

## **SPECIAL CONDITIONS OF BID**

### **1. INTERPRETATION**

- 1.1. The word "Bidder" in these conditions shall mean and include any firm of Contractors, Services Providers or any company or body incorporated or unincorporated or any other legal entities.
- 1.2. The word "Department" in these conditions shall mean the DEPARTMENT OF PUBLIC WORKS AND INFRASTRUCTURE
- 1.3. Any reference to words "Bid" or "bidder" herein and or any other documentation shall be construed to have the meaning as the words "Tender" or Tenderer".

### **2. PRECEDENCE**

- 2.1. If any other condition (bid rule) in the bid document is in contradiction with the "Special Conditions of Bid" the "Special Conditions of Bid" will take preference.
- 2.2. The "Special Conditions of Bid" can only be amended by an official addendum before the closing date of the bid.

### **3. GENERAL BID RULES**

- 3.1. "Written" or "in writing" means hand-written in non-erasable ink or any form of electronic or digital writing and or a combination thereof.
- 3.2. The digital and or electronic completion and signing of documents is permitted.
- 3.3. A bidder participates in this bid process entirely at its own risk and cost.
- 3.4. The Department may accept or reject any bid offer and may cancel the bid process (or reject all bid offers at any time) prior to the formation of a contract, due to the following:
  - 3.4.1. due to changed circumstances, there is no longer a need for the goods or services specified in the invitation;
  - 3.4.2. funds are no longer available to cover the total envisaged expenditure;
  - 3.4.3. no acceptable tender is received;
  - 3.4.4. there is a material irregularity in the tender process; or
  - 3.4.5. there is material change in the scope of works.
- 3.5. The Department shall not accept or incur any liability for such cancellation or rejection or acceptance, but will give written reasons for such action upon receiving a written request to do so.
- 3.6. Bids which are late or submitted by facsimile or electronically, will not be accepted.
- 3.7. Completed bid documents in a sealed envelope endorsed with the relevant bid number, bid description and the closing, must be deposited in the bid box as indicated in the bid document.
- 3.8. Bidders must ensure that bids submitted via courier services are deposited by the courier service in the Departmental Bid box, prior to the closing date and time. The Department will not accept responsibility for any bids not timeously deposited in the Bid Box.
- 3.9. Bids received after the closing date and time will not be accepted for consideration and where practical, be returned unopened to the Bidder(s).
- 3.10. The bidder must be registered on the Central Supplier Database (CSD) for government prior to the award and must be active on the CIDB where applicable.
- 3.11. Bidders are not allowed to recruit or shall not attempt to recruit an employee of the Department for purposes of preparation of the bid or for the duration of the execution of this contract or any part thereof.

### **4. AMBIGUITIES/ CONTRADICTIONS**

- 4.1. If a bidder becomes aware of any ambiguities or contradictions in the bid document or the specifications, drawings or descriptions or functionality or quality, or any part of the



bid document, this should be clarified with the Department, at least five (5) working days before the closing time stated in the tender data.

- 4.2. If the Department found, after the closing date of the bid, that there is an ambiguity/contradiction in the bid document, the Department reserves the right to:
  - 4.2.1. If the ambiguity/contradiction in the bid document is of an administrative nature, request bidders to correct any non-compliances caused by the ambiguity/contradiction or
  - 4.2.2. Cancel the bid and process

## **5. PERIOD OF VALIDITY FOR BIDS AFTER CLOSING DATE**

5.1 All Bids must remain valid from the closing date for a period as stipulated in the bid document.

5.2 The Department reserves the right to request for the validity extensions of bids, should it be deemed necessary. The following conditions will apply when the Department requests for a validity extension of a bid:

- 5.2.1 The request for a validity extension will be done while the validity period of the bids are still valid.
- 5.2.2 Bidders have the right to refuse the extension of the validity period of their bids.
- 5.2.3 If a request for validity extensions are sent to bidders while the validity period of the bids are still valid, non-replying to the request for validity extension before the expiry date will be deemed a tacit agreement to the extension of the validity period. The Department will communicate with the affected bidders to confirm such tacit agreement.
- 5.2.4 Should the bidder not agree with the tacit agreement, the bidder shall be deemed to be non-responsive and not considered for further evaluation.
- 5.2.5 If a bidder(s) refused a validity extension, it will be deemed that the bidder(s) had withdrawn their bids from the bidding process. The Department reserves the right to continue with its bid evaluation and adjudication of the remaining bids and finalise the process.

## **6. BRAND NAMES**

6.1 Wherever a brand name is specified in this bid document (i.e. in the specifications, pricing schedule or bill of quantities or anywhere in this document), the department's requirement is not limited to the specified brand name, but requires an item similar/equivalent or better than specified.

## **7. CONTRACTUAL PRICE ADJUSTMENTS**

7.1 The Bid will not be subjected to any price escalation.

## **8. AUTHORITY TO SIGN BID DOCUMENTS**

- 8.1 No authority to sign (PA 15.1: Resolution of Board of Directors) is required from an enterprise which has only one director or is a sole ownership.
- 8.2 In the case of a bid being submitted on behalf of a company, close corporation or partnership, evidence should be submitted with the bid at the closing time, that the Bid has been signed by a person properly authorised by resolution of the directors or under the articles of the entity. For that purpose, forms PA-15.1-15.3 (Resolution of Board of Directors) are included in the bid document for completion by the relevant Board(s) of Directors
- 8.3 The department further accepts that, in the absence of a PA 15.1: Resolution of Board of Directors, any director or any member of the enterprise may have the authority to



bind the enterprise. Therefore the following will apply when only one director or one member of the enterprise signed the bid documents:

8.3.1 The signature of any one of the directors or any one of the members of the enterprise will bind the enterprise and all the directors/ members of the enterprise. This condition will therefore render the bid valid; and

8.3.2 The Department will verify the authority to sign (if deemed necessary) and where possible, may request proof of such authority of the relevant director or relevant member to act on behalf of the enterprise in the form of a "Resolution of the Board of Directors", if such " (PA 15.1: Resolution of Board of Directors)," was not submitted with the bid or was not completed or was incorrectly completed,

8.4 In the case of a sub-contractor agreement, a joint venture or consortia, the signing of the sub-contractor agreement, or Joint Venture or Consortia agreement by any director or member of each of the parties to the agreement, will render the sub-contractor agreement or Joint Venture or Consortia agreement valid. Therefore:

8.4.1 The Department reserves the right to request from each party to the sub-contractor agreement or Joint Venture or Consortia" agreement, proof of such authority of the relevant director or relevant member to act on behalf of the enterprise(s), in the form of a "Resolution of the Board of Directors", if it was not submitted with the bid or was not completed or was incorrectly completed,

8.5 In the event that a non-member or non-director to the enterprise(s) sign the bid documents and or sign a joint venture or consortia agreement, an "Authority to sign" issued by a director of the enterprise(s) or by the Board of Directors of the enterprise(s) must be submitted with the bid at the closing date. Failure to comply with this requirement at the closing date of the bid, will invalidate the bid submitted.

## **9. CONTRACT PERIOD**

9.1 The expected contract period is as stipulated in the Contract Data. The construction period is as stipulated within the Contract Data from date of handing over of site in the case of contractors.

9.2 The service contract period in terms of consultants would commence on the date of agreeing on the project execution plan stipulating specific milestone date, as agreed by the department.

## **10. NEGOTIATION WITH THE IDENTIFIED PREFERRED BIDDER**

10.1 The Bid will be awarded to the bidder who scores the highest PPPFA number of points:

10.1.1 However, should an offer not be market related, the Department reserves the right to negotiate with bidders a reasonable market price /offer?

## **11. AWARD OF CONTRACTS TO TENDERERS NOT SCORING HIGHEST POINTS**

The Department reserves the right to award the bid to a tenderer, other than the highest scoring bidder, after having applied an objective criteria (i.e risk assessment, as per the risk assessment criteria in the notice to invitation to tender/quote).

## **12. TAX COMPLIANCE**

12.1 No tender shall be awarded to a bidder who is non tax -compliant.

12.2 All bidders' tax matters must be in order prior to award.

12.3 If the recommended bidder's tax status is non-compliant, the recommended bidder must submit written proof from SARS of their tax compliant status or submit written proof that they have made an arrangement with SARS to meet their outstanding tax obligations.



- 12.4 The recommended bidder will be given a maximum of seven (7) working days to correct their tax compliance status.
- 12.5 Failure to comply within seven (7) working days, from the date of the request, the Department will reject the bid submitted by the bidder.

### **13. REGISTRATION AS A VAT-VENDOR**

- 13.1 Non-VAT vendors do not have to include VAT in their bid prices.
- 13.2 Non-VAT vendors who submit bids for contracts that would, if successful, take their annual turnover above the threshold of R1 million, must include VAT in the prices quoted and must therefore immediately upon award of the contract, register with the South African Revenue Service (SARS) as VAT vendors.
- 13.3 The award of contract would be conditional (for Non-VAT vendors who included VAT in their prices) conditional pending the successful bidder submitting proof of registration as VAT vendor with SARS within 21 days of award.
- 13.4 Failure to comply within 21 days after being notified to do so will lead to the automatic withdrawal of the "provisional letter of award" and elimination of the bidder's offer.
- 13.5 VAT vendors must include VAT in their bid prices and failure to comply will lead to an automatic elimination of the bidder's offer.
- 13.6 In all other instances, where bidders have excluded VAT from the prices quoted, if the bidder is successful, the letter of award will clearly state that the price at which the contract is awarded is exclusive of VAT and that VAT will not be added on at any stage after the contract has been signed.
- 13.7 If a Non-VAT vendor/ bidder is contracted with the Department with a price which is Excluded Vat, and it becomes a VAT vendor after award or alternatively becomes a VAT vendor due to a cumulative number of awards, the bidder will have to absorb the adverse financial implications of not including VAT in their price quoted. VAT cannot be claimed from the Department for any payments already made or from any future payments.

### **14. CERTIFICATION OF DOCUMENTS**

- 14.1 Where so required in the bid documents, bidders are required to submit copies which are certified as a "true copy of the original".
- 14.2 If a bidder submitted an uncertified copy of an original document, or an original copy which is not correctly certified, the bidder will be afforded an opportunity to correct such non-compliance within a minimum period of 48 hours as follows:
  - 14.2.1 The corrected noncompliance must be made from the initial copied document and not from a new document or from another document.
- 14.3 All bidders' whose copies complies with the minimum requirements above, will be "deemed in order" and will be subjected for consideration in further evaluation processes, even if the Department did not request any corrections.
- 14.4 No submissions of new or alternative documents or certified copies of new or alternative documents will be allowed after the bid closing date.
- 14.5 The Department will not accept a copy of a copied document and will not provide any bidder an opportunity to correct such a non-compliance.

### **15. REQUIREMENTS FOR A VALID BBEE CERTIFICATES AND SWORN AFFIDAVITS**

A valid B-BBEE Certificate is a B-BBEE Certificate which has not expired at the closing date of the bid.

- 15.1 A "Sworn Affidavit" must comply with the following minimum requirements to be considered valid:
  - 15.1.1 The "Sworn Affidavit" must not be expired at the closing date.



- 15.1.2 In respect of Construction bids, a “Sworn Affidavit” issued in terms of the Amended Construction Sector Code; (Gazette Vol. 630 No. 41287); Issued in terms of paragraph 3.6.2.4.1 (B), must not be expired at the closing date.
- 15.1.3 The Annual Total Revenue must be based on the latest financial year-end’s Financial Statements/Management Accounts and other information of the bidder.
- 15.1.4 A “Sworn Affidavit” based on information from financial periods prior to the latest financial year-end of the bidder or for a financial year which has not yet ended, is invalid.
- 15.1.5 The latest financial year-end must be clearly indicated by the bidder (Deponent) in the “Sworn Affidavit”. An omission of the financial year will invalidate the submitted “Sworn Affidavit”.
- 15.1.6 The “Sworn Affidavit” must be correctly completed, signed and dated by the bidder (Deponent).
- 15.1.7 The “Sworn Affidavit” submitted must be correctly signed and stamped by the “Commissioner of Oath”.

## **16. AWARDING OF POINTS FOR SPECIFIC GOALS (PA-16)**

- 16.1 For a bidder to be awarded points for specific goals as per the bid, the bidder must submit proof as specified in the bid document with the bid at the closing date and time.
- 16.2 The requirements of a valid BBEE-Certificate and or “Sworn Affidavit” as specified in the Special Conditions of Tender applies.
- 16.3 Parties in an unincorporated joint venture must submit its own consolidated B-BBEE certificate, which has not expired at the closing date of the bid.
- 16.4 If a bidder submit with the bid at the closing date the required proof for specific goals, as specified in the bid document, but the proof is not certified or is certified incorrectly, the bidder will be given a minimum of 48 hours to submit a copy which is correctly certified. The copy maybe certified after the closing date of the bid. The copies maybe certified after the closing date of the bid.
- 16.5 If a bidder submit at the closing date of the bid a valid proof as specified in the bid document, but the bidder’s PA 16 is not signed or dated or witnessed or it is not properly completed, or its not completed or submitted or did not claim points, the bidder will be given a minimum of 48 hours to submit or correctly complete its PA 16.
- 16.6 All bidders’ whose submitted proof as specified in the bid document and it complies with the minimum requirements above, will be “deemed in order” and will be subjected for consideration in further evaluation, even if the Department did not request any corrections/ certifications.
- 16.7 No submissions of alternative proof for specific goals as specified in the bid document will be allowed after the bid closing date.
- 16.8 Bidders who failed to submit the required proof for points for specific goals, will not be scored for the relevant specific goal(s), but there offers will still be evaluated further.

## **17 BIDDER’S DISCLOSURE/ BIDDER’S DECLARATION (PA - 11)**

- 17.1 The Department will afford a bidder an opportunity to correct its PA-11 form, if the bidder omitted to sign or to complete or to properly complete this form.
- 17.2 A bidder’s offer maybe eliminated if the bidder’s declaration is proven false during the bid evaluation process.

## **18 FORM OF OFFER AND ACCEPTANCE**

- 18.1 The tender amount in words takes precedence, where there is a discrepancy between the amount in figures, and the amount in words will govern.
- 18.2 The successful bidder will be required to balance its rates prior signing of a contract.
- 18.3 If the tenderer makes an obvious grammatical error in the amount of words, the wording will be compared to all the submitted comparative figures (i.e. the amount in figures on the submitted "Form of Offer and Acceptance" and the amount stipulated in the bills of quantities or the final summary page, or activity schedule or pricing schedule) and if deemed the same:
- 18.3.1 The tenderer's offer will not be disqualified.
- 18.3.2 The tenderer can be requested to correct the error and ratify its "Form of Offer and Acceptance".
- 18.4 If there is no amount in words, the amount in figures on the submitted "Form of Offer and Acceptance" will be compared to all the submitted comparative figures (i.e. the amount stipulated in the submitted bills of quantities or the final summary page or the activity schedule, or the pricing schedule) and if deemed the same:
- 18.4.1 The tenderer's offer will not be disqualified.
- 18.4.2 The tenderer can be requested to correct the omission of the amount in words and ratify its "Form of Offer and Acceptance".
- 18.5 In addition to the above, the form of Offer and Acceptance, must at the closing date of the bid, comply with the following minimum criteria:
- 18.5.1 It must be signed by an authorised person of the Bidder;
- 18.5.2 The Surname with Initials/ Name of the authorised person must be clearly indicated;
- 18.5.3 The date on the form of offer must be completed;
- 18.5.4 The name of the bidder/ legal entity must be clearly indicated.
- 18.6 If both the "amount in words" and the "amount in figures" is not completed, the bid will be eliminated.

## **19 CORRECTION OF ERRORS**

- 19.1 Only the authorised signatory to the tender should initial corrections in the tender document.
- 19.2 All corrections must be in non-erasable ink and the use of correcting fluid (tippex) is prohibited.
- 19.3 In the event that a correction is not initialled or the correction is initialled by a person not having the prescribed authority, the Department will:
- 19.3.1 Seek the necessary clarification from the tenderer and;
- 19.3.2 If accepting the response from the tenderer, evaluate the bid further and or;
- 19.3.3 Allow the tenderer to correct/ ratify any noncompliance, where necessary.

## **20 CONDITIONS WITHDRAWN FROM THE GENERAL CONDITIONS OF CONTRACT**

- 20.1 N/A

## **21 INCOMPLETE SECTIONS OR SCHEDULES IN BID DOCUMENTS**



- 21.1 Bidders' who omitted or incorrectly completed a section(s) or a schedule(s) in the bid document, but have submitted with the bid the required/ specified proof or supportive documents for that particular sections of the document, maybe allowed to correct such non-compliance.

## **22 TESTIMONIALS**

- 22.1 The word "testimonial" and "reference letter" means the same
- 22.2 Testimonials must be submitted with the bid and must comply with the following minimum requirements to be considered valid:
- 22.2.1 The testimonials must be signed.
- 22.2.2 The testimonial must be for a completed project
- 22.2.3 The project must be within the period specified in the bid.
- 22.2.4 The project must have a minimum contract period as specified in the bid.
- 22.2.5 The testimonial must clearly indicate the contract start date and contract end date/ practical completion date.
- 22.2.6 The testimonial must indicate the client's name, contact particulars and Email address.
- 22.2.7 The testimonial must be dated.
- 22.2.8 The testimonial must be stamped by the client. If the testimonial is not stamped, the Department may still consider the testimonial after the authenticity has been verified by the Department.
- 22.3 The bidders performance should be indicated in the testimonial either as (or indicated as a combination of):
- 22.3.1 An unacceptable performance or
- 22.3.2 Not unacceptable, but needs Improvement or
- 22.3.3 A Satisfactory performance or
- 22.3.4 Above Satisfactory
- 22.3.5 Excellent performance
- 22.4 If the submitted testimonial(s) comply with all the conditions above, but the bidder's performance is not indicated, the Department will still accept the submitted testimonial(s). However, the following conditions will apply:
- 22.4.1 The Department will accept that the bidder's performance was unsatisfactory and will not verify the contrary.
- 22.5 An appointment letter/ award letter and or signed contract are not accepted as a testimonial.
- 22.6 Bidders may use the testimonial template provided in the bid document (if included in the Bid Document) or may use the format of their clients. The testimonial must cover the minimum requirements as specified in this special conditions.



## 23 POINTS FOR SPECIFIC GOALS

23.1 The Department will give points for specific goals for this bid as per the table below:

<b>The following specific goals are applicable (Maximum 20 points)</b>	
<b>Description of Specific Goal for which points will be allocated</b>	<b>Points</b>
An EME or QSE or any entity which is at least 51% owned by Historically Disadvantaged Individuals (HDI)	10 points
An EME or QSE which is at least 51% owned by women	4 points
An EME or QSE which is at least 51% owned by people with disabilities	2 points
An EME or QSE which is at least 51% owned by youth	2 points
Located in the Eastern Cape Province for work to be done or service to be rendered in that area	2 points
<b>TOTAL POINTS</b>	<b>20 points</b>

## 24 DISCLAIMER

24.1 It is impractical and cumbersome for the Department to communicate with all qualifying bidders to correct/ ratify all eligible matters as articulated in this "Special Conditions of Bid". The Department therefore reserves the right and discretion, during its evaluation and other administrative processes to:

24.1.1 Limit its correspondences for corrections/ ratifications/ clarities to potential higher point scoring bidders only and to

24.1.2 Further evaluate any potential qualifying lower scoring bidder(s) as "deemed responsive" without requesting the corrections/ ratifications of a matter which is eligible as per the "Special Conditions of Bid".