

REQUEST FOR QUOTATION

TEL NO: 053 8381709 /1610/1674

REF: RFQ 02/2024 SECURITY SERVICES

Date: 2024 – 05- 13

Dear Service provider

You are requested to submit a written quotation for the following service:

No	Item	Detail
1	Services needed	The Department of Employment and Labour requires a Security company to provide security services for 6 months. See attached specification
	Office where the service is to be provide	NC Provincial Office
2	Address where services are required	Laboria House C/o Pniel Compound Street KBY
3	Contract period	6 months
4	Compliance requirements and documents which should accompany your quotation	<u>Mandatory Requirements</u> <ol style="list-style-type: none">1. Valid quotation in the name of the supplier2. A valid PSIRA certificate of company and directors/ members.3. Attach proof of 1-year experience of rendering security services (Proof in form of reference letter) <i>The quotation must reflect the total amount for 4 guards for a duration of 6 months.</i>

		<p><i>Failure to submit all required mandatory documents will lead to disqualification.</i></p> <p><u>Administrative requirements</u></p> <p>Proof of CSD registration or TCC PIN</p> <p>SBD 4 – Declaration of interest (Make sure it is fully and correctly completed and signed)</p> <p>SBD 6.1 (Preference points claim form in terms of the preferential procurement regulations 2022)</p>
5	Closing date	21 May 2024 @ 11:00
6	Quotation validity period	60 days, must reflect on quotation
7	submission	Quotations must be dropped off at the Department of Employment and Labour, Cnr Pniel and Compound Street, Kimberley.
8	Enquiries	053 838 1610/1709

Quotations will be evaluated in terms of requirements; price and specific goals in terms of preferential procurement regulations of 2022.

Please find attached the department security services specification for your attention

Regards

Supply Chain Management
Tel: 053 8381709/1674/1610



**MINIMUM REQUIREMENT CONTRACT SECURITY
SPECIFICATION**

DEPARTMENT OF EMPLOYMENT AND LABOUR BUILDING

1. CONDITIONS OF THE QUOTATION

1.1 DURATION

- (a) The duration of the contract will be for a period of 06 months, commencing from the date the company begins with the security services on site.
- (b) The successful bidder shall be obliged to sign a service level agreement on commencement of the service.

2.1 OPERATIONAL CONDITIONS

SPECIFICATION (Please mark appropriate block with an X fully)

ITEM NO	DESCRIPTION	YES	NO	REMARKS
2.1.1	Service required			
	The rendering of a Guarding Service for a period of 06 months on the following premises: NC Provincial Office Department of Employment and Labour			
	<i>Item</i>			<i>Number</i>
2.1.1.1	2 x Security Officers - Grade C Day Shift : 06:00 - 18:00			2
2.1.1.2	2 x Security Officers Grade C Night Shift : 18:00 - 06:00			2
2.1.1.3	Security Aids			
	(a) Portable hand held 2 way radios (to be programmed to contractor's frequency).			
	(b) Torches (including batteries)			
	(c) Batons			
	(d) Pocket books			
	(e) Handcuffs			
	(f) Cellphone			
	(g) Whistle			
	(h) 2 x Hand held metal detectors			

Scope of work

2.1.2	Private Security Industry Regulatory Authority			
2.1.2.1	The organization must be registered in terms of the Private Security Industry Regulatory Act (Act 56 of 2001). <i>As proof thereof, a copy of registration must be attached with the Quote.</i> All Security officers that the tenderer supplies to render the service must be registered as Security Officers in terms of The Private Security Industry Regulatory Act (Act 56 of 2001).			
2.1.2.2	A copy of the registration certificates in respect of all the Security officers must be attached to the bid/tender documents.			
2.1.3	Supervision of Emergency Assistance			
	The tenderer/bidder must have a well established and equipped (24) hour security control room. The Tenderers/bidders must furnish details of security equipment, registers, and security systems which is available in the security control room.			

ITEM NO	DESCRIPTION	YES	NO	REMARKS
	<i>NB: The Department holds the right to inspect such control room. Tenderers/bidders must be reachable within twenty four (24 hours) - during emergency 8 hours terms.</i>			
2.1.4	Minimum wages			
	It is expected that the tenderer shall pay his/her employees at least the minimum monthly basic wage, as prescribed by the law.			
2.1.5	Provision of personnel in crisis situation			
	Tenderers/bidders must, in consultation with the responsible Manager in charge of Security Services, or the Security Official delegated from the Department of Labour, undertake to provide certain and reasonable number of staff as required for the rendering of the service at the site during crisis situations. Failure to consult with responsible Manager or such delegated official will result in this matter being regarded as been illegitimate			
2.1.6	Security Service			
2.1.6.1	The quality of the service to be rendered must be in accordance with Private Security Industry Regulatory Authority standards. It is the responsibility of the successful tenderer to see that personnel employed for the rendering of this service, meet the requirements at all times, which is incorporated in the legislations listed below. Failure to meet any of these requirements will result in the termination of the contract. All possible steps shall be taken by the tenderer to ensure that the intended execution of this agreement takes place. These steps include, inter alia, the following : a) The protection of Department of Labour officials against injuries, death or any other offences, including offences referred to in Schedule 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977); b) The protection of State property at the intended sites and the protection of said property against theft and vandalism; c) The Protection of Information; and d) The Protection of the business process of the Development against any interruption.			
2.1.6.2	The contractor will be held liable for any damages or loss suffered by the Department of Labour as a result of the contractor's own or his employees' negligence or intent, which originated on the site.			
2.1.6.3	The Department of Labour shall not be liable for any loss or damage of any nature to any of the contractor's properties or any items kept at the department's site.			
2.1.7	Security personnel compliance			
2.1.7.1	Security Officers must have obtained a Senior Certificate or equivalent qualification.			
2.1.7.2	The Security Officers supplied to render the service, must at least have had (1) one year security experience.			
2.1.7.3	Security Officers supplied to render the service, must be trained to the standard set by the Private Security Industry Regulatory Authority, and trained in a Private Security Industry Regulatory Authority accredited centre. The Security Officers must understand and be able to implement the Control of Access to Public Premises and Vehicle Act No. 53 of 1985.			
2.1.7.4	The Department will screen (and interview) the Security Officers supplied to render the service within (7) seven days after commencement of their			

ITEM NO	DESCRIPTION	YES	NO	REMARKS
	respective service and to verbally request an immediate replacement should the Security Officer not meet the criteria or perform to the accepted standard.			
2.1.8	Declaration of secrecy and screening			
2.1.8.1	All security personnel and management involved with the Security Services of the Department of Labour shall at the commencement of this agreement sign an "Oath of Secrecy" declaration and submit the declaration to the responsible Manager in charge of Security Services in the Department of Labour.			
2.1.8.2	The Supervisor and Security Officers must sign an undertaking in which they declare that they will refrain from any action which might be to the detriment of the Department and the State in general.			
2.1.8.3	The Supervisor and Security Officers are prohibited from reading documents or records in offices or the unnecessary handling thereof. No information concerning the State activities may be furnished to the public or media by the contractor or any of his/her employees..			
2.1.9	All Directors in the Company will be subjected to security screening.			

2.2.	General requirements for security service			
2.2.1	The following general requirements apply :			
2.2.1.1	At all times Security Officers must present an acceptable image and appearance which implies, that they may not sit, lounge about, smoke, eat or drink while attending to employees of the department and public.			
2.2.1.2	The Supervisors and Security Officers must at all times present a professional dedicated attitude. A professional dedicated attitude approach shall imply, that there shall be no unnecessary arguments with visitors / staff or discourteous behavior towards them.			
2.2.1.3	The Supervisors and Security Officers must be physically healthy and medically fit for the execution of their duties.			
2.2.1.4	The Department retains the right to ascertain from the Private Security Industry Regulatory Authority as to whether the Supervisors and Security Officers are in good standing with the Private Security Industry Regulatory Authority.			
2.2.2	Uniforms and identification			
	The contractor shall undertake to ensure that each member of his security personnel will at all times when on duty be fully equipped in respect of: a) A neat and clearly identifiable uniform of the company, which will include matching rain coats and overcoats for personnel performing duties outside the building. b) A clear identification card of the company with the member's photo, identification and staff number on it, worn conspicuously on his/her person at all times. c) Alternatively: The valid identification card issued by the Private Security Industry Regulatory Authority.			
2.2.3	Records on Security Personnel			
	Tenderers must keep proper files as well as appropriate documents of all security personnel, who are employed			

ITEM NO	DESCRIPTION	YES	NO	REMARKS
	for rendering the service to the Department available for inspection by representatives of the Department. The appropriate documents shall include, the following; Scholastic, training, registration and medical certificates.			
2.2.4	Registers to be utilized and maintained			
2.2.4.1	The contractor must ensure that the Occurrence Register and Access Control Register / Forms, which are available on the site, is utilized and maintained as required :			
	<p>(a) Occurrence Register - The purpose of this register is to keep record of all incidents, occurrences, or observations made by the Security Officer's whilst on duty for later reference.</p> <ul style="list-style-type: none"> - Compulsory Entries: All listed routine procedures such as patrols undertaken, handing over of shifts, etc., and the procedures followed, by whom and the time of commencement. These entries must all be made clearly legible, in black ink. - All occurrence/events however important, slight or unusual, with reference to the correct time and relevant actions taken must be noted in a clearly legible black ink. - All security personnel activities - especially deviations in respect of the duty list - indicating particulars of the personnel and relevant times. - The issue and/or receipt of keys, indicating the time and by whom they were received and delivered. - The unlocking / locking of doors / gates, indicating the time and by whom they were locked / unlocked. - The handling over of shifts, mentioning all names of all shift personnel and accompanying equipment and aids. In this case personnel taking over as well as personnel handing-over must sign the entries. 			
	- Occurrence register - Read : After handing-over of the shifts, the person who has come on shift must make an entry that he / she has read the occurrence register in order to acquaint himself / herself with events that occurred during the previous shift.			
	- All shifts by Supervisors and Management: These entries must be done in legible red ink. Officials of the Department shall pass on in writing, all additional requests in respect of the rendering of the service.			
	- Under no circumstances may an entry in the occurrence register be erased, painted out with correction fluid or totally deleted. It shall only be crossed out by a single line and initialed at the side.			
	<p>b) Shift Rosters - Purpose: The purpose of the shift roster is to serve as proof, at all reasonable times that all personnel who should be on duty per shift, are indeed on duty.</p> <ul style="list-style-type: none"> - Drawing up a shift roster: Daily, weekly, monthly shift roster of all security personnel must be drawn up by the contractor and kept on site where the service is rendered. - Changes to the shift roster: Any changes to the shift roster shall be crossed out by a single line, initialed, dated and noted in the occurrence register. 			

ITEM NO	DESCRIPTION	YES	NO	REMARKS
	c) <u>Duty sheet</u> - The purpose of the duty sheet is to ensure that all security personnel on duty are familiar with their duties as required for the contract. - The contractor must have a fully expounded duty sheet available at each duty point of the site.			
	d) <u>Two-way radio's</u> <input type="checkbox"/> The purpose of the two-way radio communication is to ensure that there is immediate communication between the various duty points on the site and with the contractors control room. - Hand held 2 way radios: The hand held radios must be in good working condition at all times and they must be handed to the Security Officer patrolling the site for immediate communication with the base station.			
	e) <u>Patrols</u> - The purpose of patrolling is to ensure that the site is inspected according to instructions and any deviation is immediately reported to supervisors and addressed accordingly.			
	f) Other Registers			
2.2.5	Contact with Departmental Representative			
2.2.5.1	The Site Manager or Supervisor must immediately report any abnormal and or noteworthy incident to the Departmental Representative.			
2.2.5.2	A meeting, where formal discussions can be held between the Departmental Representative and Contractors Supervisor / Manager or Contractor himself / herself, must be held at least once a month. The Department will keep the minutes of the meeting.			
2.2.5.3	The contractors shall furnish a monthly and quarterly report of the security service, incidents, etc. which transpired in the previous month to the responsible Manager or delegated official in the Dept of Labour.			
2.2.6	Maximum shift hours			
	No security personnel may be allowed to work a daily shift longer than (12) twelve hours.			
2.2.7	Lost articles			
	<u>Definition:</u> Lost articles found at the site and of which the ownership could not immediately be established. All lost articles must immediately be handed in at the security control room on site for safekeeping and recorded in the occurrence register. Thereafter it must be handed to the Departmental Representative.			
2.2.8	Inspections			
2.2.8.1	A thorough inspection of the service shall be performed by Departmental officials as well as the contractor at least once monthly.			
2.2.8.2	The Department retains the right to inspect the service rendered by the contractor at any time, in order to ensure that the service is rendered in accordance with the conditions of the contract and the site specification.			
2.2.8.3	The Department retains the right to require from the contractor, that any of his / her employees be replaced, should justifiable reasons exist, in which case the employee must leave the site immediately. The Department will not be held responsible for any damages or claims which may arise and the contractor or successful tenderer indemnifies the department against any such claims and legal expenses.			
	NOTE: The Department's representative will check daily whether sufficient personnel are available on site in terms			

ITEM NO	DESCRIPTION	YES	NO	REMARKS
	of the conditions.			
2.2.8.4	All security personnel shortages must be noted in the occurrence register by the Contractor or any of its employees on duty.			
2.2.8.5	Bidder/s shall comply with all applicable Labour legislation e.g. the Occupational Health and Safety Act, Basic Conditions of Employment Act (BCEA), Minimum Wage Act, Unemployment Insurance Contributions Act and the Compensation for Occupational Injuries and Diseases Act.			
2.2.8.6	The Department will conduct a labour legislation inspection to ensure compliance with all the labour laws including Security Vetting.			
2.2.8.7	The Department also reserves the right to cancel an award should the service provider be found to be non-compliant to security vetting and labour laws.			
2.2.9	Labour unrest incidents			
	<u>Labour unrest on site</u> : If the service is interrupted/or temporary deferred because of any labour unrest, labour dispute, civilian disorder, a local or national disaster or any other cause beyond the control of the contractor, the parties must come to an agreement on methods to ensure continuation of the security service. The contingency plan of the department will be in place.			
2.2.10	General			
	The contractor's personnel must at all times refrain from littering and they must keep the grounds / building / work area occupied by them clean, hygienic and neat.			
	The Department reserves the right to award or cancel the Request for quotation			
	Under no circumstances will any security personnel be allowed to trade on the premises.			
2.2.11	References			
	The contractor must provide a list of work references in progress which must not be less than one (1) in number.			
2.2.12	Additional requirements			
	A direct line of communication must be established between the security control room in the department and the control room of the contractor.			
	The contract is valid for a period of <u>6 months</u> and the Department reserves the right to terminate the contract with immediate effect if the contractor is not rendering the service in terms of the contract and Service Level Agreement. This will be done in line with the policies of the Department of Labour.			

3. CONTRACTOR'S RESPONSIBILITIES

- 3.1 The contractor must, at his own expense, take out sufficient insurance cover against any claims, costs, loss and damage ensuing from his obligations and he must ensure that such insurance remains operative for the duration of this agreement.
- 3.2 A copy of such insurance contract shall be handed to the departmental representative on commencement of the service.

4. OTHER SECURITY REGISTERS

Apart from the occurrence book mentioned above the following registers shall be utilised by the Security Officers in rendering service at Department of Labour buildings.

4.1 Visitors register

Purpose: The purpose of the visitor's register is to have information available at all times regarding persons allowed entry to the site within a specific period, in case occurrences should take place which might lead to judicial enquiry or investigations. Register should be kept clean, legible and neat all times. These register forms must be completed correctly and legibly by the security guard / officer on duty and the following information from the visitor should be noted:

- Date and time of visit and departure
- Surname and initials of the visitor
- ID number and proof of identity of the visitor
- Home and work address of the visitor
- Name of person to be visited
- Telephone numbers at work or home
- Duration of the visit
- Purpose of visit
- Signature of the visitor

4.2 Pocket book

Purpose: The purpose of the pocket book is to note down all incidents occurring or observations made by a security guard / officer during a turn of duty, for later reference.

Requirement: During their turns of duty all security personnel must have a pocket book on their possession.

The following information must be noted down in the Pocketbook.

All occurrence / events, however important, slight or unusual, referring to the following:

- 4.2.1. Reporting on and off duty.
- 4.2.2. Time the event occurred.
- 4.2.3. Extent of occurrence or event.
- 4.2.4. The Security Officer should record any serious event taking place during the execution of the duty.
- 4.2.5. Supervisor visiting the site should sign in the Security Officers pocket book to ensure that he / she visited the officers on site. Supervisor's entry should be in a red pen.

4.3 **Staff after hours' register**

- 4.3.1 The after hour's register is intended to exercise control over staff members and any other people who entered the buildings after hours. This register is also applied during weekends and public holidays.
- 4.3.2 All personnel leaving the building after hours should complete the after hour's register.
- 4.3.3 The Security Officer on duty must ensure that all personnel completing the register complete it correctly. This means that the Security Officer shall ensure that the correct time and signature of the personnel is entered correctly.

4.4 **Information register**

- 4.4.1 The information register plays an essential role regarding communication of security matters, particularly for shift workers. Instructions, incidents and any other matters are recorded in the book so that shift-workers can receive messages.
- 4.4.2 Security Officers reporting for duty should read the information register, so that they can have the necessary information regarding security activities. After the message the officer should sign so as to acknowledge that he / she has received the message.
- 4.4.3 Each entry should have a serial number, date, time and the name of the officer who made the entry.

4.5 **Removal permit**

This permit is the most essential in terms of control of goods and assets leaving the department. This register should be controlled in this manner.

- 4.5.1 State asset, information and other relevant goods are not allowed to leave the department before the proper authority is obtained. There is a control officer who has the authority to sign for the goods leaving the building.
- 4.5.2 The Security Officer shall verify the serial numbers and the goods before the goods can be removed from the building. When the Security Officer is not certain with the serial numbers and other information, he / she should contact the senior officer to look at the matter before such goods can be removed from the building.

4.6 **Government vehicle register**

Security personnel should control government vehicles at the exits and entrances of the buildings. The security personnel should look at the following issues:

- 4.6.1 To determine whether the driver has the authority to drive the vehicle.
- 4.6.2 To report the abuse of Government vehicles by officials.
- 4.6.3 To combat the theft of vehicles and their tools.
- 4.6.4 To ensure that the vehicles are used for only official purposes only.
- 4.6.5 To ensure that the officials are not returning the vehicles without reporting them.
- 4.6.6 To check the date and time the vehicle departed and entered the premises.

Quotations must be dropped off at the Department of Employment and Labour, Cnr Pniel and Compound Street, Kimberley with a reference number indicated on the envelope or file.

BIDDER'S DISCLOSURE (SBD4)

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

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.

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

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.

- 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 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);
- 1.2 **To be completed by the organ of state**
(delete whichever is not applicable for this tender).
- a) The applicable preference point system for this tender is the 80/20 preference point system.
 - b) Either the 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.
- 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:

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 \\
 \mathbf{P_s = 80 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right)} & \mathbf{or} & \mathbf{P_s = 90 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right)}
 \end{array}$$

Where

P_s = Points scored for price of tender under consideration

P_t = Price of tender under consideration

P_{min} = 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:

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 \\
 \mathbf{P_s = 80 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right)} & \mathbf{or} & \mathbf{P_s = 90 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right)}
 \end{array}$$

Where

P_s = Points scored for price of tender under consideration

P_t = Price of tender under consideration

P_{max} = 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 ownership	5 points	
SMME/EME	6 points	
HDI	4 points	
DISABILITY	3 points	
LOCALITY: Frances Baard	2 points	

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.

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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.