



forestry, fisheries
& the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

INVITATION TO BID

BID REFERENCE NUMBER: MLRF176/21

APPOINTMENT OF A SERVICE PROVIDER AS AN INDEPENDENT ENVIRONMENTAL CONTROL OFFICER (“ECO”) BY THE MLRF IN COMPLIANCE WITH THE STIPULATIONS IN THE ENVIRONMENTAL AUTHORISATION (“EA”) AND THE ENVIRONMENTAL MANAGEMENT PROGRAMME (“EMPr”) FOR THE SEA-BASED AQUACULTURE DEVELOPMENT ZONE (“ADZ”) LOCATED WITHIN SALDANHA BAY IN THE WESTERN CAPE, FOR A PERIOD OF THREE (3) YEARS.

Contact person:

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And

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NATIONAL TREASURY CENTRAL SUPPLIER DATABASE (CSD) REGISTRATION INFORMATION

Company name	Supplier registration number	Unique reference number	
			Main contractor
			Sub-contracted/ joint venture comp 1
			Sub-contracted/ joint venture comp 2

CLOSING DATE OF THE BID: 13 AUGUST 2020 AT 11H00

Due to the high incidents of COVID19, a MS Teams non-compulsory briefing session will be held on 03 August 2021 at 11H00 and bidders are required to register for attendance to - vdamonse@environment.gov.za



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REPUBLIC OF SOUTH AFRICA

THE MARINE LIVING RESOURCES FUND (MLRF), IS A SCHEDULE 3A PUBLIC ENTITY ESTABLISHED IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999 (ACT NO 1 OF 1999) (IN ITS COMMITMENT TO THE PRINCIPLES ENSHRINED IN THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996) ADHERES TO THE PROVISIONS OF THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT, 2003 (ACT NO. 53 OF 2003) (B-BBEE), THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 (ACT NO. 5 OF 2000) ("PPPF") AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

TERMS OF REFERENCE

TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER AS AN INDEPENDENT ENVIRONMENTAL CONTROL OFFICER ("ECO") BY THE MLRF IN COMPLIANCE WITH THE STIPULATIONS IN THE ENVIRONMENTAL AUTHORISATION ("EA") AND THE ENVIRONMENTAL MANAGEMENT PROGRAMME ("EMPr") FOR THE SEA-BASED AQUACULTURE DEVELOPMENT ZONE ("ADZ") LOCATED WITHIN SALDANHA BAY IN THE WESTERN CAPE, FOR A PERIOD OF THREE (3) YEARS.

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1. PURPOSE

The Marine Living Resources Fund (MLRF), as the holder of the Environmental Authorisation (EA) for the Saldanha Bay Aquaculture Development Zone (ADZ) has the obligation to appoint a suitably qualified and experienced service provider as an independent Environmental Control Officer (ECO) for the sea-based ADZ's construction and operational phases of the development located within Saldanha Bay Municipality in the Western Cape, in compliance with the stipulations outlined in the EA and the Environmental Management Programme (EMPr), for a period of three (3) years.

2. INTRODUCTION AND BACKGROUND

- 2.1. An ADZ is an area that has been earmarked specifically for aquaculture activities with the purpose of encouraging investor and consumer confidence; creating incentives for industry development, to provide marine aquaculture services; manage the risks associated with aquaculture; as well as to provide skills development and employment for coastal communities. The development of ADZs supports the Policy for the Development of a Sustainable Marine Aquaculture sector in South Africa (2007) aimed at creating an enabling environment that will promote growth and sustainability of the marine aquaculture sector in South Africa, as well as to enhance the industry's contribution to economic growth.
- 2.2. Saldanha Bay is the primary area for bivalve production in South Africa, with the majority of oyster and mussel production to date originating from the bay. As a result of improved opportunities for local mussel import substitution, the opening up of export markets for oysters, and improved access to water and land space through the Oceans Economy Operation Phakisa initiative, there has been a renewed interest in expanding and fully utilizing the bay for further oyster and mussel production, as well as exploring potential for finfish production in the outer more exposed parts of the bay.
- 2.3. To manage the bay holistically and create an enabling environment, the MLRF undertook an Environmental Impact Assessment (EIA) for the establishment of an ADZ in Saldanha Bay in 2016/2017 and the EA was granted on the 8th January 2018. Appeals against the authorisation were lodged to the "then Minister of Environmental Affairs" and the authorisation was upheld as per the appeal decision dated 7th June 2018.
- 2.4. One of the key conditions of the EA and EMPr was the need for the holder of the authorisation to appoint suitably qualified and experienced independent Environmental Control Officer (ECO) that will have the responsibility to ensure that the mitigation / rehabilitation measures and compliance recommendations are implemented and ensure compliance with the conditions contained in the EMPr.

3. OBJECTIVES OF THE APPOINTMENT

To ensure that the mitigation/rehabilitation measures and recommendations referred to in the EA are implemented in accordance with the provisions of the ADZ EMPr and that conditions stated therein are fully adhered to.

4. SCOPE AND EXTENT OF WORK

- 4.1 The appointed service provider as an independent ECO will be expected to perform the following duties:
 - 4.1.1 Liaise between the MLRF, operator appointed ECO's and Designated Environmental Officers (DEO), relevant authorities, the aquaculture operators and other lead stakeholders on all environmental concerns.
 - 4.1.2 Oversee that the environmental monitoring is in accordance with the EA, EMPr and Sampling Plan.
 - 4.1.3 Monitor monthly performance of the contractor / farmers (and sub-contractors) and ensure compliance with the ADZ EMPr and the site specific EMPrs and associated Method Statements.

- 4.1.4 Validate the monthly farm monitoring reports submitted by the operators to the ECO through monthly site inspections.
- 4.1.5 Verify all environmental incident (spills, impacts, legal transgressions, etc.) reports submitted, as well as corrective and preventive actions taken in this regard and maintain an incident register.
- 4.1.6 Maintain the public comments register in which all complaints/comments are recorded, as well as action/s taken.
- 4.1.7 Issue compliance directives to the operators for corrective action/s required.
- 4.1.8 Facilitate and coordinate the resolution of conflicts within the scope of the management of the ADZ.
- 4.1.9 Communicate all modifications made to the ADZ EMPr to the relevant stakeholders.
- 4.1.10 Conduct monthly site inspections of all operators located in the ADZ on a rotational basis to ensure compliance with the EA and ADZ EMPr and validate production data submitted by operators on a monthly basis (a site inspection schedule to be developed which would require travel and accommodation costs to Saldanha Bay).
- 4.1.11 Ensure that monthly ECO inspections and auditing considers environmental aspects of the operations relevant to the minimisation of environmental impacts and achievement of environmental goals as stipulated in the EMPr.
- 4.1.12 Review environmental recommendations contained in the environmental monitoring reports undertaken by suitably qualified specialists and ensure updates to EMPr or Method Statement to address such.
- 4.1.13 Review and update the ADZ Emergency Response Protocol on an annual basis and ensure (as a minimum) that the contact details of all persons and organisations on the contact list are current.
- 4.1.14 Liaise with the Competent Authority (DFFE) to ensure that all operational monitoring provides sufficient, relevant information for the Competent Authority (DFFE) to be assured that aquaculture activities are suitably managed to minimise impact on the environment. This may require revision of the monthly ECO site inspection format.
- 4.1.15 Draft monthly ADZ reports, starting from date of appointment, to registered stakeholders and submit these to the Competent Authority (DFFE) of which a summarised version must be submitted to the Consultative Forum (CF).
- 4.1.16 One of the conditions of the EA is the establishment of two management bodies, namely the Aquaculture Development Zone Management Committee (AMC), an intergovernmental forum aimed at overseeing, facilitating, managing, advising and monitoring aquaculture operations in Saldanha Bay ADZ and a Consultative Forum (CF), a multi-stakeholder forum (public, industry and government) aimed at promoting transparency and formal presentation and acknowledgement of public interest, prior to the commencement of the activity. These committees have already been established but need to be managed. The AMC meetings are held every two months or as the need arises in Cape Town or virtually. The AMC fulfils a coordination and supervising role and oversees compliance with the EMPr throughout all phases of the aquaculture farming in the ADZ. The CF meetings are held every three months alternating between Saldanha Bay and Langebaan at public venues. The responsibility of the CF is to consider and comment on the environmental monitoring data, advise on ADZ management and make recommendations to the AMC. The CF will provide feedback to the AMC through the outputs (recommendations and advice) that it provides to the AMC for consideration. The ECO is required to perform secretariat duties for both committees as outlined below:
 - 4.1.16.1 Perform secretariat duties of the AMC and CF by arranging meetings, printing documents (i.e. agendas and meeting minutes), archiving and filing all documents, reporting back and fulfil the role of rapporteur for both committees.
 - 4.1.16.2 Drafting of the Annual AMC report summarising the activities achieved over the year and submit to the Competent Authority (DFFE)
 - 4.1.16.3 Preside as the Chairperson of the CF.

- 4.2 Booking of cost-effective venues for the CF meetings should be budgeted for, inclusive of tea and coffee. Virtual meeting platforms may be used albeit with prior consultation with and consent from the MLRF.
- 4.3 Attendance of twenty-four (24) additional stakeholder meetings in Saldanha Bay/ Langebaan should be budgeted for as ad hoc meetings during the three (3) year contract period.
- 4.4 In fulfilment of the requirements of Condition 34 of the EA and Appendix 7 of the EIA regulations 2014, a competent and external auditor will have to be contracted via the ECO to undertake an EA and EMPr compliance audit and the appointed ECO must make provision for this work. The audit must consider the processes for such auditing as prescribed in Regulation 34 of GN R. 982. Auditing of compliance with EA, EMPr and closure plan. The external auditor, who must be independent of MLRF and the appointed ECO, is to conduct the year three, year four and year five external audits of the Saldanha Bay ADZ. Year three (3) audit is required in February 2022; Year four (4) audit is required in February 2023 and Year five (5) audit is required in February 2024.
- 4.5 Update the ADZ EMPr according to findings of the environmental audit reports, where necessary. The updated EMPr must be submitted to the Competent Authority (DFFE) for approval together with the audit report and make provision for amendments as indicated by the Competent Authority (DFFE). Cost for and undertaking of the Public Participation Process for the updated EMPr after each audit process should be catered for i.e. Three (3) EMPr amendments and associated public participation processes should be costed for.
- 4.6 Monthly progress meeting should be costed for in Cape Town, virtual meetings may be arranged at the discretion of the MLRF. Progress meeting minutes to be drafted by the service provider and approved by the MLRF Project Manager.
- 4.7 Facilitation of a hand over meeting and all relevant documents to the next service provider to allow for continuation of the work to the new ECO at the end of the three (3) year contract period.

5 EXPECTED DELIVERABLES / OUTCOMES

- 5.1 Monthly site inspection of operators on a rotational basis and recording of validated production data.
- 5.2 Monthly site inspection reports and site inspection schedule.
- 5.3 Monthly ECO report for the ADZ.
- 5.4 Summary version of the monthly ECO report.
- 5.5 Maintenance of compliance data base (ongoing).
- 5.6 Maintenance of records on EDMS (online system).
- 5.7 Submission of documents to the Competent Authority (DFFE) on a monthly basis.
- 5.8 Update the monthly documents received register.
- 5.9 Update the monthly communications register.
- 5.10 Update the monthly incident register.
- 5.11 Review and update the ADZ Emergency Response Protocol annually.
- 5.12 Review environmental recommendations contained in environmental monitoring reports when required.
- 5.13 Revise monthly ECO site inspection format when required.
- 5.14 Provide secretariat functions of the AMC and CF.
- 5.15 Reporting back and fulfil role of rapporteur at the AMC and CF meetings.
- 5.16 Chairing the CF meetings.
- 5.17 Logistical arrangements for the AMC and CF meetings.
- 5.18 Draft Annual AMC report.
- 5.19 Appointment of the external auditor and submission of audit report to the Competent Authority (DFFE).
- 5.20 Updating of the EMPr if required, submitting the application and conducting the public participation process as per the legal requirements.
- 5.21 Attendance at 24 additional stakeholder meetings in Saldanha Bay/ Langebaan when required.
- 5.22 Attendance at monthly progress meetings with the MLRF Project Manager.

- 5.23 Compile and ensure safe storage of all monthly progress reports and meeting minutes.
- 5.24 Facilitation of hand over meeting and documentation to the next appointed service provider at completion of the contract.

6 PERIOD / DURATION OF APPOINTMENT

The appointment of the service provider will be for the duration of three (3) years from the date of signing of the Service Level Agreement.

7 COSTING / COMPREHENSIVE BUDGET

- 7.1 A comprehensive costing must be submitted all-inclusive price in a separate envelope indicating unit prices per resource inclusive of VAT (SBD 3.3 for detailed costing and Annexure A – Price Schedule Guidance).

8 EVALUATION METHOD

8.1 The evaluation for this bid will be carried out in four (4) phases:

- Phase 1: Pre-compliance or Initial Screening
- Phase 2: Mandatory requirements
- Phase 3: Functional Evaluation Criteria,
- Phase 4: Price and B-BBEE.

8.2 PHASE 1: Pre-compliance or Initial Screening

8.2.1 During this phase, bid documents will be reviewed to determine compliance with Supply Chain Management (SCM) returnable, tax matters and whether the Central Supplier Database (CSD) report has been submitted with the bid documents at the closing date and time of the bid. Bids which do not satisfy the compliance criteria will not be evaluated further. Those who fulfil the requirements or have submitted the required documents will be further evaluated on the functionality criteria.

8.2.2 The bid proposal will be screened for compliance with administrative requirements as indicated below:

Item No.	Administrative Requirements of the main bidder and sub-contractors or joint ventures	Check/Compliance	Non-submission will result in disqualification
1	Master (original) Bid Document	provided and bound	*YES
2	Four copies of the original bid document	provided and bound	*YES
Included in the Bid Document			
3	SCM - SBD 1 - Invitation to Bid	Completed and signed	*YES
4	SCM - SBD 2 - Tax Clearance Certificate Requirements	CSD registration number/SARS PIN and CSD summary report provided for main bidder, joint ventures and sub-contractors	*YES
5	SCM - SBD 4 - Declaration of Interest	Completed and signed	*YES
6	SCM - SBD 6.1 - Preference Points Claim Form in terms of the Preferential Procurement Regulations 2017	Completed and signed, supported by B-BBEE Certificate if applicable or Affidavit if applicable	**NO
7	SCM - SBD 8 – Declaration of Bidder's Past Supply Chain Management Practices	Completed and signed, supported	*YES

Item No.	Administrative Requirements of the main bidder and sub-contractors or joint ventures	Check/Compliance	Non-submission will result in disqualification
8	SCM - SBD 9 - Certificate of Independent Bid Determination	Completed and signed	*YES
9	In case of bids where Consortia / Joint Ventures, Consortia/Joint Venture agreement signed by both parties must be submitted with bid proposal	JV agreement completed and signed, if applicable	*YES
10	Comprehensive Curriculum Vitae (CV) – Team Leader and Team Members	Detailed CV of the proposed resources, supported by copies of qualification (s). Mandatory qualifications to be certified	*YES

***YES** – MLRF reserves the right to reject proposals that are not submitted in the prescribed format or where information presented is illegible or incomplete and will not be further evaluated for Pre-Qualification Criteria (Phase 2).

****NO** – MLRF reserve the right to request such information during the evaluation process of the proposal and such information must be presented within short notice.

8.3 PHASE 2: MANDATORY REQUIREMENTS

8.3.1 Only bid proposals that meet pre-compliance requirements will be considered to be evaluated on mandatory requirements. The service provider must complete the section below by answering **YES** or **NO**. If, Yes, please attach proof and/or letter of commitment.

	Requirement	Comply: Yes or No
Pre-qualification criteria:	The ECO is registered with the South African Council for Natural Scientific Professionals (SACNASP) as a professional and has the appropriate proven experience to undertake and lead the execution of the scope of work in SECTION 4 above.	
	The ECO has conducted at least three marine environmental management projects of a multi stakeholder nature with experience as a senior/ lead ECO.	
	The ECO (or individuals of the team) has demonstrable knowledge in marine environmental monitoring and/ or aquaculture required to draft and undertake the reports listed above or be supported by a team with the required skills.	
	The ECO has at least a BSc (Hons) in Natural Sciences.	

NOTE: Failure to meet all the mandatory requirements will lead to the service provider being disqualified and not further evaluated for functionality (Phase 3).

8.4 PHASE 3: Functionality Criteria

8.4.1 Only bid proposals that meet the mandatory requirements will be considered to be evaluated on functionality criteria,

8.4.2 The bidder must score a minimum of **75%** during Phase 3 (functionality / technical) of the evaluation to qualify for Phase 4 of the evaluation where only points for Price and B-BBEE will be considered.

8.4.3 The following values/ indicators will be applicable when evaluating functionality:

0 = Non-compliance; 1 = Poor; 2 = Fair; 3 = Average; 4 = Good; 5 = Excellent.

PHASE 3		
GUIDELINES FOR CATEGORY CRITERIA	FUNCTIONALITY (GUIDELINES FOR CRITERIA APPLICATION)	WEIGHT
1. Bidder's or companies experience on completed aquaculture project in environmental management/ assessment field (EIA/ ECO) (attached contactable references on successfully completed projects clearly indicating the start and end date/ if in progress anticipated end date and description of the project)	Bidder(s) are required to demonstrate relevant past experience on aquaculture projects in the environmental management/ assessment field.	20
	Bidders should submit reliable contactable references for projects of a similar scope. Number of completed aquaculture projects in environmental managements/ assessment field (ECO/EIA, etc.)	
	No examples of projects with similar scope provided	0
	Examples of 1 project covering the criteria within the scope	1
	Examples of 2 projects covering the criteria within the scope	2
	Examples of 3 projects covering the criteria within the scope	3
	Examples of 4 projects covering the criteria within the scope	4
Examples of 5 or more projects with criteria within the scope	5	
2. Bidders or companies are to demonstrate the Senior lead ECO's number of years of experience as ECO (attach profiles/ CVs of project leader and the secretariat)	Bidders or companies are required to demonstrate relevant experience as a Senior lead ECO and secretariat on aquaculture projects in environmental management/ assessment field.	40
	Bidders or companies should supply a summary table of the past projects where the Senior lead ECO and secretariat combined years of experience in aquaculture projects in environmental management/ assessment field projects are summarised.	
	Less than one years' experience	0
	1 and less than 5 years' experience	1
	5 and less than 10 years' experience	2
	10 and less than 15 years' experience	3
	15 and less than 20 years' experience	4
20 and more years of experience	5	
3. A comprehensive thorough and detailed proposed project plan with deliverables, timeframes/ milestones, cost and understanding	Bidders are required to provide a detailed project plan with intermediate and final outputs and identified deliverables, timeframes/ milestones to achieve the scope of work.	40
	Project plan strategy with deliverables, timeframes/ milestones, and management of the scope of work.	

and management of the scope of work	No information provided	0	
	Project plan irrelevant	1	
	Project plan provided with no clear deliverables, timeframes/ milestones.	2	
	Limited information provided on deliverables, timeframes/ milestones.	3	
	Project plan with clear deliverables, timeframes/ milestones for three criteria.	4	
	Project plan well broken down with details of deliverables, timeframes/ milestones for four criteria.	5	
Total points on functionality			100

8.6. PHASE 4: Preference Point System 80/20

8.6.1. The **fourth phase** is to perform an evaluation of Price and BBEE on the bidder that successfully qualified on phase 3 (functional evaluation).

8.6.2. **Calculation of points for price** - The PPPFA prescribes that the lowest acceptable bid will score 80 points for price. The bidder that quoted higher prices will score lower points for price on a pro-rata basis. Where functionality is set as criteria, only bid proposals that meets functionality requirements will be evaluated on price and B-BBEE.

8.7. Calculating of points for B-BBEE status level of contribution

8.7.1 Points Points will be awarded to a bidder for attaining the B-BBEE status level of contribution by submitting original and valid B-BBEE Status Level Verification Certificate issued by SANAS Accredited Verification Agency or certified copies thereof; or B-BBEE Certificate issued by CIPC or Sworn Affidavit commissioned by Commissioner of Oaths together with their bids, to substantiate their B-BBEE rating claims. SBD 6.1 must also be duly completed, signed, and submitted alongside the bid to claim preference points. Failure to do so will result in B-BBEE preference points being forfeited.

Phase 3: The following table must be used to calculate the B-BBEE scores (80/20)	
PRICE	
B-BBEE Status Level Contributor	Number of points (80/20)
1	20
2	18
3	14
4	12
5	8

Phase 3: The following table must be used to calculate the B-BBEE scores (80/20)	
PRICE	
6	6
7	4
8	2
Non –compliant contributor	0

9 BID SUBMISSION REQUIREMENTS

- 9.1. The bidders should ensure that the following submission requirements, which will be needed for evaluation purposes are included in their bid proposal and are as follows:
 - 9.1.1. The bidders must draft a table of content which will indicate where each document is in the proposal.
 - 9.1.2. The proposal shall consist of two parts, namely the technical bid and the pricing bid (master and copy).
 - 9.1.3. A certified copy of the relevant tertiary qualification or equivalent from a member from a recognised institution. The bidders are expected to ensure that nominated Team Members with foreign qualifications submit South African Qualifications Authority (SAQA) Certificate with the bid submission for evaluation. **Failure to do so will result in the disqualification of the bidder/s.**
 - 9.1.4. The information in the Profile / CV of the proposed Key Staff Members should include relevant experience and qualifications in the chosen area of expertise demonstrating the required competency.
 - 9.1.5. Project reference specifying the role played by the service provider in the listed projects or assignments, project value and the duration of the project (start and end date).
 - 9.1.6. A detailed Project Plan with clear indication of who will be responsible for the management of the assignment as well as its execution. The allocation of team members on the assignments should be based on the experience in delivering the scope of work as listed.
 - 9.1.7. Standard bidding documents (SBD1, 2, 3.3, 4, 6.1, 8 and 9).
 - 9.1.8. Tax clearance certificate requirements and Central Supplier Database (CSD) summary report for major bidder. Joint ventures and sub-contractors.

10 SPECIAL CONDITIONS OF CONTRACT

- 10.1 On appointment, the performance measures for the delivery of the agreed services will be closely monitored by the MLRF.
- 10.2 The MLRF will not be held responsible for any costs incurred by the service providers in the preparation, presentation, and submission of the proposal.
- 10.3 The Project Manager allocated to the service by the MLRF shall do the ongoing management of the Service Level Agreement (SLA).

- 10.4 The Service Provider/s will be required to submit soft copies of the monthly reports to the Project manager, within four (4) working days after the end of each month for the duration of the project. Failure to submit these reports on time may result in penalties.
- 10.5 The Service Provider/s must guarantee the presence of the Team Leader in charge of the project throughout the duration of the contract. Prior to the appointment of a replacement, the Project Manager from the MLRF must approve such appointment. If the Team Leader has to leave the project, a period of at least one month is required in which the senior consultant must work parallel with the next person (senior consultant with similar expertise and equal years of experience) appointed to be able to transfer skills and knowledge.
- 10.6 All the conditions specified in the General Conditions of Contract (GCC) will apply and where the conditions in the special conditions of contract contradicts the conditions in the general conditions of contract the special conditions of contract will prevail.
- 10.7 The proposals should be submitted with all required information as per the requirements stipulated in these Terms of Reference.
- 10.8 Travelling costs and time spent or incurred between home and office of the service provider and MLRF office will not be for the account of MLRF.
- 10.9 Bidders failing to meet all the mandatory requirements will automatically be disqualified.
- 10.10 Bidders are requested to submit the original and valid B-BBEE Status Level Verification Certificate issued by SANAS Accredited Verification Agency or certified copies thereof.
- 10.11 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 10.12 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate proposal.
- 10.13 If the application is made by a Joint Venture or Partnership, the accreditation credentials in the name of joined entity should be submitted. Both members in the joint venture must meet the requirement of the proposal.
- 10.14 Poor or non-performance by the bidder will result in cancellation of the bid and the SLA.
- 10.15 The DFFE / MLRF has the right to exclude a bidder and or terminate the contract if the bidder or its sub-contractors are party to an interest group or entity involved in legal proceedings opposing the MLRF.

11 SUB-CONTRACTING CONDITIONS/ REQUIREMENTS

- 11.1 In a case whereby sub-contracting is not set as a pre-qualification criteria, however the bidder is intending to sub-contract portion of the work, such bidder awarded a contract may only enter sub-contracting arrangements with the approval of the MLRF.

- 11.2 In relation to a designated sector, a contractor will not be allowed to subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 11.3 A bidder will not be awarded the points claimed for B-BBEE status level of contribution or contract if it is indicated in the bid documents that such a bidder intends subcontracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 11.4 The contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

12 PAYMENT TERMS

- 12.1 The MLRF undertakes to pay out in full or as per deliverables within 30 (thirty) days all valid claims for work done to its satisfaction upon presentation of a substantiated claim and the required reports stipulated in special conditions. No payment will be made where there is outstanding information/work not submitted by the Service Provider/s until that outstanding information is submitted.

13 NON-COMPULSORY BRIEFING SESSION

Briefing session will be held as follows:

Date: 03rd August 2021, Tuesday

Time: 11h00 – 13h00

Venue: Microsoft Teams Virtual meeting

Bidders are required to register prior to the meeting for attendance to the Bid office three (3) days before the non-compulsory briefing session via email: VDamonse@environment.gov.za. A link for the meeting will only be sent to those who have registered.

14 TECHNICAL ENQUIRIES

Should you require any further information in this regard, please do not hesitate to contact:

Name: Mrs Michelle Pretorius

Tel: 021 – 430 7034 / 082 647 2263

E-Mail: MPretorius@environment.gov.za

For Supply Chain Management enquired, please do not hesitate to contact:

Name: Ms Ncumisa Matiwane

Tel: 021 – 402 3632

E-Mail: NMatiwane@environment.gov.za

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE MARINE LIVING RESOURCES FUND					
BID NUMBER:	MLRF176/21	CLOSING DATE: 13 AUGUST 2021	CLOSING TIME:	11H00	
DESCRIPTION	APPOINTMENT OF A SERVICE PROVIDER AS AN INDEPENDENT ENVIRONMENTAL CONTROL OFFICER ("ECO") BY THE MLRF IN COMPLIANCE WITH THE STIPULATIONS IN THE ENVIRONMENTAL AUTHORISATION ("EA") AND THE ENVIRONMENTAL MANAGEMENT PROGRAMME ("EMP") FOR THE SEA-BASED AQUACULTURE DEVELOPMENT ZONE ("ADZ") LOCATED WITHIN SALDANHA BAY IN THE WESTERN CAPE, FOR A PERIOD OF THREE (3) YEARS.				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Department of Forestry, Fisheries and the Environment					
Ground Floor, Foretrust Building					
Martin Hammerschlag Way, Foreshore					
Cape Town, 8001					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Ms Ncumisa Matiwane		CONTACT PERSON	Mrs Michelle Pretorius	
TELEPHONE NUMBER	021 402 3632		TELEPHONE NUMBER	021 – 430 7034 / 082 647 2263	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	NMatiwane@environment.gov.za		E-MAIL ADDRESS	MPretorius@environment.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? YES NO
 IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.

**PART B
 TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS 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:

TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

- 1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za.
- 6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

Particulars of tender (If applicable)

Tender number

Estimated Tender amount R ,

Expected duration of the tender year(s)

Particulars of the 3 largest contracts previously awarded

Date started	Date finalised	Principal	Contact person	Telephone number	Amount

Audit

Are you currently aware of any Audit investigation against you/the company? YES NO

If "YES" provide details

Appointment of representative/agent (Power of Attorney)

I the undersigned confirm that I require a Tax Clearance Certificate in respect of Tenders or Goodstanding.

I hereby authorise and instruct to apply to and receive from SARS the applicable Tax Clearance Certificate on my/our behalf.

Signature of representative/agent Date

Name of representative/agent

Declaration

I declare that the information furnished in this application as well as any supporting documents is true and correct in every respect.

Signature of applicant/Public Officer Date

Name of applicant/Public Officer

Notes:

- It is a serious offence to make a false declaration.
- Section 75 of the Income Tax Act, 1962, states: Any person who
 - fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
 - without just cause shown by him, refuses or neglects to-
 - furnish, produce or make available any information, documents or things;
 - reply to or answer truly and fully, any questions put to him ...
 As and when required in terms of this Act ... shall be guilty of an offence ...
- SARS will, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.**
- Your Tax Clearance Certificate will only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO.: MLRF176/21
CLOSING TIME 11H00	CLOSING DATE: 13 AUGUST 2021

OFFER TO BE VALID FOR **120 DAYS** FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
---------	-------------	--

APPOINTMENT OF A SERVICE PROVIDER AS AN INDEPENDENT ENVIRONMENTAL CONTROL OFFICER (“ECO”) BY THE MLRF IN COMPLIANCE WITH THE STIPULATIONS IN THE ENVIRONMENTAL AUTHORISATION (“EA”) AND THE ENVIRONMENTAL MANAGEMENT PROGRAMME (“EMPr”) FOR THE SEA-BASED AQUACULTURE DEVELOPMENT ZONE (“ADZ”) LOCATED WITHIN SALDANHA BAY IN THE WESTERN CAPE, FOR A PERIOD OF THREE (3) YEARS.

1. The accompanying information must be used for the formulation of proposals.
2. 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.....

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

4. PERSON AND POSITION	HOURLY RATE	DAILY RATE
.....	R-----	-----
.....	R-----	-----
.....	R-----	-----
.....	R-----	-----
.....	R-----	-----

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

5.1 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.....
.....	R.....

Name of Bidder:

TOTAL: R.....

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

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: 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 may be directed to the –

DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

Contact Person: Ncumisa Matiwane
Contact Number: 021 402 3632
E-Mail: NMatiwane@environment.gov.za

Or for technical information

Contact Person: Michelle Pretorius
Contact Number: 021 430 7034
E-Mail: MPretorius@environment.gov.za

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
- the bidder is employed by the state; and/or
 - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

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

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

2.3 Position occupied in the Company (director, trustee, shareholder²):

2.4 Company Registration Number:

2.5 Tax Reference Number:

2.6 VAT Registration Number:

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

¹"State" means –

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

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

2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

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

Position occupied in the state institution:

Any other particulars:

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

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**

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

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

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

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

2.8.1 If so, furnish particulars:

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

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

4 DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF
PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION
PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

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

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

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

1. GENERAL CONDITIONS

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

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

1.2

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

1.3 Points for this bid shall be awarded for:

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

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

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

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

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

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

5. BID DECLARATION

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

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

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

7. SUB-CONTRACTING

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

(Tick applicable box)

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

7.1.1 If yes, indicate:

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

(Tick applicable box)

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

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

Designated Group: An EME or QSE which is at 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		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

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

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

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

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

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

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

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

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

SBD 8

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

Js365bW

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

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

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

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

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

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

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

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

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

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

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

22. Penalties

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

23. Termination for default

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

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

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

24. Anti-dumping and countervailing duties and rights

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

may be due to him

25. Force Majeure

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

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

27. Settlement of Disputes

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
 - (b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

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

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

