



MOPANI TVET COLLEGE
"EXCELLENCE IS ALWAYS OUR CHOICE"

MOPANI TVET COLLEGE
REQUEST FOR PROPOSAL FOR MAINTENANCE, SERVICING AND REPAIR CONTRACT
FOR GENERATORS FOR PERIOD OF TWELVE (12) MONTHS

REFERENCE NO: RFQ MOP2023-001

Prospective Suppliers who are interested in participating in the afore-mentioned request for quotation are invited to submit their proposal in full compliance to the requirement of this document.

Mopani TVET College, Corporate Centre – Main Reception, Corner Combretum & Haarlem Street, Phalaborwa, Limpopo Province

Reference Number	RFQ MOP2023-001	
Date Issued	Tuesday, 04 April 2023	
Closing Date	Friday, 14 April 2023	Time 11:00 am

Company Name			
Address			
Contact Person <small>Mr/Mrs/Ms/Dr/Prof.</small>			
Contact Numbers	(W)	(Cell)	
Email Address			
Total Bid Amount	_____ (VAT INCLUSIVE)		
Bidder Signature		Date	

Purpose of the assignment

Mopani TVET College is looking to appoint an experienced and qualified service provider to service and repair generators. The service contract will be for a duration of 12 months.

Background

Mopani TVET College is based in Phalaborwa and Namakgale and comprises of two Campuses namely Phalaborwa Campus and Sir Val Duncan Campus and a hotel school namely Mošate Hotel School.

The college has total of five (5) standby Generators across all sites, three(3) of the generator are old (+5 years) and two are relatively new. It is imperative for the generators to be maintained since they are used as a backup during power outage to prevent disruption of teaching and learning during power failure. The maintenance contract for the generators will ensure that the generators is kept in good condition, wear and tear will be identified in good time- and worn-out parts be replaced systematically and timeously.

Invitation to quote

The purpose of this invitation to tender is to invite potential service providers to submit bids that will allow the College to evaluate quotations for the servicing, repair and maintenance of generators for a period of twelve (12) months.

Based on the quality of the bids submitted, the College intends to select preferred service provider(s) with a view of concluding a Service Level Agreement (SLA) where applicable with such successful bidder. The bid will be evaluated in terms of the Preferential Procurement Policy Framework Act (PPPFA) No 5 of 2000 and Preferential Procurement Regulations (PPR) of 2017, using 80/20 preference point system.

A valid bid will constitute of the following documents:

- a) A properly completed tender offer and declarations form with the original signature/s of the appropriately delegated employee/s or owner of the bidding company;
- b) A bid submission explaining the full scope of the work tendered for in line with the Terms of reference;
- c) Prices must be all inclusive (including **VAT** for registered vendors only) and the proposed price must be signed with the original signature/s of the appropriately delegated employee/s or owner of the bidding company;
- d) A tax Status pin that will remain valid on the closing date of the tender; and
- e) Any documents that serve as supporting documents to the above (properly referenced to the information it supports).

This document includes the following annexure(s) which the bidders need to be familiar with and use to prepare their submissions:

Documents to be completed & submitted:
SBD 1 – Invitation to bid
SBD 4 – Declaration of Interest
SBD 8 - Declaration of Bidder's past supply chain management practices
SBD 9 – Certificate of Independent Bid Determination

Valid and verifiable SARS Tax Status Pin (verification will be done with SARS for compliance)
Company registration documents
Originally Certified ID Copies of Directors
Proof of Business Address
Originally Certified Copy of Trade test certificate for Diesel Mechanic
Originally Certified Copy of Trade test certificate for electrician
Valid and Relevant COIDA from department of Labour
B-BBEE certificate/ Sworn Affidavit
National Treasury Government Procurement - General Conditions of Contract

1. Special Conditions of Tender: Terms of reference.

1.1. Closing time and date

- 1.1.1 The closing date and time for the receipt of bids in response to this invitation to bid is detailed on the cover page of this invitation to bid.
- 1.1.2 All bids must be submitted in a sealed package bearing the bid number and bid description.
- 1.1.3 All bids must be received before the closing time and date as stipulated above and must be deposited in the bid box at the address indicated in this document.

1.2 Submission of tenders

- 1.2.1 Tenders must be submitted in a sealed envelope; if a tender submission is not in an appropriately sealed package, it may invalidate the tender and lead to disqualification from the tender process.
- 1.2.2 All bids must be hand delivered at the following address and placed in the **TENDER BOX**

Physical Address:

**Mopani TVET College,
Corporate Centre – Main Reception,
Corner Combretum & Haarlem Street,
Phalaborwa, Limpopo Province**

1.3 ENQUIRIES

No claim shall exist by any supplier/service provider, the Accounting Officer or the Tender Committee for any reason arising out of the tender including but not limited to, the decision taken by Mopani TVET College in respect of its choice of supplier and the processes followed.

Should any bidder have any enquiries relating to this invitation to bid, such inquiries may only be addressed to the person/s mentioned below:

Technical terms of Reference:

Ms Ramosibudi MC

Email: ramosibudimc@mopanicollege.edu.za

Telephone Number: 015 781 5721

1.4 Partial Submissions

Partial submissions will not be accepted as valid bids.

1.5 Payment Conditions (Advances)

- 1.5.1 Payments will only be made within thirty (30) days after the service has been successfully rendered and certified by the Campus Manager or delegated Official of the College and on the provision of a valid tax invoice by the supplier within thirty (30) days after the date of delivery of goods/services.
- 1.5.2 No advance for/of payment will be allowed.

1.6 Contract period

- 1.6.1 The contract period will be from the date of appointment letter or Service Level Agreement and will remain valid for a period of twelve (12) months.

1.7 Cancellation of Tender

- 1.7.1 The Mopani TVET College retains its right to cancel any bid without notice or specifying reasons.
- 1.7.2 A bid may be cancelled and re-advertised should the committee direct so, due to inadequate responses or due to a major change in ToR or procurement procedure.

1.8 Status of Special Conditions of Tender and Tender Terms of Reference

- 1.8.1 If any of these special conditions or tender Terms of reference (ToR) in this invitation to bid document are in conflict with the “General Terms and Conditions of Tenders invited by the Mopani TVET College then these special conditions, and/or tender ToR, shall apply.

1.9 Validity

Bid documentation submitted by the bidder will be valid and open for acceptance for a period of **90 (ninety)** calendar days from the closing date and time stipulated on the front cover of this invitation to bid.

EVALUATION CRITERIA

MOPANI TVET COLLEGE APPLIES THE PROVISIONS OF THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, NO 5 OF 2000 AND PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

The following evaluation criteria will be utilized to determine a suitable service provider. All bid proposals will be evaluated in terms of Preferential Procurement Policy Framework.

There will be a three stage evaluation process comprising of:
Stage 1) Prequalification evaluation, **Stage 2)** Risk assessment and **Stage 3)** 80/20 Preference Point Scoring System where 80 points out of 100 allocated for price and 20 points out of 100 will be for B-BEEE goals.

The purpose of this prequalification evaluation is to determine which bid responses are compliant and noncompliant with the ToR issued. The following criteria shall apply:

Stage 1: Prequalification

- Bidding documents must be fully completed and signed; and
- Valid verifiable Tax Status Pin
- SBD 1, 4,8 & 9 fully completed and signed
- National Treasury Government Procurement – General Conditions of Contract initialled.
- CIPC: Company registration documents
- Originally Certified ID Copies of Directors
- Originally Certified Copy of Trade test certificate for Diesel Mechanic
- Originally Certified Copy of Trade test certificate for Electrician
- Valid and relevant COIDA from department of Labour

Stage 2: Risk Assessment:

The risk assessment is to identify the capabilities, performance and functionality of bidders in order to obtain the best quality services.

In order to facilitate a transparent selection process that allows equal opportunity to all services providers, the Mopani TVET College will adhere to its policy on the appointment of services provider. Functionality Proposals will be evaluated in terms of the following criteria:

- Experience on similar projects.
- Attractiveness of Methodology (Project Implementation plan)
- Capacity of the Company (Team members)
- Financial capacity of the Company
- Location of the company

The following table will demonstrate the criteria to be used for allocation of points for functionality as outlined above. Bids scoring less than **60 points** on functionality will not be further evaluated beyond functionality.

NO	CRITERIA FOR EVALUATING FUNCTIONALITY	WEIGHT
1	<p>Experience on similar projects: Bidders must provide at least three (3) reference for a similar project (Service , maintenance and repair of Generators) (Bidder must provide proof: a copy of the Purchase Order/Appointment and reference letter of fully completed projects from previous clients, on the clients letterhead. The letter should be verifiable, should include minimum details such as signed, clearly explaining the work done, Contact Number , email and contactable person These copies should not be fake, they must be clear and not questionable. E,g Ten(10) points for every Purchase order/appointment letter accompanied by reference letter</p>	30

	<i>NB: Mopani TVET College reserve the right to verify the authenticity of any document provided. The college report any suspected fraud to relevant authorities</i>	
2	Attractiveness of Methodology Must submit relevant maintenance plan for the systems and response plan to emergencies <ul style="list-style-type: none"> • Within 2 hours Response time = 10 points • Within 2 to 4 hours Response time = 5 points • More than 4 hours Response time = 0 points 	10
3	Capacity of Company (Team members) Human Resource (Attach CV, Qualification, Certificates and license <ul style="list-style-type: none"> • Qualified technician with Trade test certificate for Diesel Mechanic more than (2) two years' experience - 10 points • Qualified technician with Trade test certificate for electrician more than (2) two years' experience 10 points <p>The human resource mentioned should be the same people that will be deployed to the project, if the official leaves the company, then it should be a person with similar experience and qualification.</p>	20
4	Financial Capacity of the Company <ul style="list-style-type: none"> • Latest three (3) months business bank statement with an average of R100 000 positive bank balance 10 • Submission of Bank credit rating letter (We reserve the right to verify). 10 <ul style="list-style-type: none"> Bank rating A or higher 10 Bank rating B 08 Bank rating C or lower 05 No Bank rating letter 0 	20
5	Location of the Company (Proof of physical address must be attached. Preference will be given to Companies from the Mopani District) Service provider offices must be based within 30km radius from the College <ul style="list-style-type: none"> • Less than 30km (20 points) • Between 30km and 100km (15 points) • Between 100km and 150km (10 points) • Between 150km and 200km (5 points) • Greater that 200km (0 points) 	20

	Provide proof in a form of registered address e.g Lease agreement for the business or Municipal bill for the business Non-compliance with the above = 0	
	TOTAL	100

Bidders that fail to score a minimum of 60 points out of a possible 100 points for functionality will not be eligible for further consideration.

Stage 3

80/20 Preference point system

- Price 80
- B-BBEE status level of contributor 20

In order to facilitate a transparent selection process that allows equal opportunity to all service providers, Mopani TVET College will adhere to its policy on the appointment of service providers.

Annexure A

Specification for Maintenance, repair and servicing of Generators for period of twelve (12) months

The Following is list of Generators currently onsite:

No	Engine/Brand	Size	Campus/Site
1	Volvo	375Kva	Corporate
2	Volvo	375Kva	Phalaborwa
3	Volvo	350Kva	Phalaborwa
4	Volvo	375Kva	Sir Val Duncan
5	Volvo	500kva	Sir Val Duncan

- Major service to be performed Quarterly
- Monthly visits to clean, check batteries and other minor logistics to be on monthly

Monthly service include but not limited to;
Check for fluid leaks
Check condition of hoses
Check water jacket heater
Check battery condition
Check voltage & alternator charging output
Check if charge rate is correct
Check all fluid levels and fill up
Check bearings, drives and tension pulleys, grease where necessary
Check belts and replace if necessary
Perform the necessary adjustments where needed
Inspect all connections (retighten if necessary)
Check voltages & alternator output and ensure it is correct

Check and clean filters
Check and adjust alternator output voltage
Clean the unit and all its components
Monitor and draw reports on fuel consumptions
Start engine and ensure all is in working order. Engine to run at least 30 minutes
Submit a complete report to be submitted on findings and results on each generator
Create and update a Log book for each generator
Fix all the faults and Perform the necessary adjustments where needed

Quarterly service/Major Services include but not limited to;
Drain cooling system and flush it. Fill up with correct coolant & water mixture
Drain engine oil, flush engine and fill up with oil of correct grade
Check bearings, drives and tension pulleys, grease where necessary
Check belts and replace if necessary
Clean the unit and all its components
Replace all filters (oil, petrol, air)
Check Batteries and replace if necessary
Change fuel/water separator strainers
Inspect all connections (retighten if necessary)

- The service provider to be always available for any emergency call outs by the College. The service provide must be able to respond within 2 (two) hours upon notification of a generator failure (Through message, email or telephonically). Failure to respond timeously may lead to the termination of the service contract.
- The aim of servicing and maintaining the generators frequently is to minimise breakdowns. Frequent breakdown will indicate the inability of the service provider to do the job, therefore might lead to termination of the contract
- Due to operations of the college the contractor may be expected to work after hours and on weekends but strictly under the supervision of the Infrastructure official

Reporting

- Detailed service report and job card to be issued after each service
- All noticed faults/potential faults to be reported on the job card.
- The delegated college SCM official and Infrastructure officials to co-sign the Job card together with the mechanic/service provider

NB: Quotations must be in line with the above specifications.

Annexure B

Pricing Schedule

Quarterly/major Servicing of the generators				
No	Item Description	Price	Quantity	Total Price Including VAT
1	Servicing and maintenance of corporate centre Generator (Volvo 375KVA)		4	
2	Servicing and maintenance of Phalaborwa Campus Generator 1 (Volvo 375KVA)		4	
3	Servicing and maintenance of Phalaborwa Campus Generator 2 (Volvo 350KVA)		4	
4	Servicing and maintenance of Sir Val Duncan Campus Generator 1 (Volvo 375KVA)		4	
5	Servicing and maintenance of Sir Val Duncan Campus Generator 2 (Volvo 500KVA)		4	
Sub-Total				
VAT (if applicable)				
Total Amount (All cost inclusive e.g. labour and materials included)				

The Quarterly/major service will be done in terms of the SLA but not limited to the specification provided

Monthly check up of the generators				
No	Item Description	Price	Quantity	Total Price Including VAT
1	Servicing and maintenance of corporate centre Generator (Volvo 375KVA)		12	
2	Servicing and maintenance of Phalaborwa Campus Generator 1 (Volvo 375KVA)		12	
3	Servicing and maintenance of Phalaborwa Campus Generator 2 (Volvo 350KVA)		12	
4	Servicing and maintenance of Sir Val Duncan Campus Generator 1 (Volvo 375KVA)		12	
5	Servicing and maintenance of Sir Val Duncan Campus Generator 2 (Volvo 500KVA)		12	

Sub-Total	
VAT (if applicable)	
Total Amount <i>(All cost inclusive e.g. labour, material and traveling cost)</i>	

Pre-agreed rates

The following rates will form part of agreement

Emergency and breakdown.

Call out rates		
Rate Per Hour Office Hours (including transport) Weekdays 07h00 to 17h00	All cost inclusive rate	R
Rate Per Hour After Hours (including transport)	All cost inclusive rate	R
Mark up % on Spares Used NB: Original Invoice to be submitted on all spares bought and the % agreed upon to be put aside #Spares does not relate to service kit/materials , spares relate to any spares need in case of repairs(<i>Should not exceed 30%</i>)	 %

Note all the repairs should be communicated and be pre-approved before job can commence.

Bidder Name:.....

Bidder Signature:.....

Date:.....

SBD 1: INVITATION TO BID

PART A

YOU ARE HEREBY INVITED TO BID FOR GOODS/SERVICES AS SITED HEREUNDER

BID NUMBER:	MOPTVET2023-001	CLOSING DATE:	14 APRIL 2023	CLOSING TIME:	11:00
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DESCRIPTION	REQUEST FOR PROPOSAL FOR MAINTENANCE, SERVICING AND REPAIR CONTRACT FOR GENERATORS FOR A PERIOD OF TWELVE (12) MONTHS
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THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

**MOPANI TVET COLLEGE
CORPORATE CENTRE
CNR COMBRETUM & HAARLEM STREET
PHALABORWA**

SUPPLIER INFORMATION

NAME OF BIDDER				
POSTAL ADDRESS				
STREET ADDRESS				
TELEPHONE NUMBER	CODE		NUM BER	
CELLPHONE NUMBER				
FACSIMILE NUMBER	CODE		NUM BER	
E-MAIL ADDRESS				
VAT REGISTRATION NUMBER				

	TCS PIN:		OR	CSD No:	
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B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No	B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No
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IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	<input type="checkbox"/>	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)
	<input type="checkbox"/>	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)
	<input type="checkbox"/>	A REGISTERED AUDITOR
		NAME:

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT (FOR EMEs & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERECNE POINTS FOR B-BBEE]

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW]
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE (ALL INCLUSIVE)	
TECHNICAL & TENDER RELATED ENQUIRIES MAY BE DIRECTED TO:			
CONTACT PERSON	Ms M.C Ramosibudi		
TELEPHONE NUMBER	(015) 781 5721		
E-MAIL ADDRESS	ramosibudimc@mopanicollege.edu.za		

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR ONLINE</p> <p>1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.</p> <p>1.4. THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.</p>

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 VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1 IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?
YES NO
- 3.2 DOES THE BIDDER HAVE A BRANCH IN THE RSA?
YES NO
- 3.3 DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?
YES NO
- 3.4 DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?
YES NO

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

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SBD 4: DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes an advertised competitive bid, a limited bid, a proposal or written price quotation). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or the persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

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

2.1 Full name of bidder or his/her representative

2.2 Identity number

2.3 Position occupied in the Company (Director, Trustee, Shareholder², Member)

.....

2.4 Registration number of Company, Enterprise, Close Corporation, Partnership, Agreement or Trust

.....

2.5 Tax Reference Number

2.6 Vat Registration Number

2.6.1 The names of all Directors / Trustees / Shareholders / Members, their individual identity numbers, tax reference numbers and, if applicable, employee / PERSAL numbers must be indicated in paragraph three (3) below.

1"State" means-

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

(e) parliament

2.7 Are you or any person connected with the bidder presently employed by the state?

YES or NO

2.7.1 If so, furnish the following particulars:

Name of Person/Director/Trustee/Shareholder/Member:

.....
.....

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

.....
.....

Position occupied in the state institution:

.....
.....

Any other particulars:

.....
.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector?

YES or NO

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

YES or NO

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

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

.....
.....

2.8 Did you or your spouse, or any of the company's Directors/Trustee/Shareholders/Members of their spouses conduct business with the state in the previous twelve (12) months?

YES or NO

2.8.1 If so, furnish particulars:

.....
.....

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

YES or NO

2.9.1 If so, furnish particulars:

.....
.....

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

YES or NO

2.10.1 If so, furnish particulars:

.....
.....

2.11 Do you or any of the Directors/Trustees/Shareholders/Members of the company have any interest in any other related companies whether or not they are bidding for this contract?

YES or NO

2.11.1 If so, furnish particulars:

.....
.....

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

<u>Full Name</u>	<u>Identity Number</u>	<u>Personal Income Tax Reference Number</u>	<u>State Employee Number / Pearsal Number</u>

4. Declaration:

I, the undersigned (Name)

.....
CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPH 2 AND 3 ABOVE IS CORRECT. I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

NAME OF BIDDER

POSITION

SIGNATURE

DATE

SBD 8: DECLARATION OF BIDDERS PAST SUPPLY CHAIN MANAGEMENT PRACTICES

1. This Standard Bidding Document must form part of all bids invited.
2. It services as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the Supply Chain Management System.
3. The bid of any bidder may be disregarded if that bidder, or any of its directors have:
 - (a) Abuse the institution’s Supply Chain Management System;
 - (b) Committed fraud or any other improper conduct in relation to such system; or
 - (c) Failed to perform on any previous contract
4. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury’s Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury’s website (www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	<p>If so, furnish particulars: </p>		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury’s website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	<p>If so, furnish particulars: </p>		
4.3	<p>Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	<p>If so, furnish particulars: </p>		

4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

CERTIFICATION

I, the undersigned (Full Name)

Certify that the information furnished on this declaration form is true and correct.

I accept that, in addition to cancellation of a contract, action may be taken against me should this declaration prove to be false.

NAME OF BIDDER

POSITION

SIGNATURE

DATE

SBD 9: CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. This Standard Bidding Document (SBD) must form part of all bids¹ invited.
2. Section 4 (1) (b) (iii) of the Competition Act. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging)². Collusive bidding is a *pe se* prohibition meaning that is cannot be justified under any grounds.
3. Treasury Regulation 16A (9) prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the Supply Chain Management systems and authorizes accounting officers and accounting authorities to:
 - (a) Disregard the bid of any bidder if that bidder or any of its directors have abused the institution's Supply Chain Management System and or committed fraud or any other improper conduct in relation to such system.
 - (b) Cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
4. This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
5. In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

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

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

I, the undersigned, in submitting the accompanying bid:

.....
.....

(Bid Number and Description)

in response to the invitation for the bid made by:

.....
(Name of Institution)

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

I certify, on behalf of:

.....
that: (Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorised by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purpose of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) Has been requested to submit a bid in response to the bid invitation;
 - (b) Could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) Provides the same goods and services as the bidder and / or is in the same line of business as the bidder
6. The bidder as arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) Prices;
 - (b) Geographical area where product or services will be rendered (market allocation);
 - (c) Methods, factors or formulas used to calculate prices;
 - (d) The intention or decision to submit or not to submit, a bid;
 - (e) The submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) Bidding with the intention not to win the bid.
8. In addition, there has been no consultation, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³Joint venture of Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of Section 59 of the Competition Act No. 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation.

NAME OF BIDDER

POSITION

SIGNATURE

DATE

**NATIONAL TREASURY GOVERNMENT PROCUREMENT – GENERAL CONDITIONS OF CONTRACT
(REVISED JULY 2010)**

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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 regards 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 I 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.*

1. Definitions

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 from signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produces or from which the services are supplied. Goods are produces 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 detriments of any bidder, and included 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 costs 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 manufacturer 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" mean 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 the 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 also laid down to cover specific supplies, services or works.

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 supplies shall conform to the standards mentioned in the bidding documents and specifications.

5 Use of contact 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 persona 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 documents or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
2.7

5.3 Any documents, 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 us 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 compensations 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
 - (b) abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
 - (c) 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 Inspection, 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 premise 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 clause 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspection, 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 analysed 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 supplies 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, operations, 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 or 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 twenty four (24) 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 thirty six (36) months after the date of shipment from the port of place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16 Payment

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

17 Prices

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

18 Contract amendments

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

19 Assignment

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

20 Subcontracts

- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this 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 departments, or a local authority. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if any 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 obligation 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 supplier contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplies 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 delivery 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 delivery 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 intend 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 regards 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 regards 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 obligation 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 accrued 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 will full 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 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 to 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.