

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

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

## **6.2 TABLE OF CLAUSES**

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

## **GENERAL CONDITIONS OF CONTRACT**

### **1. Definitions**

1. The following terms shall be interpreted as indicated:
  - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of 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 purchase 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 I Includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
  - 1.14 "GCC" means the General Conditions of Contract.

- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

## **2. Application**

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

## **3. General**

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](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 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause
- 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

#### **6. Patent rights**

- 6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

#### **7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
- (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

#### **8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.



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

## **9. Packing**

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

## **10. Delivery and documents**

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

## **11 Insurance**

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

## **12. Transportation**

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

## **13. Incidental services**

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
  - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

## **14. Spare parts**

- 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
  - (b) in the event of termination of production of the spare parts:
    - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

## **15. Warranty**

- 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied

under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

## **16. Payment**

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

## **17. Prices**

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

## **18. Contract Amendments**

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

## **19. Assignment**

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

## **20. Subcontracts**

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

## **21. Delays in the supplier's performance**

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

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

## **23. Termination for default**

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

(c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any 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
  - (ii) the period of restriction; and
  - (iv) the reasons for the restriction.

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

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

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

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

regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him

## **25. Force Majeure**

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

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

## **29. Governing language**

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

## **30. Applicable law**

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

## **31. Notices**

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

## **32. Taxes and duties**

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

## **33. National Industrial Participation (NIP) Programme**

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

## **34.1 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.

