



## public enterprises

Department:  
Public Enterprises  
REPUBLIC OF SOUTH AFRICA

### REQUEST FOR PROPOSALS

<b>RFP Ref. No:</b>	<b>DPE 04/2021/2022</b>
<b>Description</b>	<b>REQUEST FOR PROPOSAL FOR THE APPOINTMENT OF A SERVICE PROVIDER TO ASSIST IN DETERMINING THE OPTIMAL OPERATING MODEL FOR THE STATE'S DIAMOND ASSETS</b>
<b>Publication date</b>	<b>15 SEPTEMBER 2021</b>
<b>RFP Closing Details</b>	<b>Date: 7 OCTOBER 2021 Time: 11:00 (South African Time) Place: Department of Public Enterprise Street: 80 Hamilton Street Arcadia, Pretoria</b>
<b>Deadline for enquiries</b>	<b>Date: 30 SEPTEMBER 2021</b>
<b>Public Opening of RFP Responses</b>	<b>Date: 7 OCTOBER 2021 Time: 11:00 (South African Time) Place: Department of Public Enterprise Street: 80 Hamilton Street Arcadia, Pretoria</b>
<b>RFP Validity Period</b>	<b>90 Days from the Closing Date</b>

**PROSPECTIVE BIDDERS MUST REGISTER ON NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE PRIOR TO SUBMITTING BIDS.**

**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	
GCC	GOVERNMENT PROCURMENT: GENERAL CONDITIONS OF CONTRACT	
REGISTRATION ON CENTRAL SUPPLIER DATABASE	<p><b><u>CENTRAL SUPPLIER DATABASE</u></b>                      Effective from 1<sup>ST</sup> September 2015 all prospective suppliers have to self-register once on the central supplier database website <a href="https://secure.csd.gov.za">https://secure.csd.gov.za</a>. 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.</p> <p><b><u>NB A copy of your company registration report must be submitted with your bid/price quotation. Failure thereof may disqualify your proposal.</u></b></p>	
<p><b>NB: ONLY SUBMIT ONE COPY OF THE ORIGINAL BID AS RECEIVED, 1 COPY EACH OF THE TECHNICAL/FUNCTIONALITY AND FINANCIAL PROPOSAL</b></p>		

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>					
BID NUMBER:	BID DPE 4/2021-2022	CLOSING DATE:	7 OCTOBER 2021	CLOSING TIME:	11:00
DESCRIPTION	THE DEPARTMENT OF PUBLIC ENTERPRISES INVITES SERVICES PROVIDERS TO SUBMIT A PROPOSAL FOR THE APPOINTMENT OF A SERVICE PROVIDER TO ASSIST IN DETERMINING THE OPTIMAL OPERATING MODEL FOR THE STATE'S DIAMOND ASSETS				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
DEPARTMENT OF PUBLIC ENTERPRISES, GROUND FLOOR SECURITY					
80 HAMILTON STREET, ARCADIA, 0083					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
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	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?			<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**

<b>1. BID SUBMISSION:</b>	
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).
<b>2. TAX COMPLIANCE REQUIREMENTS</b>	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6	WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7	NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER: .....

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

DATE: .....

**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER:	BID NO.: DPE 4/2021-2022
CLOSING TIME 11:00	CLOSING DATE: 7 October 2021

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

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED
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The Department of Public Enterprises invites service providers to submit a proposal for the appointment of a service provider to assist in determining the optimal operating model for the state's diamond assets

- The accompanying information must be used for the formulation of proposals.
- Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.

R.....  
(TOTAL 1 & 2)

- PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

- PERSON AND POSITION

HOURLY RATE                      DAILY RATE

.....	R.....	.....
.....	R.....	.....
.....	R.....	.....

- PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

.....	R.....	..... days
.....	R.....	..... days
.....	R.....	..... days

- Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
TOTAL (1): R.....			

All applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

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-

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**

**ASSIST IN DETERMINING THE OPTIMAL OPERATING MODEL FOR THE STATE’S  
DIAMOND ASSETS**

**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 18 of the TOR or such other person/s appointed by the Department for such purpose.

## **2 GLOSSARY OF TERMS**

2.1 In the TOR, unless the context otherwise indicates -

- 2.1.1 "B-BBEE" means Broad Based Black Economic Empowerment;
- 2.1.2 "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;
- 2.1.3 "Bidder" means a party that submits a proposal in response to the TOR;
- 2.1.4 "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;
- 2.1.5 "Department" means the Department of Public Enterprises;
- 2.1.6 "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;
- 2.1.7 "Government" means the Government of the Republic of South Africa represented by the Minister for purposes of this Project;
- 2.1.8 "Minister" means the Minister of Public Enterprises;
- 2.1.9 "Person" means a natural or juristic person;
- 2.1.10 "Proposal" means the document(s) delivered, by a Bidder in accordance with the TOR, expressing interest in the Project;
- 2.1.11 "Project Documents" means a mandate and all other agreements necessary to give effect to the Project;
- 2.1.12 "Project" means the provision of advisory services with respect to assessment of diamond mineral assets and implementation of approved operating model;
- 2.1.13 "Service Provider" means a party appointed by the Department to execute the Project;
- 2.1.14 "Shareholding Minister" means the Minister of Public Enterprises;
- 2.1.15 "SLA" means Service Level Agreement between the Department and Service Provider;
- 2.1.16 "SOC" means State-Owned Company as defined in the Companies Act No 71 of 2008;
- 2.1.17 "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 (SA Express), South African Airways (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 (SOC), their customers and suppliers so as to unlock growth, drive industrialisation, create jobs and develop skills".
- 4.3 The department oversees the SOCs considered as essential in driving economic growth. The department therefore provides direction to the SOCs 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 Alexkor SOC Limited (Alexkor) is a mining company established in 1992 in terms of Alexkor Limited Act, No 116 of 1992 and amended by Alexkor Amended Act, No 29 of 2001. The core business of Alexkor is mining diamonds on land, along rivers, on beaches and in the sea along the north-west coast of South Africa. The diamond operations are located in the town of Alexander Bay, within the Richtersveld Local municipality in the Northern Cape Province. The South African Government is the sole shareholder of Alexkor.
- 4.5 The Minister has the legislative mandate to oversee both Alexkor as the Executive Authority or Shareholding Minister on behalf of the State.
- 4.6 In 1998, the Richtersveld Community (RC) filed a claim against the Government for dispossession of land under the guidance of the Restitution of Land Rights Acts 22 of 1994. A settlement agreement was reached in April 2007 wherein commitments were set out including the transfer of land and mineral assets to the RC which were under the ownership and control of Alexkor.
- 4.7 The settlement agreement reached between, Alexkor, Government and the RC community directed that Alexkor transfers the land mining rights to the RC. Alexkor will remain the holder of the marine mining rights and the RC will remain the holder of its land mining RC. However, the two entities were to respectively put their mineral rights under the full control of the joint Board of the Alexkor Richtersveld Mining Company Pooling and Sharing Joint Venture (PSJV) for the purposes of mining both the marine diamond resources and the land diamond resources.
- 4.8 The PSJV is an unincorporated joint venture wherein Alexkor is the 51% shareholder on behalf of Government and the Richtersveld Community (RC) is the 49% shareholder Alexkor does not have any other mineral assets outside the PSJV.
- 4.9 For the past six years, the diamond operations at the PSJV deteriorated significantly due to a combination of factors including low carat prices, irregular diamond production and poor management amongst others. Consequently, the entity has reported significant losses over the

past three years.

- 4.10 The poor financial performance resulted in the inability to retain adequate funds to undertake systematic mineral exploration programme. Exploration is inherent in any mineral development project to identify areas with economic potential. The lack of this activity implies that the PSJV is operating at suboptimal level and that there is high chance of value being destroyed or left behind.
- 4.11 The department understands that exploration and development of diamond mining projects are capital intensive and high risk in nature. Against competing priorities and already limited fiscal resources, there is limited opportunity for government to support the exploration programme of the PSJV as the 51% shareholder nor is the RMC in position to extend such funds.
- 4.12 The PSJV diamonds are considered gem quality and globally sought after. Historical reports have indicated the potential for diamond resources to extend beyond 10 years in the land-based diamond concessions. Due to the complexity of the marine based diamond deposits, the potential of the diamond deposit is yet to be proven. However, over the years the concession has yielded some of the largest and highest gem quality stones.
- 4.13 Furthermore, the department is the custodian of 20% interest in the West Coast Resources (WCR) diamond operations operated by Trans Hex Group. WCR is currently under business rescue process. However, there are relatively good prospects for the diamond operation to be returned to profitability soon.
- 4.14 In view of the above, the department intends to identify an appropriate model that will ensure that the diamond mineral assets under its portfolio are streamlined, properly financed and maximum value derived from ownership of such assets. This exercise could have operational, legal, governance and financial implications for both government and the SOC. Therefore, the department would like to ensure that the reorganisation of the diamond mineral assets is done in a manner where national interest is protected and the social welfare of the surrounding communities where the operations are located are carefully considered.

## **5 PROJECT OBJECTIVES**

- 5.1 The objectives for this project are:
  - 5.1.1 To develop a well-structured report which shall inform the department of the appropriate operating model for State's diamond mineral assets under its portfolio; and
  - 5.1.2 To ensure that all aspects in relation to the possible transaction involving private parties are covered and implications thereof detailed.

## **6 SCOPE**

- 6.1 The department requires a Service Provider to assist in developing an appropriate operating model to the State's diamond mineral assets under its oversight scope. Subject to approval of the preferred operating model and recommendations, provide services including the preparation, structuring, documentation, marketing, due diligence, negotiation and closing of a possible

transaction that may arise from the Project, as and when required at the sole discretion of the department.

**6.2 The scope of work includes provision of range of service including :**

**6.2.1 Undertaking of due diligence exercise**

- 6.2.1.1 Gather and determine the adequacy of available data and information in relation to the requirements of the Project.;
- 6.2.1.2 Review relevant background documentation and information;
- 6.2.1.3 Propose and evaluate alternative operating models with a view of recommending a suitable operating model;
- 6.2.1.4 Advise on the advantages and disadvantages of all proposed operating models including but not limited to operational , financial and socio-economic aspects;
- 6.2.1.5 Examine all applicable legal, regulatory, and institutional frameworks and identify any potential issues;
- 6.2.1.6 Assess the impact of the preferred model on the state-owned mining company;
- 6.2.1.7 Evaluate the alignment of the preferred model with Government's objectives;
- 6.2.1.8 Prepare financial projections and scenarios for the model;
- 6.2.1.9 Undertake economic valuation;
- 6.2.1.10 Develop and evaluate the investment case for the proposed model.
- 6.2.1.11 Develop a comprehensive risk matrix for the project and mitigating factors.

**6.2.2 Development of market sounding approach and identification of credible private sector participants**

If the department decides to pursue a solution that requires private sector participation, the Service Provider will be required to provide necessary technical, legal and financial advisory support for the procurement of a private party. This must be in compliance with all elements of Treasury Regulation and the PFMA. The Service Provider will assist the DPE to:

- 6.2.2.1 Define desired features, terms and conditions to be negotiated in transaction;
- 6.2.2.2 Develop and evaluate the investment case for the proposed transaction.
- 6.2.2.3 Develop a detailed workplan for taking the transaction to market, in compliance with the legislative and regulatory framework;
- 6.2.2.4 Assess the appetite of potential interested parties;
- 6.2.2.5 Prepare required documentation for taking the transaction to market;
- 6.2.2.6 Execute non-disclosure agreements with short-listed parties;
- 6.2.2.7 Coordinate with the department in the preparation of a data room;
- 6.2.2.8 Send out information memorandum and process letters; and
- 6.2.2.9 Receive and analyse non-binding offers.

**6.2.3 Facilitation and execution of the potential transaction**

- 6.2.3.1 Prepare documentation required for the transaction to be executed;
- 6.2.3.2 Provide data room access to qualified bidders;
- 6.2.3.3 Facilitate management presentations;
- 6.2.3.4 Facilitate question and answer and expert meetings;
- 6.2.3.5 Receive and evaluate final bids;
- 6.2.3.6 Confirmatory due diligence by preferred and alternate bidders;
- 6.2.3.7 Assist with the negotiation and execution of all agreements and other potential transaction documents;
- 6.2.3.8 Finalise regulatory filings and approvals, including competition authorities; and
- 6.2.3.9 Close out process including engagement with executives and the Shareholder.

6.2.4 The scope of services specified above are not exhaustive. The service provider shall undertake all other transaction tasks typically required to ensure closing of similar transaction.

## **7 DELIVERABLES**

7.1 The appointed Service Provider will be expected to provide the following deliverables:

- 7.1.1 A detailed work plan and time schedule for the tasks to be undertaken for the study.
- 7.1.2 Progress reports as determined in the work plan, to assure the department that performance is in line with expected standards in line with the service level agreement;
- 7.1.3 A comprehensive due diligence report providing the assessment of diamond assets and recommendation of preferred operating model, the impact on the state-owned mining company and alignment with Government's objectives; identifying all compliance and regulatory requirements and flagging any issues; providing a risk assessment of the proposed model, the financial projections, scenarios and valuation;
- 7.1.4 A report on the advantages and disadvantages of all proposed options.
- 7.1.5 A robust and comprehensive report recommending the most optimal model.
- 7.1.6 Report detailing the proposed market approach for the transaction;
- 7.1.7 A project plan for implementing the transaction being considered and any necessary mitigating actions;
- 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 bidders;
- 7.1.11 A report on the analysis of non-binding offers;
- 7.1.12 A report on the qualified bidders;
- 7.1.13 A report on the analysis of the final bids; and
- 7.1.14 A final close out report.

## **8 PROJECT MANAGEMENT**

8.1 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;
- 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 There will be no formal briefing session, however, clarity questions may be communicated through e-mail provided below par 18 as the tender would be advertised in the e-tender portal.

**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; and
- 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 twelve (12) months period Performance will be assessed on a fortnight basis and reviewed on a monthly basis.

### **16 CONDITIONS OF APPOINTMENT**

- 16.1 The successful Bidder will:
  - 16.1.1 Conclude the relevant Project Documents (including entering into a service level agreement (SLA) with the Department prior to commencing with the services required;
  - 16.1.2 Be required to sign confidentiality and indemnity agreements; and
  - 16.1.3 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 Technical due diligence of mining assets, particularly in the diamond sector;
  - 17.1.2 Advisory experience in the mining sector;
  - 17.1.3 Project Management;
  - 17.1.4 Company and business valuations;
  - 17.1.5 Mergers and acquisitions;
  - 17.1.6 Financial and legal due diligence;
  - 17.1.7 Transaction and deal making;
  - 17.1.8 Corporate finance;
  - 17.1.9 Corporate Governance;
  - 17.1.10 Draughting of contract agreements

- 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.

## **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](mailto: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. CVs and qualifications of key personnel must be submitted together with the proposal;
  - 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); The references in the form of a letter must contain the following information:
    - 19.4.4.1 Name of the Service Provider (SP), contact details, address, and details of the project leader;
    - 19.4.4.2 Title of the project that was rendered;
    - 19.4.4.3 Value of the contract;
    - 19.4.4.4 Duration of the contract;

19.4.4.5 Reference letter/s should not be more than five years old

19.5 Skills development plan for the transfer of skills to employees of the Department involved in this project.

19.6 Pricing/cost, which must be submitted separately, should include:

19.6.1 A breakdown of anticipated disbursement (travel expenses, accommodation, and document reproduction) if applicable; and

19.6.2 Budget breakdown according to the work plan (inclusive of VAT).

19.7 The following information relating to the Bidder should be provided (as applicable):

19.7.1 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.

19.7.2 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;

19.7.3 Original Central Supplier Database report tax compliant status; and

19.7.4 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 four stages as follows:

20.1.1 First stage: The proposal will be evaluated on Administrative Compliance.

20.1.2 Second stage: The proposals will be pre-screened to establish a short list. Any bidder who does not meet this requirement will be disqualified.

20.1.3 Third stage: Technical Evaluation- Proposals will be evaluated by an evaluation committee comprised of officials from the Department.

20.1.4 Fourth stage: 80/20 preference points system for Price and B-BBEE as per the PPPFA 2017.

20.2 The technical evaluation of bidders will be carried out as follows:

20.2.1 Bidders will be evaluated in terms of the prevailing supply chain policy applicable to DPE. A minimum threshold of 350 points or 70% on technical capability (functionality) will be the cut off to qualify for further evaluation.

20.3 Those who qualify will be assessed using the 80/20 preference points system for Price and B-BBEE as per the PPPFA 2017.

**20.4 First stage: Administrative compliance**

NO.	DESCRIPTION	YES	NO
1.	Completion of all SBD Forms (Declaration Forms)		
2.	Proof that tax matters with SARS are in order (SARS Pin Number/ Tax Clearance Certificate)		
3.	Proof of company registration documents (e.g. Pty; Trust; CC etc.)		
4.	Valid B-BBEE Level of contribution or Sworn affidavit Certificate (Failure to attach certificate will lead to non- allocation of points)		
5.	General Conditions of Contract (GCC)		
6.	Registration with CSD (Central Suppliers Database)		
7.	Submission of a tender document in the form of an original printed hard copy.		

## 20.5 Second Stage-Mandatory Requirements

20.5.1 Any bidder who does not meet this requirement will be disqualified and will not be evaluated further to technical evaluation.

NO.	DESCRIPTION	YES	NO
1.	Formal written proposal		
2.	Bidder(s) must provide a valid Certificate of Good Standing (not older than twelve (12) months).		
3.	Bidders must have a project leader with minimum qualification of post graduate degree (Masters preferred) in Law/Engineering/Business Administration/ Finance or Equivalent and must have led in similar projects (mergers and acquisition) of at least R1 billion with a traceable reference (written confirmation is necessary).		
4	Submission of appropriate registration with Legal Practice Council in respect of each Attorney. Attach copies of certificate(s) of Attorney(s).		
5	Submission appropriate registration with Engineering Council of South Africa in respect of the principal engineer/s. Attached copies of certificate(s) of Engineers.		

## 20.6 Third Stage: Technical Evaluation

20.6.1 Bidders will be evaluated in terms of the prevailing supply chain policy applicable to DPE. A minimum threshold of 350 points/ 70% on technical capability (functionality) will be the cut off points to qualify for further *evaluation*.

Functionality	Score according to the score values	Weight	Total Weight Points	Maximum Points 500
<b>1. Adequacy of the following:</b> a. Comprehension & Interpretation of TORs, Methodology approach b. Proposed work plan c. Presentation of Proposal in an orderly and logical manner with table of content and separation of sections, etc			<b>30</b>	<b>150</b>
	Excellent (meets requirements in all aspects)	5		
	Good (meets requirement in most aspects)	4		
	Satisfactory (meets requirements in certain material aspect)	3		
	Below expectation (fails to meet requirements)	2		
	Poor (significantly fails to meet requirements)	1		
	No information	0		
<b>2. Professional Qualifications of Lead :</b> Project leader/lead consultant is required to have a minimum qualification of post graduate degree (Masters preferred) in Law/Engineering/Business Administration/ Finance or Equivalent.			<b>30</b>	<b>150</b>
	Master's degree (NQF 9)	5		
	Honours Degree (NQF8)	4		
	Bachelors Degree (NQF7)	3		
	National Diploma (NQF6)	2		
	Higher Certificate (NQF5)	1		
<b>3. Personnel Experience:</b> Project leader and other key staff, who will be assigned to this project must have combined experience in finance, legal, mergers and acquisition and mining sector. Bidders must attach concise CVs/ including membership to Professional bodies			<b>20</b>	<b>100</b>
	≥ 7 years'	5		
	5-6 years'	4		
	4-5 years'	3		
	3-4 years'	2		
	2-3 years'	1		
	< 2 years	0		
<b>4. Company Experience:</b> Company should demonstrate global reach and network in executing mergers and acquisition transactions by providing contactable references of projects undertaken. Written testimonials for each project as per criteria in paragraph 20.6.2 below (Refer to criteria below for explanation for reference assessments) must also be provided.			<b>20</b>	<b>100</b>
	≥ 10 projects	5		
	8 projects	4		
	7 projects	3		
	6 projects	2		
	5 projects	1		
	No information	0		

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

20.6.2 References should be in a form of letter/s containing the following information:

- 20.6.2.1 Name of the Mergers and acquisition law firm, contact details, address, and details of the project leader
- 20.6.2.2 Title of the project that was rendered
- 20.6.2.3 Value of the contract
- 20.6.2.4 Duration of the contract
- 20.6.2.5 Reference letter/s should not be more than five years old.

20.7 A proposal will be disqualified at this stage if it fails to meet the minimum threshold of 350 points (70%) for technical evaluation as per criteria above.

20.8 A bidder who meet the minimum threshold points of 350 or 70% in the third stage will then be evaluated in the fourth stage where price and B-BBEE status level contribution will be considered:

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

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

20.8.2 80/20 principle

B-BBEE status level of Contributor	Number of points
10	20
9	18
6	14
5	12
4	8
3	6
2	4
1	2
No information	0

20.9 Bid documents to be submitted:

- 20.9.1 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 that may lead to early disqualification).
- 20.9.2 One envelope with one original copy of the technical and/or functionality proposal.
- 20.9.3 The Department reserves the right not to accept the lowest price, the bidder that qualifies according to the third stage will be evaluated for price and B-BBEE and the one with the highest points will be appointed.

## 21 RESERVATION OF RIGHTS

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

- 21.1.1 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;
- 21.1.2 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;
- 21.1.3 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;
- 21.1.4 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;
- 21.1.5 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;
- 21.1.6 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:

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

22.4 On or before the closing time and date.

## **23 REFERENCES**

23.1 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**

24.1 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.

**DECLARATION OF INTEREST**

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of 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<sup>2</sup>):  
.....

2.4 Company Registration Number:  
.....

2.5 Tax Reference Number:  
.....

2.6 VAT Registration Number:  
.....

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

**\*\*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.

**\*\*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 Number	State Number / Number	Employee / Persal

**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 ...80/20..... 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
<b>PRICE</b>	
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

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

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

## 2. DEFINITIONS

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

## 3. POINTS AWARDED FOR PRICE

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

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

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

Where

- $P_s$  = Points scored for price of bid under consideration
- $P_t$  = Price of bid under consideration
- $P_{\min}$  = Price of lowest acceptable bid

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

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

B-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:

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

(Tick applicable box)

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

- 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 least 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		
<b>OR</b>		
Any EME		
Any QSE		

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

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

8.2 VAT \_\_\_\_\_ registration  
number:.....

8.3 Company \_\_\_\_\_ registration  
number:.....

**8.4 TYPE OF COMPANY/ FIRM**

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

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

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

**8.6 COMPANY CLASSIFICATION**

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

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

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

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

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

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

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

<p>.....</p> <p><b>SIGNATURE(S) OF BIDDERS(S)</b></p> <p><b>DATE:</b> .....</p> <p><b>ADDRESS</b> .....</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).	Yes <input type="checkbox"/>	No <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, <a href="http://www.treasury.gov.za">www.treasury.gov.za</a> , 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.	Yes <input type="checkbox"/>	No <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?	Yes <input type="checkbox"/>	No <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?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		



**CERTIFICATION**

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

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

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> invited.
  
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
  
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
  
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
  
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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(Bid Number/price quotation and Description)

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

**Department of Public Enterprises**

(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

**SBD 9**

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 consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding/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.

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

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

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

Js914w 2

## **Annexure G: Government Procurement: General Conditions of Contract – July 2011**

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### **NOTES**

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government Bids, contracts and orders; and
- (ii) To ensure that clients be familiar with 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 GCC 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 GCC. Whenever there is a conflict, the provisions in the SCC shall prevail.

### **TABLE OF CLAUSES**

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
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## **General conditions of contract**

### **1 Definitions**

The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of Bids.
- 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of

components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

- 1.7 "Day" means calendar day.
- 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the 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 organisation purchasing the goods.
- 1.22 "Republic" means the RSA.
- 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, SCC are also laid down to cover specific supplies, services or works.
- 2.3 Where such SCC are in conflict with these general conditions, the special conditions shall apply.

## **3 General**

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

## **4 Standards**

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

## **3 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:
  - 7.3.1 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

7.3.2 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 SIU or an organisation acting on behalf of the SIU.

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:

13.1.1 performance or supervision of on-site assembly and/or commissioning of the supplied goods;

13.1.2 furnishing of tools required for assembly and/or maintenance of the supplied goods;

- 13.1.3 furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - 13.1.4 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
  - 13.1.5 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:

14.1.1 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

14.1.2 in the event of termination of production of the spare parts:

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

14.1.2.2 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 fulfilment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in rand unless otherwise stipulated in SCC.

## **17 Prices**

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

## **18 Contract amendments**

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

## **19 Assignment**

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

## **20 Subcontracts**

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

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

- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 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.
- 21.4 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.
- 21.5 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not 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:
- 23.1.1 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;
  - 23.1.2 if the Supplier fails to perform any other obligation(s) under the contract;  
or
  - 23.1.3 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:

23.6.1 the name and address of the supplier and / or person restricted by the purchaser;

23.6.2 the date of commencement of the restriction

23.6.3 the period of restriction; and

23.6.4 the reasons for the restriction.

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

23.8 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,

27.5.1 the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

27.5.2 the purchaser shall pay the supplier any monies due the supplier.

## 28 **Limitation of liability**

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

28.1.1 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

28.1.2 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 SARSs.

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

- 33.1 The NIP Programme administered by the DTI 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.

**The above General Conditions of Contract (GCC) are accepted by:**

<b>Name:</b>	
<b>Designation:</b>	
<b>Bidder:</b>	
<b>Signature:</b>	
<b>Date:</b>	