

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)				
BID NUMBER:	NT012-2021	CLOSING DATE:	09/07/2021	CLOSING TIME: 11:00 AM
DESCRIPTION	APPOINTMENT OF A PANEL OF DOMESTIC CORPORATE LEGAL EXPERTS FOR A PERIOD OF THREE (3) YEARS.			
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).				

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE FOLLOWING ADDRESS:

TENDER INFORMATION CENTRE (TIC)
DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)
240 Madiba Street between
ABSA and Urban Eatery Restaurant

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				
	TCS PIN:		OR CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes <input type="checkbox"/> No
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?				
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	<input type="checkbox"/>	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)		
	<input type="checkbox"/>	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)		
	<input type="checkbox"/>	A REGISTERED AUDITOR		
		NAME:		

[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 BELOW]
SIGNATURE OF BIDDER	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE (ALL INCLUSIVE)	
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT/ PUBLIC ENTITY	National Treasury	CONTACT PERSON	Alilali Nelufule, Terry Msomi and David Milne
CONTACT PERSON	Thivhileli Matshinyatsimbi / Knowledge Ndou	TELEPHONE NUMBER	
TELEPHONE NUMBER		FACSIMILE NUMBER	
FACSIMILE NUMBER		E-MAIL ADDRESS	<u>Alilali.Nelufule@treasury.gov.za</u> <u>Terry.Msomi@treasury.gov.za</u> <u>David.Milne@treasury.gov.za</u>
E-MAIL ADDRESS	<u>thivhileli.matshinyatsimbi@treasury.gov.za / knowledge.ndou@treasury.gov.za</u>		

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 ONLINE
- 1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
- 1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
- 1.5. 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 LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.

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 VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / 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.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? YES NO
- 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA? YES NO
- 3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? YES NO
- 3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? YES NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

PRICING SCHEDULE
(Professional Services)

SBD 3.3

NAME OF BIDDER: BID NO: NT012-2021
CLOSING TIME 11:00 ON 9 July 2021

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

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY INCLUSIVE OF VALUE ADDED TAX
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APPOINTMENT OF A PANEL OF DOMESTIC CORPORATE LEGAL EXPERTS FOR A PERIOD OF THREE (3) YEARS.

1. Services must be quoted in accordance with the attached terms of reference and the attached.

Total cost of the assignment (R inclusive VAT, if applicable) R.....

NB: Bidders are also advised to indicate a total cost breakdown for this assignment. (Annexure A)

The financial proposal for this assignment should cover for all assignment activities and outputs enumerated above.

2. Period required for commencement with project after acceptance of bid _____

3. Are the rates quoted firm for the full period? Yes/No

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

Any enquiries regarding bidding procedures may be directed to –

Department: National Treasury

Contact Person: Thivhileli Matshinyatsimbi / Knowledge Ndou

E-mail address: thivhileli.matshinyatsimbi@treasury.gov.za / knowledge.ndou@treasury.gov.za

Any enquiries regarding technical enquiries may be directed to –

Name : Alilali Nelufule, Terry Msomi and David Milne

Email : Alilali.Nelufule@treasury.gov.za; Terry.Msomi@treasury.gov.za; David.Milne@treasury.gov.za



Special Conditions of Contract

NT012-2021

**THE APPOINTMENT OF A PANEL OF DOMESTIC CORPORATE LEGAL EXPERTS FOR THE
CHIEF DIRECTORATE: LIABILITY MANAGEMENT FOR A PERIOD OF THREE YEARS**

CLOSING DATE: 9 July 2021

VALIDITY PERIOD: 90 DAYS

S U P P L Y C H A I N M A N A G E M E N T



A. SPECIAL CONDITIONS OF CONTRACT

This bid and all contracts emanating there from will be subject to the General Conditions of Contract issued in accordance with of the Treasury Regulations 16A published in terms of the Public Finance Management Act, 1999 (Act 1 of 1999). The Special Conditions of Contract are supplementary to that of the General Conditions of Contract. Where, however, the Special Conditions of Contract are in conflict with the General Conditions of Contract, the Special Conditions of Contract prevail.

1. EVALUATION PROCESS

1.1 The evaluation process comprises the following stages:

1.1.1 Phase I: Initial screening process

During this phase bid documents will be reviewed to determine compliance with the special document at closing date and time of bid.

1.1.2 Phase II: Functionality Requirements as per the Terms of Reference

a. The panel members will individually evaluate the responses received against the following criteria as set out below:

Evaluation Criteria

	Criteria	Max. Points	Scoring Criteria
	FUNTIONALITY CRITERIA		
1	Experience in drafting required legal documents relating to global bond issuance.	10	5=Extensive experience in drafting required legal documents relating to global bond issuance (10 years or more) 4=Substantial



SPECIAL CONDITIONS OF CONTRACT: APPOINTMENT OF A PANEL OF DOMESTIC CORPORATE LEGAL EXPERTS FOR THE CHIEF DIRECTORATE: LIABILITY MANAGEMENT FOR A PERIOD OF THREE YEARS

			<p>experience in drafting required legal documents relating to global bond issuance (7-9 years)</p> <p>3=Intermediate experience in drafting required legal documents relating to global bond issuance (4-6 years)</p> <p>2=Basic experience in drafting required legal documents relating to global bond issuance (2-3 years)</p> <p>1 = Poor Basic experience in drafting required legal documents relating to global bond issuance (0-1 years)</p>
2	<p>Knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international development finance institutions.</p> <p><u>*Bidders are allowed to partner with legal experts in the field</u></p>	20	<p>5 = Excellent knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international development finance institutions (5 years or more)</p> <p>4 = Substantial knowledge in drafting/reviewing</p>



SPECIAL CONDITIONS OF CONTRACT: APPOINTMENT OF A PANEL OF DOMESTIC CORPORATE LEGAL EXPERTS FOR THE
CHIEF DIRECTORATE: LIABILITY MANAGEMENT FOR A PERIOD OF THREE YEARS

			<p>legal documents for funding from the multilateral development banks and international development finance institutions (4 years)</p> <p>3 = Intermediate Knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international development finance institutions (3 years)</p> <p>2 = Basic Knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international development finance institutions (2 years)</p> <p>1 = Poor knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and</p>
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			international development finance institutions (0-1 years)
3	Proven track record of establishing the Domestic Medium-Term Note (DMTN) programme and required legal documents and list Johannesburg Stock Exchange (JSE)	15	5= Extensive experience in drafting the DMTN programme and required legal documents and list at the JSE (7 years or more) 4= Substantial experience in drafting the DMTN programme and required legal documents and list at the JSE (5-6 years) 3=Intermediate experience in drafting the DMTN programme and required legal documents and list at the JSE (3-4 years) 2=Basic experience in drafting the DMTN programme and required legal documents and list at the JSE (2 years) 1=Poor experience



SPECIAL CONDITIONS OF CONTRACT: APPOINTMENT OF A PANEL OF DOMESTIC CORPORATE LEGAL EXPERTS FOR THE CHIEF DIRECTORATE: LIABILITY MANAGEMENT FOR A PERIOD OF THREE YEARS

			in drafting the DMTN programme and required legal documents and list at the JSE (0-1 years)
4	<ul style="list-style-type: none">Dedicated domestic Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments. <p><u>*Bidders are allowed to partner with legal experts in the field</u></p>	25	<p>5= Excellent proven record of dedicated Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments (6 years and more)</p> <p>4= Substantial proven record of dedicated Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments (5-6 years)</p> <p>3= Intermediate proven record of dedicated Shari`ah compliance finance practice, capacity to assist in relation to the</p>

			<p>structuring of the Shari`ah compliance bond/instruments (3-4 years)</p> <p>2= Basic proven record of dedicated Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments (2 years)</p> <p>1= Poor or no proven record of dedicated Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments (0 to 1 year)</p>
5	Expert knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature	15	5 = Excellent knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a



SPECIAL CONDITIONS OF CONTRACT: APPOINTMENT OF A PANEL OF DOMESTIC CORPORATE LEGAL EXPERTS FOR THE CHIEF DIRECTORATE: LIABILITY MANAGEMENT FOR A PERIOD OF THREE YEARS

			<p>corporate law nature (8 years and more)</p> <p>4= Substantial knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature (5-7 years)</p> <p>3=Intermediate knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature (3-4 years)</p> <p>2=Basic knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law</p>
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SPECIAL CONDITIONS OF CONTRACT: APPOINTMENT OF A PANEL OF DOMESTIC CORPORATE LEGAL EXPERTS FOR THE CHIEF DIRECTORATE: LIABILITY MANAGEMENT FOR A PERIOD OF THREE YEARS

			nature (2 years) 1 = Poor knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature (0-1 years)
6	Experience, competence and coordinating skills in corporate and commercial law work of a legal firm partner that will be leading the projects assigned to by the National Treasury.	15	5 = 10 years' or more experience 4 = 7-9 years' experience 3 = 5-6 years' experience 2 = 3-4 years' experience 1 = 1-2 year or no experience
	Minimum threshold	65%	
	Total	100%	

- b. Each panel member will rate each individual criterion on the score sheet using the following scale:

Value	Description
5 - Excellent	Meets and exceeds the functionality requirements
4 - Very Good	Above average compliance to the requirements
3 - Good	Satisfactory and should be adequate for stated element
2 - Average	Compliance to the requirements
1 - Poor	Unacceptable, does not meet set criteria



- c. The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criteria. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- d. This score will be converted to a percentage and **only** bidders that have met or exceeded the minimum threshold of 65 percent for functionality will be considered.
- e. Any proposal not meeting a minimum score of 65 percent technical proposal will be disqualified and the financial proposal will remain unopened.

1.1.3 Phase III: Price/Financial stage

The Price will not be evaluated at this stage. Price/ Financial proposals must be submitted in South African Rand.

NT reserves the right to negotiate hourly charge-out rates submitted by bidders.

2. MANDATORY REQUIREMENTS

The bidder must submit copies of identity documents of legal firm partner who will be leading the projects assigned to by the National Treasury with the bid documents at the closing date and time of the bid.

- Proof of qualifications in legal field
- Proof of admission to practice in South Africa
- Partnership agreement if bidding with a partner.

FAILURE TO COMPLY WITH THESE WILL RESULT IN YOUR BID NOT BEING CONSIDERED.

3. CLIENT BASE

- 4.1 Bidders must have specific experience and submit at least three recent references (in a form of written proof (s) on their company's letterhead including relevant person (s), telephone, fax numbers and e-mails) of similar work undertaken.
- 4.2 National Treasury reserves the right to contact references during the evaluation and adjudication process to obtain information.



4. SHAREHOLDERS/DIRECTORS PORTFOLIO

- 5.1 The bidder shall submit copies of the company's shareholding portfolio with the bid documents at the closing date and time of the bid.

6. COMMUNICATION

Supply Chain Management will communicate with bidders for, among others, where bid clarity is sought, to obtain information or to extend the validity period. Any

communication either by facsimile, letter or electronic mail or any other form of correspondence to any government official, department or representative of a testing institution or a person acting in an advisory capacity for the National Treasury in respect of this bid between the closing date and the award of the bid by the bidder is prohibited.

7. COUNTER CONDITIONS

Bidders' attention is drawn to the fact that amendments to any of the Special Conditions by bidders will result in invalidation of such bids.

8. PROHIBITION OF RESTRICTIVE PRACTICES

- a. In terms of section 4(1) 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:

- directly or indirectly fixing a purchase or selling price or any other trading condition;
- dividing markets by allocating customers, suppliers, territories or specific types of goods or services; or
- collusive bidding.

b. If a bidder(s) or contractor(s), in the judgment of the purchaser, has/have engaged in any of the restrictive practices referred to above, the purchaser may, without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered or terminate the contract in whole or in part and 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.



9. FRONTING

- a. The National Treasury supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background the National Treasury condemns any form of fronting.

The National Treasury, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry/investigation, the onus will be on the bidder / contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the bid/contract and may also result in the restriction of the bidder/contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the National Treasury may have against the bidder/contractor concerned.

10. PRESENTATION

National Treasury may require presentations/interviews from short-listed bidders as part of the bid process.

11. TIMEFRAMES AND FORMAL CONTRACT

Successful bidder(s) will be required to enter into formal contract with the National Treasury.

12. PACKAGING OF BID

The bidder shall place 4 original hard copy documents and 4 on USB, both on the sealed envelope or package, and must be clearly marked as follows:

13.1 FUNCTIONALITY/TECHNICAL PROPOSAL

Bid No: NT012-2021

Description: Appointment of domestic corporate legal experts for a period of three (3) years.



Bid closing date and time: 9 July 2021 at 11h00

Name and address of the bidder:

In this envelope, the bidder shall only address the legal technical aspects of the bid.

13.2 PRICE/ FINANCIAL PROPOSAL

Bid No: NT012-2021

Description: Appointment of a panel of domestic corporate legal experts for a period of three (3) years.

Bid closing date and time: 9 July 2021 at 11h00

Name and address of the bidder:

In this envelope, the bidder shall provide a breakdown of the pricing proposed.

14 CONTACT DETAILS

Supply Chain Management, 4th floor at National Treasury,

Private Bag x115, Pretoria, 0001

Physical address: 240 Madiba Street (Vermeulen), Pretoria

For General enquiries: Knowledge Ndou or e-mail: Knowledge.Ndou@treasury.gov.za

For Technical enquiries: Alilali Nelufule, Terry Msomi and David Milne

email :

Alilali.Nelufule@treasury.gov.za

Terry.Msomi@treasury.gov.za

David.Milne@treasury.gov.za

Please Cc the Debt Issuance and Management team in all communication relating the proposal:

DebtIssuanceandManagement@treasury.gov.za



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF DOMESTIC CORPORATE LEGAL EXPERTS FOR THE CHIEF DIRECTORATE: LIABILITY MANAGEMENT FOR A PERIOD OF THREE YEARS

CLOSING DATE :

9 July 2021

1 BACKGROUND INFORMATION

1.1 Introduction

The Public Finance Management Act (1999) (PFMA) Section 66(2)(a) of the PFMA gives the Minister of Finance powers to commit the National Revenue Fund to future financial commitments by borrowing money, issuing a guarantee, indemnity or security, or entering into any other binding transaction.

The Minister can borrow:

- To finance a national budget deficit
- To refinance maturing debt or a loan paid before the redemption date
- To obtain foreign currency
- To maintain credit balances on the bank account of the National Revenue Fund
- To regulate internal monetary conditions should the necessity arise
- Or any other purpose approved by the National Assembly by special resolution.

The Minister authorises and approves all domestic and foreign borrowings by the National Government of the Republic of South Africa.

The Constitution of the Republic of South Africa (Chapter 13) mandates the National Treasury to ensure transparency, accountability and sound financial controls in the management of public finances.

In terms of the government financing strategy, a portion of the government's borrowing requirement-through Chief Directorate Liability Management (CD: LM), is sourced from domestic capital markets, international capital markets, specialised markets, retail savings bonds and multilateral and or international development finance institutions. Additional funding options in the market may also explored

in order to diversify other funding sources available.

2 OBJECTIVES

The CD:LM uses the services of corporate legal experts to execute its functions. Procuring a panel of legal expert is instrumental in achieving the funding objectives.

The legal panel will be available for a period of three years for the provision of quality and specialist legal services in the domestic and international space. Given the nature of some of the funding sources, the timing of the transaction is crucial and execution may need to be concluded in a very short timeframe. A legal panel will assist in expediting the process of appointing lawyers and improve administrative efficiency compared to the requirements prescribed by Treasury regulations.

3 SCOPE OF WORK

3.1 General

These Terms of Reference (ToR) are for the domestic legal panel and outlines evaluation guidelines by the National Treasury. The domestic legal panel will be required to provide legal opinions and advise on documents relating to funding options, publicity memorandum, Investor presentation material. Furthermore, to advise on legal issues and risks relating debt management strategies. Assist with the preparation of any information for public participation and conduct due diligence meetings. The domestic legal panel may be required to work with the international panel in some of the funding transactions

The scope of work comprises of the following components:

3.1.1 Issuance in domestic and international capital markets and retail savings bonds

- Advise the National Treasury on retail, domestic and foreign bond issuances; including but not limited to updates of the annual report of South Africa that has to be filed with the various stock exchanges such as United States (U.S) Securities Exchange Commission's (SEC) form 18-k and Schedule B Registration statement.
- Draft the required legal opinions, advise on domestic and foreign bond issuances of government, including but not limited to the Declaration of Trust, Terms and Conditions, Subscription Agreements, Agency Agreement and signing and closing Agenda.
- Conduct due diligence meetings as prescribed by regulations, prepare the publicity memorandum, disclaimers and investor presentation material.

3.1.2 Multilateral development banks and international development finance institution

- Assist and advise the National Treasury on compliance with the laws and regulations relevant to the transaction relating to multilateral development banks and/or international development finance institution.
- Review, draft and advice on documents relating to loans from the multilateral development banks and international development finance institutions, including but not limited to the General conditions prescribed and the loan agreement.

3.1.3 Listing of funding programmes at exchanges

- Establish and draft a Domestic Medium-Term Note (DMTN) programme and /or other funding programmes for the National Treasury. List the programmes on the Johannesburg Stock Exchange (JSE) and /or other exchanges within the set time frames. Draft issuance documents and provide the necessary legal opinions for the DMTN programme and/or other funding programmes. Advise and assist the National Treasury to comply with the laws and regulations relevant to the listing of the DMTN programme and/ or other funding programmes relating to funding.

3.1.4 Specialised markets

- Advise, draft and review on Islamic bond/Shari'ah compliant funding.
- Assist and /or advice in structuring Shari'ah principles, legal, tax and regulations.

3.1.5 Research and knowledge of South African history, politics and economy

- knowledge and experience of South African history, politics and economics in general for purposes of preparing legal documents but not limited to legal opinions of a corporate law nature.

3.1.6 Qualifications and Experience

- Legal field related qualifications of the legal partner legal firm's partner that will be leading the projects assigned to by the National Treasury.
- Practical and related experience in corporate law
- Good understanding of the Public Finance Management Act of South Africa
- Excellent knowledge of South African politics, economic and risk analysis
- Good knowledge of broader legislative and tax frameworks.
- Good communication skills, writing and team ethic;
- Working knowledge (written and spoken) of English is a requirement.

3.1.7 Submission requirements

- List of sovereign, state-owned companies or corporate global bond issuance transactions to demonstrate the ability to draft the required legal documents.
- List of multilateral development banks and/or international development finance institutions transactions to demonstrate the understanding/knowledge of drafting/reviewing legal documents relating to funding from the multilateral development banks and international development finance institutions.
- List of Domestic Medium-Term Note (DMTN) programme completed to demonstrate the understanding of establishing a DMTN programme with the Johannesburg Stock Exchange.
- List of Islamic finance issuance to demonstrate the ability to structure of the Shari`ah compliance bond/instruments.
- Highlight projects sovereign, State-owned company of a corporate nature in South Africa to demonstrate the understanding of knowledge in the Republic's history, politics, economics, risks and regulations.
- A partnership agreement if the legal firm is bidding with a partner.
- Curriculum vitae and copies of qualifications of the legal firm partner demonstrating the experience, competence and project co-ordinating skills in corporate and commercial law work.

Evaluation Criteria

	Criteria	Max. Points	Scoring Criteria
	FUNTIONALITY CRITERIA		
1	<ul style="list-style-type: none"> • Experience in drafting required legal documents relating to global bond issuance. 	10	<p>5=Experience in drafting required legal documents relating to global bond issuance (10 years or more)</p> <p>4=Substantial experience in drafting required legal documents relating to global bond issuance (7 to 9 years)</p> <p>3=Intermediate experience in drafting required legal documents relating to global bond issuance (4 to</p>

			<p>6 years)</p> <p>2=Basic experience in drafting required legal documents relating to global bond issuance (2 to 3 years)</p> <p>1 = Poor Basic experience in drafting required legal documents relating to global bond issuance (0 to 1 years)</p>
2	<ul style="list-style-type: none"> Knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international development finance institutions. <p><u>*Bidders are allowed to partner with experts in the field</u></p>	20	<p>5 = Excellent knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international development finance institutions (5 years or more)</p> <p>4 = Substantial knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international development finance institutions (4 years)</p> <p>3 = Intermediate Knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international</p>

			<p>development finance institutions (3 years)</p> <p>2 = Basic Knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international development finance institutions (2 years)</p> <p>1 = Poor knowledge in drafting/reviewing legal documents for funding from the multilateral development banks and international development finance institutions (1 or 0 years)</p>
3	<ul style="list-style-type: none"> Proven track record of establishing the Domestic Medium-Term Note (DMTN) programme and required legal documents and list Johannesburg Stock Exchange (JSE) 	15	<p>5= Excellent experience in drafting the DMTN programme and required legal documents and list at the JSE (7 years or more)</p> <p>4= Substantial experience in drafting the DMTN programme and required legal documents and list at the JSE (5 to 6 years)</p> <p>3=Intermediate experience in drafting the DMTN programme</p>

			<p>and required legal documents and list at the JSE (3 to 4 years)</p> <p>2=Basic experience in drafting the DMTN programme and required legal documents and list at the JSE (2 years)</p> <p>1=Poor experience in drafting the DMTN programme and required legal documents and list at the JSE (0 to 1 years)</p>
4	<ul style="list-style-type: none"> Dedicated domestic Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments. <p><u>*Bidders are allowed to partner with legal experts in the field</u></p>	25	<p>5= Excellent proven record of dedicated Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments (6 years and more)</p> <p>4= Substantial proven record of dedicated Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments (5 years)</p> <p>3= Intermediate proven record of dedicated Shari`ah</p>

			<p>compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments (3 years)</p> <p>2= Basic proven record of dedicated Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments (2 years)</p> <p>1= Poor or no proven record of dedicated Shari`ah compliance finance practice, capacity to assist in relation to the structuring of the Shari`ah compliance bond/instruments (0 to 1 year)</p>
5	<ul style="list-style-type: none"> Expert knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature 	15	<p>5 = Excellent knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature (8 years and more)</p> <p>4= Substantial knowledge in South</p>

		<p>African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature (5 to 7 years)</p> <p>3=Intermediate knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature (4 to 3 years)</p> <p>2= Basic knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature (2 years)</p> <p>1 = Poor knowledge in South African history, politics, economics, the fundamentals of global capital markets, risks and regulations for the purpose of drafting legal opinion of a corporate law nature (1 or 0</p>
--	--	---

			years)
6	Experience, competence and coordinating skills in corporate and commercial law work of a legal firm's partner that will be leading the projects assigned to by the National Treasury.	15	5 = 10 years' or more experience 4 = 7-9 years' experience 3 = 6-5 years' experience 2 = 3-4 years' experience 1 = 1-2 year or no experience
	Minimum threshold	65%	
	Total	100%	

MANDATORY REQUIREMENTS:

- Qualification in legal field
- Partnership agreement if bidding with a partner

SBD 4

DECLARATION OF INTEREST

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

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

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

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:.....

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

2.4 Registration number of company, enterprise, close corporation, partnership agreement or trust:
.....

2.5 Tax Reference Number:

2.6 VAT Registration Number:

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

¹"State" means -

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

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

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

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:
Name of state institution at which you or the person connected to the bidder is employed :
Position occupied in the state institution:

Any other particulars:
.....
.....
.....

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

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

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

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

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

2.8.1 If so, furnish particulars:
.....
.....
.....

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

2.9.1 If so, furnish particulars.
.....

4 DECLARATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

November 2011

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

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

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

1. GENERAL CONDITIONS

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

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

1.2 The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

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

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

2. DEFINITIONS

- (a) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **"B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price

quotations, advertised competitive bidding processes or proposals;

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

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:
80/20

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

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

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

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

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6

7	4
8	2
Non-compliant contributor	0

5. BID DECLARATION

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

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

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

7. SUB-CONTRACTING

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

(Tick applicable box)

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

7.1.1 If yes, indicate:

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

(Tick applicable box)

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

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

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

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration
number:.....

8.3 Company registration
number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to

such cancellation;

- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

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

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

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

SBD 8

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js365bW

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

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

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

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

DEPARTMENT OF NATIONAL TREASURY



PLEASE COMPLETE QUESTIONNAIRE A OR B

**Contractors'/Suppliers' Questionnaire – Individuals:
Questionnaire A**

Please answer the questions by marking the appropriate column with an "X".
Please do not leave out any question relating to your specific circumstances.

Contractor/Supplier Name:	
Natural Persons:	
Surname:	
Initials:	
First two names:	
Title:	
ID number or passport number:	
Nationality:	
Income Tax reference number:	
Date of birth:	
If not a citizen of the RSA, furnish a certified copy of a work permit:	
Postal address and code:	
Residential address and code:	
Telephone numbers:	
Facsimile numbers:	
E-mail address:	
If in possession of a tax clearance certificate or exemption certificate (IRP30), furnish a certified copy thereof:	
Jurisdiction in which contractor is "ordinarily resident" i.e. place of permanent residence:	

DEPARTMENT OF NATIONAL TREASURY

--

	Question	Yes	No
1.	Do you supply services on behalf of a Labour Broker?		
2.	Are you subject to the control or supervision of the National Treasury (NT)? Including, but not limited to, the following: <ul style="list-style-type: none"> • The manner of duties performed; • The hours of work; • The quality of work. 		
3.	Are you paid at regular intervals i.e. daily, weekly, monthly etc? (If the payments are made at regular intervals or by a rate per time period)		
4.	Will payment to you include any benefits? Including, but not limited to, the following: <ul style="list-style-type: none"> • Leave pay; • Medical aid; • Training; • Sick Leave. 		
5.	Will, or have you be/been in the full time employment of the NT?		
6.	Will you require of the NT to provide any equipment, tools, materials or office space, in order to fulfil the contract?		
7.	Do you supply these, or similar, services only to the NT and not to any other client or the general public?		
8.	Will you be required to work more than 22 hours per week?		
8.1	If "yes", will payment be made on an hourly, daily weekly or monthly basis?		
8.2.1	Will you work solely for the NT?		
8.2.2	Will you provide a written statement to this effect?		
Non-Residents of the RSA			
9.	Will you return to your jurisdiction of residence upon the termination of the contract?		
10.	Is the contract to exceed a period of three years?		
11.	Will you be returning to the jurisdiction of residence during the course of the contract? If so, for what periods of time?		
12.	Is your employer resident in the Republic of South		

DEPARTMENT OF NATIONAL TREASURY

Question		Yes	No
	Africa or does a permanent establishment or branch represent the employer in the Republic?		
13.	If a permanent establishment or branch represents the employer in the Republic, will your salary be paid from such permanent establishment or branch?		
14.	Will you be required to perform any work outside of the Republic?		
15.	Do you agree to submit copies of your passport should the NT, so require?		

PARTICULARS OF PERSON ACTING AS REPRESENTATIVE OF THE ENTERPRISE

I, the undersigned, confirm that the information provided above is accurate, and that while in receipt of payment from NT, will inform NT of any changes that take place pertaining the information provided above.

Representative's Full Names:	Capacity:	Contact number:
Signature:		Date:

DEPARTMENT OF NATIONAL TREASURY



PLEASE COMPLETE QUESTIONNAIRE A OR B

**Contractors'/Suppliers' Questionnaire – All Service Providers
(excluding Individuals): Questionnaire B:**

Please answer the questions by marking the appropriate column with an "X".
Please do not leave out any question relating to your specific circumstances.

Contractor/Supplier Name:	
Corporate Contractors (including companies, close corporations and trusts):	
Registered name and furnish a certified copy of registration:	
Nature of legal entity:	
Trade name:	
Registration number:	
Date of incorporation:	
Jurisdiction of incorporation:	
Jurisdiction where effective management is performed:	
Income tax reference number:	
Employees' Tax reference number:	
Value Added Tax number and furnish a certified copy of VAT 103 Certificate:	
Postal address and code:	
Physical address and code:	
Telephone numbers:	
Facsimile numbers:	
E-mail address:	

DEPARTMENT OF NATIONAL TREASURY

Question		Yes	No
1.	Are you a "Labour Broker" i.e. do you provide payment for supplying the National Treasury (NT) with a person/s? If so, furnish a certified copy of an IRP30, which is valid for the period of the contract.		
2.	Is the service to be rendered personally by any person, who is a connected person, in relation to the entity? (For example a shareholder, member or their direct family)		
3.	Do you employ four or more employees on a full time basis throughout the year, excluding connected parties? If so, are these employees engaged in rendering the service to the NT? (For example secretarial employees would NOT be so engaged)		
4.	Would you be regarded as an employee of the NT if the service was rendered by the person directly to the NT, other than on behalf of the contractor?		
5.	Do you, the Company, Close Corporation or Trust receive any form of training supplied or paid for by NT? If "yes", please specify the nature and extent of the training:		
6.	Are you, the Company Close Corporation or Trust free to choose which tools or equipment, or staff, or raw materials, or routines, patents and technology to use in performing your main duties?		
7.	In order to perform your main duties, do you, or does such a person, Company, Close Corporation or Trust, use any tools or equipment supplied or paid for by NT? If "yes", please state the nature thereof:		
8.	Are you subject to the control or supervision of the NT, as to the manner in which, or hours during which, the duties are performed or are to be performed in rendering the service?		
9.	Will the amounts paid or payable in respect of the service consist of, or include, earnings of any description, which are payable at regular daily, weekly, monthly, or other intervals?		
10.	Will more than 80% of your income, during the year		

DEPARTMENT OF NATIONAL TREASURY

Question		Yes	No
	of assessment, from services rendered, consist of or be likely to consist of amounts received directly or indirectly from any one client , or any associated institution, in relation to the client?		
11.	Does your contract contain any elements of an employment contract? [i.e. Job titles, reporting structure in organisation, fixed working hours, employment benefits, performance bonuses (excluding bonus and penalties for early or late delivery)]		
12.	Does your contract contain any clause that will enable you to receive payment, even if no work was done?		
13.	Have you ever been classified as a Labour Broker or personal services company (including Close Corporation and Trust) by SARS or any other client?		
14.	If the answer to question 13 was "yes", did anything change that no longer classifies you as a labour broker or personal services company? If "yes", elaborate:		

<p>PARTICULARS OF PERSON ACTING AS REPRESENTATIVE OF THE ENTERPRISE</p> <p>I, the undersigned, confirm that the information provided above is accurate, and that while in receipt of payment from NT, will inform NT of any changes that take place pertaining the information provided above.</p>		
Representative's Full Names:	Capacity:	Contact number:
Signature:		Date:

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT

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.

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.

