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TERMS OF REFERENCE

SCMU11-23/24-053: MADWAKAZANE 219 RURAL HOUSING PROJECT - APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER FOR INCEPTION, PLANNING & DESIGN, CONTRACT MONITORING AND CONSTRUCTION SUPERVISION OF 219 NEW HOUSING UNITS IN MADWAKAZANE, MTHUKUKAZI, NDAKENI, NYASA, CHIBINI & MVENYANE (NTABANKULU) AT NTABANKULU LOCAL MUNICIPALITY UNDER ALFRED NZO REGION.

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FEBRUARY 2024

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1. BACKGROUND

The Department is engaged in an effort to improve and accelerate delivery of RDP houses in the Province and to fast track the implementation of these projects. The Department is seeking a professional team with high performing capacity to complete outstanding planning activities that include geotechnical investigation and foundation design, contract monitoring and construction supervision of top structures to assist in the implementation and completion of this project in the Alfred Nzo District. The entire project should consist of 219 units in Madwakazane, Mthukukazi, Ndakeni and Mvenyane, Nyasa & Chibini villages (Ntabankulu) within five wards which are wards 02, 06, 07, 09 and 13 in Ntabankulu Local Municipality.

MADWAKAZANE 219 housing project is a new rural project with 219 units and it is earmarked for Contractors in the incubator programme.

2. PROJECT LOCATION

The project covers four (4) villages i.e. Madwakazane, Mthukukazi, Ndakeni and Mvenyane Villages which are in Ward 2, 6, 7, 9 and 13 Ntabankulu Local Municipality, under the jurisdiction of Alfred Nzo District Municipality. Its coordinates are as follows: 30.9976° S, 29.2873° E

3. PROJECT DESCRIPTION

Table 1: Project details

NO.	AREA AND WARD NO.	LOCAL MUNICIPALITY	DISTRICT MUNICIPALITY	NO. OF UNITS
1.	Madwakazane, Mthukukazi, Ndakeni & Mvenyane, Nyasa and Chibini (Ntabankulu) in Ward 2, 6, 7, 9 and 13	Ntabankulu Local Municipality	Alfred Nzo Region	219

Table 2: Project Information

NO.	DESCRIPTION	STATUS	COMMENT
1.	Number of approved beneficiaries	0	No beneficiaries are approved
2.	Environmental Impact Assessment	Outstanding	This is an in-situ project. Beneficiaries are currently staying in their houses. Exemption letter required
3	Geo-technical Investigation	outstanding	To be done by PSP
4.	House Plan Design	outstanding	To be done by PSP
5.	Foundation Design	outstanding	To be done by PSP
6.	Social facilitation	outstanding	To be done by PSP
7.	Monitoring and certification	outstanding	To be done by PSP
8.	Occupational Health and Safety Specification	outstanding	To be done by PSP
9.	NHBRC Home Enrolment	outstanding	To be done by PSP
10.	Global Positioning System (GPS) – Co-ordinates for each beneficiary stand	outstanding	To be done by PSP
11.	Contract Monitoring and Construction supervision	outstanding	To be done by PSP
12.	Final account and Close out Report	outstanding	To be done by PSP

4. SCOPE OF WORKS

The scope of work will cover planning, design, contract monitoring and construction supervision of 40m², and 45m², housing units for 219 beneficiaries. One professional team will be appointed. The project will be phased into three (3) stages as follows:

4.1 PHASE ONE (1) – INCEPTION

This phase involves the assessing of the available information and getting familiar with the scope of work and the project area, identifying risks and constraints and devise plans to mitigate these.

4.1.1 A detailed project implementation plan and cash flow for the entire project will have to be prepared.

4.1.2 A detailed quarterly cost analysis report (i.e. showing original costs, current costs and variation orders (additions or omissions or savings) for labour, material and professional service provider costs and any other project costs) a process will run throughout the entire project quarterly.

4.1.3 The successful professional team will have to perform the following main tasks during this phase:

4.1.4 Review all data provided by the Department and the identified outstanding information to be included in the project implementation plan;

4.1.5 Review the project scope and visit the site to get familiar with all the details of the project and the possible geographical and logistical challenges. Any risks to the project have to be identified and mitigating measures devised;

4.1.6 Stakeholder engagement through on-going interaction with the Department, Ntabankulu Local Municipality and public Participation;

4.2 PHASE TWO (2) – PLANNING AND DESIGN

This phase involves the continuation of social facilitation, obtaining Geotechnical Investigation, Foundation Design, House Design, and National Home Builders Registration Council (NHBRC) Home Enrolment.

The successful Professional Team will have to perform the following main tasks during this phase:

- 4.2.1 Prepare designs to obtain approval from the Local Authority
- 4.2.2 Prepare house & foundation designs to comply with NHBRC and Department's minimum requirements including Norms & Standards;
- 4.2.3 Obtain community, Departmental, NHBRC and Local Authority approval of the designs;
- 4.2.4 Prepare home enrolment documents and submit to Project Manager for NHBRC enrolment;
- 4.2.5 Review designs, drawings and schedules for compliance with approved budget.
- 4.2.6 Prepare detailed estimate of construction costs.
- 4.2.7 Issue construction documentation in accordance with the documentation schedule including in the case of structural engineering, reinforcing bending schedules and detailing and specification of structural steel sections and connections.
- 4.2.8 Preparation of monthly progress reports detailing progress, challenges and mitigating measures; and
- 4.2.9 Any other activity, not listed above, required to render the project ready to commence construction.

4.3 PHASE THREE (3) – IMPLEMENTATION

This phase entails the contract monitoring and construction supervision of top structures together. Further social facilitation, Contracts administration and inspection (including Principal Agents/Engineer duties), Construction Monitoring Level 3 (as per Government Gazette No. 38324, Vol. 594), Occupational Health

& Safety and Environmental Management inclusive of the applicable monitoring agents and Close Out.

The principal agent will be responsible for the following during this stage:

- 4.3.1 Project Management and contract administration
- 4.3.2 Construction Supervision of **40m²**, and **45m²** houses including electrical installation;
- 4.3.3 Continuation with the social facilitation process
- 4.3.4 Attend all project related meetings
- 4.3.5 Monthly progress reporting and Extended Public Works Program (EPWP) reports;
- 4.3.6 Conduct fortnightly technical site meetings;
- 4.3.7 Contracts administration and inspection (including Engineer duties), Construction Monitoring Level 3 (as per Government Gazette No. 38324, Vol. 594), Management of Occupational Health & Safety, Environmental Management duties.
- 4.3.8 Further engagement with NHBRC to obtain Final Unit Reports (FURs) for all completed units;
- 4.3.9 Facilitate compilation of technical completion certificates and “Happy Letters” for all completed units;
- 4.3.10 Handover of houses; and
- 4.3.11 Provide necessary reports on project completion for project close-out and commissioning.
- 4.3.12 Prepare and submit a detailed close-out reports.

5. MINIMUM SPECIFICATIONS

NB: The Professional Service Provider should take into account hereunder mentioned details when preparing designs and specifications:

5.1. GENERAL

- 5.1.1 All works to be carried out in compliance with the Department of Housing Generic Specifications (GFSH 1 to 11) and the Technical Guidelines as contained in the Housing Code and NHBRC Home Builders Manual;
- 5.1.2 All Department of Labour and Expanded Public Works Program (EPWP) requirements should be met;
- 5.1.3 All works to be done in compliance with the current Health & Safety Regulations;
- 5.1.4 All works must also be done in compliance with all Environmental Regulations; and
- 5.1.5 All relevant Local Authority requirements to be adhered to and relevant permission obtained.

5.2 TOPSTRUCTURE

In addition to the specification already mentioned, the following are additional minimum requirements:

- 5.3.1 2011 revised National Building Regulations; South African National Standards (SANS) 10400, XA Energy Usage in Buildings.
- 5.3.2 SABS approved roof trusses to be used and Roof Covering to be cement roof tiles;

- 5.3.3 Concrete aprons to be provided on all 4 sides with a minimum width of 1000mm; including storm water management precautionary measures (as per NHBRC project enrolment requirement).
- 5.3.4 Fascia's and barge boards to be provided;
- 5.3.5 House to be plastered and painted internally and externally;
- 5.3.6 Installation of a ceiling with the air brick above and below the ceiling levels for the entire dwelling.
- 5.3.7 Installation of above ceiling insulation comprising a 130mm mineral fibre glass blanket for the entire house; and
- 5.3.8 Installation of distribution board an electrical wiring including plugs, lights and power point socket to all living areas of the house.
- 5.3.9 Over and above specification indicated hereto 45m² units will have these additional items:
- i. Access to unit to have concrete ramp at an acceptable minimum slope ratio, hand and grab rail to access the unit as indicated on SANS 10400-S2011 Edition 3 (For disabled beneficiaries)
 - ii. All doors to be special made to allow wheelchair space to enter and must have kick plate
 - iii. All window must be at a minimum of 600mm above floor level

6. PROJECT DELIVERABLES

6.1 GENERAL

The scope of works detailed in Section 4 clearly describes the extent of work expected from the professional team. Project deliverables can, however, be summarized as follows:

6.1.1 Completing all inception, planning and design activities as described in the scope of works, to render the project ready for construction; and

6.1.2 Furthermore, to perform project management, construction monitoring and supervision during implementation as described in the scope of works, including providing Certificates, Happy Letters and Final Unit Report.

NB: Item 6.1.2 above will only be executed upon Contractor appointment.

7. PROPOSAL FORMAT

- Bidders must submit (one) 1 sealed envelope of their proposal to fulfill the project deliverables described above.

7.1. ENVELOPE must contain a well-prepared document as a **Technical and Financial Proposal**.

7.2 PROJECT PLAN AND SCHEDULE

Bidders should include a proposed project plan (including schedule/timetable and deliverables, with the identification of team member involvement).

7.3 FINANCIAL PROPOSAL

7.3.2 The Financial Proposal provided shall specify and state a firm and fixed price, including total fees and expenses (VAT zero rated), in order to complete the project.

7.3.3 Bidders must ensure that they fill in the following document in black ink as part of Financial Proposal:

Table 3: Bill of Quantity for inception, planning and design activities of the 40m2 house

1						INCEPTION (40 m ²)					
NO.	ITEM	UNIT	QTY	RATE	AMOUNT						
1.1	Implementation Plan & Cash flow projections,	NO.	1								
1.2	Analysis of available information and scope of the project	NO.	1								
1.3	Attend all project related meetings, Stakeholder engagement through on-going interaction with the Department, Local & District Municipality and public participation (through Social Facilitation)	NO.	1								
1.4	Determine the availability of data, and plans relating to the project and review all data provided by the Department and the identified outstanding information to be included in the project implementation plan;	NO.	1								
SUB TOTAL						R		R			
2						PLANNING AND DESIGN (40 m ²)					
NO.	ITEM	UNIT	QTY	RATE	AMOUNT						
2.1	Conduct Phase 2 Geotechnical investigation (including ground water protocol): report as per (GSFH2 compliance & SANS 634) to suite rural nature of the project	No	1								
2.2	Foundation design	NO.	1								
2.3	House Plan Design	NO.	1								
2.4.	ISBT Sanitation	NO.	1								
2.4	Electrical Layout design	No	1								
2.5	Project and Home enrolment with NHBRC	NO.	1								

SUB TOTAL	R	R

Table 4: Bill of Quantity for the construction activities of the 40m² house

3 IMPLEMENTATION 40m²					
NO.	ITEM	UNIT	QTY	RATE	AMOUNT
3.1	Project Management and Contract Administration	NO.	219		
3.2	Construction Monitoring Level 3 (Full Time) including certification of work done				
3.2.1	Foundations	NO.	219		
3.2.2	Top Structure	NO.	219		
3.2.3	Roof	NO.	219		
3.2.4	ISBT Sanitation	NO.	219		
3.2.5	Rainwater Harvesting	NO.	219		
3.2.6	Completions, Certification and obtaining FUR's from NHBRC	NO.	219		
3.3	Occupational Health & Safety	NO.	219		
3.4	Environmental Management	NO.	219		
3.5	Close out Report	NO.	219		
SUB TOTAL				R	R
TOTAL = SUM OF SUB TOTALS				R	R
TOTAL = SUM OF SUB TOTALS (Carried to FINAL SUMMARY & FORM OF OFFER)				R	

8. PAYMENT MILESTONES

Payment will only be made upon the completion of milestones (payment milestones) as follows:

Table 5: Payment milestones

ITEM	MILESTONE (as per table)	UNIT	QUANTITY
1.	INCEPTION	NO.	219
2.	PLANNING & DESIGN	NO	219
3.	IMPLEMENTATION		
3.1	FOUNDATIONS		
3.2	WALL PLATE	NO.	219
3.3	ROOF	NO.	219
3.4	FINISHES	NO.	219
3.5	ELECTRICITY	NO.	219
3.6	ISBT	NO.	219
3.7	RAINWATER TANKS & STANDS	NO.	219
3.8	COMPLETIONS	NO.	219
4.	CLOSEOUT	NO.	219

NB: A sectional completion plan must be provided as a proposal by the professional team, agreed upon and approved by the Department. A written approval of the sectional completion plan must form part of the contract.

9. EVALUATION CRITERIA

ECDHS has set minimum standards (Stages) that a bidder needs to meet in order to be evaluated and selected as a successful bidder. The minimum standards consist of the following:

Table 6: Stages of Evaluations of Bidders

(STAGE 0): Administrative compliance	(STAGE 1): Functionality Criteria	(STAGE 2): Price and Specific goals Evaluation	(STAGE 3): Risk Assessment
Bidders must submit all documents as outlined in Table 7	Bidders must meet all the criteria stipulated under functionality criteria to proceed to Stage 2 (Price and specific goals evaluation).	Bidders will be evaluated in terms of section 5 of the PPPFA 2000, Preferential Procurement Regulations, 2022.	Bidders will be evaluated in terms risk. Bidders that fail to meet the risk criteria will be considered to containing a potential high risk level and will not be considered for appointment

9.1 STAGE 0 – ADMINISTRATIVE COMPLIANCE

9.1.1 Without limiting the generality of ECDHS’s other critical requirements for this Bid, bidders must submit the documents listed in Table 7 below. All documents must be completed and signed by the duly authorised representative of the prospective bidder. During this phase, bidders’ response will be evaluated based on compliance with the listed administration and mandatory bid requirements. In case of a Joint Venture/Consortium all parties are expected to submit individual documentation:

Table 7: Administrative compliance

No	Document that must be submitted	Explanatory Information
1	SBD1: Invitation to tender	Complete and sign the supplied proforma document
2	SBD2: Tax clearance certificate	Complete and sign the supplied proforma document
3	SBD4: Declaration of interest	Complete and sign the supplied proforma document

4	SBD6.1: Preference points claim form;	Complete and sign the supplied proforma document
5	Bill of quantities and summary & form of offer	Submit full details of the pricing proposal as per Bill of quantities. Blank spaces will be regarded as incomplete. Should the bidder not charge for the service, the bidder must indicate that with a zero (0). Bidders must complete the entire Pricing Schedule
7	Central supplier Database (CSD) registration	Service Providers must be registered as a service provider on the Central Supplier Database (CSD). If you are not registered, prior to submitting your proposal. Visit https://secure.csd.gov.za/ to obtain your vendor number. Submit CSD printout as proof of registration.
8	Annexure A: Performance report	Completed performance reports must be submitted together with the bid proposal, failure to submit will result in non-allocation of points
9	Annexure B: Intent to form Joint venture consortium agreement	The joint venture and/or consortium agreements must clearly set out the shareholding and roles and responsibilities of the Lead Partner and the joint venture and/or consortium party. The agreement must also clearly identify the Lead Partner, who shall be given the power of attorney to bind the other party/parties in respect of matters pertaining to the joint venture and/or consortium arrangement. A signed agreement will be expected to be submitted prior award of contract.

9.2 STAGE 1: FUNCTIONALITY EVALUATION

9.2.1 In this stage the capabilities of the contractor as well as the professional team will be assessed. Functionality will be scored out of **sixty seven (67) points**.

9.2.2 Bidders should obtain at least **forty five (45) points out of sixty seven (67) points** on functionality evaluation to qualify for the Price and specific goals evaluation.

9.2.3 Only bids which have achieved the required minimum points for functionality will proceed to Stage 2 of evaluation. **NB:** Points scored in Stage 1 will not be taken into consideration for the evaluation in Stage 2.

9.3 FUNCTIONALITY CRITERIA

These are names of professionals nominated by the bidder whose CVs will be considered for evaluation. If no nomination is made no points will be allocated for evaluation.

Table 8: List of professionals to be considered for evaluation.

NO.	POSITION OF NOMINATED TEAM LEADER	NAME OF NOMINATED TEAM LEADER	HIGHEST LEVEL OF NOMINATED TEAM LEADER
3.1	*Construction Project Manager		
3.2	*Civil and or Structural Engineer		
3.3	*Quantity Surveyor		
3.4	*Architect		
3.5	*Housing Administrator/*Social Scientist		
3.6	*Health And Safety Officer		
3.7	*Health & Safety Agent		
3.8	*Environmental Management Officer		
3.9	*Environmental Management Agent		

9.3.1 RELEVANT EXPERIENCE OF TEAM LEADERS

Table 9: Functionality criteria for Professional team

NO.	TEAM LEADER EXPERIENCE	MAX. POINTS	SCORE FOR YEARS OF EXPERIENCE PER TEAM LEADER			
			20 years +	10 – 19 years	5 – 9 years	None
2.1	*Construction Project Manager (SACPCMP)	5	5	3	1	0
2.2	*Civil and or Structural Engineer (ECSA)	5	5	3	1	0
2.3	*Quantity Surveyor (SACQSP)	5	5	3	1	0
2.4	*Architect (SACAP)	5	5	3	0.5	0
2.5	*Housing Administrator/*Social Scientist (SACNASP)	2	2	2	0.5	0
2.6	*Health & Safety Agent (SACPCMP)	2	2	2	0.5	0
2.7	*Environmental management Agent (HPCSA)	2	2	2	0.5	0
2.8	*None of the above	0	0	0	0	0
TOTAL			26			
NO.	TEAM LEADER REGISTRATION	MAX. POINTS	SCORE FOR PROFESSIONAL REGISTRATION PER TEAM LEADER			
			PROFESSIONAL	TECHNICIAN/ CNDIDATE		
3.1	*Construction Project Manager (SACPCMP)	8	8	4		
3.2	*Civil and or Structural Engineer (ECSA)	8	8	4		
3.3	*Quantity Surveyor (SACQSP)	8	8	4		
3.4	*Architect (SACAP)	8	8	2		
3.5	*Housing Administrator/*Social Scientist (SACNASP)	3	3	1		
3.6	*Health & Safety Agent (SACPCMP)	3	3	1		
3.7	*Environmental management Agent (HPCSA)	3	3	1		
3.8	*None of the above	0	0	0		
TOTAL			41			

9.3.2 DESCRIPTION OF PROFESSIONAL TEAM CRITERIA

9.3.2.1 RELEVANT EXPERIENCE OF TEAM LEADERS: This shall be the experience of a team leaders. Copy of curriculum vitae must be attached.

9.3.2.2 PROFESSIONAL REGISTRATION OF TEAM LEADERS WITH AUTHORISED COUNCIL OF S.A.: This shall be professional registration certificate of team leaders within the identified building disciplines. Copy of professional registration certificate must be attached.

NB: Verification will be conducted on submitted documents. Where information provided are found to be fraudulent or there's misrepresentation of information, the Department will eliminate the bidder from further evaluation.

Bids which have not scored the required minimum points on functionality will be disqualified at this stage and only qualifying bids will proceed to the evaluation on Price and specific goals evaluation status level of contribution. Shortlisted bidders may be required to make presentations to the Department.

9.4 STAGE 2: PRICE AND PRICE AND SPECIFIC GOALS EVALUATION EVALUATION

9.4.1 Regulation 3 of the Preferential Procurement Policy Framework Act 2000: Preferential Procurement Regulations 2022, (the Regulations) stipulates that an organ of state must, prior to making an invitation for tenders, determine and stipulate the appropriate preference point system to be utilized in the evaluation and adjudication of tenders..

9.4.2 Regulation 5 and 6 stipulates that the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included);

THE 80/20 PREFERENCE POINT SYSTEMS

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

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = Price of lowest acceptable bid

9.4.3 POINTS AWARDED FOR SPECIFIC GOALS

In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table below as may be supported by proof/ documentation stated in the conditions of this tender:

Table 10: Specific goals allocated points

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Women owned Organizations	8	
Youth	4	
People with Disability	2	
Locality: Eastern Cape	5	
Military Veterans	1	

9.4.4 CLAIMING OF PREFERENCE POINTS

9.4.4.1 Preference points allocated for women may be claimed if there is sufficient evidence that such woman has ownership of 51% or more of the

enterprise shareholding. Bidders must submit proof in a form of valid Central Supplier Database (CSD) supplier profile that outlines the ownership of the organisation.

- 9.4.4.2** Preference points allocated for persons with disabilities may only be claimed if there is sufficient evidence that such person has ownership of 51% or more of the enterprise shareholding. Bidders must submit proof in form of a medical certificate / letter not older than 6 months from a registered medical practitioner (Practitioner number, contact details to be stated on correspondence) detailing the disability. The Medical certificate will only be used for evaluation purposes.
- 9.4.4.3** Preference points allocated for promotion of youth may only be claimed if there is sufficient evidence that such youth has ownership of 51% or more of the enterprise shareholding. Bidders must submit proof in a form of valid Central Supplier Database (CSD) supplier profile that outlines the ownership of the organisation.
- 9.4.4.4** Preference points for Locality may be allocated for promotion of enterprises located within the Eastern Cape Province may be claimed by submission of proof that the enterprise is located within the borders of Eastern Cape Province. This includes an enterprise whose head office may be situated in another province but has a fully-fledged branch within Eastern Cape Province. Enterprises located outside the borders of the Eastern Cape Province and who only appoints agents and or commission warehouses in this municipal area are expressly excluded from claiming points for this goal. Bidders must submit proof of the Company's Registered Offices. Proof of rate statement, lease agreement or confirmation of locality from local authority.
- 9.4.4.5** Preference points allocated for Military Veterans may only be claimed if there is sufficient evidence that such person has ownership of 51% or more of the enterprise shareholding. Bidders must submit proof in terms confirmation letters from the Department of Military Veterans.

NB: Bidders must provide sufficient proof and supporting documentation in respect of the above evaluation criteria and specific goals evaluation. Bidders who do not submit the required information shall not be scored for the respective/relevant evaluation criteria. In a case of a joint venture and/or consortium the agreements must clearly set out the shareholding and roles and responsibilities of the Lead Partner and the joint venture and/or consortium party. Failure to submit shareholding will result in non-allocation of points.

10. OBJECTIVE CRITERIA/RISK ASSESMENT

10.1 The Department reserves the right not to appoint the highest scoring bidder, in a case where the bidder has quoted below the market related price of **R10 600.00 per unit**. The market related price includes all extra ordinary development site conditions i.e. double handling, difficult terrain, scatterdness of sites, creation of access roads and all geo technical site conditions.

10.2 Where the highest point scorer declines the appointment, the second highest point scorer will be considered, and if the second highest scorer declines the appointment the third highest point scorer will be considered and if the third highest points scorer declines the bid will be cancelled and re-advertised.

10.3 The Department will **not** negotiate a price higher than that quoted by the bidder.

10.4 The amount of **R10 600.00 per unit** will be utilized as the minimum market related price.

10.5 If the price offered by a tenderer scoring the highest points is above the market related price,

10.6 The Department may

10.6.1.1 Negotiate a market-related price with the tenderer scoring the highest points;

10.6.1.2 If the tenderer scoring the highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points;

10.6.1.3 If the tenderer scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points and if the third highest points scorer does not agree to a market related price the bid will be cancelled and re-advertised.

10.7 In an event where the Department has advertised more than one (01) tender on a single notice, the highest scoring bidder will be awarded one tender of the tenders advertised. If a single bidder has scored the highest points on multiple tenders the Department will enter into negotiations with the bidder to give waver to award the second highest scoring bidder up to the third highest points scorer.

11 LEGALITIES OF CONTRACT AND TENDER RULES

11.1 GENERAL CONDITIONS

The JBCC and the Service Level Agreement with Professional Service provider shall apply.

11.2 SPECIAL CONDITIONS OF THE CONTRACT

Special Conditions that apply to this contract are as follows:

11.2.1 The Professional Service Provider must have access to internet as basis of communication (email);

11.2.2 The Professional Service Provider will draft and submit a detailed Bill of Quantities (BOQ);

- 11.2.3** The Professional Service Provider will furnish the Department with an invoice upon completion of each milestone (along with other required supporting documentation);
- 11.2.4** The successful Professional Service Provider will have to sign a Service Level Agreement with the Department immediately upon approval of the award;
- 11.2.5** The successful Professional Service Provider will be liable for any recollection of missing data, as a result of poor completion of questionnaire by the appointed entity;
- 11.2.6** Tariffs must not exceed the tariffs published by ECSA, DPSA or the Department of Public Works for specified Consultants categories;
- 11.2.7** The Department reserves the right to cancel the appointment;
- 11.2.8** The Department is not obliged to appoint the bidder with the highest number of points scored;
- 11.2.9** Bidders must ensure that the professional team is indemnified and with active registration; and
- 11.2.10** Copyright of the reports to be delivered by the services provider to the Department will vest upon the Department on acceptance of the final reports.

12 DOCUMENTS TO BE SUBMITTED

The following documents **MUST** be submitted with the proposal and failure to submit will lead to elimination. In case of a Joint Venture/Consortium all parties are expected to submit individual documentation:

- 12.1** Joint Venture/Consortium Agreement (where applicable).

13 DURATION OF THE PROJECT

The duration of the project (Inception, Planning & Design, Implementation, Monitoring, Supervision and Close-out) is expected to be a maximum period of Twenty-four months (24) months.

14 RETURNABLE SCHEDULES

The Competent Professional Service Provider must ensure that the following documents are completed and returned with the bid proposal:

- 14.1** SBD 1: INVITATION TO TENDER;
- 14.2** SBD 2: TAX CLEARANCE CERTIFICATE;
- 14.3** SBD 4: DECLARATION OF INTEREST;
- 14.4** SBD 6.1: PREFERENCE POINTS CLAIM FORM;
- 14.5** SBD 8: DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES;
- 14.6** SBD 9: CERTIFICATE OF INDEPENDENT BID DETERMINATION;
- 14.7** FINAL SUMMARY & FORM OF OFFER;
- 14.8** COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC) CERTIFICATE.

15 COLLECTION OF BID DOCUMENTS

Bid documents will be available from the **08 March 2024** on the on Departmental website (www.ecdhs.gov.za).

16 SUBMISSION OF PROPOSAL

Bid proposals must be deposited in a Bid Box (that is accessible 24 hours) situated at the Ground Floor, Department of Human Settlements, Steve Tshwete Houses, 31–38 Phillip Frame Road, Waverley Park, Chiselhurst, East London.

Bid proposals must be submitted in a sealed envelope clearly marked with bidders' details as follows:

SCMU11-23/24-053: MADWAKAZANE 219 RURAL HOUSING PROJECT - APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER FOR INCEPTION, PLANNING & DESIGN, CONTRACT MONITORING AND CONSTRUCTION SUPERVISION OF 219 NEW HOUSING UNITS IN MADWAKAZANE, MTHUKUKAZI, MVENYANE, NDAKENI, NYASA & CHIBINI (NTABANKULU) AT NTABANKULU LOCAL MUNICIPALITY UNDER ALFRED NZO REGION

Faxed or emailed bid proposals will not be accepted. The Technical Proposal envelope may be opened in public on the closing day.

17 BID VALIDITY

This bid will be valid for one hundred and twenty (120) days after the closing date.

18 COMPULSORY BRIEFING

Compulsory briefing session for this Bid will be held on the **19 March 2024 at 13h00** converging at Ntabankulu Local Municipality, ERF 24 MAIN STREET Tabankulu 5130, thereafter proceed to site. Failure to attend the compulsory briefing session will lead to disqualification.

19 CLOSING DATE

All bid proposals in response to this bid should reach the Department not later than the **19 April 2024 at 11H00**. Bids received after 11H00 will not be accepted and considered.

20 CONTACT DETAILS ON TERMS OF REFERENCE

All **technical enquiries** regarding this bid may be directed to:

Mr. Zibele Beja: Chief Construction Project Manager – Department of Human Settlements, Alfred Nzo Regional Office

Cell: 074 142 6448

Email: ZibeleB@ecdhs.gov.za

All **Supply Chain Management** related enquiries regarding this bid may be directed to:

Mr. Xolile Mpupa: Deputy Director – Demand Management; Department of Human Settlements, **EAST LONDON**

Tel: (043) 711 9641

E-mail: XolileM@ecdhs.gov.za

SCMU11-23/24-053: MADWAKAZANE 219 RURAL HOUSING PROJECT - APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER FOR INCEPTION, PLANNING & DESIGN, CONTRACT MONITORING AND CONSTRUCTION SUPERVISION OF 219 NEW HOUSING UNITS IN MADWAKAZANE, MTHUKUKAZI, MVENYANE, NDAKENI, NYASA & CHIBINI (NTABANKULU) AT NTABANKULU LOCAL MUNICIPALITY UNDER ALFRED NZO REGION

RECOMMENDED / NOT RECOMMENDED

.....
.....


MR A MBARANE
REGIONAL DIRECTOR: ALFRED NZO

04.03.2024
DATE

RECOMMENDED / NOT RECOMMENDED

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


CHAIRPERSON
BID SPECIFICATION COMMITTEE

05/03/2024
DATE

APPROVED / NOT APPROVED

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


MR EDQ VENN
ACTING HEAD OF DEPARTMENT

05/03/24
DATE

21 FINAL SUMMARY AND FORM OF OFFER

Table 11: Final Summary and Form of Offer

FINAL SUMMARY & FORM OF OFFER			
SCMU11-23/24-053: MADWAKAZANE 219 RURAL HOUSING PROJECT - APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER FOR INCEPTION, PLANNING & DESIGN, CONTRACT MONITORING AND CONSTRUCTION SUPERVISION OF 219 NEW HOUSING UNITS IN MADWAKAZANE, MTHUKUKAZI, MVENYANE, NDAKENI, NYASA & CHIBINI (NTABANKULU) AT NTABANKULU LOCAL MUNICIPALITY UNDER ALFRED NZO REGION			
NO.	ITEM	RATE	TOTAL
A.	INCEPTION		
B.	PLANNING & DESIGN		
C.	IMPLEMENTATION		
D.	CONTINGENCY ALLOWANCE FOR 45M ² UNIT		
TOTAL = A + B + C + D			
TOTAL ABOVE IN WORDS			

SIGNED BY/ON BEHALF OF THE BIDDER

NAME

SIGNATURE

DATE

COMPANY STAMP

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	SCMU11-23/24-053	CLOSING DATE:	19 APRIL 2024	CLOSING TIME:	11: 00
DESCRIPTION	MADWAKAZANE 219 RURAL HOUSING PROJECT - APPOINTMENT OF A PROFESSIONAL SERVICE PROVIDER FOR INCEPTION, PLANNING & DESIGN, CONTRACT MONITORING AND CONSTRUCTION SUPERVISION OF 219 NEW HOUSING UNITS IN MADWAKAZANE, MTHUKUKAZI, NDAKENI, NYASA, CHIBINI & MVENYANE (NTABANKULU) AT NTABANKULU LOCAL MUNICIPALITY UNDER ALFRED NZO REGION.				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
DEPARTMENT OF HMAN SETTLEMENTS					
31-33 PHILLIP FRAME ROAD, STEVE TSHWETE BUILDING, GROUND FLOOR					
WAVERLY PARK					
EAST LONDON					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	MR X MPUPA		CONTACT PERSON	Mr ZIBELE BEJA	
TELEPHONE NUMBER	0437119641		TELEPHONE NUMBER	074 142 6448 \ 039 727 3337	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	xolilem@ecdhs.gov.za		E-MAIL ADDRESS	zibeleb@ecdhs.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS					

SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.

**PART B
TERMS AND CONDITIONS FOR BIDDING**

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

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

SIGNATURE OF BIDDER:

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

DATE:

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.



Application for a Tax Clearance Certificate

Purpose

Select the applicable option:Tenders Good standing

If "Good standing", please state the purpose of this application

Two empty rectangular boxes for stating the purpose of the application.

Particulars of applicant

Name/Legal name (Initials & Surname or registered name)											
Trading name (if applicable)											
ID/Passport no						Company/Close Corp. registered no					
Income Tax ref no						PAYE ref no	7				
VAT registration no	4					SDL ref no	L				
Customs code						UIF ref no	U				
Telephone no						Fax no					
E-mail address											
Physical address											
Postal address											

Particulars of representative (Public Officer/Trustee/Partner)

Surname											
First names											
ID/Passport no						Income Tax ref no					
Telephone no						Fax no					
E-mail address											
Physical address											

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.

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

with any person who is employed by the procuring institution? YES/NO

2.2.1 If so, furnish particulars:

.....
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? YES/NO

2.3.1 If so, furnish particulars:

.....
.....

3 DECLARATION

I, _____ the _____ undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

² Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

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

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature	Date
.....
Position	Name of bidder

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2022**

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

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

1.2 To be completed by the organ of state

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

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

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

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

2. DEFINITIONS

- (a) “**tender**” means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) “**price**” means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) “**rand value**” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) “**tender for income-generating contracts**” means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) “**the Act**” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

80/20

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

Where

- Ps = Points scored for price of tender under consideration
- Pt = Price of tender under consideration
- Pmin = Price of lowest acceptable tender

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

3.2.1. POINTS AWARDED FOR PRICE

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

$$Ps = 80 \left(1 + \frac{80/20 (Pt - Pmax)}{Pmax} \right)$$

Where

- Ps = Points scored for price of tender under consideration
 Pt = Price of tender under consideration
 Pmax = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
 - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,
- then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.)

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Women owned organizations	8	
Youth	4	
People with Disability	2	
Locality: Eastern Cape	5	
Military Veterans	1	
TOTAL POINTS	20	

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company
- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown

in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;

iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –

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

.....	
SIGNATURE(S) OF TENDERER(S)	
SURNAME AND NAME:
DATE:
ADDRESS:

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 (NIP) Programme** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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

Js General Conditions of Contract (revised July 2010)