

### INVITATION FOR BID

**YOU ARE HEREBY INVITED TO SUBMIT BIDS FOR THE REQUIREMENTS OF  
NATIONAL HEALTH LABORATORY SERVICES**

<b>BID NUMBER:</b>	<b>RFB 011/13-14</b>		
<b>CLOSING DATE:</b>	<b>09 JULY 2013</b>		
<b>CLOSING TIME:</b>	<b>11:00AM</b>		
<b>PUBLIC TENDER OPENING</b>	<b>11:30</b>		
<b>BID VALIDITY PERIOD:</b>	<b>90 days (commencing from the RFB Closing Date)</b>		
<b>IMPORTANT:</b>	<b>NO BRIEFING SESSION WILL BE HELD</b> All questions must be sent per e-mail to <a href="mailto:michelle.gerard@nhls.ac.za">michelle.gerard@nhls.ac.za</a> on or before <b>02 JULY 2013.</b>		
<b>DESCRIPTION:</b>	<b>EMPLOYEE ASSISTANCE PROGRAMME FOR A PERIOD OF THREE (3) YEARS</b>		
<b>BID DOCUMENTS MUST BE MARKED WITH THE FOLLOWING:</b>	<b>OR</b>	<b>DEPOSITED IN THE BID BOX SITUATED AT:</b>	
<b>Procurement Controller: MRS M GERARD</b>			
<b>RFB: 011/13-14</b> <b>Bidders Name: _____</b> <b>RFB: Enclosed-Regret (delete N/A)</b> <b>Closing Date: _____</b>	<b>NHLS MAIN RECEPTION</b> <b>1 Modderfontein Road,</b> <b>Sandringham, Johannesburg.</b>		

Bidders should ensure that Bids are delivered in time to the correct address. If the bid is late, it shall not be accepted for consideration.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – **(Please note that no changes on the content of this document is allowed)**

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF THE BID, 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 SHALL  
RESULT IN YOUR BID BEING DISQUALIFIED)**

**BIDDING STRUCTURE**

Indicate the type of Bidding structure by marking with an 'X':

Individual bidder	
Joint venture	
Consortium	
Subcontractors	
Other	

**If individual bidder, indicate the following:**

Name of bidder	
Registration number	
VAT registration number	
Contact person	
Telephone number	
Fax number	
E-mail address	
Postal address	
Physical address	

**If Joint Venture or Consortium, indicate the following:**

Name of prime contractor	
Registration number	
VAT registration number	
Contact person	
Telephone number	
Fax number	
E-mail address	
Postal address	
Physical address	

**If Joint Venture or Consortium, indicate the following:**

Name of partners	
Registration number	
VAT registration number	
Contact person	

Telephone number	
Fax number	
E-mail address	
Postal address	
Physical address	

<b>If using <u>other</u> sub- contractors, indicate the following:</b>	
Name of prime contractor	
Registration number	
VAT registration number	
Contact person	
Telephone number	
Fax number	
E-mail address	
Postal address	
Physical address	

<b>If using subcontractors:</b>	
Name of subcontractors:	
Registration number	
VAT registration number	
Contact person	
Telephone number	
Fax number	
E-mail address	
Postal address	
Physical address	

**HAS AN ORIGINAL AND VALID TAX CLEARANCE  
CERTIFICATE/S BEEN SUBMITTED?**

Yes		No	
-----	--	----	--

**HAS PROOF OF PAYMENT BEEN SUBMITTED?**

Yes		No	
-----	--	----	--

**IS THE BIDDING COMPANY A TERTIARY INSTITUTION  
OR A PUBLIC COMPANY?**

Yes		No	
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**HAS AN ORIGINAL AND VALID B-BBEE STATUS LEVEL  
VERIFICATION CERTIFICATE OR CERTIFIED COPIES**

Yes		No	
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**THEREOF BEEN SUBMITTED?**

**If NO, please indicate the expiry date of the B-BBEE status level verification certificate that was previously submitted to NHLS**

D	D	M	M	Y	Y

**I CERTIFY THAT THE INFORMATION FURNISHED ON THIS FORM IS TRUE AND CORRECT.**

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

**SIGNATURE OF BIDDER (duly authorised)**

.....

**DATE**

.....

**CAPACITY UNDER WHICH THIS BID IS SIGNED**

.....

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## 1 Confidential information disclosure notice

- 1.1 This document may contain confidential information that is the property of the NHLS and the Client.
- 1.2 No part of the contents may be used, copied, disclosed or conveyed in whole or in part to any party in any manner whatsoever other than for preparing a proposal in response to this Bid, without prior written permission from NHLS and the Client.
- 1.3 All copyright and Intellectual Property herein vests with NHLS and its Client.

## 2 Introduction

- 2.1 Based on the Bids submitted and the outcome of the evaluation process according to the set evaluation criteria, NHLS intends to select a preferred bidder with the view of concluding a service level agreement (SLA) with such successful bidder. The Bid shall be evaluated in terms of the Preferential Procurement Policy Framework Act (PPPFA)

### 2.2 Queries

- 2.2.1 Should it be necessary for a bidder to obtain clarity on any matter arising from or referred to in this RFB document, please refer queries, in writing, and to the contact person\_email address number listed below on or before **(02 JULY 2013)** Under no circumstances may any other employee within NHLS be approached for any information. Any such action might result in a disqualification of a response submitted in competition to the RFB. NHLS reserves the right to place responses to such queries on the website.

<b>COMMERCIAL QUERIES:</b>  Procurement: M Gerard	Telephone	011 386 6165
	E-mail	<a href="mailto:michelle.gerard@nhls.ac.za">michelle.gerard@nhls.ac.za</a>
	Fax	011 386 6218
<b>TECHNICAL QUERIES:</b>	Telephone	011 386 6165
	E-mail	<a href="mailto:michelle.gerard@nhls.ac.za">michelle.gerard@nhls.ac.za</a>

### 3 Definitions

- 3.1 National Health Laboratory Services [hereinafter referred to as NHLS] is a public health laboratory service with laboratories across South Africa. Its activities comprise diagnostic laboratory services, research, teaching and training, and production of sera for anti-snake venom, reagents and media
- 3.2 NHLS was established in 2001 by an Act of Parliament to provide diagnostic pathology laboratory services to the National and Provincial Health Department.
- 3.3 **"Acceptable Bid"** - means any bid, which, in all respects, complies with the specifications and conditions of the RFB as set out in this document.
- 3.4 **"B-BBEE"** - means broad bases black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act.
- 3.5 **"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.
- 3.6 **"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 bidding processes or proposals.
- 3.7 **"Bidders"** - means any enterprise, consortium or person, partnership, company, close corporation, firm or any other form of enterprise or person, legal or natural, which has been invited by NHLS to submit a bid in response to this bid invitation.
- 3.8 **"Broad-Based Black Economic Empowerment Act"** - means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).
- 3.9 **"Client"** - means the goods or services requestor
- 3.10 **"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.
- 3.11 **"Consortium"** - means several entities joining forces as an umbrella entity to gain a strategic collaborative advantage by combining their expertise, capital, efforts, skills and knowledge for the purpose of executing this tender.
- 3.12 **"Contractor Agent"** - means any person mandated by a Prime Contractor or consortium/joint venture to do business for and on behalf of, or to represent in a business transaction, the Prime Contractor and thereby acquire rights for the Prime Contractor or consortium/joint venture against NHLS or an organ of state and incur obligations binding the Prime Contractor or consortium/joint venture in favour of NHLS or an organ of state.
- 3.13 **"Disability"** - means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of,

ability to perform an activity in the manner, or within the range, considered normal for a human being.

- 3.14 **"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 a law or regulation is binding on the contractor and demonstrably has influence on the price of any supplies or the rendering cost of any service, for the execution of a contract.
- 3.15 **"Goods"** - means any work, equipment, machinery, tools, materials or anything of whatever nature to be rendered to NHLS or NHLS's delegate by the Successful Bidder in terms of this bid.
- 3.16 **"Historically Disadvantaged Individual"** (HDI) - means a South African citizen:
- 3.16.1 Who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983, (Act No. 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (the Interim Constitution); and/or;
  - 3.16.2 who is a female; and/or;
  - 3.16.3 who has a disability;
  - 3.16.4 provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution is deemed not to be an HDI.
- 3.17 **"Joint Venture"** - (Project) means two or more businesses joining together under a contractual agreement to conduct a specific business enterprise with both parties sharing profit and losses. The venture is for one specific project only, rather than for a continuing business relationship as in a strategic alliance. It is about sharing risk with others and providing one or more missing and needed assets and competencies.
- 3.18 **"Management"** - in relation to an enterprise or business, means an activity inclusive of control, and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.
- 3.19 **"Non-firm Price(s)"** - means all price(s) other than "firm" price(s).
- 3.20 **"Organ of State"** - means a National Department or Provincial Administration as stipulated in Schedules 1 and 2 of the Public Service Act, Act 93 of 1994 (as amended).
- 3.21 **"Person(s)"** - refers to a natural and/or juristic person(s).
- 3.22 **"Prime Contractor"** - means any person (natural or juristic) who forwards an acceptable proposal in response to this RFB with the intention of being the main contractor should the proposal be awarded to him/her.



- 3.23 **"Rand Value"** - means the total estimated value of a contract in South African currency, calculated at the time of invitations and includes all applicable taxes and excise duties.
- 3.24 **"SMME"** – bears the same meaning assigned to this expression in the National Small Business Act, 1996 (Act No. 102 of 1996).
- 3.25 **"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.
- 3.26 **"Subcontractor"** - means any person (natural or juristic) who is subcontracted a portion of an existing contract by a Prime Contractor.
- 3.27 **"Successful Bidder"** - means the organization or person with whom the order is placed and who is contracted to execute the work as detailed in the bid.

## 4 Acronyms and abbreviations

- 4.1 The following acronyms and abbreviations are used in this proposal and must be similarly used in the proposal submitted in response and shall have the meaning ascribed thereto below.

Abbreviations / Acronyms	Description
BBBEE	Broad Based Black Economic Empowerment.
CPI	Consumer Price Index.
DIR	Directorate
EDMS	Electronic Document Management System
HDI	Historically Disadvantaged Individuals
ISO	International Standard Organization
IT	Information Technology
ITC	Information Technology Committee
MISS	Minimum Information Security Standard
OEM	Original Equipment Manufacturer
PPPFA	Preferential Procurement Policy Framework Act
RFB	Request for Bid
RSA	Republic of South Africa
NHLS	National Health Laboratory Services
SLA	Service Level Agreement
SW	Software

## 5 General rules and instructions

### 5.1 Confidentiality

- 5.1.1 The information contained in this document is of a confidential nature, and must only be used for purposes of responding to this RFB. This confidentiality clause extends to Bidder partners and/or implementation agents, whom the Bidder may decide to involve in preparing a response to this RFB.
- 5.1.2 For purposes of this process, the term "Confidential Information" shall include all technical and business information, including, without limiting the generality of the foregoing, all secret knowledge and information (including any and all financial, commercial, market, technical, functional and scientific information, and information relating to a party's strategic objectives and planning and its past, present and future research and development), technical, functional and scientific requirements and specifications, data concerning business relationships, demonstrations, processes, machinery, know-how, architectural information, information contained in a party's software and associated material and documentation, plans, designs and drawings and all material of whatever description, whether subject to or protected by copyright, patent or trademark, registered or un-registered, or otherwise disclosed or communicated before or after the date of this process.
- 5.1.3 The receiving party shall not, during the period of validity of this process, or at any time thereafter, use or disclose, directly or indirectly, the confidential information of NHLS (even if received before the date of this process) to any person whether in the employment of the receiving party or not, who does not take part in the performance of this process.
- 5.1.4 The receiving party shall take all such steps as may be reasonably necessary to prevent NHLS's confidential information coming into the possession of unauthorised third parties. In protecting the receiving party's confidential information, NHLS shall use the same degree of care, which does not amount to less than a reasonable degree of care, to prevent the unauthorised use or disclosure of the confidential information as the receiving party uses to protect its own confidential information.
- 5.1.5 Any documentation, software or records relating to confidential information of NHLS, which comes into the possession of the receiving party during the period of validity of this process or at any time thereafter or which has so come into its possession before the period of validity of this process:
- 5.1.5.1 shall be deemed to form part of the confidential information of NHLS;
  - 5.1.5.2 shall be deemed to be the property of NHLS;
  - 5.1.5.3 shall not be copied, reproduced, published or circulated by the receiving party unless and to the extent that such copying is necessary for the

- performance of this process and all other processes as contemplated in;  
and
- 5.1.5.4 shall be surrendered to NHLS on demand, and in any event on the termination of the investigations and negotiations, and the receiving party shall not retain any extracts.

## **5.2 News and press releases**

- 5.2.1 Bidders or their agents shall not make any news releases concerning this RFB or the awarding of the same or any resulting agreement(s) without the consent of, and then only in co-ordination with, NHLS and its Client.

## **5.3 Precedence of documents**

- 5.3.1 This RFB consists of a number of sections (see list). Where there is a contradiction in terms between the clauses, phrases, words, stipulations or terms and herein referred to generally as stipulations in this RFB and the stipulations in any other document attached hereto, or the RFB submitted hereto, the relevant stipulations in this RFB shall take precedence.
- 5.3.2 Where this RFB is silent on any matter, the relevant stipulations addressing such matter and which appear in the PPPFA shall take precedence. Bidders shall refrain from incorporating any additional stipulations in its proposal submitted in terms hereof other than in the form of a clearly marked recommendation that NHLS may in its sole discretion elect to import or to ignore. Any such inclusion shall not be used for any purpose of interpretation unless it has been so imported or acknowledged by NHLS.
- 5.3.3 It is acknowledged that all stipulations in the PPPFA are not equally applicable to all matters addressed in this RFB. It however remains the exclusive domain and election of NHLS as to which of these stipulations are applicable and to what extent. Bidders are hereby acknowledging that the decision of NHLS in this regard is final and binding. The onus to enquire and obtain clarity in this regard rests with the Bidder(s). The Bidder(s) shall take care to restrict its enquiries in this regard to the most reasonable interpretations required to ensure the necessary consensus.

## **5.4 Preferential Procurement Reform**

- 5.4.1 NHLS supports B-BBEE as an essential ingredient of its business. In accordance with government policy, NHLS insists that the private sector demonstrates its commitment and track record to B-BBEE in the areas of ownership (shareholding), skills transfer, employment equity and procurement practices (SMME Development) etc.

5.4.2 NHLS shall apply the principles of the Preferential Procurement Policy Framework Act, (Act No. 5 of 2000) to this proposal.

5.4.3 Bidders shall complete the preference certificate attached to this proposal. In the case of a consortium and sub contractors, the preference certificate must be completed for each legal entity.

## **5.5 National Industrial Participation Programme**

5.5.1 The Industrial Participation policy, which was endorsed by Cabinet on 30 April 1997, is applicable to contracts that have an imported content. The NIP is obligatory and therefore must be complied with. Bidders are required to sign and submit the Standard Bidding Document (SBD5).

## **5.6 Language**

5.6.1 Bids shall be submitted in English.

## **5.7 Gender**

5.7.1 Any word implying any gender shall be interpreted to imply all other genders.

## **5.8 Headings**

5.8.1 Headings are incorporated into this proposal and submitted in response thereto, for ease of reference only and shall not form part thereof for any purpose of interpretation or for any other purpose.

## **5.9 Security clearances**

5.9.1 Employees and subcontractors of the successful bidder may be required to be in possession of valid security clearances to the level determined by the State Security Agency (SSA) and/or NHLS commensurate with the nature of the project activities they are involved in. The cost of obtaining suitable clearances is for the account of the bidders. The bidders shall supply and maintain a list of personnel involved on the project indicating their clearance status.

5.9.1 Employees and subcontractors of the successful bidder will be required to sign a non-disclosure agreement.

## **5.10 Occupational Injuries and Diseases Act 13 of 1993**

- 5.10.1 The Bidder warrants that all its employees (including the employees of any sub-contractor that may be appointed) are covered in terms of the Compensation for Occupational Injuries and Diseases Act 13 of 1993 and that the cover shall remain in force for the duration of the adjudication of this bid and/ or subsequent agreement. NHLS reserves the right to request the Bidder to submit documentary proof of the Bidder's registration and "good standing" with the Compensation Fund, or similar proof acceptable to NHLS.

## **5.11 Formal contract**

- 5.11.1 This RFB, all the appended documentation and the proposal in response thereto read together, form the basis for a formal contract to be negotiated and finalised between NHLS and/or its clients and the enterprise(s) to whom NHLS awards the bid in whole or in part.
- 5.11.2 Any offer and/or acceptance entered verbally between NHLS and any vendor, such offer shall not constitute a contract and thus not binding on the parties.

## **5.12 Instructions for submitting a proposal**

- 5.12.1 **All costing and information must be typed and signed by the bidder, no hand written costing/pricing will be accepted.**
- 5.12.2 One (1) original, one (1) hard copy and 1 (one) electronic copy on compact disk (CD) in Portable Document Format (**PDF**) of the Bid shall be submitted on the date of closure of the Bid.
- 5.12.2.1 **Pricing: One (1) original, one (1) hard copy and 1 (one) electronic copy on compact disk (CD) in Portable Document Format (PDF) of the Bid shall be submitted on the date of closure of the Bid. Note, pricing must be submitted in a separate sealed envelope and clearly marked, pricing and name of the bidder.**
- 5.12.2.2 The original copy must be **signed in black ink** by an authorised employee, agent or representative of the bidder and each and every page of the proposal shall contain the initials of same signatories.
- 5.12.3 Bidders shall submit proposal responses in accordance with the prescribed manner of submissions as specified above.
- 5.12.4 Bids must be submitted in a prescribed response format herewith reflected as **Response Format**, and be sealed in an envelope.
- 5.12.5 Bids that are too large to fit into the tender box must be handed in at the reception desk during office hours from 08:00- 16:30 or before 10:00 on the closing date.

- 5.12.6 All Bids in this regard shall only be accepted if they have been placed in the bid box before or on the closing date, 09 July 2013 **and stipulated time, 11h00.**
- 5.12.7 Bids received after the time stipulated shall not be considered.
- 5.12.8 Bid responses sent by post or courier must reach this office at least **36 hours** before the closing date to be deposited into the proposal box. Failure to comply with this requirement shall result in your proposal being treated as a "late proposal" and shall not be entertained. Such proposal shall be returned to the respective bidders.
- 5.12.9 **No proposal shall be accepted by NHLS if submitted in any manner other than as prescribed above.**

## **6 Response format**

- 6.1 Bidders shall submit response in accordance with the response format specified below. Failure to do so shall result rejecting vendor's response. No referrals may be made to comment. Failure to comply shall result in the vendor being penalised.

### **6.2 Schedule Index:**

- 6.2.1 **Schedule 1:** Pages 1 – 20 of this RFB document
- 6.2.2 **Schedule 2:** Mandatory Documents
- 6.2.2.1 **Original and valid Tax Clearance Certificate (no certified copy or scanned copies shall be accepted).**  
**If a Consortium, Joint Venture or Subcontractor, an original and valid Tax Clearance Certificate must be submitted for each member.**  
**NOTE If you have submitted an original tax clearance certificate before at NHLS for any bid, it is not necessary for you to submit another tax clearance certificate again. It is the duty of the bidder to ensure that each and every time a bid response is submitted, the previously submitted tax clearance certificate is still valid at the closing date of the subsequent submission of a response for a particular RFB or RFQ.**
- 6.2.2.2 Bid Receipt of R500.00 (if Consortium, Joint Venture or Subcontractor, only one (1) payment per tender response must be submitted).
- 6.2.2.3 National Industrial Participation Programme Certificate from the DTI (read paragraph 5.5 in conjunction with Annex E – SBD 5) (If applicable).
- 6.2.3 **Schedule 3:** Executive Summary of proposal
- 6.2.4 **Schedule 4:** Technical/Functionality
- 6.2.5 **Schedule 5:** Price. (Please submit the price **in a sealed envelope.**)
- 6.2.6 **Schedule 6:** Participation goals (Preferential points questionnaire).
- 6.2.7 **Schedule 7:** Declaration of interest

6.2.8 **Schedule 8: Bidder Profile:**

- 6.2.8.1 Credentials of the company/consortium members etc.
- 6.2.8.2 Structure of the company/ consortium members etc.
- 6.2.8.3 Partnership agreements/contracts

6.3 **Bidder background information materials:**

- 6.3.1 Bidder Operating Organisation – Provide an overview of the operating structure and geographical locations of the firm at the national, regional, and local levels.
- 6.3.2 Standards – Include information regarding your firm’s utilization of widely known Industry Standards and guidelines, as they apply to your firm, your firm’s proposal and proposed hardware assets.
- 6.3.3 Company Contact(s) – Provide the name, title, street address, city, state, telephone and fax numbers and e-mail of the primary company’s contact person, and for any sub-Contractors.
- 6.3.4 Corporate Financial Solvency - Provide solvency statement signed by a qualified independent auditor that the financial position of the company is sound and that the company will be able to mobilise financial resources to deliver the project.
  - 6.3.4.1 Indicate the percentage of total annual revenue that the proposed service will contribute against the revenue generated for the most recent and the preceding two fiscal years.

## 7 Key personnel

- 7.1 Identify key personnel, by employer (include subcontractor(s), and provide contact information.

## 8 Reasons for disqualification

- 8.1 NHLS reserves the right to disqualify any bidder which does any one or more of the following, and such disqualification may take place without prior notice to the offending bidder, however the bidder shall be notified in writing of such disqualification:
- 8.2 bidders who do not submit a valid and original Tax Clearance Certificate on the closing date and time of the bid;
- 8.3 bidders who submitted incomplete information and documentation essential for the adjudication of the requirements of this RFB;
- 8.4 bidders who submitted information that is fraudulent, factually untrue or inaccurate, for example memberships that do not exist, B-BBEE credentials, experience, etc;
- 8.5 bidders who received information not available to other vendors through fraudulent means; and/or

- 8.6 bidders who do not comply with **mandatory requirements** as stipulated in this RFB.

## 9 Bid preparation

- 9.1 All additions to the proposal documents i.e. annexes, supporting documentation pamphlets, photographs, technical specifications and other support documentation covering the goods offered etc. shall be neatly bound as part of the schedule concerned.
- 9.2 All responses regarding questions posed in the annex attached herewith shall be answered in accordance with the prescribed **RFB Response Format**.
- 9.3 Telephonic, faxed, e-mailed or oral tenders shall not be accepted.

## 10 Oral presentations and briefing sessions

- 10.1 Bidders who submit Bids in response to this RFB may be required to give an oral presentation, which may include, but is not limited to, an equipment/service demonstration of their proposal to NHLS. This provides an opportunity for the vendor to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. NHLS shall schedule the time and location of these presentations. Oral presentations are an option of NHLS and may or may not be conducted.

## 11 General Conditions of Bid and Conditions of Contract

- 11.1 Bidders shall provide full and accurate answers to all (including mandatory) questions posed in this document, and, are required to explicitly indicate either "Comply/Accept (with a ✓)" or "Do not comply/Do not accept (with an X)" regarding compliance with the requirements. Where necessary, the bidder shall substantiate their response to a specific question.**

**NOTE: It is mandatory for bidders to complete or answer this part fully (11.1.1 to 11.28); otherwise their bid shall be treated as incomplete and shall be disqualified. Refer to paragraph 8 of this document (reasons for disqualification).**

### 11.1.1

This bid is subject to the General Conditions of Contract stipulated in this document.	Accept	Do not Accept

### 11.1.2

The laws of the Republic of South Africa shall govern this RFB and the bidders hereby accept that the courts of the Republic of	Accept	Do not Accept



South Africa shall have the jurisdiction.		
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#### 11.1.3

NHLS shall not be liable for any costs incurred by the bidder in the preparation of response to this RFB. The preparation of response shall be made without obligation to acquire any of the items included in any bidder's proposal or to select any proposal, or to discuss the reasons why such vendor's or any other proposal was accepted or rejected.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.4

NHLS Procurement Services may request written clarification regarding any aspect of this proposal. The bidders must supply the requested information in writing within the specified time frames after the request has been made, otherwise the proposal shall be disqualified.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.5

In the case of Consortium, Joint Venture or subcontractors, bidders are required to provide copies of signed agreements stipulating the work split and Rand value.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.6

In the case of Consortium, Joint Venture or subcontractors, all bidders are required to provide mandatory documents as stipulated in schedule 1 of the Response format.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.7

NHLS reserves the right to; cancel or reject any proposal and not to award the proposal to the lowest bidder or award parts of the proposal to different bidders, or not to award the proposal at all.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.8

Where applicable, bidders who are distributors, resellers and installers of network equipment are required to submit back-to-back agreements and service level agreements with their principals.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.9

By submitting a proposal in response to this RFB, the bidders accept the evaluation criteria as it stands.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.10

Where applicable, NHLS reserves the right to conduct benchmarks on product/services offered during and after the evaluation.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.11

NHLS reserves the right to conduct a pre-award survey during the source selection process to evaluate contractors' capabilities to meet the requirements specified in the RFB and supporting documents.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.12

Where the bid calls for commercially available solutions, bidders who offer to provide future based solutions will be disqualified.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.13

<p>The bidder should not qualify the proposal with own conditions.</p> <p><b>Caution:</b> If the bidder does not specifically withdraw its own conditions of proposal when called upon to do so, the proposal response shall be declared invalid.</p>	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.14

Should the bidder withdraw the proposal before the proposal validity period expires, NHLS reserves the right to recover any additional expense incurred by NHLS having to accept any less favourable proposal or the additional expenditure incurred by NHLS in the preparation of a new RFB and by the subsequent acceptance of any less favourable proposal.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.15

Delivery of and acceptance of correspondence between NHLS and the bidder sent by prepaid registered post (by air mail if appropriate) in a correctly addressed envelope to either party's	<b>Accept</b>	<b>Do not Accept</b>

postal address or address for service of legal documents shall be deemed to have been received and accepted after (2) two days from the date of postage to the South African Post Office Ltd.		
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#### 11.1.16

Should the parties at any time before and/or after the award of the proposal and prior to, and-or after conclusion of the contract fail to agree on any significant product price or service price adjustments, change in technical specification, change in services, etc. NHLS shall be entitled within 14 (fourteen) days of such failure to agree, to recall the letter of award and cancel the proposal by giving the bidder not less than 90 (ninety) days written notice of such cancellation, in which event all fees on which the parties failed to agree increases or decreases shall, for the duration of such notice period, remain fixed on those fee/price applicable prior to the negotiations.  Such cancellation shall mean that NHLS reserves the right to award the same proposal to next best bidders as it deems fit.	Accept	Do not Accept

#### 11.1.17

In the case of a consortium or JV, each of the authorised enterprise's members and/or partners of the different enterprises must co-sign this document.	Accept	Do not Accept

#### 11.1.18

Any amendment or change of any nature made to this RFB shall only be of force and effect if it is in writing, signed by NHLS signatory and added to this RFB as an addendum.	Accept	Do not Accept

#### 11.1.19

Failure or neglect by either party to (at any time) enforce any	<b>Accept</b>	<b>Do not Accept</b>
---	---------------	----------------------

of the provisions of this proposal shall not, in any manner, be construed to be a waiver of any of that party's right in that regard and in terms of this proposal. Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this proposal, or prejudice the right of that party to institute subsequent action.		
---	--	--

## 11.1.20

	Accept	Do not Accept
<p>Bidders who make use of subcontractors.</p> <p><b>The proposal shall however be awarded to the Vendor as a primary contractor who shall be responsible for the management of the awarded proposal. No separate contract shall be entered into between NHLS and/or its client and any such subcontractors. Copies of the signed agreements between the relevant parties must be attached to the proposal responses.</b></p>		

## 11.1.21

	Accept	Do not Accept
<p>All services supplied in accordance with this proposal must be certified to all legal requirements as per the South African law.</p>		

## 11.1.22

	Accept	Do not Accept
<p>No interest shall be payable on accounts due to the successful vendor in an event of a dispute arising on any stipulation in the contract.</p>		

## 11.1.23

	Accept	Do not Accept
<p>Evaluation of Bids shall be performed by a CFET established by NHLS.</p> <p>Bids shall be evaluated on the basis of conformance to the required specifications as outlined in the RFB. Points shall be allocated to each bidder, on the basis that the maximum number of points that may be scored for price is 80/90, and the maximum number of preference points that may be claimed for B-BBEE (according to the PPPFA) is 20/10.</p>		

## 11.1.24

	Accept	Do not Accept
<p>Prior to the award of any tender or contract the NHLS will check the Prohibition status of recommended suppliers/ service providers on the Treasury website (<a href="mailto:restricted@treasury.gov.za">restricted@treasury.gov.za</a>) as well as the Treasury Register for Tender Defaulters (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>)</p>		

## 11.25

The NHLS will act against the bidder or person awarded the contract upon detecting that the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the contract conditions have not been fulfilled.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.26

<p>The NHLS may, in addition to any other remedy that it may have against the bidder or person:</p> <ul style="list-style-type: none"> <li>• Disqualify the bidder or person from the bidding process;</li> <li>• Recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct</li> <li>• 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;</li> <li>• 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 applying the audi alteram partem (hear the other side) rule;</li> <li>• Forward the matter for Blacklisting by Treasury; and</li> <li>• Forward the matter for criminal prosecution</li> </ul>	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.27

If the successful bidder disregards contractual specifications, this action may result in the termination of the contract.	<b>Accept</b>	<b>Do not Accept</b>

#### 11.1.28

The bidders' response to this Tender, or parts of the response, shall be included as a whole or by reference in the final contract.	<b>Accept</b>	<b>Do not Accept</b>

11.1.29

NHLS has discretion to extend the validity period should the evaluation of this bid not be completed within the stipulated validity period.	Accept	Do not Accept

11.1.30

Upon receipt of the request to extend the validity period of the bid, the bidder must respond within the required time frames and in writing on whether or not he agrees to hold his original bid response valid under the same terms and conditions for a further period.	Accept	Do not Accept

11.1.31

Should the bidder change any wording or phrase in this document, the bid shall be evaluated as though no change has been effected and the original wording or phrasing shall be used.	Accept	Do not Accept

11.1.32

Should the bidder change any wording or phrase in this document, the bid shall be evaluated as though no change has been effected and the original wording or phrasing shall be used.	Accept	Do not Accept

## 12 Evaluation Criteria and Methodology

### 12.1 Evaluation of tenders and selection of contractors/service providers

The NHLS is a Schedule 3A Government Institution subjected to the Public Finance Management Act (PFMA), the Public Preferential Framework Act (PPPFA) and Treasury Regulations/ Instructions. Bidders must assist the NHLS to eliminate corruption and fraud by completing and submitting form SBD4.

12.1.1. Any tender closing is followed by a Public Opening where the names and pricing of all bids received are read out to the bidders attending. NHLS tender opening officials sign the pages where pricing is indicated to prevent any alterations.

12.1.2 Administrative evaluation is then done by NHLS Procurement Services and bidders whom failed to submit the Mandatory documents in paragraph ....shall be disqualified.

12.1.3 Next step of evaluation is the “technical” or so called “functional” evaluation which is purely based on NHLS specifications (Annexure 2) and Scope of Work. NHLS end-user department( *who requested the bid* ), Procurement Services, Finance and subject specialists are part of the Cross Functional Evaluation Team( CFET ) meeting which is chaired by Quality Assurance( QA ). All the members of the CFET must complete Declaration of Interest forms and must recuse themselves in case of any conflict of interest.

12.1.4 The final stage of evaluation is done after the CFET has reached their verdict and is done by NHLS Procurement Services and separately from the CFET meeting. Price and B-BBEE score (commercial evaluation) are being added in order to get the final order of merit for the bidders being evaluated.

12.1.5 bidders that score the minimum threshold are recommended and submitted to the NHLS Tender Evaluation Committee( TAC ) for adjudication and the bid MUST be awarded to the bidder who scored the highest points( Merit 1 ) during the CFET and Commercial evaluation( price and B-BBEE ). *All the members of the CFET must complete Declaration of Interest forms and must recuse themselves in case of any conflict of interest. **Should the TAC decide on a bidder other than Merit 1, this decision must be motivated as a Deviation from NHLS Policy & procedure and Treasury must be advised accordingly.***

12.1.6 The CEO of the NHLS must finally approve the recommendation by the TAC, in his capacity as the Accounting Officer.



12.1.7 Details of the successful bidder to be advertised in the Government Tender Bulletin.

## 12.2. Administrative Compliance

The following will be used to evaluate bids administratively:

- Fully completed and signed SBD4
- Submission of original and valid tax clearance
- Audited financial statement not older than two years
- SANAS accredited B-BBEE Certificate
- The service providers to have agree with NHLS general contract terms conditions

12.2.1 The evaluation of the Bids shall be based on the 90/10 PPPFA principle and the points for evaluation criteria are as follows:

Price points	80/90
B-BBEE status level contribution	20/10
<b>Total</b>	<b>100 points</b>

12.2.2 All Bids received shall be evaluated by a panel using the preference points system as stipulated in the Preferential Procurement Regulations.

12.2.3 The bids will be evaluated first based on mandatory requirements and then non mandatory requirements.

12.2.4 Any service provider who does not achieve **80% out of 100%** of functionality non mandatory requirements listed below will be disqualified.

## 12.3 Functional evaluation criteria

The Functionality Evaluation Criteria will **not be used** in this bid. Bidders will be assessed on the Mandatory requirements, Price and B-BBEE only.

**12.4 Step 1:** Bidders who do not qualify with all the technical mandatory requirements **will not** be considered for further evaluation.

**1 SPECIAL INSTRUCTIONS TO VENDORS**

- 1.1 Should a vendor have reasons to believe that the Technical Specification is not open and/or is written for a particular brand or product; the vendor shall notify Procurement Services within ten (10) days after publication of the bid.
- 1.2 Bidders shall provide full and accurate answers to the mandatory questions posed in this document, and, where required explicitly state either "Comply/Not Comply" regarding compliance with the requirements. Bidders **must** substantiate their response to all questions, including full details on how their proposal/solution will address specific functional requirements. All documents as indicated must be supplied as part of the submission.
- 1.3 Vendors are encouraged to promote the growth and development of SMME's, and will be assessed on their efforts in this regard during the evaluation of this Tender.

**2. SCOPE OF WORK****2.1. Background**

The NHLS is the largest diagnostic pathology service in South Africa, serving 80% of the country's population, and conducts health-related research appropriate to the broader population needs, such as HIV/AIDS, tuberculosis, malaria, pneumococcal infections, occupational health, cancer and malnutrition. The NHLS forms a national network of integrated pathology laboratories throughout the country that utilise common laboratory management systems and transport networks to facilitate transport of specimens, referral of tests to reference laboratories and delivery of results. More than 200 laboratories are included in the NHLS, employing over 6,500 people. The activities comprise diagnostic laboratory services, research, teaching and training, and production of sera for anti-snake venom, reagents and media. All laboratories provide laboratory diagnostic services to the national Department of Health, provincial hospitals, local authorities and medical practitioners

**2.2. The Scope of this RFB is:**

The service provider is required to implement a comprehensive Employee Wellness Programme (EAP) to address the full spectrum of emotional, behavioral and other psycho-social problems through face-to-face as well as telephonic counseling. The proposal from the service provider should address the EAP and it should at a minimum cover the following: The NHLS has approx 7300 employees across South Africa in 268 sites.

### **Employee Assistance Programme (EAP)**

- Access to call centre (24/7/365 days)
- Telephonic counselling
- Trauma debriefing sessions (within 24 hours)
- Face to face counselling (where required)
- HIV & Aids Counselling
- Legal advice
- Health advice
- Referral services
- Interactive website
- Promotional material (wallet cards, posters, electronic communication, etc)
- Proposed implementation and roll out process of the programmes
- Reporting and benchmarking (monthly, quarterly, and annually)
- Account Management
- Policy formulation / review

### **Value Adds**

- Personalised number

### **SPECIFICATION**

- Application Performance Management Tools are **Mandatory Items** and must be quoted. Respondents should note they have Desirable Requirements or Features. The Software offered should incorporate the following components / requirements / features: **Mandatory**.

### **3. DEMONSTRATION**

- 3.1 During the proposal evaluation stage, the respondent may be required to demonstrate the viability of the proposed Systems with respect to the capabilities and features specified in this RFB and the claimed compatibility with the existing authority hardware and software
- 3.2 The demonstration will be set up by the respondent's own resource and at its own expenses and where applicable, using the authority's test cases and data
- 3.3 The respondent may be required to work outside normal office hours during the demonstration period
- 3.4 The respondent shall be responsible for any loss or damage to the data, programs, media or related items released by the Authority to the respondent for use in the demonstration
- 3.5 The Authority shall have access to all programs and data used in and output from the demonstration

- 3.6 If the respondent is selected to perform demonstration of the proposed Systems, the respondent will be informed of the date and the details of the demonstration no less than 2 calendar weeks in advance of the demonstration. It shall then conduct and complete the demonstration within the period specified by the Authority
- 3.7 If the respondent fails to demonstrate the mandatory requirements or fails to complete the demonstration within the period specified by the Authority, its RFB will be disqualified

#### **4. Expectation of Supplier**

4.1 Track record of previous performance

A proven project delivery track record and experience of similar services with dates of provision for these services must be indicated

4.2 References

The Supplier must indicate if they have previously provided any services to the NHLS. A list of other similar and reference able projects that the supplier has recently delivered with the resources that have been put forward must be supplied

4.3 Methodologies, Standards and Procedures

During the delivery of services to the NHLS, the vendor must adhere to all the NHLS Standard Operating Procedures (SOP's) and make recommendations for improvement. The consultant must ensure all relevant information is published in the NHLS Project Library

4.4 Quality Management

There should be a continuous drive to meet and exceed the quality expectations of the NHLS. It is expected that the Supplier comply with Quality Management Standards. This approach needs to be integrated with the NHLS SOP's, Policies and Standards. All deliverables must have a quality element associated with it, which may take on the form of service levels

#### **5. MANDATORY REQUIREMENTS**

- **If a bidder does not comply fully with each of the mandatory requirements, it shall be regarded as mandatory non-performance/non-compliance and the bid SHALL be disqualified. No "unanswered" questions will be allowed. If a response to a question has been indicated as comply but not elaborated upon or substantiated it shall be regarded as mandatory non-performance/non-compliance and the bid shall be disqualified.**
- **Bidders shall provide full and accurate answers to the mandatory questions posed in this document, and, where required, explicitly state either "Comply/Accept (with a "Yes")" or "Do not comply/do not accept (with a "No")" regarding compliance to the requirements.**

**Bidders must substantiate their responses to all mandatory questions.**

- **PLEASE NOTE: If the response does not substantiate any of the points or requirements in the body of the tender, it will be deemed to not comply, even if the 'Comply' field has been marked.**
- **Costs for evaluation studies in each laboratory will be paid by the supplier**
- **Direct Material: cost ratio of not more than 10%**
- **Please note: All documentation to substantiate the mandatory requirements have to be supplied.**

• **Mandatory:**

**1**

Access to call centre (24/7/365 days)	Comply	Not Comply

**2**

Telephonic counseling	Comply	Not Comply

**3**

Trauma debriefing sessions (within 24 hours)	Comply	Not Comply

**4**

Face to face counseling (where required)	Comply	Not Comply

**5**

Bidder must provide HIV & Aids Counseling	Comply	Not Comply

**6**

Bidder must provide Legal advice	Comply	Not Comply

**7**

Bidder must provide Health advice	Comply	Not Comply

**8**

Referral services	Comply	Not Comply

**9**

Bidder must provide a Interactive website	Comply	Not Comply

**10**

Promotional material (wallet cards, posters, electronic communication, etc)	Comply	Not Comply

**11**

Bidder must proposed implementation and roll out process of the programmes	Comply	Not Comply

**12**

Reporting and benchmarking (monthly, quarterly, and annually)	Comply	Not Comply

**13**

Account Management	Comply	Not Comply

**Additional Requirements**

Bidder to provide a Personalised Number

## Pricing Schedule

- 1 Please indicate your total bid price here: R..... **(compulsory)**
- 2 **Important: It is mandatory to indicate your total bid price as requested above. This price must be the same as the total bid price you submit in your pricing schedule. Should the total bid prices differ, the one indicated above shall be considered the correct price.**
- 3 **NOTE - All prices must be VAT exclusive and must be quoted in South African Rand (ZAR).**
- 4 All prices must be firm and fixed from the tender closing date and for the duration of the contract
- 5 **NOTE - All the consortium or joint venture partners must submit a complete set of the latest audited financial statements.**

6

The cost of installation, delivery, site preparation etc. must be included in this proposal.	Comply	Not comply
Substantiate / Comments		

7

No price adjustments that are 100% linked to exchange rate variations shall be allowed.	Comply	Not comply
Substantiate / Comments		

8

The bidder must indicate <b>clearly</b> which portion of the purchase price as well as the monthly costs is linked to the exchange rate.	Comply	Not comply
Substantiate / Comments		

9

All additional costs must be clearly specified.	Comply	Not comply
Substantiate / Comments		

**NOTE: The pricing must be submitted in a separate envelope.**

Bidders **must** provide the NHLS with the following pricing options for each of their proposed solutions/ equipment placements:

**IE: Cost for equipment + fixed full maintenance cost per month, etc + cost of materials;**

**Please provide costing information for 3 years contract duration**

Please indicate the costs related to listed mandatory items:-

DESCRIPTION	UNIT COST/STAFF	MONTHLY COST	ANUAL COST
Programme			

Please indicate any services that are not covered with all related costs:-

DESCRIPTION	UNIT COST / PER STAFF	MONTHLY COST	ANUAL COST



## **Price Declaration Form**

**Dear Madam /Sir,**

Having read through and examined the Tender Document, **RFB No: 011/13-14** General Conditions, The Requirement and all other Annexures to the Tender Document, we offer to provide **APPLICATION FOR PERFORMANCE MONITORING SYSTEM**, as detailed in the **RFB 011/13-14**, for the total Tendered Contract Sum of in words:

R\_\_\_\_\_ (VAT Incl.)

We confirm that this price covers all activities associated with the **APPLICATION FOR PERFORMANCE MONITORING SYSTEM**, including but not limited to the supply of all required, for **APPLICATION FOR PERFORMANCE MONITORING SYSTEM**,

We confirm that NHLS will incur no additional costs whatsoever over and above this amount in connection with the supply of this solution.

We further confirm that all licences required for complete implementation of the solution, and the costs associated therewith, as well as any licences that may be required for future expansion have been fully described and disclosed in this document.

We undertake to hold this offer open for acceptance for a period of **90 days** from the date of submission of offers. We further undertake that upon final acceptance of our offer, we will commence with delivery when required to do so by the Client.

Moreover, we agree that until formal Contract Documents have been prepared and executed, this Form of Tender, together with a written acceptance from the Client shall constitute a binding agreement between us, governed by the terms and conditions set out in this Request for Proposals.

We understand that you are not bound to accept the lowest or any offer and that we must bear all costs which we have incurred in connection with preparing and submitting this tender.

We hereby undertake for the period during which this tender remains open for acceptance not to divulge to any persons, other than the persons to which the tender is submitted, any information relating to the submission of this tender or the details therein except where such is necessary for the submission of this tender.

**SIGNED**

**DATE**

\_\_\_\_\_

\_\_\_\_\_

**(Print name of signatory)**

**Designation**

\_\_\_\_\_

\_\_\_\_\_

**FOR AND ON BEHALF OF: COMPANY NAME** \_\_\_\_\_

**Tel No** \_\_\_\_\_

**Fax No** \_\_\_\_\_

**Cell No** \_\_\_\_\_

**NOTE: The pricing must be submitted in a separate envelope.**

**SBD 2**

- 1 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.
- 2 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.
- 3 SARS shall then furnish the bidder with a Tax Clearance Certificate that shall be valid for a period of one (1) year from the date of approval.
- 4 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate shall result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate shall not be acceptable.
- 5 In bids where Consortia / Joint Ventures / subcontractors are involved, each party must submit a separate Tax Clearance Certificate.
- 6 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).
- 7 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers shall need to register with SARS as eFilers through the website [www.sars.gov.za](http://www.sars.gov.za).



## TAX CLEARANCE

### Application for a Tax Clearance Certificate

#### Purpose

Select the applicable option .....Tenders ☐ Good standing ☐

If "Good standing", please state the purpose of this application


#### Particulars of applicant

Name/Legal name (Initials & Surname or registered name)		
Trading name (if applicable)		
ID/Passport no		Company/Close Corp. registered no
Income Tax ref no		PAYE ref no 7
VAT registration no 4		SDL ref no L
Customs code		UIF ref no U
Telephone no	CODE NUMBER	Fax no CODE NUMBER
E-mail address		
Physical address		
Postal address		

#### Particulars of representative (Public Officer/Trustee/Partner)

Surname		
First names		
ID/Passport no		Income Tax ref no
Telephone no	CODE NUMBER	Fax no CODE NUMBER
E-mail address		
Physical address		

**Particulars of tender (If applicable)**

Tender number

Estimated Tender amount R ,

Expected duration of the tender  year(s)

**Particulars of the 3 largest contracts previously awarded**

Date started	Date finalised	Principal	Contact person	Telephone number	Amount
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Audit**

Are you currently aware of any Audit investigation against you/the company?.....

If "YES" provide details

  
**Appointment of representative/agent (Power of Attorney)**

I the undersigned confirm that I require a Tax Clearance Certificate in respect of  or .

I hereby authorise and instruct  to apply to and receive from SARS the applicable Tax Clearance Certificate on my/our behalf.

-   -

Signature of representative/agent

Date

Name of representative/agent

**Declaration**

I declare that the information furnished in this application as well as any supporting documents is true and correct in every respect.

-   -

Signature of applicant/Public Officer

Date

Name of applicant/  
Public Officer

**Notes:**

1.It is a serious offence to make a false declaration.

2.Section 75 of the Income Tax Act, 1962, states: Any person who

(a) fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or

(b) without just cause shown by him, refuses or neglects to

(i) furnish, produce or make available any information, documents or things;

(ii) reply to or answer truly and fully, any questions put to him ...

As and when required in terms of this Act ... shall be guilty of an offence ...

3. **SARS shall, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.**

4. Your Tax Clearance Certificate shall only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.

**DECLARATION OF INTEREST**

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
    - the bidder is employed by the state; and/or
    - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.
  2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
    - 2.1 Full Name of bidder or his or her representative: .....
    - 2.2 Identity Number: .....
    - 2.3 Position occupied in the Company (director, trustee, shareholder).....
    - 2.4 Company Registration Number.....
    - 2.5 Tax Reference Number:.....
    - 2.6 VAT Registration Number:.....
    - 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.
- <sup>1</sup>"State" means –
- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 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 12 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, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and/or adjudication of this bid? **YES/NO**

2.10.1 If so, furnish particulars:  
 .....  
 .....  
 .....

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

2.11.1 If so, furnish particulars:  
 .....  
 .....  
 .....

## 2 Full details of directors / trustees / members / shareholders.

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

## 4. DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
 Signature

.....  
 Date

.....  
 Position

.....  
 Name of bidder

May 2011



This document must be signed and submitted together with your bid  
**THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME**

## **INTRODUCTION**

The National Industrial Participation (NIP) Program, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the program.

### **1 PILLARS OF THE PROGRAMME**

1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$ 10 million or other currency equivalent to US\$ 10 million shall have an NIP obligation. This threshold of US\$ 10 million can be reached as follows:

(a) Any single contract with imported content exceeding US\$10 million. or

(b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$10 million.

or

(c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content shall exceed US\$10 million. or

(d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$10 million.

1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above shall amount to 30 % of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a *pro-rata* basis.

1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.

1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

## **2 REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY**

2.1 In order to ensure effective implementation of the program, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million rand), submit details of such a contract to the DTI for reporting purposes.

2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million rand) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

## **3 BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)**

3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.

3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1

(d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million rand), to contact and furnish the DTI with the following information:

- bid or contract number.
- description of the goods, works or services.
- date on which the contract was accepted.
- name, address and contact details of the government institution.
- value of the contract.
- imported content of the contract, if possible.

- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr. Elias Malapane within five (5) working days after award of the contract. Mr. Malapane may be contacted at telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at [Elias@thedti.gov.za](mailto:Elias@thedti.gov.za) for further details about the program.

#### **4 PROCESS TO SATISFY THE NIP OBLIGATION**

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps shall be followed:
- a. the contractor and the DTI shall determine the NIP obligation;
  - b. the contractor and the DTI shall sign the NIP obligation agreement;
  - c. the contractor shall submit a performance guarantee to the DTI;
  - d. the contractor shall submit a business concept for consideration and approval by the DTI;
  - e. upon approval of the business concept by the DTI, the contractor shall submit detailed business plans outlining the business concepts;
  - f. the contractor shall implement the business plans; and
  - g. the contractor shall submit bi-annual progress reports on approved plans to the DTI.
- 4.2 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number.....	Closing date.....
Name of bidder.....	
Postal address.....	
.....	
Signature.....Name(in print).....	
Date.....	

**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	<b>Is the bidder or any of its directors listed on the National Treasury's database as companies or persons prohibited from doing business with the public sector?</b> (Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied).	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?  <b>To access this Register enter the National Treasury's website, <a href="http://www.treasury.gov.za">www.treasury.gov.za</a>, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.</b>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Item	Question	Yes	No
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**

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

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

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 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/not exceed R1 000 000 (all applicable taxes included) and therefore the...80/20 or 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:

	<b>POINTS</b>
<b>1.3.1.1 PRICE</b>	80/90.....
<b>1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	20/10.....
<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. ....

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

2. ....

DATE:.....

ADDRESS:.....

.....

.....

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

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

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

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

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

---

(Bid Number and Description)

in response to the invitation for the bid made by:

---

(Name of Institution)

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

I certify, on behalf

of: \_\_\_\_\_ that:

(Name of Bidder)

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

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.

.....

SignatureDate

.....

Position Name of Bidder

Js914w 2



## **Annex I : GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT – July 2011**

---

### 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.

### TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
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17. Prices
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23. Termination for default
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25. Force Majeure
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27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

#### General Conditions of Contract

##### 1. Definitions

1. The following terms shall be interpreted as indicated:

1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.

1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 "Day" means calendar day.

1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.

1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.

1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 "GCC" means the General Conditions of Contract.

1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the

supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 "Project site," where applicable, means the place indicated in bidding documents.

1.21 "Purchaser" means the organization purchasing the goods.

1.22 "Republic" means the Republic of South Africa.

1.23 "SCC" means the Special Conditions of Contract.

1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

## 2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

#### 4. Standards

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

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

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

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

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

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

#### 6. Patent rights

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

## 7. Performance security

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or

(b) a cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

## 8. Inspections, tests and analyses

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

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

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

## 9. Packing

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

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional

requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

#### 10. Delivery and documents

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

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

#### 11. Insurance

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

#### 12. Transportation

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

#### 13. Incidental services

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

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

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



## 14. Spare parts

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

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and

(b) in the event of termination of production of the spare parts:

(i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and

(ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

## 15. Warranty

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

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

## 16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon 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 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 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 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

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

### 32. Taxes and duties

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

### 33. National Industrial Participation (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.