

**CONSTRUCTION EDUCATION AND TRAINING AUTHORITY**

BID No: 031-2015/2016

**APPOINTMENT OF A SOFTWARE DEVELOPMENT SERVICE PROVIDER TO REVIEW,  
DESIGN, DEVELOP AND MAINTAIN THE INTEGRATED MANAGEMENT  
INFORMATION SYSTEM (MIS) FOR THE CETA**

<b>Issued by:</b>
Construction Education and Training Authority: Supply Chain Department
Unit 5 Midrand Business Park 563 Old Pretoria Main Road Midrand 1685
Administrative queries - Ms N Dlamini: 011 265 5900/5919 Technical enquiries – Mr P Nethengwe: 011 265 5900/5956

Full Name of Bidding/Tendering Entity: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Tel Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Total Bid Amount (incl. VAT): R \_\_\_\_\_

**Advert Date: 04 December 2015**

**Compulsory briefing session 19 January 2016@ 10:00**

**Closing Date and Time: 29 January 2016 @ 11h00**

Bidder's Authorised Signatory:

Initials and Surname: \_\_\_\_\_

Signature: \_\_\_\_\_

## COMPULSORY DOCUMENTS

Please note that failure to submit the following documents and/or proof will lead to immediate disqualification:

1. Original valid tax clearance certificate
2. Certified copies of company registration documents
3. Completed and signed:
  - SBD 4
  - SBD 6.1
  - SBD 7.2
  - SBD 8
  - SBD 9
  - General Conditions of Contract (GCC) – with every page initialled

## OTHER REQUIRED DOCUMENTS

Please note that failure to attach the following documents will result in the forfeiture of preference points:

- EMEs:

B-BBEE Certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by the South African National Accreditation System (SANAS) or a Registered Auditor. Registered Auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.

- Bidders other than EMEs:

Original and valid B-BBEE status level verification certificate, or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

**Please double-check that you have attached all the above documents before submitting your Bid.**

## BID DOCUMENTS CHECK LIST:

The contents of the BID/ TENDER document must be as follows, and numbered as per the numbering below, with each schedule punched, placed in a file and separated from the next schedule with a file divider.

Please complete the checklist below to verify your submission of the relevant documents:

<b>Schedules</b>	<b>Description</b>	<b>Submitted – Indicate YES or NO</b>
Schedule 1	Original Valid Tax Clearance Certificate	
Schedule 2	Certified Copies of Company Registration Documents	
Schedule 3	B-BBEE Verification Certificate	
Schedule 4	Minimum of 3 Written Testimonials from Clients	
Schedule 5	Qualifications and CVs of key staff to be used in the project	
Schedule 6	Methodology and Project Approach	
Schedule 7	Cancelled Cheque or letter from the bank confirming banking details.	
Schedule 8	Pricing Schedule	

# TERMS OF REFERENCE

## APPOINTMENT OF A SOFTWARE DEVELOPMENT SERVICE PROVIDER TO REVIEW, DESIGN, DEVELOP AND MAINTAIN THE INTEGRATED MANAGEMENT INFORMATION SYSTEM (MIS) FOR THE CETA

### 1. INTRODUCTION

The Construction Education and Training Authority (CETA) calls for bids to be submitted by System Software Development Service Providers to provide a fully integrated Management Information System (MIS) in support of the CETA's core business. The system must be able to integrate with existing CETA systems with no or little human intervention. The appointment will from 01 April 2016 to 31 March 2018 in line with the licence period of CETA and shall be renewable annually. The current CETA MIS contract will expire on 31 March 2016. The appointed provider must understand the current requirements in terms of Department of Higher Education and Training (DHET) MIS compliance for Sector Education Training Authority (SETA) and be able to assist the CETA to meet these requirements within the set timeframes.

### 2. BACKGROUND

The CETA is a Sector Education and Training Authority established in terms of the Skills Development Act, 1998 as amended. The National Skills Development Strategy (NSDS) III has eight strategic goals which guide the strategic plan and annual performance plan of the CETA.

The CETA Strategic Programmes are supported by the Management Information System. This relates to core business processes on Research and Skills Planning, Mandatory and Discretionary Grants Management, Learner Record Management, Strategic Project Management, Organizational Performance Monitoring and Evaluation and Customer Relations Management. The CETA Core Business has the following two main departments as per the skills value chain:

#### 2.1. Core Business Department:

There are three (3) sub units under core business namely

- Planning and Reporting;
- Learning Pathway & Quality Development (LPQD); and
- Monitoring and Evaluation (M&E). M&E cuts across all the business units.

#### 2.2. Projects Department:

There are five (5) sub units under the Projects Department namely

- Contract Management;
- Data Management;
- Project Implementation;
- Invoicing; and
- Customer Relations Management/Strategic Projects.

The CETA has already developed standard operating procedures for all its functions. Furthermore, the CETA has identified a number of system related constraints which need to be addressed through a modern, interactive and integrated MIS system.

Due to the advent of the QCTO, NAMB, DHET Labour Market Intelligence Project, MIS requirements and the occupational learning system, the CETA would like to ensure that its current MIS system and its associated system modules are compliant and up to date with the latest technologies and DHET reporting requirements. Please note that potential service providers are required to send their proposals which must be linked to each or selected MIS Modules as per CETA functionality areas. CETA will consider its budget availability, service provider project plan and proposed timelines versus timing of NSDS III (the end date has been extended until 31 March 2018).

To this end, the CETA would like to appoint a suitable service provider within the prescribed supply chain processes to review, design, develop, implement and maintain the CETA MIS System.

The integrated development and maintenance of the CETA MIS must transpire within the IT Governance framework as defined in King III and COBIT 5 standards and related systems development standards.

No internal expertise exists within the organization to support the diverse functionality and operational needs required.

### **3. OBJECTIVES OF THE CETA INTEGRATED MANAGEMENT INFORMATION SYSTEM**

CETA requires an MIS system that:

- Is an auditable modern interactive system
- Has ICT security with maximum data integrity and reliability
- Is robust and user friendly
- Caters for internal and external stakeholder needs – inclusive of provincial offices
- Allows for integration with existing CETA systems
- Provides management information and performance dashboard functionality
- Support deliverables of all CETA Core Business and associated Units and business processes
- Interfaces and aligns with national systems such as the DHET, SAQA and QCTO
- Must be developed with provision of access to both external and internal users
- Supports the implementation of the CETA portal

### **4. REQUIREMENTS OF THE CETA MIS**

#### **4.1. FUNCTIONAL REQUIREMENTS**

- 4.1.1. Central user access and profile administration
  - Complete user access control integration into the MIS system
  - Detailed user access and performance reporting

#### 4.1.2. Workplace Skills Plan (WSP) and Annual Training Report (ATR) automation module

- Complete Skills Development Facilitator (SDF) systems interface file upload and download processes managed by the MIS
- Complete employer and SDF management
- Generate the Sector Skills Plan (SSP) components of the SETA SSP
- Generate and supply source data file for the SDF/employer. This also contains payment history of grant disbursement, viewable by the employer on the SDF-WSP-ATR automation module.
- Approve or reject WSP-ATR submissions
- Supply and auto submit WSP Identifiers with receipt numbers
- Place all correspondence with employer and/or SDF into the "Liaison archive" module
- Update employer and SDF detail from upload data file supplied by the SDF during WSP and ATR submissions
- SDF functionality
- Comprehensive self-installable application to be installed at the employer/SDF for capturing WSP and ATR of an organization and generate WSP/ATR authorization at employer level for approval by the employer representative and employee representative
- Generate upload file for the SETA MIS
- Submit data file to MIS
- Retrieve data file from MIS containing WSP/ATR identifiers and receipt number, being supplied by the MIS WSP/ATR approval module
- Complete automation of data import from MIS system
- SDF does not have to be logged onto an online system to capture and compile the actual documents. Everything happens locally. Only when ready does the SDF need internet access to allow for the programme to submit the data files to the MIS.
- Manage Inter SETA Transfers

#### 4.1.3. Complete integrated and automated Mandatory Grants module

- Interface with the SETA financial system
- Complete automated process in terms of the levy income files
- Complete batch Electronic Funds Transfer (EFT) request with source approval from levy file import
- Inform bank system regarding batch payment
- Auto notification to SDF or employer of grant disbursement
- Managing SETA funds in relation to projects and NSDS Objectives
- Produce reports in line with Department of Higher Education and Training (DHET) reporting framework
- Automation of payment verification - both mandatory grants as well as discretionary grants - from implementation to supply chain to finance.
- Automated process to import monthly Skills Development Levy (SDL) files
- Complete levy management should cover the following:
  - SDL adjustments of prior scheme years and quarterly payment processing

- Below threshold SDL indication and liability flagging.
- Administration grants indication / budget availability notification.
- Manage discretionary grant allocation
- Manage allocation of penalty and interest into discretionary grant budget
- Manage sweeping of unclaimed mandatory grant to discretionary budget
- Second discretionary budget to SETA projects
- Financial reports
- Manage SETA grants liabilities
- Scheme year indicators
- Project Budgets and SETA commitments
- The system should be able to generate :
  - Direct levy deposit journal/s
  - Mandatory grant disbursement journal/s
  - Discretionary grant disbursement journals
  - Electronic payment files for importing into accounting system and batch payment request to bank

#### 4.1.4. Discretionary Grants module

- Interface with the SETA financial and accounting system
- Project managing and interfacing with the Education and Training Quality Assurance related to learner achievement.
- Complete levy management functionality.
- Detail account/budget allocation
- Sweeping of mandatory grants.
- Allocation of total available discretionary grant to SETA projects and activates the interactive projects module
- Detail financial related reporting in terms of commitments
- Manage projects for different funding windows

#### 4.1.5. Invoice tracking module

- Complete tracking functionality on invoices
- Flagging and notification
- Supply auto correspondence to all parties

#### 4.1.6. SETA projects management module

- Interface with discretionary grants (DG) commitments and CETA DG call
- Interface with the DG module on the MIS
- Complete project management and reporting module linked to:
  - SETA strategic objectives
  - Service Level Agreement (SLA) objectives
  - Contract management and archiving of signed SLA's
  - ETQA / Learnerships
- System generated order numbers / Module supply order numbers
- Notify beneficiaries of payment requirements
- Recording of all evidence + store actual documents (electronic) within the system
- Record project progress reports
- Request/interface with finance division to release payments
- Supply auto correspondence to all parties

#### 4.1.7. Skills planning, learning programme and Qualification Module

- Cater for apprenticeships/Learnerships/skills programmes, etc
- Cater for clustering unit standards in a Qualification
- Cluster unit standards formulating registered skills programmes
- Interface with the NLRD supplied ID's for Learnerships implementation
- Generation: Quarterly Management Reports (QMR)
- QMR to interface with the ATR and feed info to the ATR
- Variance report to include areas in which people were trained



- 1% Expenditure Report template to be populated on the system
- Upload of the authorization of the 1% Quarterly Expenditure report
- Bulk SMS under the Customer relations management module
- Learnership Agreements: Captured
- Skills Programmes : Captured
- Generation of Learnership Certificates
- Organised Framework for Occupations (OFO) drop down menu
- Inclusion of non-CETA service providers

#### 4.1.8. Quality Assurance Module

- Complete automated and integration to:
  - Apprenticeship achievements
  - Learnership achievements and tracking
  - Qualification achievements and tracking
  - Unit Standard achievements and tracking
- Provider / Employer (Workplace provider) accreditation and administration.
- Interface with NLRD supplied provider list for importing of secondary providers due to programme approval
- Assessor registration administration
- Moderator registration administration
- Learner and achievement administration and notification
- Accreditation certification request and administration
- Qualification achievements, request for certification and administration:
  - Apprenticeship achievements
  - National Qualification Framework (NQF) Qualification achievements
- Complete stand-alone provider management system for the providers of the SETA/ETQA to manage:
  - Learner enrolments

- Learner achievements
- DG project management and reporting
- Upload to SETA MIS (supporting documentation)
- Request for endorsement and certification of learner achievements
  - Direct integration with and from the SETA system
  - Automate the submission of learner achievement data
  - Automation of certification after verification from the CETA side.
- Comprehensive report functionality for building own filters and queries.
- Comprehensive early warning flagging in terms of provider accreditation, assessor and moderator expiration
- MIS should be able to generate and send out professional letters of notification to stakeholders
- All the required business rules are managed by the module, which ensures that both the system users and providers follow the required processes. This key feature ensures ETQA compliance with policy and legislation.

#### 4.1.9. NLRD Upload Module

- Total integrated NLRD Upload module and file processing aligned to the NLRD latest version specification.

#### 4.1.10. Certification and Hologram management Module

- Complete automated Hologram number management functionality
- Automate the management and distribution of holograms for:
  - Provider accreditation
  - Qualification achievement
- Automate the generation and batch printing of:
  - Provider accreditation
  - Qualification achievements
  - Apprenticeship
  - NQF Qualification Achievements
- Record and manage spoiled Holograms

#### 4.1.11. Client liaison module

- Automate the correspondence to:
  - Employers
  - Providers
  - Assessors
  - Moderators
  - Learners
  - SDF
- Auto generates and supply the correspondence by means of MIS generated auto e-mails.
- Achieve all correspondence and create a DMS (Document Management System) entry and receipt number for future access and reference purposes.
- Automate the correspondence to providers

#### 4.1.12. Provider learner management system

- Comprehensive learner management functionality for:
  - Management and administration of learner information and learner achievement/progress at the training provider and or the employer.
  - Direct integration with the SETA MIS system
  - Upload data file/s to the SETA MIS system
  - Receive data file/s from the SETA MIS system
  - Conform to the upload criteria of various SETA MIS systems
  - The provider does not have to be logged onto an online system to capture and administer learners, learner achievement and learning events. Everything happens locally. Only when needed does the provider upload the latest data files to the SETA MIS System, where a provider upload import module allows for the ETQA to accept the load or reject, based on QA and QC related criteria.
  - The MIS acknowledges receipt of the load with a detail analysis and a feedback report of the load. This happens automatically and the correspondence is recorded against the provider on the "Liaison history" module

#### 4.1.13. Complete integrated reporting module

- Discretionary grants related reports
- Mandatory grants related reports
- WSP and ATR related reports
- Skills planning and Qualification related reports
- All ETQA related reporting
- NLRD Upload file
- Certification and Hologram distribution
- Finance related reports
- SSP related reports
- Quarterly Monitoring Report Generation in line with SETMIS: QMR
- Facility to track and trace modules for easy correspondence functionality.
- Detailed filter and sorting functionality with the ability to export directly into Microsoft:
  - Word
  - Excel
  - PowerPoint
  - Etc.

#### 4.1.14. Complete integrated automated QMS system supplied as part of the MIS system

- Scheduling and sharing a common calendar for organizational purposes:
  - Event planning
  - Bookings and flagging
  - Meetings
  - Use a Meeting Workspace to organize attendees, agendas, documents, minutes, and other details for meetings
  - Important dates
  - Integrate this calendar directly with Microsoft Outlook end-users

- Share events and allow for individual notification.
- Task allocation, tracking progress, reporting and flagging
- Communication and information sharing.
- Remote access and remote management of user rights and user access.
- Sharing portal for documentation such as:
  - Policies for viewing purposes
  - Any type of document that a user would like to request input from other users
  - Informing system users of any amendments and alterations
- Portal for contacts and migrate directly to Microsoft Outlook end-user contacts.
- Export functionality to export list to Excel
- Creation of Data-Views for extracting data through the CETA MS SharePoint based Intranet
- Portal for important web-sites:
  - SETA web sites
  - SAQA
  - DHET, etc.

#### 4.1.15. Meeting management module

- Log committees
- Log committee members
- Compile agenda and minutes
- Issue and notify members of tasks and responsibilities
- Store and secure minutes
- Secure the retrieval of previous minutes by specific identified users.

#### 4.1.16. QCTO processes and alignment

- The MIS should be aligned to Quality Council for Trade and Occupations (QCTO) processes
- Integrated modules in relation to QCTO latest developments

- The provider must be prepared to further develop and/or modify the system in alignment with QCTO and any other skills related developments

#### 4.1.17. Development of WSP and ATR monitoring module

- The provider must be prepared to further develop and/or modify the system to monitor WSP and ATR
- This module will cover monitoring of learners not funded by the CETA and through Mandatory Grants

#### 4.1.18. Provision for Customer Relations Management.

- Managing relationships with stakeholders.

## **4.2. NON-FUNCTIONAL REQUIREMENTS**

4.2.1. Performance Monitoring: There shall be regular engagements between the Service Provider, CETA Business Units, CETA Management and the CETA ICT Steering Committee.

4.2.2. Compliance: Service provision shall be within the CETA ICT Governance Framework. In this regard systems shall comply with the CETA ICT Policies.

4.2.3. Delivery of project and related services within formal project management structures and methodologies.

4.2.4. Seamless Integration with other CETA Systems such as Pastel Evolution and Microsoft Dynamics CRM

4.2.4 Provision for a Help Desk System for handling queries, incidents and requests regarding operations and use of the system.

4.2.5. Migration of data from the current SMS to the new system.

4.2.6. Secure access from all CETA Offices.

4.2.7. Secure access via the Web.

4.2.8. Provision for adequate training as part of the system implementation process.

4.2.9. SLA for continuous operational support and training and development of CETA staff, stakeholders and/or accredited training providers.

**The above requirements specifications are very high-level. A detailed requirements analysis and specification exercise which complies with applicable Software and Systems Engineering Standards shall be conducted as indicated in the Scope Of Work below. Bidders are required to factor this into their costing.**

## **5. SCOPE OF WORK AND DELIVERABLES**

### **5.2. REQUIREMENTS ANALYSIS AND SPECIFICATION**

- Detailed specification of requirements.
- Verification, Approval / Sign-off of requirements (Document).

### **5.3. SYSTEMS DESIGN**

- Detailed Design Specifications
- Verification, Approval and sign-off of the design (document).

### **5.4. SYSTEMS DEVELOPMENT/CUSTOMIZATION AND TESTING**

- System Customization
- Specification of Test Cases.
- Approval / sign-off of test cases.

### **5.5. SYSTEMS ACCEPTANCE TESTING**

- Use test cases to test solution.
- Do acceptance testing.
- Sign-off acceptance testing.

## **5.6. TRAINING AND KNOWLEDGE TRANSFER**

- Produce documentation of final solution
- Produce end-user manuals if necessary
- Deliver hands-on orientation and training to appropriate CETA staff, stakeholders and accredited training providers on how to maintain the equipment and system.

## **5.7. DATA MIGRATION**

## **5.8. SYSTEM IMPLEMENTATION**

## **5.9. INITIAL PROJECT SIGN-OFF**

## **5.10. POST GO-LIVE ACTIVITIES**

- Invoke Maintenance and Support.

## **6. OTHER**

### **CROSS CUTTING FUNCTIONAL AREAS:**

- Organisational and stakeholder management (Customer Relationship Management Module)
- System enhancement and integration across CETA Business processes and other related ICT Platforms
- Continuous capacity building of CETA MIS user and stakeholder awareness and functionality training where relevant
- Provision of service within a sound ICT Governance framework relating to inter alia ICT Security, change management, ICT risk management and business continuity.
- Monitoring through regular engagements with business units and reporting to CETA ICT Steering Committee
- Provision of help desk and MIS Queries and log calling

### **PROVISION OF A HELPDISK FOR MIS QUERIES (TECHNICAL HELPDISK)**

- Ensure that the Help Desk is adequately resourced at all operational times.
- Receive CETA end-user requests, incidents and queries
- Open/Update requests and incidents
- Unless specifically agreed all contacts with the Help Desk (incidents, requests and queries) will be logged.
- Perform initial problem determination in support of standard in-scope services:
  - Dispatch of software and hardware engineer or specialist to site as required.
  - Initial incident categorisation (type of fault).
  - Incident investigation/diagnostics.
  - Provision of fault diagnosis tools (e.g. knowledge management).

- Manage/track maintenance requests and queries
- Provide weekly reports on progress Operations or CETA Management meeting

### **Call/Query Closure**

Define and document call / query-closure rules and parameters

### **Trends & statistics**

- Identify and report on trends.
  - Include trend analysis in monthly reports.
  - Trend analysis of incident/problems.
    - Produce accurate and auditable statistics
- Produce meaningful and accurate reports and administer help desk systems.
- Produce ongoing Customer Satisfaction Reports.
  - Develop a knowledge transfer project plan to support the transfer of some of the IT support functions to the CETA internal IT Unit
  - Deleting and modifying end user accounts within the CETA ICT governance framework

### **CONDITIONS OF TENDER**

Services of a successful service provider will be secured in accordance with the CETA's Procurement Policy subject to the following conditions:

- The CETA reserves the right to award or not to award this contract;
- The CETA reserves the right to award this contract to one or multiple bidders;
- The National Treasury general conditions of contract will be applicable to this tender;
- Bidders who fail to complete and attach all relevant documents will be disqualified i.e. SBD 1,4,6 and 8, 9 and original valid tax clearance certificate;
- Only bidders who score above the minimum threshold in terms of technical evaluation will be considered for further evaluation;
- All prices quoted must be VAT inclusive;
- Please note that bidders who may be invited for presentations, may be re-evaluated.
- Bidders must submit 4 bid documents (1 original and 3copies). Bidders who fail to do so will be disqualified
- No tender document will be accepted if not properly sealed and marked;
- The CETA reserves the right not to accept the lowest cost proposal;
- The general conditions of contract will be applicable to this tender;
- The CETA will enter into a formal contract with the successful service provider;



- ❑ The CETA reserves the right to terminate the contract should the performance of the service provider be unsatisfactory;
- ❑ The CETA has the right to visit the business premises to verify the information provided in the tender documents
- ❑ It is the responsibility of prospective bidders to ensure that their bid documents are submitted before the closing time and date of the tender;
- ❑ Bids received after closing time and date will be marked as non-compliant and will NOT be considered;
- ❑ Although adequate thought has been given in the drafting of this document, errors such as typos may occur which the CETA will not be responsible for;
- ❑ Any change of information provided in the tender document that may affect delivery should be brought to the CETA's attention as soon as possible. Failure to comply may result in the contract being terminated;
- ❑ Service provider presenting information intentionally incorrectly or fraudulently will be disqualified;
- ❑ The CETA reserves the right to terminate the contract should the performance of the service provider be unsatisfactory;
- ❑ Service provider presenting information intentionally incorrectly or fraudulently will be disqualified;

## **PROJECT PROPOSAL**

The tender proposal must include the following:

- A short profile of the organisation;
- List of the available human resource expertise listing the specific expertise of each person as it is expected that due to the nature of the assignment a multi-disciplinary team of persons will be required.;
- A list of any similar work carried out;
- A detailed project plan and proposal showing how your organisation will manage the project against each of the functionality areas as needed by CETA;
- Details of the cost / fee breakdown for the services to be rendered against each of the functionality areas as required by CETA

All potential service providers must attend a compulsory briefing session scheduled for the 19 January 2016 at CETA Head Office in Midrand. All bidders who do not attend the briefing session will automatically be disqualified.

## EVALUATION CRITERIA

### Criterion 1 – Compulsory Requirements

Bidders will first be evaluated in terms of the gatekeeper/minimum requirements on page 2 of this document. Bidders who do not fulfil all the requirements or do not submit the required documents will be disqualified. Those who fulfil all the requirements or have submitted the required documents will be further evaluated on functionality.

### Criterion 2 – Functionality

Functionality is worth 80 points. The minimum threshold is 56 points. Bidders who score less than 56 points on functionality will therefore be disqualified. Those who score 56 points or more will be further evaluated in terms of price and preference points (i.e. on the B-BBEE status level of contributor). The functionality evaluation is broken down as follows:

Methodology and Project Approach	Total – 80 points
Short profile of organisation including multidisciplinary IT/HR expertise relevant to the MIS Project. <b>Submit CVs of the project team as per functionality Module</b>	5
Detailed relevant Project Plan to manage the project clearly identifying all functional areas, timeframe, budget/costs and previous proven delivery. Submit reference letters as proof.	25
Proven knowledge of provisioning of a technical help desk for systems queries for MIS	10
Proven knowledge of integrating systems particularly Grants Payment, QMR, QMS portal and finance grant payment modules or accounting systems. (Attach reference letters as proof)	20
Proven knowledge of management and implementation of disaster recovery plans. <b>Attach reference letters as proof.</b>	10
Organisational and stakeholder management (Customer Relationship Management Module). <b>Attach reference letters as proof.</b>	10

### Criterion 3 – Presentations

Bidders who score 56 points or more on functionality will be invited for presentations, presentations will be worth 20 points and bidders need to score a minimum of 14 points to be further evaluated on price and preference. Bidders who score less than 14 points will be disqualified.

Criterion	Total Points - 20
Company profile and experience of proposed team.	10 points
Methodology and Project Plan	10 points

### Criterion 4 – Price and Preference Evaluation

Bidders who score 14 points or more on presentation will be further evaluated in terms of Price and Preference points (B-BBEE status level of contributor). As per the table below, price is evaluated over 90 points and preference points over 10:

Price Assessment	90 Points
Preferential Elements	10 Points
B-BBEE Status Level of Contributor	Number of Points
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

### ENQUIRIES

Enquiries regarding this proposal should be addressed to **Mr Phumudzo Nethengwe** on 011 265 5900/5956

**INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR THE APPOINTMENT OF A SOFTWARE DEVELOPMENT SERVICE PROVIDER TO REVIEW, DESIGN, DEVELOP AND MAINTAIN THE INTEGRATED MANAGEMENT INFORMATION SYSTEM (MIS) FOR THE CETA (CONSTRUCTION EDUCATION AND TRAINING AUTHORITY)

BID NUMBE: **031-2015/2016**CLOSING DATE: **29 January 2016**CLOSING TIME: **11:00**

DESCRIPTION: **APPOINTMENT OF A SOFTWARE DEVELOPMENT SERVICE PROVIDER TO REVIEW, DESIGN, DEVELOP AND MAINTAIN THE INTEGRATED MANAGEMENT INFORMATION SYSTEM (MIS) FOR THE CETA**

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The successful bidder will be required to fill in and sign a written Contract Form (SBD 7).

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DEPOSITED IN THE BID BOX SITUATED AT (*STREET ADDRESS*):

Unit 5

Midrand Business Park

563 Old Pretoria Main Road

Midrand

1685

Bidders should ensure that bids are delivered timeously to the correct address as stated above. If the bid is late, it will not be accepted for consideration.

**ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)**

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THE FOLLOWING PARTICULARS MUST BE FURNISHED  
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER.....

POSTAL ADDRESS.....

STREET ADDRESS.....

TELEPHONE NUMBER CODE.....NUMBER.....

.CELLPHONE NUMBER.....

FACSIMILE NUMBER.....CODE.....NUMBER.....

E-MAIL ADDRESS.....

VAT REGISTRATION NUMBER.....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2) YES or NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED?(SBD 6.1)  
YES or NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA).....

A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS); .....

A REGISTERED AUDITOR .....  
[TICK APPLICABLE BOX]

**(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE 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? YES or NO

[IF YES ENCLOSE PROOF]

SIGNATURE OF BIDDER .....

DATE .....

CAPACITY UNDER WHICH THIS BID IS SIGNED .....

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED.....

**ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:**

**Department:** Supply Chain Management Unit

**Contact Person:** Nokwanda Dlamini

**Tel:** 011 265 5900/5909

**Email:** Nokwandad@ceta.co.za

## TAX CLEARANCE CERTIFICATE REQUIREMENTS

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

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

## 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 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, shareholder<sup>2</sup>, 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.

<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 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) 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 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.  
.....  
.....  
.....

2.10 Are you, or any person connected with the bidder, **YES/NO**



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?

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 Income Tax Reference Number	State Number/Personal Number	Employee

**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

# PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

**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, 2011.**

---

**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 R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed R1 000 000 (all applicable taxes included) and therefore the **90/10** system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

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

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

	POINTS
<b>1.3.1.1 PRICE</b>	.....90.....
<b>1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	.....10.....
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5. 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**

2..1 **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

2.3 **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic

Empowerment Act;

- 2.4 **“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 services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 **“consortium or joint venture”** 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;
- 2.8 **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **“EME”** means any enterprise with an annual total revenue of R5 million or less .
- 2.10 **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **“non-firm prices”** means all prices other than “firm” prices;
- 2.13 **“person”** includes a juristic person;
- 2.14 **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 **“sub-contract” means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;**
- 2.16 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### 3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid

must be the one scoring the highest number of preference points for B-BBEE.

3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

**4. POINTS AWARDED FOR PRICE**

**4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS**

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

**80/20 or 90/10**

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for comparative price of bid under consideration

$P_t$  = Comparative price of bid under consideration

$P_{\min}$  = Comparative price of lowest acceptable bid

**5. Points awarded for B-BBEE Status Level of Contribution**

5.1 In terms of Regulation 5 (2) and 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>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	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.
- 5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

**6. BID DECLARATION**

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

**7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1**

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

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).

**8 SUB-CONTRACTING**

8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

8.1.1 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? YES / NO (delete which is not applicable)

**9 DECLARATION WITH REGARD TO COMPANY/FIRM**

9.1 Name of company/firm ..... :

9.2 VAT registration number : .....

9.3 Company registration number .....

:

9.4 TYPE OF COMPANY/ FIRM

Partnership/Joint Venture / Consortium

One person business/sole propriety

Close corporation

Company

(Pty) Limited

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

9.6 COMPANY CLASSIFICATION

Manufacturer

Supplier

Professional service provider

Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

9.7 Total number of years the company/firm has been in business? .....

9.8 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 contribution indicated in paragraph 7 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 paragraph 7, 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 contribution 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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

**WITNESSES:**

- 1. ....
- 2. ....

.....  
 SIGNATURE(S) OF BIDDER(S)

DATE:.....

ADDRESS:.....

.....  
 .....

# CONTRACT FORM - RENDERING OF SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

## PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number.....at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.

The following documents shall be deemed to form and be read and construed as part of this agreement:

Bidding documents, viz

Invitation to bid;

Tax clearance certificate;

Pricing schedule(s);

Filled in task directive/proposal;

Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;

Declaration of interest;

Declaration of bidder's past SCM practices;

Certificate of Independent Bid Determination;

Special Conditions of Contract;

General Conditions of Contract; and

Other (specify)

I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.

I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.

I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.

I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

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



**CONTRACT FORM - RENDERING OF SERVICES**

**PART 2 (TO BE FILLED IN BY THE PURCHASER)**

I..... in my capacity as.....  
 accept your bid under reference number .....dated.....for the rendering of services  
 indicated hereunder and/or further specified in the annexure(s).

An official order indicating service delivery instructions is forthcoming.

I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT .....ON.....

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

**WITNESSES**

1 .....

....

2 .....

## 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 audi alteram partem rule was applied).</p> <p>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.</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 (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) 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	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:		

### 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

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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.

<sup>3</sup> 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

# GENERAL CONDITIONS OF CONTRACT

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 anything 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 wilful 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
- The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34. Prohibition of Restrictive Practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the

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

