

**PART A  
INVITATION TO BID SBD 01**

|   |   |               |  |                               |   |
|---|---|---------------|--|-------------------------------|---|
| <b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE WHOLESALE AND RETAIL SETA (W&amp;RSETA)</b>  |   |               |  |                               |   |
| BID NUMBER:   | WRSCM-2022/2023-0003  | CLOSING DATE: | 03 November 2022                               | CLOSING TIME:                 | 11:00   |
| DESCRIPTION   | THE APPOINTMENT OF A SUITABLE SERVICE PROVIDER TO PROVIDE AN IT AUDIT FOR THE W&RSETA FOR A PERIOD OF THREE YEARS |               |  |                               |   |
| <b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>  |   |               |  |                               |   |
| 1303 Riverside Office Park  |   |               |  |                               |   |
| Corner Heuwel and Lenchen South Avenue  |   |               |  |                               |   |
| Hennops House   |   |               |  |                               |   |
| Centurion   |   |               |  |                               |   |
| <b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>   |   |               | <b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b> |                               |   |
| CONTACT PERSON  | Supply Chain Management   |               | CONTACT PERSON                                 | Supply Chain Management       |   |
| TELEPHONE NUMBER  | 012 622 9500  |               | TELEPHONE NUMBER                               | 012 622 9500                  |   |
| FACSIMILE NUMBER  | N/A   |               | FACSIMILE NUMBER                               | N/A                           |   |
| E-MAIL ADDRESS  | tenders@wrseta.org.za   |               | E-MAIL ADDRESS                                 | tenders@wrseta.org.za         |   |
| <b>SUPPLIER INFORMATION</b>   |   |               |  |                               |   |
| NAME OF BIDDER  |   |               |  |                               |   |
| POSTAL ADDRESS  |   |               |  |                               |   |
| STREET ADDRESS  |   |               |  |                               |   |
| TELEPHONE NUMBER  | CODE  |               | NUMBER   |                               |   |
| CELLPHONE NUMBER  |   |               |  |                               |   |
| FACSIMILE NUMBER  | CODE  |               | NUMBER   |                               |   |
| E-MAIL ADDRESS  |   |               |  |                               |   |
| VAT REGISTRATION NUMBER   |   |               |  |                               |   |
| SUPPLIER COMPLIANCE STATUS  | TAX COMPLIANCE SYSTEM PIN:  |               | <b>AND</b>                                     | CENTRAL SUPPLIER DATABASE No: | MAAA  |
| B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE  | TICK APPLICABLE BOX]<br><input type="checkbox"/> Yes <input type="checkbox"/> No                                  |               | B-BBEE STATUS LEVEL SWORN AFFIDAVIT            |                               | [TICK APPLICABLE BOX]<br><input type="checkbox"/> Yes <input type="checkbox"/> No |
| <b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b> |   |               |  |                               |   |

|   |  |   |   |
|---|--|---|---|
| ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED? | <input type="checkbox"/> Yes <input type="checkbox"/> No<br>[IF YES ENCLOSE PROOF] | ARE YOU A FOREIGN BASED SUPPLIER FOR <b>THE GOODS /SERVICES /WORKS OFFERED?</b> | <input type="checkbox"/> Yes <input type="checkbox"/> No<br>[IF YES, ANSWER PART B:3] |
|---|--|---|---|

**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

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

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

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

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

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

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



**Table 1: Returnable Checklist**

| Document that must be submitted                 | Non-submission will result in disqualification? |   |
|---|---|---|
| Invitation to Bid – SBD 1                       | YES   | Complete and sign the supplied pro forma document   |
| Tax Status                                      | YES   | <ul style="list-style-type: none"> <li data-bbox="732 275 1562 411">i. A Central Supplier Database (CSD) summary report and Tax Compliance Status Pin Should be submitted to verify the bidder's tax whether the bidder's tax matters are in order.</li> <li data-bbox="732 432 1562 558">ii. The Tax Compliance Pin Number or the CSD Master Registration Number (MAAA number) to verify the bidder's tax compliance tax status.</li> <li data-bbox="732 579 1562 800">iii. In case of foreign recommended bidders who has no history of doing business in South Africa, the foreign recommended bidder's completed SBD 1 must be submitted to the South African Revenue Service to issue Confirmation of Tax Obligation letter in terms <b>Instruction Note No. 09 of 2017/2018.</b></li> <li data-bbox="732 821 1562 915">iv. The CSD and tax compliance status PIN are the approved methods of verifying the tax compliance status of bidders.</li> <li data-bbox="732 936 1562 1031">v. In the event where the Bidder does not submit a tax compliance status PIN, the tax compliance status will be verified utilizing the CSD summary report.</li> </ul> |
| Pricing Schedule - SBD 3.3                      | YES   | Submit full details of the pricing proposal to SBD 3.3  |
| Declaration of Interest – SBD 4                 | YES   | Complete and sign the supplied pro forma document   |
| Registration on Central Supplier Database (CSD) | YES   | Bidders must be registered on the Central Supplier Database (CSD). If you are not registered proceed to complete the registration of your company prior to submitting your proposal. Visit <a href="https://secure.csd.gov.za/">https://secure.csd.gov.za/</a> to obtain your vendor / supplier number. Submit proof of registration with your bid document.  |
| Preference Point Claim Form – SBD 6.1           | YES   | Complete and sign the supplied pro forma document<br>Non-submission will lead to zero points awarded. Therefore, a valid certified copy of the B-BBEE certificate or sworn affidavit must be attached)  |
| Minimum Requirements                            | YES   | SARS Tax Clearance Pin  |
|   |   | Bidder must complete the prescribed Standard bidding Documentation  |
|   |   | Bidder must be registered on the Centralized Supplier Database (CSD) and must submit proof of registration thereof or proof that the bidder has attempted to register   |
|   |   | Bidder must submit one (1) hard copy of compliance document i.e. SBD 1, SBD 3, SBD 4, SBD 6.1 and GCC, Technical Proposal and Price Proposal)   |

|                                    |            |  |
|------------------------------------|------------|--|
|                                    |            | Bidder must be an EME with 100% Black ownership as a Level 1 contributor with B-BBEE Level of 135% in terms of the Code of Good Practice.  |
| <b>Compulsory Briefing Session</b> | <b>YES</b> | The W&RSETA will host a compulsory briefing session on Tuesday, 18 October 2022 @ 11:00am via teams. Please ensure email correspondence sent to <a href="mailto:tenders@wrseta.org.za">tenders@wrseta.org.za</a> outlining interest to attend the compulsory briefing session. Subject heading must state the bid reference number. Email correspondence will be accepted between the 11 October 2022 and 17 October 2022. |

**PART B**

**TERMS AND BID CONDITIONS**

**3. BID SUBMISSION:**

- 1.5. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.6. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.7. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.8. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

**4. TAX COMPLIANCE REQUIREMENTS**

**2.9 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.**

- 2.10 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.11 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE [WWW.SARS.GOV.ZA](http://WWW.SARS.GOV.ZA).
- 2.12 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.13 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.14 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 2.15 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."
- 2.16 THE BID IS VALID FOR A PERIOD OF 90 DAYS.

## TERMS AND CONDITIONS

### **BIDDING PROCEDURE CONDITIONS FOR THIS BID**

#### **LATE BIDS RECEIVED**

Bids submitted after the stipulated submission date and time will not be considered.

#### **NON-COMPLIANT BIDS RECEIVED**

Bids not submitted in the prescribed format will not be considered.

#### **BID SUBMISSION QUANTITIES**

Bids must be submitted in **hardcopy submissions only** as follows:

One (1) hardcopy of bid proposals i.e., one original copy Compliance, Technical and Price Proposal.

#### **COUNTER CONDITIONS**

Bidder's attention is drawn to the fact that amendments to any of the Bid Conditions or setting of counter conditions by bidders may result in the invalidation of such bids. This bid is subject to the Preferential Procurement Policy Framework Act and the Preferential Procurement Regulations- 2017.

#### **CANCELLATION PRIOR TO AWARDING**

The W&RSETA has the right to withdraw and cancel the Bid Invitation.

#### **COLLUSION, FRAUD AND CORRUPTION**

Any effort by bidders to influence evaluation, comparisons, or award decisions in any manner may result in the rejection of the bidder concerned. The W&RSETA reserves the right to reject bids when deemed necessary. Bid rigging by the bidder will result in disqualification of the bid. The bidder is not permitted to submit a bid for more than one registered company with a common director/ shareholder.

#### **PRESENTATIONS AND PROOF OF FUNCTIONALITY AS PART OF THE EVALUATION OF BIDS**

The W&RSETA has the right to perform due diligence on a bid proposal received through calling for interviews, presentations, proof of functionality sessions with short listed bidders before concluding the evaluation.

#### **SUB-CONTRACTING**

The W&RSETA does not enter into any separate contract with sub-contractors of its appointed contractors.

#### **INFORMATION PROVIDED I THE BID INVITATION**

All information contained in this bid documentation is solely for the purpose of assisting bidders to prepare their bids. Any use of the information contained herein for other purpose than those stated in this documentation is prohibited.

#### **GENERAL CONDITIONS OF CONTRACT**

This bid is subject to the General Conditions of Contract.

#### **SPECIAL CONDITIONS OF CONTRACT**

This bid is subject to the Special Conditions of Contract as outlined hereto below.

The price schedule (cost) must be in South African currency and must include value added tax, where applicable and must include disbursements.

W&RSETA reserves the right not to accept any of the submitted price schedules (cost). The lowest, or only accepted price schedules (cost), will not necessarily be accepted.

Penalties will be applied in respect of late completion of work defined in the final contract provided that the delay is attributed on the part of the service provider.

#### **SCM PROCESS PHASE**

##### **1. Administrative Evaluation Phase**

The SCM department will evaluate submission received based on the outlined minimum requirements as outlined on page 3 above.

## 2. Technical Evaluation Phase

The SCM will submit all compliant proposals onto the Bid Evaluation Committee (BEC) for technical evaluation. The outcome will be based on the published terms of reference technical evaluation criteria and the functionality threshold set for the bid. All bids that met the functionality criteria will be considered for price evaluation.

## 3. Price Evaluation Phase

All bids that met the functionality criteria as per the published terms of reference technical evaluation will be evaluated on price and preference points. Thus, the bid with the lowest acceptable price will be considered for award.

5. The W&RSETA reserves the right to award or not to award this bid.

### **The service provider:**

1. Undertakes to act as an independent contractor in respect of the work
2. Shall exercise all reasonable skill care and diligence in the execution of the work and shall carry out all its obligations in accordance with professional standards
3. Shall in all professional matters, act as a faithful adviser to the W&RSETA
4. Shall be deemed to have satisfied itself as to the correctness and sufficiency of the rates and prices set out in the contract for the work/ services to be rendered.
5. Shall, whenever so required by the representative, furnish the representative with particulars in writing regarding the Service Providers arrangement for the execution of the work. Should the parties be of the opinion that the proposal submitted by the Service Provider does not ensure, inter alia, the completion of the work within a stipulated time for completion, the representative shall have the right to request that the proposal be amended to his/ her satisfaction.
6. Shall attend meetings with officials whenever required to do so by the representative for the purpose of obtaining information or advice in regard to the work and assignment or any matters arising there from in connection therewith.
7. Shall not have the power or authority to enter into any contracts or otherwise to bind or incur any liability on behalf of the W&RSETA
8. All documents, database or any other material in any format prepared by the Service Provider in relation to the work shall be delivered to W&RSETA immediately upon the W&RSETA's request.
9. The Service Provider shall not attempt to recruit employees of the department during the execution of the contract or any part thereof.
10. The department undertakes to pay the service provider within (30) days from the date of receipt of the correct invoice.
11. The department shall not enter into a contract where a company had directors, partners, or employees who are employed by the state
12. No late, faxed, electronically transmitted, incomplete copies or unsigned bids will be accepted.
13. All service providers enlisted by National Treasury in the restricted service providers register will not be considered.
14. Completed bid documents must be submitted in a sealed envelope (One original copy).

### **W&RSETA reserves to right:**

1. To award this bid to a bidder that did not score the highest total number of points, only in accordance with section 2(1)(f) of the PPPFA (Act 5 of 2000)
2. To negotiate with one or more preferred bidders identified in the evaluation process, regarding any terms and conditions, including price without offering the same opportunity to any other bidder(s) who has not been awarded the status of the preferred bidder(s).
3. To accept part of a Bid rather than the whole Bid
4. To correct any mistakes at any stage of the Bid process that may have been in the bid documents or occurred at any stage of the Bid process.
5. To cancel and/ or terminate the Bid process at any stage, including after the closing date and/ or after bids have been evaluated and/ or after the preferred bidder (s) have been notified of their status as such.

**Failure to comply with the above requirements will lead to the bid regarded as non-responsive and not considered.**



**BID EVALUATION PHASE**

**Bids must achieve the allocated functionality percentage to be considered for Price evaluation. Responsive bidders will be invited to present the implementation approach to the W&RSETA. Due Diligence may be conducted (where applicable)**

**Bidders must adhere to the Minimum Requirements as set out in the Terms of Reference. Failure in doing so will render the bid as non-responsive. The W&RSETA reserves the right to award or not award the services to the successful bidder.**

**NB: FAILURE TO SUBMIT THE MINIMUM REQUIREMENTS WILL LEAD TO DISQUALIFICATION OF THE BID**

SIGNATURE OF BIDDER:

\_\_\_\_\_

CAPACITY UNDER WHICH THIS BID IS SIGNED:

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

\_\_\_\_\_

DATE:

\_\_\_\_\_

**PRICING SCHEDULE**  
(Professional Services)

|                       |                                |
|-----------------------|--------------------------------|
| NAME OF BIDDER: ..... | BID NO: WRSCM-2022/2023-0003   |
| CLOSING TIME 11:00    | CLOSING DATE: 03 November 2022 |

OFFER TO BE VALID FOR .....DAYS FROM THE CLOSING DATE OF BID.

| ITEM NO | DESCRIPTION   | BID PRICE IN RSA CURRENCY<br>**(ALL APPLICABLE TAXES INCLUDED) |                      |
|---------|---|--|----------------------|
| 1.      | The accompanying information must be used for the formulation of proposals.   |  |                      |
| 2.      | Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project. | R.....   |                      |
| 3.      | PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)  |  |                      |
| 4.      | PERSON AND POSITION   | HOURLY RATE  | DAILY RATE           |
|         | -----   | R-----   | -----                |
|         | -----   | R-----   | -----                |
|         | -----   | R-----   | -----                |
|         | -----   | R-----   | -----                |
|         | -----   | R-----   | -----                |
| 5.      | PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT  |  |                      |
|         | -----   | R-----   | ----- days           |
|         | -----   | R-----   | ----- days           |
|         | -----   | R-----   | ----- days           |
|         | -----   | R-----   | ----- days           |
| 5.1     | Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.    |  |                      |
|         | DESCRIPTION OF EXPENSE TO BE INCURRED   | RATE   | QUANTITY      AMOUNT |
|         | -----   | .....  | .....      R.....    |
|         | -----   | .....  | .....      R.....    |
|         | -----   | .....  | .....      R.....    |
|         | -----   | .....  | .....      R.....    |
|         |   | TOTAL: R.....  |                      |

\*\* "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

| DESCRIPTION OF EXPENSE TO BE INCURRED | RATE  | QUANTITY | AMOUNT |
|---------------------------------------|-------|----------|--------|
| .....                                 | ..... | .....    | R..... |
| .....                                 | ..... | .....    | R..... |
| .....                                 | ..... | .....    | R..... |
| .....                                 | ..... | .....    | R..... |
| TOTAL: R.....                         |       |          |        |

- 6. Period required for commencement with project after acceptance of bid .....  
.....
- 7. Estimated man-days for completion of project .....  
.....
- 8. Are the rates quoted firm for the full period of contract? \*YES/NO
- 9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index. ....  
.....  
.....  
.....

**\*[DELETE IF NOT APPLICABLE]**

Any enquiries regarding bidding procedures may be directed to the –

(INSERT NAME AND ADDRESS OF DEPARTMENT/ENTITY)

Tel:

Or for technical information –

(INSERT NAME OF CONTACT PERSON)

Tel:

**PART C  
DECLARATION OF INTERST SBD4**

**BIDDER'S DISCLOSURE**

**1. PURPOSE OF THE FORM**

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

**2. Bidder's declaration**

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

| Full Name | Identity Number | Name of State institution |
|-----------|-----------------|---------------------------|
|           |                 |                           |
|           |                 |                           |
|           |                 |                           |
|           |                 |                           |

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<sup>1</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

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2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

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### 3 DECLARATION

I, the undersigned, (name) \_\_\_\_\_ in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

3.1 I have read and I understand the contents of this disclosure;

3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

3.3 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>2</sup> will not be construed as collusive bidding.

3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

3.4 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.

3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

3.6 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.

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<sup>2</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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF  
PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN  
MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

\_\_\_\_\_

Signature

\_\_\_\_\_

Date

\_\_\_\_\_

Position

\_\_\_\_\_

Name of Bidder

**PART E**

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

**SBD 6.1**

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

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

**1. GENERAL CONDITIONS**

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

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

1.2

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

1.3 Points for this bid shall be awarded for:

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

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

|  | <b>POINTS</b> |
|--|---------------|
| <b>PRICE</b>   | 80            |
| <b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>                | 20            |
| <b>Total points for Price and B-BBEE must not exceed</b> | <b>100</b>    |

or

|  | <b>POINTS</b> |
|--|---------------|
| <b>PRICE</b>   | 90            |
| <b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>                | 10            |
| <b>Total points for Price and B-BBEE must not exceed</b> | <b>100</b>    |

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

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

**2. DEFINITIONS**

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good

practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

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

### 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

#### 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<sub>s</sub> = Points scored for price of bid under consideration

P<sub>t</sub> = Price of bid under consideration

P<sub>min</sub> = Price of lowest acceptable bid

##### 4.2 FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME-GENERATING PROCUREMENT

##### 4.3 POINTS AWARDED FOR PRICE

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

**80/20** or **90/10**

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

Where



- Ps = Points scored for price of bid under consideration
- Pt = Price of bid under consideration
- Pmax = Price of highest acceptable bid

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

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

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

**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 CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1**

7.1 B-BBEE Status Level of Contributor: . = .....(maximum of 10 or 20 points)  
 (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.)

**8. SUB-CONTRACTING**

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

*(Tick applicable box)*

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

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 or QSE

*(Tick applicable box)*

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

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

| Designated Group: An EME or QSE which is at last 51% owned by: | EME | QSE |
|--|-----|-----|
|  | √   | √   |
| Black people   |     |     |

|   |  |  |
|---|--|--|
| Black people who are youth  |  |  |
| Black people who are women  |  |  |
| Black people with disabilities                                    |  |  |
| Black people living in rural or underdeveloped areas or townships |  |  |
| Cooperative owned by black people                                 |  |  |
| Black people who are military veterans                            |  |  |
| <b>OR</b>   |  |  |
| Any EME   |  |  |
| Any QSE   |  |  |

**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 contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and

6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;

iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

.....

## **GCC- GENERAL CONDITIONS OF CONTRACT: 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
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Restriction from bidding
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties

## General Conditions of Contract

### 1. Definitions

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 "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 recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components
- 1.6 "Day" means calendar day.
- 1.7 "Delivery" means delivery in compliance of the conditions of the contract or order
- 1.8 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.9 "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.
- 1.10 "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.
- 1.11 "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.
- 1.12 "GCC" means the General Conditions of Contract.
- 1.13 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.14 "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
- 1.15 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.16 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

|  |   |
|--|---|
|  | 1.17 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.   |
|  | 1.18 “Project site,” where applicable, means the place indicated in bidding documents.  |
|  | 1.19 “Purchaser” means the organisation purchasing the goods.   |
|  | 1.20 “Republic” means the Republic of South Africa.   |
|  | 1.21 “SCC” means the Special Conditions of Contract.  |
|  | 1.22 “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.   |
|  | 1.23 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.  |
| <b>2. Application</b>  | 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.  |
| <b>3. General</b>  | 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.   |
| <b>4. Standards</b>  | 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.  |
| <b>5. Use of contract documents and information; inspection.</b> | 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.   |
| <b>6. Patent rights</b>  | 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.   |
| <b>7. Performance security</b>                                   | 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 organisation 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 analysed 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.   |
| <b>10. Delivery and documents</b> | 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.  |
| <b>11. Insurance</b>              | 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.  |
| <b>12. Transportation</b>         | 12.1 | Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.  |
| <b>13. Incidental services</b>    | 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.   |
| <b>14. Spare parts</b>            | 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: Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.  |
| <b>15. Warranty</b>               | 15.1 | The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may |



develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

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

**16. Payment**

- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

**17. Prices**

- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 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 these 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) (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, pursuant to GCC Clause 24.1, 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.

## **24. Restriction from bidding**

24.1 In cases of any improper conduct or non-performance by a bidder or supplier, the Accounting Officer may, in addition to any other legal remedies it may have, resolve that no offer to the public sector from the bidder or supplier concerned should be considered during a period up to a maximum of ten (10) years.

24.2 The Accounting Officer must inform the National Treasury of any such restrictions imposed, for inclusion in the national list of restricted bidders/suppliers/persons.

24.3 The Accounting Officer may at any time amend or rescind any restriction contemplated in clause 24.1 and must inform the National Treasury accordingly.

24.4 For the purpose of Clauses 24.1 and 24.2 the expression "bidder or supplier", in respect of any restriction, shall also include a director, member, employee or agent of such bidder or supplier.

## **25. Force Majeure**

25.1 Notwithstanding the provisions of GCC Clauses 22, 23, and 24, 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. |
| <b>26. Termination for insolvency</b> | 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.                                 |
| <b>27. Settlement of Disputes</b>     | 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)  | (b) the purchaser shall pay the supplier any monies due the supplier.   |
| <b>28. Limitation of liability</b>    | 28.1 | Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;   |
|                                       | 1    | 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   |
|                                       | 2    | 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.   |
| <b>29. Governing language</b>         | 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.  |
| <b>30. Applicable law</b>             | 30.1 | The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.   |
| <b>31. Notices</b>                    | 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.  |
| <b>32. Taxes and duties</b>           | 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 W&RSETA 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.