PART A

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (*NAME OF DEPARTMENT/ PUBLIC ENTITY*)					
BID NUMBER:	**SCM004/2026**	CLOSING DATE: **04 DECEMBER 2026**		CLOSING TIME:	**11:00**
DESCRIPTION	**APPOINTMENT OF A LEGAL EXPERT TO DRAFT REGULATIONS FOR AND ADVISE ON THE PUBLIC SERVICE AMENDMENT ACT, 2025 AND THE PUBLIC ADMINISTRATION MANAGEMENT AMENDMENT ACT, 2025.**				

BID RESPONSE DOCUMENTS MUST BE FORWARDED TO THE BELOW MENTIONED EMAIL ADDRESS

Quotations@dpsa.gov.za

BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO		**TECHNICAL ENQUIRIES MAY BE DIRECTED TO:**	
CONTACT PERSON	**Lorraine Masenya / Mmapula Kotsokoane**	CONTACT PERSON	**MMASETSHABA MATLOU**
TELEPHONE NUMBER	**012 336 1126 / 012 336 1389**	TELEPHONE NUMBER	**012 336 1638**
FACSIMILE NUMBER		FACSIMILE NUMBER	**N/A**
E-MAIL ADDRESS		E-MAIL ADDRESS	Mmaseshaba.Letwaba@dpsa.gov.za

SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		**OR**	CENTRAL SUPPLIER DATABASE No:	MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	☐Yes ☐No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?	☐Yes ☐No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	

QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

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: ……

NB: KINDLY SUBMIT YOUR BID PROPOSALS/RESPONSES TO THE BELOW MENTIONED EMAIL:
Quotations@dpsa.gov.za

NB: NO HARDCOPIES WILL ACCEPTED FOR THIS BID

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER: …… BID NO.: **SCM004/2026**

CLOSING TIME AND DATE: **11:00 ON 04 DECEMBER 2026**

OFFER TO BE VALID FOR **90** DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY INCLUSIVE OF VALUE ADDED TAX

APPOINTMENT OF LEGAL EXPERT TO DRAFT REGULATIONS FOR AND ADVISE ON THE PUBLIC SERVICE AMENDMEND ACT, 2025 AND THE PUBLIC ADMINISTRATION MANAGEMENT AMENDMEND ACT, 2025.

Services must be quoted in accordance with the attached terms of reference.

Total cost of the assignment (R inclusive VAT) R……

NB; Bidders are also advised to indicate a total cost breakdown for this assignment.

The financial proposal for this assignment should cover all assignment activities and outputs enumerated above.

2. Period required for commencement with project after acceptance of bid ……

3. Are the rates quoted firm for the full period? YES/NO

4. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.

…….

…….

…… ……
Signature Date

……
Position

Any enquiries regarding bidding procedures may be directed to the

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

For SCM related enquiries – Lorraine Masenya/ Mmapula Kotsokoane

Tel:012 336 1126/336 1389

Or for technical information – Mmasetshaba Matlou
Tel:012 336 1638

PLEASE REFER TO THE ATTACHED TERMS OF REFERENCE FOR MORE INFORMATION.

the dpsa
Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

ANNEXURE: A

PRICING PROPOSAL

Public Service Regulations

No.	Deliverable	Time (hours)	Rate	Total
1.	**Alignment Analysis:** Map existing Public Service Regulations against enabling statute, the PS Amendment Act (Act 9 of 2025) and consider inputs from DPSA Branches			
2.	**Drafting** (First draft of regulations)			
3.	**Consulting** first draft with DPSA officials before OCSLA			
4.	**Consideration** of inputs from OCSLA before publication for public comment			
5.	**Consideration** of public comments			
6.	Amend accordingly and produce final version for approval to the Minister (via submission)			
			SUB-TOTAL	
			VAT @15%	
			TOTAL	

Public Administration Management Regulations

No.	Activities and Deliverables	Time	Rate	Total
1.	**Alignment Analysis:** Map existing Public Service Regulations against enabling statute, the PAM Amendment Act (Act 7 of 2025), Laws regulating specific amendments in local government and public entities and consider inputs from DPSA Branches			
2.	**Consult** policy owners within the DPSA			
3.	**Conducting** research and **consulting** stakeholders (i.e SALGA and COGTA)			
4.	**Drafting** (first draft of regulations)			

5.	**Consulting** first draft with DPSA officials before OCSLA			
6.	**Consideration** of inputs from OCSLA before publication for public comment			
7.	**Consideration** of public comments			
8.	**Consult** public comments with DPSA			
9.	**Amend** accordingly and produce final version for approval to the Minister (via submission)			
			SUB-TOTAL	
			VAT @15%	
			TOTAL	
			TOTAL CONSOLIDATED BID PRICE FOR PUBLIC SERVICE AND PUBLIC ADMINISTRATION MANAGEMENT REGULATIONS	

NOTE:

TOTAL CONSOLIDATED BID PRICE AS PER THIS ANNEXURE IS TO BE REFLECTED ON SBD 3.3.

SBD4

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 State institution**

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

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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.

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

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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**

a) The applicable preference point system for this tender is the 80/20 preference point system.

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	**80**
SPECIFIC GOALS	**20**
Total points for Price and SPECIFIC GOALS	**100**

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is

adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

(a) **"tender"** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;

(b) **"price"** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

(c) **"rand value**" means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

(d) **"tender for income-generating contracts"** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and

(e) **"the Act"** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

(f) **Consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract

(g) **"trust"** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and

(h) **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

(i) **"Youth"** means persons between the ages of 14 and 35 in terms of the National Youth Development Agency Act, 2008. For the purpose of this bid the date to be used for determination of age will be the closing date of the bid and in a case where the closing date of a bid has been extended, the original (first) closing date shall be used for the purpose of determining age.

(j) **"disability"** means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.

(k) **"Local Content and Production"** means locally produced and manufactured products within the borders of South Africa in support of the Reconstruction Development Programme.

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 PREFERENCE POINT SYSTEM

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

80/20

$$Ps = 80\left(1 - \frac{Pt - P\,min}{P\,min}\right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

3.2.1. POINTS AWARDED FOR PRICE

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

80/20

$$Ps = 80\left(1 + \frac{Pt - P\,max}{P\,max}\right)$$

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 (80/20 system) (To be completed by the organ of state)**	**Number of points claimed (80/20 system) (To be completed by the tenderer)**
Black Equity Ownership	8	
Women Equity Ownership	6	
Persons living with disability Equity Ownership	3	
Youth Equity Ownership	3	

Refer to the Preference Point Matrix attached for ease of claiming points for the specific goals for this tender.

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: ……
……
……
……

PREFERENCE POINT MATRIX (80/20)

SPECIFIC GOALS	POINTS OUT OF 20	REQUIRED PROOF
Black Equity Ownership	**Maximum = 8**	*One or more of the following is to be provided for the verification of points claimed by the tenderer:* • Company Registration Certificate (CIPC). • Company Shareholders Certificate. • Certified Identification Documentation of company director/s. • Detailed Central Supplier Database Report (CSD). • B-BBEE Certificate / B-BBEE Sworn Affidavit of the tendering company. • Consolidated B-BBEE Certificate if the tendering company is a Consortium, Joint Venture or Trust issued by a verification agency accredited by the South African Accreditation Body. • Agreement for a Consortium, Joint Venture or Trust. • Declaration from a registered medical practitioner in support of Persons Living with Disabilities.
100% Black ownership	8 Points	
>51% Black ownership	6 Points	
>0<51% Black ownership	2 Points	
0% Black Ownership	0 Points	
Women Equity Ownership	**Maximum = 6**	
100% ownership	6 Points	
>51% ownership	4 Points	
>0<51% ownership	2 Points	
0% ownership	0 Points	
Persons Living with Disabilities Equity Ownership	**Maximum = 3**	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	
Youth Equity Ownership	**Maximum = 3**	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	



the dpsa

Department:
Public Service and Administration
REPUBLIC OF SOUTH AFRICA

REQUEST FOR PROPOSAL

TERMS OF REFERENCE

TERMS OF REFERENCE FOR THE APPOINTMENT OF A LEGAL EXPERT TO DRAFT REGULATIONS FOR AND ADVISE ON THE PUBLIC SERVICE AMENDMENT ACT, 2025 AND THE PUBLIC ADMINISTRATION MANAGEMENT AMENDMENT ACT, 2025

(Duration of Six (6) Months)

1. BACKGROUND AND CONTEXT OF THE PROJECT

1.1 The Public Service Amendment Act, 2025 (Act No. 9 of 2025) (PS Amendment Act) and the Public Administration Management Amendment Act, 2025 (Act No. 7 of 2025) (PAM Amendment Act) (collectively referred to as the Amendment Acts) were assented to by the President on 26 March 2026 and 31 March 2026, respectively.

1.2 The Amendment Acts introduce provisions aimed at enhancing administrative powers, strengthening accountability mechanisms, and improving efficiency in the public service. These reforms align with the President's vision for a professional, efficient, and ethical public service, as emphasised in the State of the Nation Address.

2. APPOINTMENT AND SCOPE OF WORK OF THE PROJECT

2.1 The Department of Public Service and Administration (the Department) wishes to appoint a public administration legal expert with a minimum of three (3) years' experience whose scope of work will include the following –

a) Draft the necessary regulations for the Amendment Acts;
b) on request, advise orally or in writing on particular questions pertaining to the Amendment Acts;
c) on request, participate as an expert in meetings of the Department/Task Team and any other forums at which the Amendment Acts will be discussed, including presentations to be made;
d) on request, advise orally or in writing on comments made at any such meetings or any other written input received from stakeholders;
e) ensure technical quality, adherence to best practice and consistency with the Constitution and other applicable legislation;
f) conduct comparative research to assist in the drafting of the necessary regulations for the Amendment Acts; and
g) consolidate inputs from public participation and incorporate into final draft regulations and respond accordingly.

3. REQUIRED COMPETENCIES AND SKILLS

3.1 Legislative drafting skills and experience, expert knowledge in the field of public administration and management, constitutional law, and local and international trends and practices.

4. REPORTING REQUIREMENTS

4.1 The appointed Service Provider will report to the Acting Chief Director: Legal Services.

5. DURATION AND COMMENCEMENT OF PROJECT

5.1 The envisaged project duration is six (6) months.

5.2 The actual commencement date and due dates for submission of drafts will be agreed upon between the Department and the appointed Service Provider.

6. PROJECT MANAGEMENT

6.1 The appointed Service Provider will be given written instructions by the Acting Chief Director: Legal Services.

6.2 Meetings will be held between the Department and the appointed Service Provider, as deemed necessary.

7. PROPOSAL REQUIREMENTS

7.1 The written proposal must include, but is not limited to, the following:

a) the availability of the appointed Service Provider;
b) the understanding of the scope of work; and
c) how the Service Provider proposes to ensure quality and value for money.

8. EVALUATION CRITERIA

8.1 The proposal documents will be evaluated in terms of the requirements of the Department.

8.2 The evaluation criteria for assessing the proposals will be based on the bid's qualitative and financial aspects.

8.3 Service providers shall be evaluated on mandatory requirements, functionality, price and specific goals.

8.4 The Bid documents will be evaluated individually on score sheets by a representative evaluation panel according to the evaluation criteria and scores, which are indicated in the table at the evaluation criteria on the terms of reference.

8.5 The evaluation of proposals will be based on Price and Specific Goals provided in terms of the Preferential Procurement Policy Framework, Act 5 of 2000 and the Preferential Procurement Regulations of 2022.

9. PRICING SCHEDULE

9.1 Price Proposal to be provided must follow the breakdown as per Annexure: A)
9.2 The prices provided will be fixed for the duration of the project.
9.3 Costs associated for travel and accommodation as directly related to the assignment will be borne by the department.
9.4 The rate of remuneration will be subject to negotiation taking into consideration market related rates.

10. METHOD OF PAYMENT

10.1 Payment will only be made for services rendered.

10.2 Payments will be made in South African Rands, not later than thirty (30) days after the receipt of invoices unless otherwise communicated and agreed upon.

11. TERMS AND CONDITIONS OF THE BID

11.1 The Service Provider will enter into a service level agreement with the Department, which will regulate, among others, the following –

a) period of agreement;
b) project objectives and scope;
c) roles and responsibilities;
d) method of communication;
e) dispute resolution mechanisms; and
f) termination of agreement.

11.2 The Service Provider will exercise all reasonable skill, care and diligence in the performance of the work and will carry out all their responsibilities in accordance with the highest professional standards.

11.3 The Service Provider warrants that the supply of services delivered in terms of the service level agreement shall be of high quality and correspond to the highest professional standards.

11.4 The Service Provider shall promptly correct and immediately address any performance that does not meet the required standards.

11.5 The Department reserves the right to terminate the service level agreement if there is clear evidence of non-performance on the part of the Service Provider.

12. MANDATORY SUBMISSION REQUIREMENTS

(All personal information provided will be used in accordance with the provisions of the Protection of Personal Information Act No 4 of 2013)

12.1 The following mandatory requirements must be submitted/addressed when bidding:

a) Company/Law Firm or Consultant (if bidding as an individual) profile with clear indication of understanding of the scope of work with a minimum of three (03) years' experience in providing services of this nature.
b) Bidders must submit a detailed CV of the proposed Lead Legal Expert that specifically indicates the number of years (post admission) experience as well as a track record of the transactions/projects, copy of qualification/s and admission.
c) A minimum of three references in relation to the provision of services of this nature, from current/recent (not older than 60 months).clients to whom legislative drafting work is/was provided in the respective field.
d) Price Proposal to be provided must follow the breakdown as per Annexure: A.
e) Proof of registration on the Central Supplier Database (CSD) with National Treasury.

Note: Prospective bidders responding to this bid/RFP must be registered as a service provider on the Central Supplier Database (CSD). If your company is not registered on the CSD, proceed to complete the registration of your company prior to submitting your proposal. Refer to https://secure.csd.gov.za/ to register your company. Ensure that all documentation on the database is updated and valid.

No Bid will be awarded to a Supplier/Service Provider who has not registered on the CSD.

Failure to comply with any of the above-mentioned mandatory requirements will result in the disqualification of the bid.

12.2 Detailed Functionality Criteria			Weighting:	
Criteria		**Scoring Indicators**	**Score**	**Total Score**
Bidders must submit the following information/evidence: Company/Law Firm/Consultant to provide profile to determine its years of experience.				
1.	**Bidders Experience / proficiency and experience** The criterion includes the bidder's years of experience and its field or area of expertise.	More than 20 years of experience. 5 = Excellent	5	20
		Between 11 to 20 years of experience. 4 = Very Good	4	
		Between 6 to 10 years of experience. 3 = Good	3	
		Between 4 to 5 years of experience. 2 = Average	2	
		3 years of experience. 1 = Poor	1	
Bidders must submit the following information/evidence: Lead Legal Expert to submit copies of valid certificates to verify academic qualifications and admission (where applicable).				
2.	**Lead Legal Expert Qualifications** The criterion includes the lead legal expert's academic qualifications	5 = Bachelor of Laws (LLB) plus Doctoral degree (NQF 10) or higher	5	20
		4 = Bachelor of Laws (LLB) plus Master's degree (NQF 9)	4	
		degree. 3 = Bachelor of Laws (LLB)Degree/ (NQF 8)	3	
		Baccalaureus Procurationis (B. Proc) degree 2 = Bachelor's Degree/ (NQF 7)	2	
		National Diploma (NQF 6) or less..	1	
Bidders must submit the following information/evidence: Bidders must submit a detailed CV of the proposed Lead Legal Expert that specifically indicates the number of years experience as well as a track record of the transactions/projects.				
3.	**Lead Legal Expert's Experience** The criterion includes the lead Legal Expert's years of post-admission experience and track record.	The Lead Legal Expert has 15 and more years of post admission experience in the respective field. 5 = Excellent	5	20
		The Lead Legal Expert has between 11 – 14 years of post admission experience in the respective field. 4 = Very Good	4	
		The Lead Legal Expert has between 7 – 10 years of post admission experience in the respective field. 3 = Good	3	
		The Lead Legal Expert has between 4 – 6 years of post admission experience in the respective field. 2 = Average	2	
		The Lead Legal Expert has 3 years of post admission experience in the respective field. 1 = Poor	1	

4.	**Methodology** Methodology to include: (a) Approach – the bidder's strategy for addressing the scope of work and the corresponding action plan. (b) Communication – The bidder must identify a primary point of contact and specify the proposed frequency and methods of communication with the Department (c) Resources – Availability of resources for the project. (d) Risk management – the methodology the bidder will employ to identify, assess and mitigate risks associated to this project. (e) Quality Assurance – the methods a bidder will employ to	The methodology demonstrates all strategies listed herein. 5 = Excellent	5	20
		The methodology demonstrates 4 of 5 strategies listed herein. 4 = Very Good	4	
		The methodology demonstrates 3 of 5 strategies listed herein. 3 = Good	3	
		The methodology demonstrates 2 of 5 strategies listed herein. 2 = Average	2	
		The methodology demonstrates 1 of 5 strategies listed herein. 1 = Poor	1	

	ensure work quality.			
Bidders must submit the following information/evidence: Bidders must provide signed and verifiable references/testimonials related to services of this nature from current/recent (not older than 60 months) clients to whom Legislative drafting services are/were provided. The aforesaid references must be on the client's letterhead and the duration of such specific attorney/client relationship, a brief description of the Legislative Drafting services that are/were being provided by the Bidder to such client, **NB: Reference letters/testimonial not reflecting all the required information will be allocated the lowest score**				
5.	**Client References**	7 or more signed and verifiable reference letters provided, reflecting all legislative drafting services/work done. 5 = Excellent	5	20
		6 signed and verifiable reference letters provided, reflecting all legislative drafting services/work done. 4 = Very Good	4	
		5 signed and verifiable reference letters provided, reflecting all legislative drafting services/work done. 3 = Good	3	
		4 signed and verifiable reference letters provided, reflecting all legislative drafting services/work done. 2 = Average	2	
		3 signed and verifiable references provided, reflecting all legislative drafting services/work done. 1 = Poor	1	
		Total functionality score	**100%**	
		Minimum threshold for functionality	**70%**	

12.3 All Bidders who score less than 70 out of 100 points for functionality will not be considered further.

12.4 Shortlisted Bidders may be invited to do a presentation on their proposals at their own cost.

12.5 Bidders doing the presentation will be evaluated by a representative panel according to the evaluation criteria indicated in the TOR.

12.6 Only Service Providers that score points that exceed the minimum threshold provided on functionality will be evaluated further. The Department will, in terms of specific goals, focus on persons historically disadvantaged based on race (Black people), gender (women), and persons living with disabilities, as well as categories of persons being youth referenced in the Preferential Procurement Policy Framework Act and its associated regulations. The Preference point system will therefore be based on Price and the consolidated points scored for the four respective goals.

12.7 Responsive bids will be adjudicated by the Department on the 80/20- preference point system in terms of which points are awarded to bidders based on the formulae below.

12.8 The following formula will be used to calculate the points for price in respect of bidders:

$$Ps = 80\left(1-\frac{Pt-P\min}{P\min}\right)$$

Where:
Ps = Points scored for comparative price of Bid under consideration;
Pt = Comparative price of Bid under consideration; and
Pmin = Comparative price of lowest acceptable Bid

12.9 Points awarded to a bidder for attaining specific goals for the procurement initiative. A maximum of 20 points may be awarded to a bidder who meets the criteria for the four specific goals from a preference point perspective. For this Bid, the maximum number of points that could be allocated are indicated in the table below:

Specific Goals	Number of points (80/20)
Black Equity Ownership	8
Women Equity Ownership	6
Persons living with disabilities Equity Ownership	3
Youth Ownership	3
Goals not met	0

13. Preference Point Matrix (80/20)

SPECIFIC GOALS	POINTS OUT OF 20	REQUIRED PROOF
Black Equity Ownership	**Maximum = 8**	*One or more of the following is to be provided for the verification of points claimed by the tenderer:* • Company Registration Certificate (CIPC). • Company Shareholders Certificate. • Certified Identification Documentation of company director/s. • Detailed CSD Report. • B-BBEE Certificate / B-BBEE Sworn Affidavit of the tendering company. • Consolidated B-BBEE Certificate if the tendering company is a Consortium, Joint Venture or Trust issued by a verification agency accredited by the South African Accreditation Body. • Agreement for a Consortium, Joint Venture or Trust. • Declaration from a registered medical Expert in support of Persons Living with Disabilities.
100% Black ownership	8 Points	
>51% Black ownership	6 Points	
>0<51% Black ownership	2 Points	
0% Black Ownership	0 Points	
Women Equity Ownership	**Maximum = 6**	
100% ownership	6 Points	
>51% ownership	4 Points	
>0<51% ownership	2 Points	
0% ownership	0 Points	
Persons Living with Disabilities Equity Ownership	**Maximum = 3**	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	
Youth Equity Ownership	**Maximum = 3**	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	

13.1 Failure to capture the required points claimed and to submit the required support documentation will lead to a zero (0) for non-compliant Service Providers.

13.2 The points scored by a bidder in respect of the points indicated above will be added to the points scored for price.

13.3 Bidders are requested to complete the various preference claim forms in order to claim preference points.

13.4 Only a bidder who has fully completed and signed the declaration part of the preference claim form will be considered for points scored with the provision of support documentation thereto.

13.5 Supply Chain Management (SCM) may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made regarding points claimed for specific goals.

13.6 Points scored will be rounded off to the nearest two decimals.

13.7 If two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for specific goals. If two or more bidders are equal in all respects, the award shall be decided by drawing lots.

13.8 A contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points.

14. INTELLECTUAL PROPERTY

14.1 All information about this project (documents, audio, digital, cyber, project documents, , etc.) belongs to the Department, which the Service Provider may come into contact with during the performance of his/her duties under this project, shall remain the property of the Department, who shall have exclusive rights over its use.

14.2 Except for the purpose of this project, the information shall not be disclosed to the public nor used without written permission from the Department.

15. CONFIDENTIALITY

15.1 Service Providers shall hold the TOR and all information related to the Bid in strict confidence and usage of such information shall be limited to the preparation of the Bid. Service Providers shall undertake to limit the number of copies of this document.

15.2 The Service Provider is bound by this confidentiality provision, preventing the unauthorised disclosure of any data or information to other organisations or individuals.

16. CODE OF CONDUCT

16.1 Signature of and adherence to the Code of Conduct for Public Servants is an obligation of all of the Department's employees and contractors. This same obligation will be required of the employees of the Service Provider.

17. NON-DISCLOSURE AGREEMENT

17.1 Non-Disclosure Agreements (NDAs) are required for this project to ensure the confidentiality of sensitive information. The Service Provider shall sign an NDA with the Department before commencing work on the project.

17.2 The NDA shall cover all project-related information, including but not limited to software, documentation, data, reports, and any other materials produced during the project.

18. PENALTIES

18.1 The Department reserves the right to claim penalties and remedies in the event of non-performance, delays and missed deadlines.

19. SUBMISSION REQUIREMENTS FOR THE BID

19.1 The bid must be submitted to Quotations@dpsa.gov.za with the subject matter "Appointment of a Legal Expert"

19.2 Fully completed and signed Standard Bidding Documentation (SBD) forms and associated support documentation.

20. LATE BIDS

20.1 Bids received late will not be considered. Service Providers are therefore strongly advised to ensure that bids are dispatched, allowing enough time for any unforeseen events that may delay the delivery of the Bid.

20.2 The official Telkom time (Dial 1026) will be used to verify the exact closing time.

20.3 Bids sent via any other means other than hand delivery shall be deemed to be received on the date and time of arrival at the Department premises.

20.4 Bids received at the physical address after the closing date and time of the Bid, shall therefore be deemed to have been received late.

21. WITHDRAWAL OR MODIFICATION OF BID

21.1 A Service Provider who submits a bid in response to the terms of reference will have the right to withdraw, modify or correct a bid after delivery thereof provided that the request for such withdrawal, modification or correction, together with the full details of such modification or correction are received by the DPSA at the address provided before the closing date stipulated for the receipt of bids. Failure to do so before the closing date and time as stipulated will result in the original (pre-modified) Bid being considered.

22. CONTACT DETAILS

All Technical and Supply Chain Management enquiries regarding the RFP may be directed to the following:

- **Technical: Advocate Mmasetshaba Matlou: 012 336 1638/ Mmasetshaba.Letwaba@dpsa.gov.za**
- **Supply Chain: Ms. Mmapula Kotsokoane 012 336 1389**

AGREEMENT

ENTERED INTO BY AND BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA through its

DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

[HEREIN REFERRED TO AS **"the DPSA"**]

DULY REPRESENTED BY **……** IN HIS/HER CAPACITY AS

……..

duly authorised thereto

and

…… (Pty) Ltd /CC

Company/CC Registration Number: …….

OR

Name: ……
Id No:……...

[HEREIN REFERRED TO AS **"the SERVICE PROVIDER"**]

DULY REPRESENTED BY **……** IN HIS/HER CAPACITY AS

……

duly authorised thereto by a Resolution of Directors/Members dated ……,

attached hereto marked ……

SAMPLE

ANNEXURES

A. Terms of Reference

B. *[State other Annexures, if any – EG: Proposal /Quotation, Resolution of Directors etc]*

WHEREBY THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 In this Agreement, unless the context otherwise indicates—

"**Agreement**" means the Agreement set out in this document and the Annexure/s attached hereto;

"**Letter of Award**" means the letter of award issued to the Service Provider by DPSA, dated…. [**insert date]**

"**POPIA**" means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

"Terms of Reference" means the Terms of Reference in Annexure A

"**Term**" means the term of this Agreement defined in **Clause 3** below;

"Services" means the functions and responsibilities to be provided by the Service Provider to DPSA in respect of the provision of goods and or services as detailed in the Terms of Reference as they may evolve or be supplemented;

"**staff**" means any employee, agent, consultant, sub-contractor or other representative of the Parties;

"**working days**" means any day, except Saturdays, Sundays and public holidays, in terms of the Public Holidays Act, 1994 (Act 36 of 1994), and shall be calculated exclusive of the first and inclusive of the last day.

1.2 In the Agreement, unless the context otherwise indicates—

(a) the masculine includes the feminine;

(b) the singular includes the plural; and

(c) any reference to a natural person includes a juristic person.

1.3 The headnotes to the clauses of the Agreement are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.

SAMPLE

2. APPOINTMENT

2.1. The Service Provider is hereby appointed in accordance with the Letter of Award, to provide Services to DPSA under the Terms of Reference as attached in **annexure A.**

2.2. Subject to the provisions of the Terms of Reference, the Agreement generally, DPSA hereby appoints the Service Provider, on a non-exclusive basis, to provide the Services on the terms and conditions of this Agreement, and the Service Provider hereby accepts such appointment.

2.3. DPSA shall not be precluded from obtaining services that may be similar or identical to the Services from any other service provider and nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for services in the future, whether under this Agreement or otherwise from.

2.4. The Service Provider shall report directly to…….[**state position, e.g. Director: Finance, rather than the name of an individual**], who shall be the Project Manager for purposes of the Agreement and provide all instructions to the Service Provider.

2.5. The Service Provider shall, within 10 working days, after the last signature of the Agreement, submit a draft workplan to the Project Manager for a written approval. The Service Provider and the Project Manager may from time to time agree in writing to amend the workplan.

3. COMMENCEMENT AND DURATION

3.1. The Agreement shall commence on the last date of signature to this agreement and shall terminate after a period of _____[**State the duration of the contract]**

3.2 The Parties may, subject to their respective prescripts for extension, in writing agree to extend the term of the Agreement.

SAMPLE

4. FEES INVOICING AND PAYMENT

4.1. Fees under **Annexure "B"** (price schedule) are the only amounts payable by DPSA to the Service Provider for the Services or otherwise in connection with this Agreement, and no other charges, expenses, costs or other amounts incurred by the Service Provider will be chargeable to or payable by DPSA to the Service Provider.

4.2. The Service Provider will not be entitled to: (i) impose or seek payment of any amounts or charges under the Agreement other than the fees; (ii) establish any new types of charges under the Agreement; or (iii) modify any of the fees under the Agreement; unless DPSA has subject to the procurement policies and procedures agreed thereto in writing.

4.3. Payment shall be made once all deliverables as set out in the Terms of Reference are successfully delivered within 30 days after receipt by the DPSA of-

(a) Satisfactory proof that the deliverables complies with the Agreement and the Terms of Reference; and

(b) An original specified invoice certified as correct by the Project Manager.

4.4. Each invoice will consist of or have attached statement of the total amount due which will be itemised per Goods delivered / Service rendered.

4.5. The Service Provider will verify that each invoice is complete and accurate and that it conforms to the requirements of the Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to DPSA.

4.6. All payments in terms of this clause shall be made into the banking account of the Service Provider as provided in writing to the DPSA.

4.7. Payment may only be withheld in terms of this clause if the Service Provider has failed to remedy a default or breach within the required time after written notice was given in terms of clause 14.

SAMPLE

5. TAX, DUTIES AND CURRENCY ISSUES

5.1. Unless otherwise specified, all Fees and expenses are recorded inclusive of Value Added Tax. The Service Provider will be financially responsible for all taxes associated with the Services and will comply with all applicable laws relating to tax and tax invoices.

5.2. All Fees set out in this Agreement are inclusive of any export and import tax, if applicable.

5.3. The Fees are stated in South African Rand and will be quoted, invoiced and paid in South African Rand. The Fees are not subject to adjustment due to any currency fluctuations for the duration of the Agreement.

6. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES

6.1. The Service Provider will ensure that its personnel will at all times, whilst on the DPSA's premises, adhere to the standard health, safety and security procedures and guidelines applicable to DPSA's personnel, as such procedures and guidelines may be changed by DPSA from time to time and are available to the Service Provider on request. Should DPSA at any time have reason to believe that any member of the Service Provider's personnel is failing to comply with such standard health, safety and security procedures and guidelines, DPSA will be entitled to deny such member of Service Provider's personnel to any or all of location/s and require the Service Provider to replace such member of staff without delay.

6.2. The Service Provider hereby agrees and undertakes, in terms of section 37(2) of the Occupational Health and Safety Act, 1993, to ensure that the Service Provider and the Service Provider's staff comply with the aforesaid Act and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the duration of this Agreement, including with regard to the Service Provider personnel and ensuring that neither DPSA's staff's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

SAMPLE

7. OBLIGATIONS OF DPSA

The obligations of the DPSA are as set out in the Terms of Reference.
[OR state them hereunder]

8. OBLIGATIONS OF SERVICE PROVIDER

The obligations of the Service Provider are as set out in the Terms of Reference.
[OR state them hereunder]

9. CONFIDENTIALITY, OWNERSHIP AND COPYRIGHT

9.1 A Party shall treat information furnished by the other Party or another person for purposes of the execution of the Agreement, as confidential. Subject to this clause, the Party so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.

9.2 The DPSA shall become the owner of information and materials derived from the provision of services under the Agreement. The Service Provider shall submit all such information and material to the DPSA before or on the termination of the Agreement, on written request by the DPSA, without the right of retention.

9.3 The Service Provider shall not use any information or material derived from the provision of the services under the Agreement for any purposes other than those of the DPSA, except with the written approval of the DPSA.

9.4 The copyright in every work or any part thereof, in which copyright may subsist, created by the Service Provider, or any person performing work on the Service Provider's behalf, in the execution of the Agreement shall vest in the State and such works or part thereof, may only be reproduced, or disclosed to another person, with the written consent of the DPSA. The term "works or any part thereof", shall not be interpreted to include a work or part thereof in which

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copyright already vests in the Consultant or another person and not created in the execution of the Agreement.

9.5 The Service Provider may use any experience or learning acquired in the execution of the Agreement, provided that such use may not be to the detriment of the DPSA.

9.6 This clause is severable from the Agreement and shall remain in effect when the Agreement terminates for whatever reason.

10. PROTECTION OF PERSONAL INFORMATION

10.1. Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Services.

10.2. Each Party shall only provide, collect and/or Process the Personal Information:

10.2.1. in compliance with POPIA and where binding on a Party;

10.2.2. as is necessary for the purposes of this Agreement and the Services;

10.2.3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;

10.2.4. for internal business-related purposes; and

10.2.5. in accordance with the lawful Purpose and reasonable instructions of DPSA as the Responsible Party.

11 AUDITS

11.1 Audit Rights:

11.1.1 The Service Provider will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. The Service Provider will provide to DPSA, its internal or external auditors, inspectors and regulators access at all reasonable times to such facility or part of a facility at which either the Service Provider is providing the Deliverables and/or Services, to Service Provider Personnel, and to equipment, software, personnel, data, records and

SAMPLE

documentation relating to the Deliverables and/or Services for the purpose of performing audits and inspections of the Service Provider to: (i) verify the accuracy of the Service Provider's Fees and invoices; (ii) verify the accuracy of payments by or credits from the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider's costs or changes thereto; (v) examine the Service Provider's performance of the Services or Deliverables, including verifying compliance with the industry standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law;

11.1.2 DPSA reserves the right to appoint a third party to perform an audit under this Clause.

11.1.3 The Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require. In the case of audits, DPSA's audits will not unreasonably interfere with the Service Provider's normal course of business and will comply with the Service Provider's reasonable confidentiality requirements.

11.1.4 Unless DPSA has a good faith suspicion of fraud, DPSA will provide the Service Provider with reasonable notice for audits.

11.1.5 All costs incurred by DPSA in performing audits of the Service Provider will be borne by DPSA unless any such audit reveals a material inadequacy or material deficiency in respect of the Services including compliance with the relevant Applicable Laws, in which event the cost of such audit will be borne by Service Provider.

11.1.6 If an audit reveals an overcharge, the Service Provider will promptly refund the overcharge plus interest at Repo Rate, from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.

12. WARRANTIES

12.1. The Service Provider hereby represents and warrants to DPSA that-

12.1.1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;

12.1.2. it is acting as a principal and not as an agent of an undisclosed principal;

12.1.3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its

SAMPLE

business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;

12.1.4. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to DPSA;

12.1.5. it will have the requisite insurance to cover for professional liability claims (to the extent that it may be applicable), that may be instituted against it;

12.1.6. it has the necessary resources, skills and experience to render the Service and/or deliver the Deliverables to DPSA; and

12.1.7. it is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced DPSA to conclude this Agreement.

12.2. The provisions of this Clause shall survive the termination of this Agreement.

13 INDEMNITY

13.1 Without in any way detracting from DPSA's rights in terms of this Agreement, the Service Provider hereby indemnifies DPSA from any and all losses which may be suffered as a result of any breach of the warranties including the provisions of this Agreement by the Service Provider or Service Provider personnel.

13.2 In addition to any remedy available to DPSA, the Service Provider agrees to indemnify in full an on demand and to keep DPSA so indemnified from and against all claims, demands, actions, proceedings and losses, which are made or brought against or incurred or suffered by DPSA resulting from any action arising from the Service Provider's breach of any obligation with respect to confidential information and/or personal information.

13.3. The Service Provider indemnifies the DPSA against any claims or court actions, including all legal costs in respect thereof, that may be instituted by any person against the DPSA arising out of any act, omission or default on the part of the Service Provider or, any person performing work on behalf of the Service Provider, in the provision of services under the Agreement.

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14. BREACH

If a Party is in default or breach of any obligation which arises in terms of the Agreement and that defaulting Party fails to remedy such default or breach within 7 working days after receipt of a written notice given by the aggrieved Party calling upon the defaulting Party to remedy such default or breach, then the aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law—

(a) claim specific performance;

(b) cancel the Agreement, such cancellation to be effective immediately on receipt by the defaulting Party of a written notice to that effect; or

(c) claim any money due and payable in terms of the Agreement and claim damages from the defaulting Party.

15. INDEPENDENT CONTRACTOR

The Service Provider is employed as an independent contractor and not as an agent of the DPSA and has no authority to bind or represent the DPSA in any matter.

16. GOOD FAITH AND REASONABLENESS

In their dealings with each other for purposes of the Agreement, the Parties—

(a) undertake to act in good faith and reasonably; and

(b) warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the rights or obligations of each other.

17. CONFLICT OF INTEREST

17.1 Neither the Service Provider nor their staff shall engage in any activity which conflict with or could potentially conflict with the services to be provided in terms of the Agreement.

17.2 The Service Provider shall notify the DPSA immediately of any activities or circumstances which give rise to or could potentially give rise to such conflict of interest and shall inform the DPSA how the Service Provider intends dealing with such conflict.

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18. *FORCE MAJEURE*

18.1 *Force majeure* shall be considered to be circumstances where the performance of any obligation in terms of the Agreement are suspended or postponed by-

(a) strikes or lock-outs or any combination thereof by employees of either of the Parties;

(b) war or civil commotion;

(c) any cause, except as may otherwise be provided for in the Agreement, beyond the reasonable control of either of the Parties; and

(d) any natural disaster.

18.2 If the completion of any obligation be delayed as a result of *force majeure*, the Party who is unable to perform its obligation shall, within 7 working days of the occurrence of such *force majeure*, give notice thereof in writing to the other Party and request an extension of time in which to comply with its obligation. On receipt of such notice and supporting particulars of the claim, the other Party may in writing grant an extension of time as may be justified.

18.3 The Party who is incapable of performing its obligation shall not be liable for any such claim which the other Party may have as a result of such obligation not being performed provided that the reason why it cannot perform its obligation is due to *force majeure* and provided further that the notice referred to in 18.2 has been duly delivered.

18.4 In the event of *force majeure* continuing for a period of 7 working days, either Party shall be entitled to terminate the Agreement by written notice to the other Party and without any Party incurring any liability to the other Party.

19. TERMINATION

19.1. Termination for cause by DPSA

19.1.1. DPSA may, by giving notice to the Service Provider, terminate this Agreement or rendering of the Services in whole or part, as of a date set out in the notice of termination, in the event that the Service Provider-

SAMPLE

19.1.1.1. breaches the confidentiality provisions of this Agreement;

19.1.1.2. breaches applicable laws;

19.1.1.3. is found guilty of an offence in terms of applicable laws;

19.1.1.4. commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated;

19.1.1.5. commits an act of professional misconduct or professional or technical incompetence, which is substantial and serious; or

19.1.1.6. commits or participates in any unlawful, dishonest or unethical act in executing this Agreement.

19.1.2. DPSA shall have no liability to the Service Provider with respect to a termination under this clause.

19.2. **Termination Upon Sale, Acquisition, Merger or Change of Control**

19.2.1. In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a "Change Event") where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially of all the assets of the Service Provider in a single or series of related transaction, then the Service Provider shall notify DPSA of such Change Event within ten (10) working days after the Change Event is achieved.

19.2.2. No sale, acquisition, merger or other change of control shall be effective against and legally binding on DPSA if the Service Provider failed to notify DPSA, as required by clause 19.2.1 above.

19.2.3. DPSA may terminate this Agreement, at any time after being notified by the Service Provider of the Change Event, by giving the Service Provider thirty (30)

SAMPLE

days written notice designating a date upon which such termination shall become effective.

19.2.4. In the event that the Service Provider fails to notify DPSA, as required by clause 19.2.1 above, then DPSA may upon discovery of the Change Event terminate the Agreement by giving the Service Provider (30) days written notice and designating a date upon which such termination shall be effective.

19.2.5. DPSA shall have no liability to the Service Provider with respect to termination of the Agreement on terms of this clause.

19.2.6. "Control" in terms of this clause means, with regard to any entity, the right or power to dictate the management of and otherwise control such by entity by any of the following:

19.2.6.1. holding directly or indirectly the majority of the issued share capital stock (or other ownership interest if not a company) of such entity ordinarily having voting rights;

19.2.6.2. controlling the majority of the voting rights in such entity; or

19.2.6.3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.

19.2.7. Any termination of this Agreement pursuant to the provisions of this clause shall be without prejudice to any prior claim, which either Party may have.

19.2.8. The DPSA may terminate the Agreement without prejudice to any of its rights upon the occurrence of any of the following:

(a) on commencement of any action for the dissolution and/or liquidation of the Service Provider, except for purposes of an amalgamation or restructuring approved in advance by the DPSA;

(b) the Service Provider receives a court order to be placed under judicial management, business rescue or to commence liquidation procedures that is not withdrawn or struck out within five working days;

(c) the Service Provider informs the DPSA that it intends to cease performing its obligations in terms of the Agreement;

SAMPLE

(d) the Service Provider informs the DPSA that it is incapable of completing the Services.

19.2.9. The Service Provider shall receive remuneration for the services provided to the satisfaction of the DPSA up to the date of termination of the project.

19.2.10. Termination of the Agreement shall relieve the DPSA and the Service Provider of their respective obligations in terms of the Agreement.

19.2.11. The Service Provider shall not be entitled to advance a right of retention or any similar right if the Agreement is terminated in terms of this clause.

20. GENERAL TERMS AND CONDITIONS

20.1 WHOLE AGREEMENT AND AMENDMENT

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to the applicable Service Agreement and assigned a sequential letter to be included in the title.

20.2 INTERPRETATION OF AGREEMENT

The law of the Republic of South Africa shall govern the interpretation of the Agreement.

20.3 NO ASSIGNMENT WITHOUT CONSENT

The Service Provider shall not be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of DPSA which consent shall if approved by DPSA in its sole discretion, be in compliance with the provisions of the PFMA and DPSA’s procurement policies and procedures.

SAMPLE

20.4 ADVERTISING AND MARKETING

The Service Provider shall not make or issue any formal or informal announcement (with the exception of Authority announcements), advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of DPSA.

20.5 JURISDICTION OF COURTS

If any legal proceedings arise from the provisions of the Agreement, both Parties submit to the jurisdiction of the courts of the Republic of South Africa.

20.6 ENTIRE CONTRACT

The Agreement and the Annexures attached hereto constitute the entire contract between the Parties.

20.7 VARIATION

No amendment, alteration, addition or suspension of any provision of the Agreement shall be of any force, unless reduced to writing and signed by both Parties.

20.8 WAIVER

No waiver of any right in terms of the Agreement shall be binding for any purpose unless expressed in writing and signed by the Party concerned and such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right precludes any other or further exercise thereof or the exercise of any other right.

SAMPLE

20.9 CESSION

A Party may not cede any right or obligation in terms of the Agreement to another person without the other Party's written consent.

20.10 INVALID PROVISIONS

If any provision of the Agreement contravenes any provision of the law, that provision shall be deemed to be void or the scope of the provision shall be deemed to have been limited to exclude such contravention, provided that if any Party—

(a) can establish in a court of law that it is adversely affected or prejudiced thereby; or

(b) unsuccessfully relies on that provision in any legal proceedings,

that Party may terminate the Agreement immediately.

20.11 INTERVENING CHANGES IN LAW

If any change in the law renders any material provision of the Agreement illegal or void, either Party may terminate the Agreement immediately.

20.12 SEVERABILITY

If any provision of the Agreement is or becomes invalid or unenforceable, such provision shall be divisible and be regarded as *pro non scripto* and the remainder of the Agreement shall be regarded as valid and binding unless materially affected.

21. COSTS

Each party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.

SAMPLE

22. AUTHORISED SIGNATORIES

22.1 The Parties agree that this Agreement and any contract document concluded in terms hereof shall not be valid unless signed by all authorised signatories of DPSA.

22.2 This Agreement is signed by the Parties on the dates and at the places indicated below.

22.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

22.4 The persons signing this Agreement in a representative capacity warrant their authority to do so.

23. *DOMICILIUM CITANDI ET EXECUTANDI*

23.1 DPSA chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

(Insert details)

23.2 The Service Provider chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

(Insert details)

23.3 Each of the Parties shall be entitled at any time by way of written notice to the other Party, to change its *domicilium citandi et executandi* to another physical address.

23.4 Any notice in terms of the Agreement shall either be—

(a) delivered by hand during normal business hours of the recipient; or

(b) sent by prepaid registered post to the address chosen by the addressee.

SAMPLE

23.5 A notice in terms of the Agreement shall be considered to be duly received if—

(a) hand-delivered on the date of delivery;

(b) sent by registered post as indicated in clause 23.4(b), 10 days after the date it was posted,

unless the contrary is proved.

23.6 Notwithstanding anything to the contrary contained or implied in the Agreement, the written notice or communication actually received by one of the Parties from the other, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.

THUS DONE AND SIGNED BY THE DPSA AT …… ON THIS ……. DAY OF ……2023

AS WITNESSES:

1. _____

2. _____

……..

For THE DPSA

Being duly authorised hereto

THUS DONE AND SIGNED BY THE SERVICE PROVIDER AT …… ON THIS …… DAY OF …….. 2023

SAMPLE

AS WITNESSES:

1. _____

2. _____

……..

For SERVICE PROVIDER being duly authorised hereto

SAMPLE

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.

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.

1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 “Day” means calendar day.

1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.

1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.

1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

1.12 ”Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 “GCC” means the General Conditions of Contract.

1.15 “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 “Project site,” where applicable, means the place indicated in bidding documents.

1.21 “Purchaser” means the organization purchasing the goods.

1.22 “Republic” means the Republic of South Africa.

1.23 “SCC” means the Special Conditions of Contract.

1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

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

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

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

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

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

6. Patent rights

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

7. Performance security

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
(b) a cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

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

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract supplies may on or after delivery be inspected, tested or

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

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

9. Packing

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

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

(d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

(e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

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

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and

(b) in the event of termination of production of the spare parts:

(i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and

(ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

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

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

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

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

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

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

16. Payment

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

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

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

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

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

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

22. Penalties

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

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

(a) 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.