



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. 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.
- 3.7. 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, which are not timeously deposited in the Bid Box.
- 3.8. A Bid will be treated as a late bid, if it is not received in the bid box. The Department will not accept responsibility for any late depositing of bids or for the non-depositing of bids in the bid box, which are as a result from an act committed or omitted by an official. This is not limited to the following cases:
 - 3.8.1. A Bidder handed over its bid to a departmental official or to the security services personnel timeously, but they omits to deposit the bid in the bid box on or before the closing date and time.
 - 3.8.2. If a courier service delivers the bid to a departmental official or to the security services personnel timeously and it is not deposited in the bid box timeously.
 - 3.8.3. The bid documents were send through mail / Post Office and it is not timely collected and or timely deposited in the Departmental 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. Bidders who are not registered on the CSD, must register on the CSD within 7 working days, if requested to do so. No award letters or purchase orders or contracts will be signed, with a bidder not registered on the CSD.
- 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 / OMISSIONS

- 4.1. If a bidder becomes aware of any ambiguities or contradictions or omissions 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 or omission in the bid document, the Department reserves the right to:
 - 4.2.1. If the ambiguity or contradiction or omission in the bid document is of an administrative nature, request bidders to correct any non-compliances caused by the ambiguity or contradiction or omission or
 - 4.2.2. If the ambiguity or contradiction or omission is immaterial, proceed to finalise the procurement process and notify the delegated authority in the submission of the ambiguity or contradiction or omission for the consideration of the approving authority or
 - 4.2.3. 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 deemed necessary. The following conditions will apply when the Department request 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 send 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.

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 Bidders' tax matters will be verified through CSD.
- 12.4 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.
- 12.5 The recommended bidder will be given a maximum of seven (7) working days to correct their tax compliance status.
- 12.6 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 All the mandatory sections in the affidavit must be completed in ink.
 - 15.1.3 If a percentage ownership is zero (0) % on paragraph 3, it is not mandatory to complete the field. It can be left blank.
 - 15.1.4 The BBEE Level Contributor must be indicated (ticked)
 - 15.1.5 The Annual Total Revenue must be based on the latest financial year-end's Financial Statements/Management Accounts and other information of the bidder.
 - 15.1.6 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.
 - 15.1.7 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".
 - 15.1.8 The financial year must clearly indicate: day/month/year.
 - 15.1.9 The "Sworn Affidavit" must be correctly completed, signed and dated by the bidder (Deponent).
 - 15.1.10 The "Sworn Affidavit" submitted must be correctly signed and stamped by the "Commissioner of Oath".
 - 15.1.11 For construction bids, a "Sworn Affidavit" issued in terms of the Amended Construction Sector Code; (Gazette Vol. 630 No. 41287) and in terms of paragraph 3.6.2.4.1 (B) must be used. All other the conditions applicable to "valid sworn affidavits" as per this "Special Conditions of Bid" will apply. In addition, for Construction Sector Affidavits, the annual turnover table must also be completed

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



- 16.1 In accordance with the PPPFA regulations 2022, bidders will not be eliminated if they do not submit a BBBEE – certificate or a “valid sworn affidavits”. The bidder will not be scored for points, but will be evaluated further.
 - 16.2 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.
 - 16.3 The requirements of a valid BBBEE-Certificate and or “Sworn Affidavit” as specified in the Special Conditions of Tender applies.
 - 16.4 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.
 - 16.5 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.
 - 16.6 Non-submission of the PA-16 form or non-completion the PA-16 form or an incomplete PA-16 form, is not an elimination criteria.
 - 16.7 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.
 - 16.8 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.
 - 16.9 No submissions of alternative proof for specific goals as specified in the bid document will be allowed after the bid closing date.
 - 16.10 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 not be considered further.

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 project must be within the period specified in the bid.
 - 22.2.3 The testimonial's contract period and R- value must be for a single contract and not the sum of various contracts.
 - 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 In the case of a rates based contract, the actual expenditure or work certified will be deemed the contract value.
- 22.4 The bidders performance should be indicated in the testimonial either as (or indicated as a combination of):
 - 22.4.1 An unacceptable performance or
 - 22.4.2 Not unacceptable, but needs Improvement or
 - 22.4.3 A Satisfactory performance or
 - 22.4.4 Above Satisfactory
 - 22.4.5 Excellent performance
- 22.5 If the bidder's performance is not indicated in the testimonial, the Department will deemed that the bidder's performance was unsatisfactory and will not verify the contrary.
- 22.6 It is the bidder's responsibility to ensure that their references are contactable.
- 22.7 The Departmental will only engage once with the bidder to provide alternative contact numbers to verify the testimonial, if it is not contactable on the Department's first attempt.

- 22.8 If the Department receives no response on the bidder's testimonials, the bidder will be deemed to have performed unsatisfactory work on the relevant project. Also a "no comment" reply will be deemed as an unsatisfactory performance.
- 22.9 Bidders will not be afforded to submit new testimonials, if there initial references/ testimonials are not responding.
- 22.10 An appointment letter/ award letter and or signed contract are not accepted as a testimonial.
- 22.11 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:

23.1.1 For cases with a rand value greater than R 2000,00 and up to a R 1million (inclusive of all applicable taxes), the specific goals as listed in the table below applies:

The following specific goals are applicable (Maximum 20 points)	
Description of Specific Goal for which points will be allocated	Points
1. An EME or QSE or any entity which is at least 51% owned by black people	10 points
2. An EME or QSE which is at least 51% owned by women	4 points
3. An EME or QSE which is at least 51% owned by people with disabilities	2 points
4. An EME or QSE which is at least 51% owned by youth	2 points
5. Located in a specific Municipality or District Municipality or Metro or Province for work to be done or service to be rendered in that area	2 points
TOTAL POINTS	20 points

23.1.2 For cases with a rand value greater than R 1 million and up to a R 50 million (inclusive of all applicable taxes), the specific goals as listed in the table below applies:

The following specific goals are applicable (Maximum 20 points)	
Description of Specific Goal for which points will be allocated	Points
1. An EME or QSE or any entity which is at least 51% owned by Historically Disadvantaged Individuals (HDI)	10 points
2. An EME or QSE which is at least 51% owned by women	4 points
3. An EME or QSE which is at least 51% owned by people with disabilities	2 points
4. An EME or QSE which is at least 51% owned by youth	2 points
5. Located in a specific Municipality or District Municipality or Metro or Province for work to be done or service to be rendered in that area	2 points
TOTAL POINTS	20 points

23.1.3 For a bidder to be awarded the points for specific goals as per the table above, the bidder must submit proof with the bid at the closing date and time.

23.1.4 The required proof to be submitted is specified in the tables of Form PA 16.

24 THE OTHER ADDITIONAL INFORMATION WHICH MAY BE REQUIRED FOR EVALUATION

CRITERIA	SPECIAL CONDITIONS OF BID
a) A close corporation, incorporated prior to 1 May 2011 under the Close Corporations Act, 1984 (Act 69 of 1984, as amended)	Copies of the Founding Statement - CK1
b) A profit company duly registered as a private company. [including a profit company that meets the criteria for a private company, whose Memorandum of Incorporation states that the company is a personal liability company in terms of Section 8(2)(c) of the Companies Act, 2008 (Act 71 of 2008, as amended)].	Copies of: i. Certificate of Incorporation - CM1; ii. Shareholding Certificates of all Shareholders of the company, plus a signed statement of the company's Auditor, certifying each Shareholder's ownership / shareholding percentage relative to the total; and/or iii. Memorandum of Incorporation in the case of a personal liability company.



CRITERIA	SPECIAL CONDITIONS OF BID
c) A profit company duly registered as a private company in which any, or all, shares are held by one or more other close corporation(s) or company(ies) duly registered as profit or non-profit company(ies).	Copies of documents referred to in a. and/or b. above in respect of all such close corporation(s) and/or company(ies).
d) A profit company duly registered as a public company.	Copy of Certificate of Incorporation - CM1, and a signed statement of the company's Secretary or Auditor confirming that the company is a public company.
e) A non-profit company, incorporated in terms of Section 10 and Schedule 1 of the Companies Act, 2008 (Act 71 of 2008, as amended).	Copies of: i. The Founding Statement - CK1; and ii. The Memorandum of Incorporation setting out the object of the company, indicating the public benefit, cultural or social activity, or communal or group interest.
f) A natural person, sole proprietor or a Partnership	Copy(ies) of the Identity Document(s) of: i. such natural person/ sole proprietor, or each of the Partners to the Partnership.
g) A Trust	Deed of Trust duly indicating names of the Trustee(s) and Beneficiary (ies) as well as the purpose of the Trust and the mandate of the Trustees.

25 DISCLAIMER

- 25.1 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:
- 25.1.1 Limit its correspondences for corrections/ ratifications/ clarities to potential higher point scoring bidders only and to
 - 25.1.2 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".



PA-10: GENERAL CONDITIONS OF CONTRACT (GCC)

NOTES:

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

- 1.1. **“Closing time”** means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. **“Contract”** means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. **“Contract price”** means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. **“Corrupt practice”** means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5. **“Countervailing duties”** are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6. **“Country of origin”** means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7. **“Day”** means calendar day.
- 1.8. **“Delivery”** means delivery in compliance of the conditions of the contract or order.
- 1.9. **“Delivery ex stock”** means immediate delivery directly from stock actually on hand.
- 1.10. **“Delivery into consignees store or to his site”** means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11. **“Dumping”** occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12. **”Force majeure”** means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13. **“Fraudulent practice”** means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14. **“GCC”** means the General Conditions of Contract.
- 1.15. **“Goods”** means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16. **“Imported content”** means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17. **“Local content”** means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.



- 1.18. **“Manufacture”** means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19. **“Order”** means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20. **“Project site”** where applicable, means the place indicated in bidding documents.
- 1.21. **“Purchaser”** means the organization purchasing the goods.
- 1.22. **“Republic”** means the Republic of South Africa.
- 1.23. **“SCC”** means the Special Conditions of Contract.
- 1.24. **“Services”** means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25. **“Written” or “in writing”** means handwritten in ink or any form of electronic or mechanical writing.

2. Application

- 2.1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2. Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3. Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

- 3.1. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2. With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

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

5. Use of contract documents and information; inspection.

- 5.1. The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2. The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3. Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.
- 5.4. The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights



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

7. Performance security

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

8. Inspections, tests and analyses

- 8.1. All pre-bidding testing will be for the account of the bidder.
- 8.2. If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4. If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5. Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6. Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7. Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

- 9.1. The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during



transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

- 13.1. The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
 - (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2. Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

- 14.1. As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
 - (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

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



- 15.2. This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4. Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5. If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

- 16.1. The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2. The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment 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 contract 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 cancelling 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 of not exceeding 10 years.
- 23.4. If a purchaser intends imposing a restriction on a supplier or any person with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide 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 on any person by the Accounting Officer/ Authority will, at the discretion of the Accounting Officer/ Authority, also be applicable to any 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 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 the 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 ten years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its 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 antidumping 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 the 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 contract unless they Otherwise agree; and
(b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of Liability

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;



- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing language

- 29.1. The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

- 30.1. The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

31. Notices

- 31.1. Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2. The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

- 32.1. A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2. A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3. No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African

33. National Industrial Participation Programme (NIPP)

- 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.

Name of Bidder	Signature	Date