



dcstm

Department:
Community Safety and Transport Management
North West Provincial Government
REPUBLIC OF SOUTH AFRICA



SUPPLY CHAIN MANAGEMENT

Tirelo Building, Albert Luthuli Drive,
Mafikeng, 2745
P/Bag X 19 Mmabatho 2735
Tel: +27 (18) 200 8020 / 8003

Ref : CS&TM 04/23/24
Date : 23/11/2023

INVITATION TO BID

REQUEST FOR PROPOSALS FOR INVESTMENTS IN AND AROUND THE GD MONTSHIOA AND PILANESBERG INTERNATIONAL AIRPORT

DATE ISSUED: 23/11/2023

CLOSING DATE: 13/12/2023 AT 11 H00

TENDER BOX

DEPARTMENT OF COMMUNITY SAFETY AND TRANSPORT MANAGEMENT
SAFETY HOUSE, 31-34 MOLOPO ROAD, (MAIN ENTRANCE)
SECURITY CHECK POINT
MAHIKENG

Name of bidder		Bidder VAT registered?
Total bid price including VAT – Where Applicable: (brought forward from SBD 1)		Yes: <input type="checkbox"/> No: <input type="checkbox"/>

MR. F MABOKELA

DIRECTOR: SUPPLY CHAIN MANAGEMENT

22/11/2023

DATE

"Let's Grow North West Together"





**Department of Community Safety
and Transport Management**

Request for Proposals

For

Investments in and around the

GD Montshioa

and or

Pilanesberg International Airport

A handwritten signature in black ink, located in the bottom right corner of the page.



dcstm

Department:
Community Safety and Transport Management
North West Provincial Government
REPUBLIC OF SOUTH AFRICA



OFFICE OF THE HOD

Tirelo Building, Albert Luthuli Drive,
Mafikeng, 2745
P/Bag X 19 Mmabatho 2735
Tel: +27 (18) 200 8020 / 8003

SECTION 1: GENERAL INFORMATION

1.1. Request for Proposal Overview

Through the issuance of this Request for Proposals (RFP) Tender for the development and operations of the GD Montshioa Airport (Mahikeng Local Municipality) and Pilanesberg International Airport (Moses Kotane Local Municipality), the Department of Community Safety and Transport Management of the North West province, the Republic of South Africa is hereby soliciting competitive proposals from potential investors (partners) for the development and operation of the two Airports herein referred to.

This Request for Proposals is being provided to the recipient to assist in making its appraisal of the PPP opportunities presented herein and in deciding whether to submit a proposal in connection with the opportunities. However, this RFP is not intended to serve as the basis for an investment decision on the opportunities, and each recipient is expected to make such independent investigation and to obtain such independent advice as he or she may deem necessary for a decision.

The purpose of this RFP is not a solicitation for proposals to privatise the airports, but it is rather an invitation for proposals that will leverage the private sector's access, development, utilisation, and activation of the airport economy for job creation and economic opportunities in the North West Province. The North West Provincial Government will retain ownership of the airports.

The proposals should include a plan to create and implement capital investment strategies to benefit the North West Province, manage and operate the current and or any future Airport facilities as well and develop the property within the boundaries as well as outside the Airports respectively. The Provincial government, Local Municipalities, and tribal authorities respectively own certain land around the airports that may be made available through negotiation with respective land owners.

1.2. Purpose of the Request for Proposal

This RFP is soliciting a multifaceted response that includes amongst others solutions that are innovative, creative, and importantly, feasible, economic, and sustainable. Proposals should address three critical components:

- (i) Development of provincial airports,**
- (ii) Operations and management of the airports, and**
- (iii) Investing in the two provincial airports.**

One entity must have the resources and experience necessary to satisfy all of the above components. Thus, the departments encourage respondents to collaborate broadly to form the most experienced, capable, and creative team for the proposed components in and around the airports.

Similarly, the department will not consider proposals that address only part of the above of components of this RFP. The respondents may consider collaborative teams (cooperatives) when submitting proposals.

It is important to the Department that this RFP Tender process is objective, competitive, open, and transparent for public participation in the process. The vision of the Department and the Province for this RFP is to have vibrant, viable, and sustainable airports, driving capital investment, economic growth, and development, and ensuring job creation in the province. The role of the respective airports would be to effectively and efficiently support the province's transportation needs now and, in the future, and work as a catalyst to the three proposed pillars of the province, which are tourism, agriculture, and arts and culture.

1.3. Deliverables

1.3.1. The overall deliverables of this RFP Tender is to achieve the following:

- Develop and operationalise the two provincial airports for cargo and or airlift (passengers).
- Establishment of a highly competent, professional, and innovative team capable of managing and developing the airport and the surrounding land;
- Ability and willingness to maximise capital investment ranks into the airport's growth and development of property;



- Development of sustainable airports (environmentally, economically, and socially).
- Job creation and economic development in the province with a focused emphasis on the employment of local residents and historically marginalised groups, such as women, youth, disabled and veteran business owners;
- Creation of a strong community partnership to share in a long-term vision for the two government-owned airports (GD Montshioa Airport, and Pilanesberg International Airport) in the North West Province.

1.4. Public-Private Partnership Opportunities

The following outlines all aspects of the PPP Opportunity for the operation of the GD Montshioa and or Pilanesberg International Airport (s):

- The Bidder will be required to demonstrate that it has comprehensive experience and core expertise in the development and management of airport infrastructure and operations.
- The bidder will be required to demonstrate the ability and capacity to develop GD Montshioa airport to become a world-class cargo hub in the region, and further develop the airport precinct development plan and non-aeronautical infrastructure such as the hotel and conference facilities.
- The bidder will be required to demonstrate the ability and capacity to develop an airlift strategy to uplift the tourist attraction destined for Pilanesberg Airport and further develop the airport network as a catalyst in the envisaged developments around it, which includes, amongst others: Bakubung Smart City and Bojanala Special Economic Zone (SEZ).

1.5. General Rules of the RFP

- This RFP supersedes all other airport communications to bidders about this kind of investment opportunity and the rules and conduct of the bid.
- No verbal discussion with any staff or advisor of the Department can change any of the terms and conditions contained in this RFP. Bidders should only rely on written changes, additions, or clarifications from the duly authorised staff of the Department, circulated to each bidder. E-mail communications from the Department to Bidders will account as written communication.



- The Department reserves the right to modify and or amend, supplement, or clarify the RFP at any time deemed fit to do so. The Department may cancel the bid at any time without prior notice and may disqualify any bidder as provided for in this RFP.
- The Department shall not incur any liability whatsoever in exercising any rights or otherwise granted in this RFP or available under the laws of the Republic of South Africa.
- The bid will be conducted by, and shall be governed by the laws of the Republic of South Africa and this RFP.
- All correspondence and documents relating to this RFP shall be in English.
- The submission of the RFP by the Bidder implies full knowledge and acceptance of and submission to, all the terms and conditions set out in this RFP.
- Bidders shall be responsible for any costs, expenses, and losses incurred by them in the preparation and submission of the RFP.
- Each Bidder must appoint one or more duly authorised representatives (**“Legal Representatives”**), mandated by an executive decision of the project company and legal power of attorney to represent the Bidder.

1.6. Identity of Bidders

- A Bidder may be a single company, an incorporated joint venture or a trust. The Bidder must meet the operational and financial criteria as contained in the Request for Proposal.
- Public entities are not excluded from submitting proposals or bidding for the tender.
- The Bidder must be a single-purpose vehicle (“SPV”) constituted for the sole purpose of participating in the investment agreement.
- In its Bid Submission, the company or incorporated joint venture or trust must:
 - certify by providing an attestation from the Legal Representative, notarised by a Notary Public, that the company or incorporated joint venture or trust meets the operational experience and financial prerequisite and provide a summary statement of the operational and financial criteria and how they are met;



- submit to the Department, all relevant information about the Bidding organisation (company, corporative, or trust; its shareholders, partners of beneficiaries); and
- certify to the Department that the information contained therein is true, accurate, and complete in all respects.
- where a Bidder is made up of several parties, shareholders in one SPV shall not be shareholders of other SPVs taking part in the tender process.
- The Department reserves the right to request, at any time, additional information or documentation from Bidders.

1.7. Performance Management

- The successful bidder shall upon receipt of written notification of an award, be required to conclude a Memorandum of Agreement (MOA) and Service Level Agreement (SLA) with the department, which will form an integral part of the contract agreement.
- The SLA will serve as a tool to measure, monitor, and assess the performance and ensure effective delivery of service, quality, and value-add to the department's business.
- Successful bidders will be required to comply with the conditions of the SLA, and also provide a scorecard on how their product/service offering is being measured to achieve the objectives of this RFP.

1.8. Department's Rights

- Department is entitled to amend any bid condition, or RFP specification, or extend the bid closing date. All bidders, to whom the RFP documents have been issued and where the department has a record of such bidders, may be advised in writing of such amendments in good time and any such changes will also be posted on the departmental website.
- The department reserves the right to award the contract to the bidder who proves to be fully capable of handling the contract and whose bid is functionally acceptable and/or financially advantageous to the department.
- The department reserves the right to award this bid as a whole or in part.

- The department reserves the right to conduct site visits at the bidder's corporate offices and/or at client sites if so required.
- The department reserves the right to request all relevant information, agreements, and other documents to verify information supplied in the bid response. The bidder hereby gives consent to the department to conduct background checks, including FICA verification, on the bidding entity and any of its directors/trustees/shareholders/members.
- The department reserves the right of final decision on the interpretation of its RFP requirements and response thereto.

1.9. Undertakings by the Bidder

- By submitting a bid in response to the RFP, the bidder offers to render all services described in the bid response submitted by it to the department on the terms and conditions and by the specifications stipulated in this RFP document.
- The bidder shall prepare for a possible presentation should the department require such and the bidder will be required to make such presentation within five (5) days from the date the bidder is notified of the presentation. Such presentation may include a practical demonstration of products or services as called for in this RFP.
- The bidder agrees that the offer contained in its bid shall remain binding upon him/her and receptive to acceptance by the department during the bid validity period indicated in this RFP and its acceptance shall be subject to the terms and conditions contained in this RFP document read with the bid.
- The bidder furthermore confirms that he/she has satisfied himself/herself as to the correctness and validity of his/her bid response; and that the price(s) and rate(s) quoted cover all the work/item(s) specified in the bid response documents; and that the price(s) and rate(s) cover all his/her obligations under a resulting contract for the services contemplated in this RFP; and that he/she accepts that any mistakes regarding price(s) and calculations will be at his/her risk.
- The successful bidder accepts full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on him/her under the SLA to be concluded with the department, as the principal(s) liable for the due fulfilment of such contract.



- The bidder accepts that all costs incurred in the preparation, presentation, and demonstration of the solution offered by it shall be for the account of the bidder. All supporting documentation and manuals submitted with its bid will become Department property.

SECTION 2: RETURNABLE SCHEDULES

Bidders shall submit their bid responses with the following returnable schedules specified below (each program must be marked):

- **Schedule 1:**

- **Cover Page:** (the cover page must indicate the RFP reference number, bid description, and the bidder's name). A bidder's company, or a special purpose vehicle (SPV), for the purposes of bidding for this PPP opportunity. The following must be specified:
 - The name, address, telephones, email address of the bidder, and the trading name of the Bidder if different from the registered name;
 - Director/Partners/Trustees and their responsibilities;
 - Registration Address;
 - Registration Number;
 - Certified copy of Memorandum and Articles of Association or Memorandum of Incorporation (or equivalent consultative documents);
 - Certified copy of shareholders' or partner register at the date of submission of the bid indicating each shareholder or partner's beneficial interest and in the event that there is more than 1 (one) class of shares, the percentages held by each;
 - An irrevocable confirmation, to the satisfaction of the Department by the bidder that it has irrevocably waived any right it may have to seek and obtain a writ of injunction or prohibiting or restraining order against the Department to prevent or restrain the tender or any proceedings related to it. Such waiver shall be without prejudice to the right of a disqualified or losing bidder to question the lawfulness of their qualification or the rejection of its bid by appropriate administrative or judicial processes not involving the issuance of a writ or injunction or prohibition or restraining order;
 - The bidders must certify by providing an attestation from the Legal Representative, notarised by a Notary Public, that the company or incorporated joint venture or trust



meets the operational and financial criteria as contained in the RFP regarding the operational experience and financial prerequisites and provide a summary statement of the operational and financial criteria and how they are met in the reasonable opinion of the bidder.

Failure to comply with Mandatory Requirements may lead to the bidder being disqualified.

- **Schedule 2:**

- **Financial and Capital Plan**

The Bidder should provide the following information:

- Audited financial statements corresponding to the last two (2) years;
- Schedule of history of profit over the past five (5) years;
- Cash flow from operations for the past 12 months;
- Indicate how much capital will be needed, where it will come from (own capital, grants, loans), and the expected amount and terms (interest rate, repayment period, security) of any proposed loans. Specify whether the necessary financing has been secured, and provide appropriate proof;
- Indicate the amounts proposed for the capital investments in the facilities and the applicable timing thereof;
- A recent auditor's report confirming that all the members of the bidder are solvent and liquid; and
- A cash flow forecast (net of VAT) for the proposed term (number of years) of the PPP agreement. This may be in a spreadsheet format of the bidder's choice, but must at least present: cash inflows, owner's capital, loans received, grants received, cash from sales and other operating revenue, cash from other sources, cash outflow, projects costs, and starting up expenses, salaries, wages, and staff costs, all other operating costs and expenses, loan repayments, infrastructure upgrades, building additions, internal décor, replacement of equipment and vehicles.

- **Schedule 3:**

- **Business, Operational and Design Plan**

The objective here is to determine the technical ability and expertise of the bidder. This is a very critical success factor and hence the adjudication of this element forms a significant part of the bid. Bidders should therefore provide the following information with backup evidence wherever possible:

- Current operations of the two airports



- Business Plan for Pilanesberg Airport
- Business Plan for GD Montshioa Airport
- Pilanesberg Airport Operations
- GD Montshioa Airport Operations
- Pilanesberg Airport Design Plan
- GD Montshioa Airport Design Plan

- **Schedule 4:**

- **Environmental Proposal**

The environmental proposal should detail amongst others the following:

- Legislative requirements;
- Departmental Internal Requirements;
- Code of Conduct;
- Staff Safety;
- Refueling Facility;
- Visual Impacts;
- Noise Impacts;
- Aircraft Pollution;
- Water;
- Waste Management-Liquid wastes;
- Waste Management-Solid wastes;
- Noxious Fumes;
- Fire Management;
- Access;

- **Schedule 5:**

- **Risk Matric**

The risk matrix should include but not limited to the following:

Type of risk, general description of risk, project-specific risk, mitigation measures, and allocation of risk (institution/private party /shared).

- **Schedule 6:**

- **Price Proposal** *(Must be submitted as a separate file/document marked Schedule 2: Price Proposal).*



SECTION 3: EVALUATION CRITERIA

3.1. Functionality Evaluation

Bid responses will be evaluated by the Functional Criteria as follows:

ELEMENTS	WEIGHT
<p>Bidder's experience in airport development / infrastructure development, which may include the of turnaround strategies, financing models, and operational models. (Attach three Client's reference letters)</p> <p>Over ten years of experience = 40 Six to nine years of experience = 30 Three to five years of experience = 20 Less than three years of experience = 00</p>	40
<p>Qualification of project leader in either of the following (Airport Management, Business Management, Strategic Management, Auditing, Accounting, Financial Management, Economics, Transport Economics, Civil Engineering, Airport Engineering, Project Management, Aviation Management).</p> <p>Honours Degree = 20 Degree / Advance Diploma = 05</p>	10
<p>Business, Operational and Design Plan (Per airport bidding for)</p> <p>Business Plan = 05 Operational Plan = 05 Design Plan = 05</p>	15
<p>Financing and Capital Plans</p> <p>How much investment is needed and where it will come from (own capital, grant, loans, etc.)</p> <p>Attached = 15 Not attached = 00</p>	15
<p>Risk Matrix (As per schedule 5)</p> <p>Attached = 10 Not attached = 00</p>	10

Environmental Plan (As per schedule 4)		10
Attached	= 10	
Not attached	= 00	
TOTAL		100

Note: The minimum qualifying score for functionality is 70%.

Those who acquire a 70 % threshold will proceed to the next stage of evaluation which is presentation.

CLOSING DATE... 13/12/2023

CLOSING TIME: 11H00

A compulsory briefing session shall be held on 07/12/2023
time... 10H00 **at Safety House, 31-34 Molopo Road, Mahikeng.**

All documents accompanying this invitation to bid must be completed in detail where applicable, be sealed in an envelope, and delivered to the following address:

Department of Community Safety and Transport Management

Tender Box

Safety House, 31-34 Molopo Road

Ground Floor

Mahikeng

Inquiries will also be accepted and must be emailed to:

OBaikgaki@nwpg.gov.za and or ThelmaBogatsu@nwpg.gov.za

- Any attempt to gain information in a manner deemed unfair or disadvantageous to other respondents or to influence the outcome of the response evaluation will result in immediate disqualification from the RFP process.

For more information, please get in touch with the following:

Contact person 1: Dr. Olebogeng Baikgaki (Transport-related matters)
Director: Transport Planning and Policy Development
Tel: 018 200 8075
Email address: OBaikgaki@nwpg.gov.za

And or

Mr. Thabo Sematle (Transport-related matters)
Director: Transport Terminals
Tel: 018 200 8027/8
Email address: TSematle@nwpg.gov.za

Contact person 2: Ms. Thelma Bogatsu
Deputy Director: Acquisition Management
Tel: 018 200 8418 / 8/84
Email address: ThelmaBogatsu@nwpg.gov.za

COMPILED BY:


DR. O.A. BAIKGAKI
DIRECTOR: TRANSPORT TERMINALS

22/11/2023

RECOMMENDED BY:


Ms. KUTLWANO PHATUDI
DBAC CHAIRPERSON

22/11/2023
DATE

Approved / not approved / approved with amendments

Comments.....


DR. HANS KEKANA
HEAD OF DEPARTMENT

23/11/2023
DATE

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:		CLOSING DATE:		CLOSING TIME:	
DESCRIPTION					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON			CONTACT PERSON		
TELEPHONE NUMBER			TELEPHONE NUMBER		
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS			E-MAIL ADDRESS		
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO 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, 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:

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of institution	State

2.2 Do you, or any person connected with the bidder, have a relationship

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

with any person who is employed by the procuring institution? YES/NO

2.2.1 If so, furnish particulars:

.....
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? YES/NO

2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

I, _____ the _____ undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 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 consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

² 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.

SBD4

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

- 3.6 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

..... Signature Date
..... Position Name of bidder

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2022**

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- 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 **To be completed by the organ of state**

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the 90/10 preference point system.
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- c) Either the 90/10 or 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

1.4 **To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	
SPECIFIC GOALS	
Total points for Price and SPECIFIC GOALS	100

3.2. **FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOMEGENERATING PROCUREMENT**

3.2.1. **POINTS AWARDED FOR PRICE**

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

$$Ps = 80 \left(1 + \frac{Pt - Pmax}{Pmax} \right) \text{ or } Ps = 90 \left(1 + \frac{Pt - Pmax}{Pmax} \right)$$

Where

- Ps = Points scored for price of tender under consideration
Pt = Price of tender under consideration
Pmax = Price of highest acceptable tender

4. **POINTS AWARDED FOR SPECIFIC GOALS**

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I 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 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering 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 tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted 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, if deemed necessary.

.....	
SIGNATURE(S) OF TENDERER(S)	
SURNAME AND NAME:
DATE:
ADDRESS:

THE NATIONAL TREASURY

Republic of South Africa



**GOVERNMENT PROCUREMENT:
GENERAL CONDITIONS OF CONTRACT**

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
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 any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection.

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this 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
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

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

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

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

may be due to him

25. Force Majeure

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

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

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

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

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

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

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

28. Limitation of liability

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

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

(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

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

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

Js General Conditions of Contract (revised July 2010)