

## Annexure A

### REQUEST FOR PROPOSAL

The Gauteng Partnership Fund (GPF) invites all interested parties to submit bids for requirements stipulated below:

<b>BID REFERENCE NUMBER:</b>	RFP008/2021
<b>CLOSING DATE:</b>	03 September 2021
<b>CLOSING TIME</b>	11:00am
<b>RFP VALIDITY PERIOD</b>	90 Days
<b>DESCRIPTION</b>	REQUEST TO LANDOWNERS/DEVELOPERS TO AVAIL SERVICED STANDS LOCATED WITHIN THE GAUTENG PROVINCE FOR ACQUISITION AND DEVELOPMENT CONSIDERATION
<b>NON-COMPULSORY BRIEFING SESSION</b>	25 August 2021 at 12h00pm via Microsoft teams
<b>QUESTIONS AND ANSWERS</b> Closing Date	27 August 2021
<b>ENQUIRIES</b>	Supply Chain Management Enquiries: <a href="mailto:nokuthulam@gpf.org.za">nokuthulam@gpf.org.za</a> Technical Enquiries: <a href="mailto:simphiwen@gpf.org.za">simphiwen@gpf.org.za</a>

PART A

INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (GAUTENG PARTNERSHIP FUND)</b>					
BIDNUMBER:	RFP008/2021	CLOSINGDATE:	03 September 2021	CLOSING TIME:	11h00
DESCRIPTION	<b>REQUEST TO LANDOWNERS/DEVELOPERS TO AVAIL SERVICED STANDS LOCATED WITHIN THE GAUTENG PROVINCE FOR ACQUISITION AND DEVELOPMENT CONSIDERATION</b>				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
<b>Reception Area,</b>					
<b>West wing, 1<sup>st</sup> floor</b>					
<b>82 Grayston Drive, Sandton</b>					
<b>2031</b>					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	Nokuthula Mqwashi		CONTACT PERSON	Simpfiwe Ndlovu	
TELEPHONE NUMBER	011 685 6627		TELEPHONE NUMBER	011 685 6695	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	nokuthulam@gpf.org.za		E-MAIL ADDRESS	simpfiwen@gpf.org.za	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM		CENTRAL SUPPLIER DATABASE No:	MAAA	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	[TICK APPLICABLE BOX] Yes <input type="checkbox"/> No <input type="checkbox"/>		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] Yes <input type="checkbox"/> No <input type="checkbox"/>	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					

<p>ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>[IF YES ENCLOSE PROOF]</p>	<p>ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>[IF YES, ANSWER THE QUESTIONNAIRE BELOW]</p>
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**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?  
 YES  NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA?  
 YES  NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?  
 YES  NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?  
 YES  NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?  
 YES  NO

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

**PART B**

**TERMS AND CONDITIONS FOR BIDDING**

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

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

(Proof of authority must be submitted e.g. company resolution)

DATE:

.....

## **TERMS OF REFERENCE**

### **1. INTRODUCTION**

In 2002, the Gauteng Department of Housing (later configured as the Gauteng Department of Local Government and Housing, and since 2013 as the Gauteng Department of Human Settlements), established the Gauteng Partnership Trust, trading as the Gauteng Partnership Fund (GPF). As such, the Gauteng Partnership Fund:

- Was established as a benevolent trust under the Trust Properties Control Act 57 (1988) (“Trust Act”), i.e., as “a trust with a social delivery mandate”.
- On 3 October 2003, was declared tax exempt in terms of Section 10(1)(c) of the Income Tax Act.
- Is registered as a non-profit organisation with the registration number 030-671-NPO.
- On 31 August 2005 GPF, was listed as a Schedule 3C Provincial Public Entity (PPE), in terms of the Public Finance Management Act (Act 1 of 1999, as amended by Act 29 of 1999) (PFMA).

GPF reports to the Gauteng Department of Human Settlements (GDHS) as its Executive Authority, and from which it receives its annual budget allocation. It aims to support the National priorities and outcomes as detailed in the National Development Plan (NDP) and aligned Medium Term Strategic Framework (MTSF) and directs its efforts at contributing to the decisive spatial transformation and modernisation of human settlements pillars of the Gauteng Provincial Government’s (GPG) Ten Pillars Programme of Transformation, Modernisation and Reindustrialisation (TMR).

Gauteng Province has approved the implementation and roll-out of the Gauteng Rapid Land Release Plan. The plan is in accordance with the national Accelerated Land Reform Programme. It is against this background that the GPF on behalf of the GDHS invites proposals from landowners and/or developers to submit proposals to avail serviced stands for acquisition and development consideration.

## **2. DEFINITIONS**

- 2.1. Residential 1 means the zoning which stipulates that properties can have a density of only one dwelling per stand or erf.
- 2.2. Partly serviced stands mean stands which are in approved township land with all the rights but no services yet.
- 2.3. SG Diagram means a Surveyor General Diagram.

## **3. OBJECTIVE**

These terms of reference invites proposals from interested landowners and/or developers to submit land development proposals which entails the full level of services to free standing erven (e.g. Residential 1 erven) for allocation to qualifying beneficiaries in terms of the Gauteng Rapid Land Release Programme. The development areas must be planned and approved townships located within the area of jurisdiction of the Gauteng Province.

## **4. SCOPE OF WORK**

The proposed serviced stands must be located in areas approved as formal townships by the relevant municipality (the list of approved areas can be accessed from the relevant local municipalities) within whose area of jurisdiction the stands are located. All stands must be zoned Residential 1 and all the relevant planning and zoning approvals must be submitted as part of the proposal. Any outstanding approval activity must be indicated as such.

### **4.1. Fully serviced stands:**

The offered stands must be serviced with the following functional municipal services:

- Water reticulation.
- Sewer reticulation
- Roads – asphalt (tarmac) or paved surface for access and internal circulation
- Stormwater construction, and
- Electrical reticulation and street lighting
- Bulk and connector services (where required)

### Note

1. All reticulation services must be connected to bulk infrastructure
2. Bulk infrastructure must be appropriate, accessible and have the required capacity

#### **4.2. Partly serviced stands:**

Proposals for partly serviced stands will also be considered. Partly serviced stands must be in approved township land and ready for services installation. The stands must be able to be connected to adequate and available bulk services. All stands must be zoned Residential 1.

Such a proposal must indicate outstanding work, cost involved and the time frames within which the services will be completed. Proposers must also indicate capacity to complete the services within the indicated time frames.

#### **5. PROOF OF LAND OWNERSHIP/LAND MANDATE**

Bidders must prove land ownership or prove their relationship to the landowner which provides them with development rights and a mandate to sell the land. The following documents are acceptable;

- Title deed
- Valid offer to purchase (OTP) and valid agreement to sell accompanied by the Title deed
- Valid land mandate – providing development rights and mandate to sell to the bidder which has been signed by authorised persons accompanied by the Title deed
- Valid power of attorney – providing development rights and mandate to sell to the bidder which has been signed by authorised persons accompanied by the Title deed
- Any other legally binding document – providing development rights and mandate to sell to the bidder which has been signed by authorised persons accompanied by the Title deed

#### Note

1. **Title deeds will only be utilised to verify that the person entering into an agreement with the bidder is the rightful owner of the land or authorised person to enter into the agreement.**
2. **If the submitted documents are not valid then bidders will be disqualified.**

#### **6. COSTING**

Interested parties responding to these terms of reference must provide the total development cost (including land consideration) for serviced stands offered and the cost per individual serviced stand.

#### **7. BULK INFRASTRUCTURE**

Bidders must clearly declare in their bid the total amount paid for bulk services contributions / installations and must indicate if any government subsidies (Provincial, National or Local) were used to pay for the bulk infrastructure.

Bidders that received government subsidies to install bulk services are not allowed to include the cost of the bulk services in their offered price.

## **8. NEGOTIATIONS WITH BIDDERS**

The GPF reserves the right to enter into negotiations with shortlisted bidders on the offered price.

## **9. TIMEFRAME**

The total estimated duration for the completion of the development is a maximum period of 24 (twenty-four) months.

## **10. OFF-TAKE AGREEMENTS**

The GPF has first option to enter into off-take sales agreements in respect of partly serviced stands.

Such mutually agreed off take agreements entered into by the GPF will be subject to:

- A detailed project execution plan with budget, methodology, key deliverables and timeframes to the satisfaction of the GPF.
- Proof of financial capacity of the Developer to implement the entire project or based on a phased delivery of serviced stands (e.g., unencumbered cash, sources of working capital - credit facilities with service providers, suppliers & contractors).
- A performance guarantee, the value to be agreed upon in the off-take agreement.

Bidders must note that even in the event of an off-take agreement being signed for partly serviced stands, the GPF will only effect payments upon transfer of the fully serviced stands.

## **11. PROPOSAL REQUIREMENTS**

- 11.1. Prospective proposers must submit detailed project information including all applicable approvals and services certificates.
- 11.2. Any reports and/or budgets submitted must be signed off by a Registered Professional Engineer (Civil Engineer or Electrical Engineer). Such reports must not be older than one (1) year from the date of closing of the tender.
- 11.3. In the event that services have been installed for a period of more than one (1) year but were not being utilized, the GPF may require bidders to submit an engineer's report signed off by a Registered Professional Engineer (Civil Engineer or Electrical Engineer) confirming that they are satisfied that all services have been inspected and are in good working order. This will be confirmed before entering into an off-take agreement.
- 11.4. Professionally Registered Engineer's must submit a copy of their professional registration with Engineering Council of South Africa (ECSA) as proof of professional registration.



**11.5. The GPF will conduct due diligence on the proposals as part of the evaluation process and further reserves the right to undertake a physical inspection of the projects where required.**

## **12. EVALUATION PROCESS AND CRITERIA**

The GPF and the GDHS need to be satisfied, in all respects, that the proposers have the necessary resources and capacity to deliver the envisaged serviced stands, and that all proposals are regarded in a fair manner in terms of evaluation criteria and process.

The general methodology of selection will be that proposals will first be evaluated on the capacity to deliver.

The evaluation of the bids will be conducted in four (4) stages: mandatory compliance, technical / functionality compliance, due diligence and price and B-BBEE.

### **12.1 The bidders will be evaluated in the following stages:**

- Stage 1: Mandatory compliance**
- Stage 2: Technical / Functionality**
- Stage 3: Due Diligence**
- Stage 4: Price and B-BBEE**

### **12.2 Mandatory compliance (Stage 1)**

The mandatory documents to be submitted with the tender are as listed below. Failure to submit any of the documents, the tenderer will be disqualified and not considered for the next stage, i.e. Functionality.

#### **12.2.1 The following mandatory documents are applicable for Fully serviced stands:**

- Proof of land ownership
  - Title deed; or
  - Valid offer to purchase (OTP) and valid agreement to sell accompanied by the Title deed; or
  - Valid land mandate – providing development rights and mandate to sell to the bidder which has been signed by authorised persons accompanied by the Title deed; or
  - Power of attorney – providing development rights and mandate to sell to the bidder which has been signed by authorised persons accompanied by the Title deed; or
  - Any other legally binding document – providing development rights and mandate to sell to the bidder which has been signed by authorised persons accompanied by the Title deed
- General Plan approved by the Surveyor General.

- Certificate of Approval from the Municipality that states that all conditions of establishment in relation to the township establishment have been met and the installation of all internal services has been arranged in terms of the relevant planning legislation. Section 82 Certificate in terms of the Town Planning and Township Ordinance no 15 of 1986.
- The GPF will only consider proposals with a minimum of 10 or more serviced stands.

The following mandatory documents are applicable for **Partly** serviced stands:

- Proof of land ownership
  - Title deed; or
  - Valid offer to purchase (OTP) and valid agreement to sell accompanied by the Title deed; or
  - Valid land mandate – providing development rights and mandate to sell to the bidder which has been signed by authorised persons accompanied by the Title deed; or
  - Power of attorney – providing development rights and mandate to sell to the bidder which has been signed by authorised persons accompanied by the Title deed; or
  - Any other legally binding document – providing development rights and mandate to sell to the bidder which has been signed by authorised persons accompanied by the Title deed
- General Plan approved by the Surveyor General.
- Project execution plan with budget, key deliverables and timeframes.
- The GPF will only consider proposals with a minimum of 10 or more serviced stands.

**Failure to submit the above-mentioned documents will lead to automatic disqualification**

12.2.2 Bidders are required to submit the following fully completed and signed Standard Bidding Documents (SBDs).

- SBD 1: Invitation to Bid.
- SBD 4: Declaration of Interests Form.
- SBD 6.1: Preference Points Claim Form in terms of PPPFA, 2011.
- SBD 8: Abuse of Supply Chain Management System.
- SBD 9: Certificate of Independent Bid Determination.
- Submission of joint venture/consortium agreement signed by all parties to the agreement (Where bidders submit proposals of such).

Note

The above-mentioned documents should be fully completed, meaning where the information is not applicable the bidder must state it as such.

**Failure to submit the above-mentioned documents will lead to automatic disqualification**

12.2.3 Bidders are also required to submit

- One (1) original hard copy tender document
- Soft copy of a tender document in a DVD, CD or memory stick (The information on the tender document must be the same as in a DVD, CD or memory stick)

**Failure to submit the above-mentioned document will lead to automatic disqualification**

**12.3. Subcontracting as a condition of tender**

The PPR 2017 regulation 9 states the following, “If feasible to subcontract for a contract above R30 million, an organ of state must apply subcontracting to advance designated groups”. The Department has assessed the compliance with regulation 9 as stated above on the feasibility to subcontract and it was considered not practically feasible due to the nature of goods or services that are being procured.

**12.4. Technical / Functionality (Stage 2)**

Bidders must complete the table below and stipulate the type and quantity of serviced stands offered. Where the bidder is offering fully serviced stands and partially serviced stands then a separate bid must be submitted for each.

**Table 1 – Type of Serviced Stands**

Description	Fully Serviced	Partly Serviced
Number of Stands		

The bids will be evaluated on technical / functionality compliance by allocating points in respect of functionality according to the criteria set out below. ***Bidders who score 70 Points or more out of 100 points on technical functionality will be able to proceed to the due diligence evaluation.***

12.4.1. The following evaluation criteria (**Table 2**) is applicable for **Fully** serviced stands;

**Table 2 – Evaluation Criteria**

Criteria	Sub-Criteria	Portfolio Of Evidence	Sub Weighting	Weighting

<b>Town Planning</b>	Environmental Impact Assessment (EIA)	Copy of the Record of Decision	10	
	Proclamation	Proclamation Notice	10	
	SG Diagram	SG Diagram	10	
<b>Services Designs</b> (Approved by relevant local municipality)	Water and sewer	Approved Service Designs	5	
	Roads and stormwater	Approved Service Designs	5	
	Electricity and street lighting	Approved Service Designs	5	
<b>Installed Services</b> (Services certificate from relevant local municipality)	Water and Sewer	<b>Fully Installed:</b> Services Certificate	5	
	Roads and Stormwater	<b>Fully Installed:</b> Services Certificate	5	
	Electricity	<b>Fully Installed:</b> Services Certificate	5	
	Streetlights	<b>Fully Installed:</b> Services Certificate	5	
<b>Bulk Services Availability</b>	Development areas with <b>sufficient</b> bulk services in close proximity.  <u>Note</u> Should bidders submit both documents they will score the maximum points allocated	Bulk services report confirming bulk capacity and availability signed by PrEng / Pr Tech Eng	3	5
		Letter confirming bulk from the relevant local municipality	2	
<b>Average Stand Size</b>	< 100m <sup>2</sup>	Township layout plan approved by the relevant local municipality with separate list indicating number of stands and sizes	5	10
	Between 100m <sup>2</sup> and 150m <sup>2</sup>		8	
	> 150m <sup>2</sup>		10	
<b>Number of Residential 1 Stands</b>	More than 500	Township layout plan approved by the relevant local municipality with	20	20
	201 - 500		15	
	101 - 200		10	
	10 - 100		5	

		separate list indicating number of stands and sizes		
<b>TOTAL</b>				<b>100</b>

12.4.2. The following evaluation criteria (**Table 3**) is applicable for **Partly** serviced stands;

**Table 3 – Evaluation Criteria**

Criteria	Sub-Criteria	Portfolio Of Evidence	Sub Weighting	Weighting
<b>Experience in the implementation of similar projects</b>	<p>Owner-developers or the service providers appointed lead consultant or project manager must demonstrate experience and track record in programme and project management of projects within the human settlements sector to be assessed as follows:</p> <p>0 projects completed = 0 points            1 project completed = 10 points            2 projects completed = 15 points            3 projects completed = 20 points            4 or more projects completed = 25 points</p> <p><u>Note</u>            For the <b>lead consultant or project manager</b> submission of an appointment letter without a corresponding reference letter will result in the bidder scoring 0.</p>	<p>For <b>owner-developers</b> they must provide a comprehensive CV indicting projects completed, scope and value. For the <b>lead consultant or project manager</b> they must provide a combination of appointment letters together with the signed reference letters on the employer's letterhead. The description of the project, scope and value must be covered in either the appointment letter or reference letter.</p>		25
<b>Approved Township</b>	<p>Provide proof of valid approval of the land development area as an approved township by competent authority (Municipality, Province).</p>	<p>Conditions of Establishment approved by the relevant local municipality</p>		15
<b>Bulk Services Availability</b>	<p>Development areas with <b>sufficient</b> bulk services in close proximity.</p> <p><u>Note</u></p>	<p>Bulk services report confirming bulk capacity and availability signed by PrEng / Pr Tech Eng</p>	10	15

	Should bidders submit both documents they will score the maximum points allocated	Letter confirming bulk from the relevant local municipality	5	
<b>Average Stand Size</b>	< 100m <sup>2</sup>	Township layout plan approved by the relevant local municipality with separate list indicating number of stands and sizes	5	15
	Between 100m <sup>2</sup> and 150m <sup>2</sup>		10	
	> 150m <sup>2</sup>		15	
<b>Number of Residential 1 Stands</b>	More than 500	Township layout plan approved by the relevant local municipality with separate list indicating number of stands and sizes	30	30
	201 - 500		20	
	101 - 200		10	
	10 - 100		5	
<b>TOTAL</b>				<b>100</b>



### **12.5. Due Diligence (Stage 3)**

There will be a due diligence process conducted on bids which have scored the minimum points required on the technical / functionality compliance, the following will be considered:

1. Town Planning – The GPF will appoint a qualified town planner to conduct a independent verification for compliance with town planning and land use rights on the offered serviced stands.
2. Services Investigation – The GPF will appoint qualified engineers to conduct a independent verification for compliance of services designs and installed services on site, this may require a physical inspection and bidders must ensure that the engineers have access to the site (where applicable).

Only bids which have successfully met the requirements of the due diligence process will be able to proceed to be evaluated in terms of the points for price and B-BBEE.

### **12.6. Price and B-BBEE (Stage 4)**

The GPF and GDHS reserve the right to appoint bidders when the objective criteria have been finalised and bidders are found to be fully compliant with these requirements.

A steering committee will be constituted to assist with the objective criteria in terms of demand and allocation.

The proposals that meet the due diligence requirements will be assessed on the objective criteria within their regions.

Bidders must note that the GPF reserves the right to appoint more than one service provider.

- Demand analysis and beneficiary identification confirmation: The GPF will ascertain from the GDHS the areas where there is a demand and whether the relevant beneficiaries have been identified.
- In the case where the land is not located in areas where there is a demand, the GPF and GDHS reserve the right not to conclude any contract with the bidder until such a time that the demand or need becomes apparent and the beneficiaries have been identified.
- The GPF will be guided by the annual provincial budget threshold for the Rapid Land Release programme in terms of how many service providers they will be able to appoint.

The 80/20 or 90/10 price and preference points ranking will be performed on the bids that meet the due diligence criteria. Based on where the land is located, the price and preference points evaluation will be performed within the respective regions.

In terms of Preferential Procurement Regulation 2017, if there is uncertainty on the preference point system to be applied, institutions must advertise the tender indicating that the tender will be evaluated on either the 80/20 or 90/10 preference point system. Once a tender is received, the lowest acceptable tender must be used to determine the preference point system to be used for the evaluation of tenders.

The following formula will be used to calculate the points for price

**80/20**

Where

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

$P_s$  = Points scored for price of tender under consideration

$P_t$  = Price of tender under consideration

$P_{\min}$  = Price of lowest acceptable tender.

The following formula will be used to calculate the points for price

**90/10**

Where

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

$P_s$  = Points scored for price of tender under consideration

$P_t$  = Price of tender under consideration

$P_{\min}$  = Price of lowest acceptable tender.

Bidders are required to complete the table below.

**Table 4 – Price**

Average Square Meter Per Stand	
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Price Per Square Meter (Incl. VAT)	
Price Per Stand (Incl. VAT)	
<b>Total Price (Incl. VAT)</b>	

The unit price per square meter (Incl. VAT) will be utilised for the 80/20 or 90/10 price and preference points evaluation within OR in and around the specific demand site to determine which bidders to award first.

**Table 5 – B-BBEE**

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

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

**Market Value** – The GPF will appoint 3 x qualified property valuers to provide independent property valuation reports to verify that the offered price for the serviced stands is market related. In the case where the offered price is not market related, the GPF and GDHS reserve the right to enter into negotiations with the bidders on the offered price.

If the price offered by a tenderer is not market related, the GPF may not award the contract to that tenderer. The GPF will negotiate a market-related price with the tenderer scoring the highest points or cancel the tender; if the tenderer does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the second highest points or cancel the tender; if the tenderer scoring

the second highest points does not agree to a market-related price, negotiate a market-related price with the tenderer scoring the third highest points or cancel the tender. If a market-related price is not agreed as envisaged, the GPF may cancel the tender.

The bidders that meet the objective criteria will be appointed.

Bidders are required to, together with their bids to submit:

- A valid Broad-based black economic empowerment (B-BBEE) Status Level Verification Certificates issued by agencies accredited by South African national accreditation system SANAS will be accepted.
- Tenderers who qualify as Exempted Micro Enterprises (EME) must submit a valid Sworn Affidavit signed by the EME representative and attested by a Commissioner of Oaths in line with the justices of the Peace and Commissioners of Oaths Act, 1963. Alternatively, the bidder must submit a Broad-based black economic empowerment (B-BBEE) Certificate for Exempted Micro Enterprises issued by the Companies & Intellectual Property Commission (CIPC) on behalf of the Department of Trade and Industry (This certificate serves as an sworn affidavit in terms of Code Series 000, Section 4.5 of the Amended codes 2013.)
- In the case of Qualifying Small Enterprises (QSE), if the bidding entity is more than 51% black owned, then no Broad-based black economic empowerment (B-BBEE) Certificate is required as a valid original Sworn Affidavit signed by the QSE representative and attested by a Commissioner of Oaths in line with the justices of the Peace and Commissioners of Oaths Act, 1963 will suffice. If the QSE is less than 51% black owned, then the bidding entity will be required to provide an original and Broad-based black economic empowerment (B-BBEE) Certificate (issued by an agency accredited by South African national accreditation system (SANAS)
- In case of a trust, consortium or joint venture, such bidders must submit a consolidated Broad-based black economic empowerment (B-BBEE) Status Level Verification Certificate issued by an agency accredited by South African national accreditation system (SANAS) or certified copies thereof, will be accepted.

Note that a sworn affidavit as explained above is to be signed by a commissioner of oath at the same date as deponent.

NB! Failure to submit (A B-BBEE Certificate, sworn affidavit as explained above bidders will forfeit B-BBEE points)

13.1. A non-compulsory briefing session will be held via Microsoft Teams Meeting on the 25 August 2021 @12h00pm.

13.2. Potential bidders who are interested in attending the briefing session are requested to submit their email addresses to be invited on Microsoft Teams Meeting between the 16 August 2021 until 24 August 2021 @12h00pm to the following email address: [tenders@gpf.org.za](mailto:tenders@gpf.org.za)

#### **14. GENERAL**

Below are requirements for this service:

14.1. It is important to note that the successful proposers will work under the supervision of GPF and GDHS representatives, abide by GPF and GDHS Code of Conduct, and other organisational guidelines.

#### **15. NON-COMMITMENT**

The GPF is not bound to accept any of the bids submitted, in line with the Preferential Procurement Policy Framework Act (PPPFA) ACT, 2000: Preferential Procurement Regulations, 2017, Paragraph 13.

The GPF reserves the right to withdraw or amend these terms of reference by notice in writing to all parties who have received the terms of reference prior to the closing date.

The cost of preparing the bid by the bidder will not be reimbursed by GPF.

#### **16. REVIEW PROCESS**

Documents submitted on time by bidders shall not be returned and shall remain the property of the GPF.

All bids duly lodged will be evaluated in accordance with the evaluation criteria.

Bidders must note that the GPF reserves the right to appoint more than one service provider. The GPF will be guided by the annual provincial budget threshold for the Rapid Land Release programme in terms of how many service providers they will be able to appoint.

#### **17. LATE BIDS**

Bids received late shall not be considered and would therefore be returned to the bidder if possible. **A bid will be considered late if it is received from one second after closing time.** The bid closing time is stipulated in the advert.

## **REASONS FOR REJECTION**

- 17.1. The GPF reserves the right to return late bids as mentioned in section 13 above.
- 17.2. The GPF reserves the right to determine and reject bids that are not in accordance to specification / Terms of Reference.
- 17.3. Bidders shall not contact GPF on any matter pertaining to their bids from the closing date to the time the bid has been adjudicated. Any effort by a bidder to influence the bid evaluation or adjudication may result in rejection of the bid concerned.
- 17.4. The GPF shall reject a submission if the bidder has committed a proven corrupt or fraudulent act in competing for a particular contract.
- 17.5. The GPF may disregard any submission if that bidder, or any of its directors:
  - Have abused the Supply Chain Management (SCM) system of any Government Department;
  - Have committed proven fraud or any other improper conduct in relation to such system;
  - Have failed to perform on any previous contract and the proof thereof exists; and
  - Are restricted from doing business with the public sector or if such supplier failed to perform on a contract based on the specific goals.

## **18. ENQUIRIES**

All enquiries must be directed in writing to:

Nokuthula Mqwashi for **Supply Chain Management Enquiries**

E-mail: [nokuthulam@gpf.org.za](mailto:nokuthulam@gpf.org.za)

Or

Simphiwe Ndlovu for **Technical Enquiries**

E-mail: [simphiwen@gpf.org.za](mailto:simphiwen@gpf.org.za) The bid number should be mentioned in all correspondence.

Responses to all enquiries will be shared with all bidders.

**Telephonic requests for clarification will not be accepted.**

**DECLARATION OF INTEREST**

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

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

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

2.1 Full Name of bidder or his or her representative:

.....

2.2 Identity Number:

.....

2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>):

.....

2.4 Company Registration Number:

.....

2.5 Tax Reference Number:

.....

2.6 VAT Registration Number:

.....

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

indicated in paragraph 3 below.

<sup>1</sup>"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 199) any municipality or municipal entity;
- (b) provincial legislature;
- (c) national Assembly or the national Council of provinces; or
- (d) Parliament.

<sup>2</sup>"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 YES / NO presently employed by the state?

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 YES / NO the appropriate authority to undertake remunerative work outside employment in the public sector?

document?

2.7.2.1 If yes, did you attached proof of such authority to the bid 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 / YES / NO trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months?



2.8.1 If so, furnish particulars:

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

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

2.9.1 If so, furnish particulars.

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

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? YES/NO

2.10.1 If so, furnish particulars.

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

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract? YES/NO

2.11.1 If so, furnish particulars:

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

3 Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Tax Reference Number	State Number / Employee Peral Number


4 DECLARATION

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

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

.....  
Signature

.....  
Date

.....

..... Position

Name of bidder

**SBD 6.1**

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

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

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

**1. GENERAL CONDITIONS**

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

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

1.2

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

1.3 Points for this bid shall be awarded for:

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

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

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

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

1.6 The purchaser reserves the right to require of a bidder, either before a bid is

adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

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

## 3. POINTS AWARDED FOR PRICE

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

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

$$\begin{array}{ccc}
 \text{80/20} & \text{or} & \text{90/10} \\
 \left( \frac{Ps}{Pt - P \min} \right) & & \left( \frac{Ps}{Pt - P \min} \right) \\
 \left| \frac{Ps}{P \min} \right| & \text{or } Ps = 90 \left| \frac{Ps}{P \min} \right| & \left| \frac{Ps}{P \min} \right|
 \end{array}$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

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

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

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

**5. BID DECLARATION**

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

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

6.1 B-BBEE Status Level of Contributor: . = .....(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph

4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

**7. SUB-CONTRACTING**

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

(Tick applicable box)

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

7.1.1 If yes, indicate:

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 | NO | |
- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

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

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

- 8.1 Name of company/firm:.....
- 8.2 VAT registration number:.....
- 8.3 Company registration number:.....
- 8.4 TYPE OF COMPANY/ FIRM
- Partnership/Joint Venture / Consortium  
 One person business/sole propriety  
 Close corporation  
 Company  
 (Pty) Limited  
 [TICK APPLICABLE BOX]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....

.....

.....

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person’s conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

	<p>WITNESSES</p> <p>1. .... BIDDERS(S)</p> <p>2. .... DATE: ..... ADDRESS</p>	<p>..... SIGNATURE(S) OF</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><b>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	<p>Yes</p> <input type="checkbox"/>	<p>No</p> <input type="checkbox"/>



4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

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

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_

(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

**SBD 9**

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 consortium<sup>3</sup> will not be construed as collusive bidding.

7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- (a) prices;
- (b) geographical area where product or service will be rendered (market allocation)
- (c) methods, factors or formulas used to calculate prices;
- (d) the intention or decision to submit or not to submit, a bid;
- (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
- (f) bidding 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.

**SBD 9**

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

Signature

.....

Date

.....

Position Name of Bidder

.....

Js914w 2

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **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](http://www.treasury.gov.za)

## **4. Standards**

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

## **5. Use of contract documents and information; inspection.**

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

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

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

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

## **6. Patent rights**

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

**7. Performance security**

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

**8. Inspections, tests and analyses**

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

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

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

**9. Packing**

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

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

**10. Delivery and documents**

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

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

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental services**

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

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

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

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

#### **14. Spare parts**

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

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

#### **15. Warranty**

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

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

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

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

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

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

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



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

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

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

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

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

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

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

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

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

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

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

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

#### **24. Anti-dumping and countervailing duties and rights**

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

may be due to him

**25. Force Majeure**

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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

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

**28. Limitation of liability**

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

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

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