

CHECK LIST FOR BID DOCUMENTATION

TAKE NOTE: SHOULD ANY OF THE MENTIONED BID DOCUMENTS NOT BE DULY COMPLETED AND SIGNED YOUR BID WILL BE DISQUALIFIED

FORM	DESCRIPTION	CHECK BOX
SBD 1	INVITATION TO BID	
SBD 3.3	PRICING SCHEDULE (PROFESSIONAL SERVICES)	
TOR	TERMS OF REFERENCE FOR SERVICE	
SBD 4	DECLARATION OF INTEREST	
SBD 6.1	PREFERANCE POINTS CLAIM FORM: ORIGINAL B-BBEE CERTIFICATE/CERTIFIED ORIGINAL/ORIGINAL SWORN AFFIDAVIT OR ORIGINAL CERTIFIED COPY TO BE SUBMITTED	
SBD 8	DECLARATION OF BIDDER'S PAST SCM PRACTICES	
SBD 9	CERTIFICATE OF INDEPENDENT BID DETERMINATION	
	GOVERNMENT PROCURMENT: GENERAL CONDITIONS OF CONTRACT	
REGISTRATION ON CENTRAL SUPPLIER DATABASE	<p><u>CENTRAL SUPPLIER DATABASE</u> Effective from 1ST September 2015 all prospective suppliers have to self-register once on the central supplier database website https://secure.csd.gov.za. In order to do business with all spheres of government. As soon as supplier's information has been verified with external data sources (e.g sars and cipc) a unique supplier nr and security code will be allocated and communicated to all suppliers. The supplier can use this information to update and maintain his profile. <u>NB A copy of your company registration report must be submitted with your bid/price quotation. Failure thereof may disqualify your proposal.</u></p>	
<p>NB: ONLY SUBMIT ONE COPY OF THE ORIGINAL BID AS RECEIVED AND 4 COPIES OF THE TECHNICAL/FUNCTIONALITY PROPOSAL</p>		

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	DPE 10/2019-2020	CLOSING DATE:	6 DECEMBER 2019	CLOSING TIME:	11:00
DESCRIPTION	THE DEPARTMENT OF PUBLIC ENTERPRISES INVITES SERVICE PROVIDERS TO SUBMIT A PROPOSAL TO ADVISE ON CORPORATE FINANCE TRANSACTIONS UNDERTAKEN IN RELATION TO THE STATE OWNED AIRLINES. A BRIEFING SESSION WILL BE HELD ON 21 NOVEMBER 2019 AT 10:00 AT 80 HAMILTON STREET, ARCADIA, 0083				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
DEPARTMENT OF PUBLIC ENTERPRISES, GROUND FLOOR SECURITY, 80 HAMILTON STREET, ARCADIA, 0083					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	ABEL MAKHAFOLA		CONTACT PERSON	ABEL MAKHAFOLA	
TELEPHONE NUMBER	012 431-1005		TELEPHONE NUMBER	012 431-1005	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	abel.makhafola@dpe.gov.za		E-MAIL ADDRESS	abel.makhafola@dpe.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
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
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]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?			<input type="checkbox"/> YES <input type="checkbox"/> NO		
DOES THE ENTITY HAVE A BRANCH IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO		
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO		
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO		
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?			<input type="checkbox"/> YES <input type="checkbox"/> NO		
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:	
1.1.	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2.	ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3.	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4.	THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6	WHERE NO TCS 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:

Name of Bidder:

5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	R.....
.....	R.....
.....	R.....
.....	R.....
TOTAL (2): R.....			

6. Period required for commencement with project after acceptance of bid

7. Estimated man-days for completion of project

8. Are the rates quoted firm for the full period of contract? *YES/NO

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

*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures or technical information may be directed to-

Mr Abel Makhafola
Tel: (012) 431-1005



public enterprises

**Department:
Public Enterprises
REPUBLIC OF SOUTH AFRICA**

Private Bag X15, Hatfield, 0028 80 Hamilton Street, Arcadia, 0083
Tel: 012 431 1118/1150 Fax: 012 431 1039 Private Bag X9079, Cape Town, 8000 Fax: 021 465 2381

TERMS OF REFERENCE ("TOR")

FOR THE APPOINTMENT OF A SERVICE PROVIDER

TO

**ADVISE ON CORPORATE FINANCE TRANSACTIONS UNDERTAKEN IN RELATION TO
THE STATE OWNED AIRLINES**

**Department of Public Enterprises
("Department")**

1. DISCLAIMER

- 1.1. The TOR is issued by the Department of Public Enterprises. The sole purpose of this document is to guide the Bidder in deciding whether to submit a proposal in response to the TOR.
- 1.2. The Bidder agrees and undertakes that it will procure and ensure that its directors, officers, employees, agents, representatives and advisors use the TOR only to prepare and submit a proposal for the purposes contemplated in the TOR, and for no other purpose.
- 1.3. The Bidder further undertakes not to divulge the contents of, or distribute any copies of the TOR to any other party without the prior written consent of the Department and shall return all copies of the TOR to the Department promptly upon request.
- 1.4. The Department reserves the right to amend, modify or withdraw the TOR or to amend, modify or terminate any of the procedures or requirements set out herein at any time and from time to time, without notice to the Bidder but without liability to compensate or reimburse any party.
- 1.5. The information contained in the TOR is obtained from the Department and other sources. Neither Government, the Department nor any of their respective directors, officers, employees, agents, representatives or advisors make any representation or warranty or give any undertaking, express or implied, or accept any responsibility or liability whatsoever as to the content, accuracy or completeness of the information contained in the TOR or any other written, electronic or verbal information made available in connection with the Project, and nothing contained herein is, or shall be relied upon, as an offer capable of acceptance, a promise or representation, whether as to the past or the future. A Bidder shall accordingly only be entitled to rely on those representations and warranties set forth in the final Project Documents when, and if, such final Project Documents are ultimately agreed and executed, and subject to such limitations and restrictions as may be contained therein.
- 1.6. The TOR does not contain all of the information that may be required by a Bidder in considering whether to submit a proposal and/or a bid and is merely issued for information purposes to enable a Bidder to formulate a proposal. Neither Government, the Department nor any of their respective officers, employees, agents, representatives or advisors have independently verified any of the information contained in the TOR nor are they obliged to update or otherwise revise the TOR or other material supplied herewith nor do they accept any obligation to provide recipients with access to any additional information or to correct any inaccuracies which may become apparent in the TOR or in

any other information which may be made available concerning the Project.

- 1.7. The TOR is not intended to form the basis of a decision to enter into any transaction or any other agreement and does not constitute an offer, invitation or recommendation to enter into any such transaction, or an intention to enter into any legal relationship with any party.
- 1.8. The information contained in the TOR has been compiled to enable a Bidder to consider whether to submit a proposal. The Bidder should be aware that this information has been prepared by Department and involves elements of subjective judgement and analysis. This information is subject to change between the date of issue of the TOR and the issuing of more detailed information during the ensuing phase/s of the Project due to the passage of time and the changes in circumstances relating to the Project, and the verification of such information.
- 1.9. Any Bidder considering submitting a proposal and/or submitting a bid and/or entering into the Project is advised to seek its own independent legal, tax, financial and other advice. The costs of engaging advisors shall be solely for the account of the Bidder concerned.
- 1.10. The issue of the TOR should not be regarded as any form of commitment on the part of the Department to proceed with the Project. Receipt of this TOR does not confer any right on any party. The Department reserves the right in its sole and absolute discretion to terminate any party's participation in the Project on notice to the Bidder concerned without liability whatsoever.
- 1.11. No written, electronic or verbal communication shall be made with the Department or any of its respective directors, officers or employees, either directly or indirectly, with respect to any information contained in the TOR or with respect to any possible transaction concerning an SOC and any communication must be directed to the contact persons referred to in section 9 of the TOR or such other person/s appointed by the Department for such purpose.

2. GLOSSARY OF TERMS

In the TOR, unless the context otherwise indicates -

- 2.1. "B-BBEE" means Broad Based Black Economic Empowerment;
- 2.2. "B-BBEE status level of contributor" means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good practice on Black Economic Empowerment, issued in terms of section 9 (1) of the Broad Based Black Economic Empowerment Amendment Act of 2013;
- 2.3. "Bidder" means a party that submits a proposal in response to the TOR;
- 2.4. "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;
- 2.5. "Department" means the Department of Public Enterprises;
- 2.6. "Functionality" means the measurement according to predetermined norms of a service or commodity designed to be practical and useful, working or operating, taking into account quality, reliability, viability and durability of a service or commodity;
- 2.7. "Government" means the Government of the Republic of South Africa represented by the Minister for purposes of this Project;
- 2.8. "Minister" means the Minister of Public Enterprises;
- 2.9. "Person" means a natural or juristic person;
- 2.10. "Proposal" means the document(s) delivered, by a Bidder in accordance with the TOR, expressing interest in the Project;
- 2.11. "Project Documents" means a mandate and all other agreements necessary to give effect to the Project;
- 2.12. "Project" means the provision of transaction advisory services with respect to major transactions undertaken in relation to the state-owned airlines;
- 2.13. "SAA" means South African Airways SOC Limited, the company established in terms of the South African Airways Act, No. 5 of 2007;
- 2.14. "SA Express" means South African Express Airways SOC Limited, the company established in terms of the South African Express Airways Act, No. 34 of 2007;
- 2.15. "SEP" means a Strategic Equity Partner;
- 2.16. "Service Provider" means a person appointed by the Department to execute the Project;
- 2.17. "Shareholding Minister" means the Minister of Public Enterprises;
- 2.18. "SLA" means Service Level Agreement between the Department and Service Provider;
- 2.19. "SOC" means State-Owned Company as defined in the Companies Act No 71 of 2008;
- 2.20. "TOR" means this Terms of Reference together with all its attachments;

3. INTERPRETATION

- 3.1. Any reference to the singular includes the plural and vice versa;
- 3.2. Any reference to natural persons includes legal persons and vice versa;
- 3.3. Any reference to gender includes the other gender; and
- 3.4. Headings have been inserted for convenience only and shall not be taken into account in the interpretation of the TOR.

4. BACKGROUND

- 4.1. The Department of Public Enterprises is the shareholder representative on behalf of the South African Government with oversight responsibility over seven State Owned Companies (SOC), namely: Eskom, Transnet, South African Express Airways SOC Limited (SA Express), South African Airways SOC Limited (SAA), Denel, South African Forestry Company Limited (SAFCOL) and Alexkor.
- 4.2. The vision of the Department of Public Enterprises (DPE), articulated in 2011, "is to drive investment, productivity and transformation in the Department's portfolio of State Owned Companies (SOCs), their customers and suppliers so as to unlock growth, drive industrialisation, create jobs and develop skills".
- 4.3. The Department sees the SOC's for which it is responsible as essential in driving economic growth. The Department therefore provides direction to the SOC's in order to ensure that their activities, operations and investment programmes support the objectives of the Medium Term Strategic Framework (MTSF), as well as programmes set out in the National Development Plan (NDP).
- 4.4. The Minister has the legislative mandate to oversee both SAA and SA Express as the Executive Authority or Shareholding Minister on behalf of the State.
- 4.5. SAA has been facing significant financial and operational challenges over the last several financial years. This has resulted in the continued poor financial performance by the entity. In order to turnaround this poor performance, SAA is currently undergoing a restructuring programme focused on enhancing revenue and reducing costs in order to steer the airline towards profitability and future growth.
- 4.6. Following SA Express' return to operations in August 2018, the airline revised its turnaround strategy to focus on stabilising its financial and operational performance to reduce its high cost structure and improve its ability to generate revenue. The Department has reviewed the airlines' strategies and considered its options to optimise the business

operations of the state-owned airlines. These options include the possible sale of non-core assets, the introduction of Strategic Equity Partners (SEPs) at group or subsidiary level, and consolidation of the state's shareholding in the state-owned airlines and strengthening the relationship with franchise partners.

- 4.7. These are major transactions that could have operational, legal, governance and financial implications for both Government and the state-owned airlines and are also envisaged to contribute to their turnaround. The Minister of Public Enterprises would therefore like to ensure that the structuring of such transactions and others that may have a positive impact on the sustainability of the airlines are done in a manner that consider all the necessary aspects of the transaction, in particular ensuring that the national interest is protected.

5. PROJECT OBJECTIVES

- 5.1. The Department seeks to appoint a Service Provider to advise on possible corporate finance transactions that may arise in relation to the state-owned airlines, for example the sale on non-core assets, introduction of SEPs group level or subsidiary, or consolidation of the state-owned airlines. The successful service provider will be required to perform some or all of the proposed services as outlined below and have the capacity to run various separate transactions simultaneously. The successful party will work closely with the internal transaction team and may be required to interact with the SAA and SA Express' Boards and executive management teams as well as their subsidiaries and other relevant stakeholders from time to time.

6. SCOPE

- 6.1. The Department requires a Service Provider that will assist with the preparation, structuring, documentation, marketing, due diligence, negotiation and closing of corporate finance transactions that may arise in relation to the state owned airlines, as and when required at the sole discretion of the Department. For each of the different transactions, the Service Provider will be required to do the following:

6.1.1. Planning and preparation

- 6.1.1.1. Review relevant background documentation;
- 6.1.1.2. Advise on the advantages and disadvantages of possible transaction structure options;

- 6.1.1.3. Craft the investment case, value proposition and equity story for different potential investors and stakeholders;
- 6.1.1.4. Identify non-negotiable requirements and assurances that can be provided;
- 6.1.1.5. Identify all compliance and regulatory requirements and flag any potential issues;
- 6.1.1.6. Develop financial projections and prepare a valuation;
- 6.1.1.7. Identify risks and mitigating actions;
- 6.1.1.8. Prepare the required management presentations and documentation;
- 6.1.1.9. Coordinate with other advisors in the preparation of a data room;
- 6.1.1.10. Identify an appropriate process for taking the transaction to market, in compliance with the legislative and regulatory framework;
- 6.1.1.11. Develop an implementation plan; and
- 6.1.1.12. Design appropriate project management and governance structures and, if required, provide project management support.

6.1.2. Due diligence

- 6.1.2.1. Gather and validate key information;
- 6.1.2.2. Review relevant background documentation and information and analyse the proposed transaction;
- 6.1.2.3. Assess the impact of transaction on the state owned airlines;
- 6.1.2.4. Evaluate the alignment of transaction with Government's objectives;
- 6.1.2.5. Review all compliance and regulatory requirements and flag any potential issues;
- 6.1.2.6. Conduct a risk assessment of the proposed transaction;
- 6.1.2.7. Prepare financial projections and scenarios for the transaction;
- 6.1.2.8. Undertake a valuation;
- 6.1.2.9. Define desired features, terms and conditions to be negotiated in transaction; and
- 6.1.2.10. Develop and evaluate the investment case for the proposed transaction.

6.1.3. Marketing

- 6.1.3.1. Identify potential counterparts for transaction;
- 6.1.3.2. Assess the appetite of potential interested counterparts;
- 6.1.3.3. Prepare required documentation for taking the transaction to market;

- 6.1.3.4. Execute non-disclosure agreements with short-listed counterparties;
- 6.1.3.5. Send out information memorandum and process letters;
- 6.1.3.6. Receive and analyse non-binding offers;
- 6.1.3.7. Assist with finalising a list of qualified respondents.

6.1.4. Execution and close

- 6.1.4.1. Prepare documentation required for the transaction to be executed;
- 6.1.4.2. Provide data room access to qualified respondents;
- 6.1.4.3. Facilitate management presentations;
- 6.1.4.4. Facilitate question and answer and expert meetings;
- 6.1.4.5. Receive and evaluate final responses;
- 6.1.4.6. Confirmatory due diligence by preferred and alternate respondents;
- 6.1.4.7. Assist with the negotiation and execution of all agreements and other potential transaction documents;
- 6.1.4.8. Finalise regulatory filings and approvals, including competition authorities; and
- 6.1.4.9. Close out process with engagement with executives and the Shareholder.

7. DELIVERABLES

- 7.1. Depending on the scope of the tasks assigned to the service provider, the appointed service provider will be expected to provide the following deliverables:
 - 7.1.1. Weekly progress reports to assure the Department that performance is in line with expected standards in line with the service level agreement;
 - 7.1.2. Proposal for the design of appropriate project management and governance structures;
 - 7.1.3. A project plan for implementing the major transaction being considered and any necessary mitigating actions;
 - 7.1.4. A report on the advantages and disadvantages of possible transaction structure options including the value proposition and identification of non-negotiable requirements and assurances;
 - 7.1.5. Report detailing the recommended approach for the transaction;
 - 7.1.6. A due diligence report analysing the transaction, its impact on the state owned airlines, and alignment with Government's objectives; identifying all compliance and regulatory requirements and flagging any issues; providing a risk

assessment of the proposed transaction, the financial projections and scenarios and valuation; and setting out the desired features, terms and conditions to be negotiated in transaction;

- 7.1.7. An investment case for the proposed transaction setting the key selling points of the business and addressing likely investor issues, tailored for specific investors or stakeholders;
- 7.1.8. The management presentations, information memorandum, legal agreements, regulatory filings and other documentation;
- 7.1.9. A report on the universe of counterparts and their potential appetite;
- 7.1.10. A report on the list of short-listed respondents;
- 7.1.11. A report on the analysis of non-binding offers;
- 7.1.12. A report on the qualified respondents;
- 7.1.13. A report on the analysis of the final responses; and
- 7.1.14. A final close out report.

8. PROJECT MANAGEMENT

- 8.1. The Transport and Defence Unit in the DPE will take responsibility for the management of the Project.
- 8.2. The Service Provider is expected to:
 - 8.2.1. Successfully complete the Project's milestones within agreed timelines;
 - 8.2.2. Develop a project plan with clear milestones, responsibilities and timelines while also setting out assumptions made and risks related to the delivery of the Project;
 - 8.2.3. Provide weekly progress reports to assure the Department that performance is in line with expected standards in line with the service level agreement (SLA);
 - 8.2.4. Conduct quality assurance on deliverables considered final (in line with project milestones) prior to them being submitted to the Department;
 - 8.2.5. At the most have ten (10) working days to incorporate DPE's comments on any deliverable submitted;
 - 8.2.6. Be available to present the final deliverables to approving authorities and other relevant structures within five working days of communication of the request;
 - 8.2.7. Continuously seek to find ways to minimise Project costs; and
 - 8.2.8. Bear Project cost overruns that materialise as result of the Service Provider's own doing.

9. BRIEFING SESSION

- 9.1. Bidders may attend an optional briefing session as would be advertised in the State Tender Bulletin.

10. ACCESS TO RESOURCES

- 10.1. The DPE will facilitate all engagements, meetings and workshops with stakeholders and provide the service provider with reasonable support to access the following resources for successful implementation of the Project:

- 10.1.1. Key stakeholders; and

- 10.1.2. Relevant documentation and company information.

11. ISSUE, RISK AND/OR OPPORTUNITY

- 11.1. The Service Provider must identify any issues, risks and/ or opportunities associated with the Project and ensure that these are documented, communicated, prioritised and resolved within a reasonable timeframe.

12. SCOPE CONTROL

- 12.1. The scope will be defined based on a signed SLA.
- 12.2. The DPE will introduce scope control to this Project through the implementation of five key processes, namely the:
 - 12.2.1. Submission and receipt of scope change requests;
 - 12.2.2. Review and logging of scope change requests;
 - 12.2.3. Determination of the feasibility of scope change requests;
 - 12.2.4. The approval of scope change requests; and
 - 12.2.5. The implementation and closure of the scope change requests.

13. REPORTING

- 13.1. The Service Provider must provide weekly status reports that gives the overall summary of activities.
- 13.2. The Service Provider must conduct meetings to discuss the Project's progress and feedback from DPE.
- 13.3. The Service Provider must provide a final close out report on completion of the Project.

14. ACCEPTANCE PROCESS

14.1. The acceptance process will ensure deliverables produced are reviewed and accepted by the DPE. One of several approaches may be taken by the DPE to accept Project deliverables:

14.1.1. Each deliverable may be reviewed and presented individually to DPE for sign-off; and

14.1.2. Sets of deliverables may be reviewed and presented to DPE for sign-off at the same time.

15. DURATION

15.1. It is envisaged that this assessment will be undertaken over a three (3) year period. Performance will be assessed on a quarterly basis and reviewed on an annual basis.

16. CONDITIONS OF APPOINTMENT

16.1. The successful Bidder will:

16.1.1. Conclude the relevant Project Documents (including entering into a SLA with the Department prior to commencing with the services required; and

16.1.2. Be required to sign confidentiality and indemnity agreements.

16.2. The Service Provider will only be paid for acceptable work done as defined in the scope for the Project.

17. KEY EXPERTISE REQUIRED

17.1. The Department is looking for Bidders that have the following expertise:

17.1.1. Accounting;

17.1.2. Company and business valuations;

17.1.3. Mergers and acquisitions;

17.1.4. Financial due diligence;

17.1.5. Transaction and deal making;

17.1.6. Project Management

17.1.7. Corporate finance;

17.1.8. Corporate Governance;

17.1.9. Legal due diligence and contracting; and

17.1.10. Aviation sector, specifically knowledge of airline business operations and the

global airline industry and players;

17.2. The successful Bidder will need to demonstrate:

17.2.1. Relevant experience in successfully executing similar transactions;

17.2.2. Ability to access key stakeholders, particularly potential counterparts for the transactions, at the right level within those organisations;

17.2.3. Capacity to provide end-to-end transactional advisory services, potentially on several transactions simultaneously;

17.2.4. A meaningful presence in South Africa; and

17.2.5. Commitment to Broad-based Black Economic Empowerment (BBBEE) and transformation;

17.3. In addition, all the team members must possess:

17.3.1. Well-developed analytic skills;

17.3.2. High levels of communication, interpersonal skills;

17.3.3. The ability to work under pressure; and

17.3.4. Attention to detail and deadlines.

18. CONTACT DETAILS

For information on bidding and tender documents:

Name: Abel Makhafola

Supply Chain Management

Phone: 012 431 1005

Fax: 086 615 5711

Email: Abel.Makhafola@dpe.gov.za

19. CONTENT OF PROPOSALS

19.1. The address of the Bidder, together with the contact details (telephone numbers, telefax numbers and emails addresses) of the principal contact of the interested parties, must be provided.

19.2. Full details of the Bidder, including full details of its ownership, shareholding structure, B-BBEE credentials, Directors and management, and their experience and credentials must be provided.

19.3. In the case of a Consortium, any agreement evidencing the relationship between the consortium partners and the composition, structure and operation of the consortium must

be provided.

- 19.4. The technical/functionality proposal shall include the following information and documents:
 - 19.4.1. The names and recent Curriculum Vitae of all the personnel that will form the Project team;
 - 19.4.2. The proposed approach to the Project and work plan of the interested party, including the proposed Project team;
 - 19.4.3. Curriculum Vitae (CVs) of the proposed Project team to assist the Department, highlighting past relevant experience. The Project team should include an experienced team leader (normally a partner or director) who will be the lead advisor to the Department and other senior members;
 - 19.4.4. Client references from similar previous projects (where available); and
 - 19.4.5. Skills development plan for the transfer of skills to employees of the Department involved in this Project.
- 19.5. Pricing/cost, which must be submitted separately, should include:
 - 19.5.1. A breakdown of anticipated disbursement (travel expenses, accommodation and document reproduction) if applicable; and
 - 19.5.2. Budget breakdown according to the work plan (inclusive of VAT).
- 19.6. The following information relating to the Bidder should be provided (as applicable):
 - 19.6.1. A statement declaring if any, a conflict or a potential conflict of interests and, in the event of such conflict or potential conflict, an explanation as how the conflict or potential conflict will be managed;
 - 19.6.2. A statement regarding the tax status of the interested party and, if an existing South African entity, a valid original tax clearance certificate issued by the South African Revenue Services;
 - 19.6.3. Original Central Supplier Database report tax compliant status; and
 - 19.6.4. Original B-BBEE certificate with emblem of South African National Accreditation Systems ("SANAS") or copy of B-BBEE certificate signed by commissioner of oath or sworn affidavits.

20. EVALUATION OF PROPOSALS

- 20.1. The evaluation of proposals will be done in two stages. In the first stage the proposal will be evaluated on Functionality to establish a shortlist; and in the Second stage, the shortlisted Bidder's price and B-BBEE status level will be scored.
- 20.2. **First stage:** Proposals will be evaluated by an evaluation committee comprised of officials

from the Department. The evaluation committee, will make use of the following functionality criteria:

Functionality	Score according to the score value's	Weight	Total Weight Points	Maximum Points 800
Content and methodology: Proposal demonstrates a solid understanding of the requirements in line with government's expectations and a rigorous work plan to deliver all outcomes in the required level of detail. The Bidder is appropriately resourced to deliver these outcomes within the required timeframes			50	250
	Excellent	5		
	Very Good	4		
	Good	3		
	Fair	2		
	Poor	1		
	No information	0		
Qualifications: Key personnel who will be assigned to this Project must have qualifications in Corporate Finance, accounting, legal and aviation (specifically airline business management) (attach proof of qualification)			5	25
	DTech/ Doctorate	5		
	Masters	4		
	Honours	3		
	Degree	2		
	Diploma	1		
	No information	0		
Individual Experience: Key personnel who will be assigned to this Project must have experience in an appropriate combination of finance, accounting, legal, mergers and acquisitions and aviation sector (specifically airline business management and global airline industry) (attach CVs).			15	75
	≥10 years	5		
	8-9 years	4		
	6-7 years	3		
	4-5 years	2		
	1-3 years	1		
Company Experience: Company should demonstrate global reach and a network in the aviation industry. The Company must demonstrate experience of executing transactions of a similar nature, with an added advantage being given for transactions in the aviation industry.			50	250
	≥10 Projects	5		
	8-9 Projects	4		
	6-7 Projects	3		
	4-5 Projects	2		
	1-3 Projects	1		
	No information	0		
Presence in South Africa: Company should demonstrate that it has a meaningful presence in South Africa and particularly executing transactions in the South African public sector.			20	100
	≥ 10 Projects	5		
	8-9 Projects	4		
	6-7 Projects	3		
	4-5 Projects	2		
	1-3 Projects	1		
	No information	0		
Approach on transfer of knowledge/ skills: A and executable project plan for transferring skills to DPE employees			10	50
	Excellent	5		
	Very Good	4		
	Good	3		
	Fair	2		
	Poor	1		

Functionality	Score according to the score value's	Weight	Total Weight Points	Maximum Points 800
Contactable References: Documentary proof of similar projects undertaken with contactable references (Refer to criteria below for template for references)	No information	0		
	Three relevant contactable references	5	10	50
	Two relevant contactable references	3		
	One relevant contactable references	1		
	No contactable reference	0		

Value: 0 = no information provided, 1 = Poor, 2 = Fair, 3 = Good, 4 = Very Good and 5 = Excellent

Reference Description	Standard	Yes/Comments if any
Overall Performance	Would you hire the company again to develop a framework?	
Timetable	Was the original scope of the work completed within the specified timelines	
	Were there any milestones met ahead of schedule?	
Completeness and Responsiveness	Was the work done responsive to the needs of your organisation?	
	Were problems resolved quickly?	
Budget	Was the original scope of the work completed within the budget?	
Job Knowledge	Did the project team members possess the necessary competencies to carry out the work?	

20.3. A proposal will be disqualified at this stage if it fails to meet the minimum threshold of 560 points (70%) for functionality as per criteria above.

20.4. **Second stage:** A Bidder who meets the requirements in the first stage will then be evaluated in the second stage where price and B-BBEE status level contribution will be considered:

Price:	80 points
B-BBEE	20 points
Total	100 points

B-BBEE points will be allocated according to the following table only if an original and valid B-BBEE Status Level Verification Certificate or sworn affidavits by the commissioner of oaths

80/20 principle

B-BBEE status level of Contributor	Number of points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

20.5. Bid documents to be submitted:

20.5.1. One envelope with one original proposal that includes all bid documents required by the Department (Please ensure that all Bid documents are appropriately completed and signed to prevent early disqualification).

20.5.2. One or more envelopes with four copies of the technical and/or functionality proposal.

20.5.3. The Department reserves the right not to accept the lowest price, the Bidder that qualifies according to the first stage will be evaluated for price and B-BBEE and the one with the highest points will be appointed.

21. RESERVATION OF RIGHTS

Without limiting any other rights of the Department (whether otherwise reserved in the TOR or under any law) –

- 21.1. The Department reserves the right to amend, modify or terminate any of the procedures or requirements set out in this TOR at any time or from time to time without prior notice to the Bidder. The Department further reserves the right not to accept any Proposal or bid;
- 21.2. The Project described in the TOR may be cancelled at any time, at no cost and with no liability being incurred to the Department or Government, if the Department so determines in its sole and absolute discretion;
- 21.3. The Bidder agrees and undertake to hold harmless, Government, the Department and their respective directors, officers, agents, representatives from and against any and all such claims, actions and legal proceedings and any and all liabilities, damages, loss, costs and expenses (including all legal costs and expenses) of whatever nature in connection with or arising from the Project and/or the process outlined in this TOR;
- 21.4. No Proposal will be deemed accepted and no agreement will be deemed to be reached with any Bidder or successful party if all the parties have not executed the Project Documents thereto. Accordingly, unless and until such time as the Project Documents have been executed as aforesaid, no Bidder or successful party will have any rights, claims or entitlement with respect to the Project, as a result of its participation in the process outlined in the TOR;
- 21.5. The Department, Government, and their respective directors, officers, agents, representatives expressly disclaim any and all liability for representations, warranties or statements contained in any written material furnished or information verbally transmitted to or received by a Bidder. The Department will make only those particular representations and warranties set forth in the final Project Documents when, and if, such Project Documents are ultimately agreed upon and executed, and subject to such limitations and restrictions as may be contained therein;
- 21.6. It is the Department's prerogative to award the Project to one individual/successful party as a single Project. However, the Department reserves the right in its sole and absolute discretion to award the mandate in parts to different individuals/successful parties or any entity the Department deems suitable.

22. CLOSING DATE

- 22.1. The submission/delivery of proposals will be published on the Bid documents with prior notice for the closing date. Any proposal arriving after this time will not be considered.

Proposals should be submitted into the Departmental Bidding box at:

Department of Public Enterprises

Ground Floor Security

80 Hamilton Street

Arcadia

Pretoria

- 22.2. It is the responsibility of the Bidder to ensure that its proposal and any correspondence in response to the TOR is received:

22.2.1. By the Department or such other person/appointed for such purpose, and

22.2.2. On or before the closing time and date.

23. REFERENCES

An interested party must also furnish the Department with recent, service – comparable references, including contact details and an overview of the service provided. Personal interviews may be conducted with references where required.

24. VALUE-ADDED SERVICES

Should Bidder wish to provide the Department with additional services not outlined herein, but which would add value to the Project, it is welcome to do however, these will be at no additional cost. A Bidder should first meet the minimum service requirements/scope of work outlined herein.

SBD 4

DECLARATION OF INTEREST

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

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

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

2.1 Full Name of bidder or his or her representative:
.....

2.2 Identity Number:
.....

2.3 Position occupied in the Company (director, trustee, shareholder?):
.....

2.4 Company Registration Number:
.....

2.5 Tax Reference Number:
.....

2.6 VAT Registration Number:
.....

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

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 or the national Council of provinces; or
- (e) Parliament.

²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

- 2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**
- 2.7.1 If so, furnish the following particulars:
- Name of person / director / trustee / shareholder/ member:
- Name of state institution at which you or the person connected to the bidder is employed :
- Position occupied in the state institution:
- Any other particulars:

- 2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**
- 2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**
- (Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.
- 2.7.2.2 If no, furnish reasons for non-submission of such proof:

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

- 2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**
- 2.9.1 If so, furnish particulars.

- 2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? **YES/NO**

2.10.1 If so, furnish particulars.

.....

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract?

YES/NO

2.11.1 If so, furnish particulars:

.....

3 Full details of directors / trustees / members / shareholders.

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

4 DECLARATION

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

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

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
 Signature

.....
 Date

.....
 Position

.....
 Name of bidder

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

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

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

1. GENERAL CONDITIONS

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

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

1.2

- a) The value of this bid is estimated to **exceed/not exceed** R50 000 000 (all applicable taxes included) and therefore the preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE
B-BBEE STATUS LEVEL OF CONTRIBUTOR
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

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

5. BID DECLARATION

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

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: _____ = _____ (maximum of 10 or 20 points)
 (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.)

7. SUB-CONTRACTING

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

(Tick applicable box)

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

7.1.1 If yes, indicate:

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

(Tick applicable box)

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

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

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

Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT _____ registration
number:.....

8.3 Company _____ registration
number:.....

8.4 TYPE OF COMPANY/ FIRM

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

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

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

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a

fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

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

<p>WITNESSES</p> <p>1.</p> <p>2.</p>
--

<p>..... SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p> <p>.....</p>

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's database 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 National Treasury after the <i>audi alteram partem</i> rule was applied).	<input type="checkbox"/>	<input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	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)? To access this Register enter the National Treasury's website, www.treasury.gov.za, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.	<input type="checkbox"/>	<input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	<input type="checkbox"/>	<input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	<input type="checkbox"/>	<input type="checkbox"/>
4.4.1	If so, furnish particulars:		

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME).....
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION
FORM IS TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,
ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION
PROVE TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

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 No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.

- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.

- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid/price quotation:

(Bid Number/price quotation and Description)

in response to the invitation for the bid/price quotation made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid/price quotation, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid/price quotation in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid/price quotation invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid/price quotation 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 service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding/quote with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

THE NATIONAL TREASURY

Republic of South Africa



**GOVERNMENT PROCUREMENT:
GENERAL CONDITIONS OF CONTRACT**

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

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2. Application
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5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
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31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

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

obligations of the supplier covered under the contract.

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

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

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

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

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

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

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

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