



**PROVISION OF LEGAL AND COMPLIANCE EXPERTS' SERVICES (3 YEARS)**  
**BID NUMBER: CATHS/LEGAL/22/2024**

**PART A  
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CATHSSETA					
BID NUMBER:	CATHS/LEGAL/22/2024	CLOSING DATE:	21 JUNE 2024	CLOSING TIME:	11H00am
BID DESCRIPTION	PROVISION OF LEGAL AND COMPLIANCE EXPERTS' SERVICES (3 YEARS)				
VALIDITY PERIOD	HUNDRED AND TWENTY (120) DAYS AFTER THE CLOSING DATE				
BRIEFING SESSION	NONE				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT</b>					
CATHSSETA HEAD OFFICE					
270 GEORGE ROAD, NOORDWYK, MIDRAND					
JOHANNESBURG					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	ZANELE HLATSHWAYO		CONTACT PERSON	ZANELE HLATSHWAYO	
TELEPHONE NUMBER			TELEPHONE NUMBER		
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	<a href="mailto:tenders@cathsseta.org.za">tenders@cathsseta.org.za</a>		E-MAIL ADDRESS	<a href="mailto:tenders@cathsseta.org.za">tenders@cathsseta.org.za</a>	
<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>O R</b>	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <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>					

<p><b>1. ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</b></p>	<p><input type="checkbox"/>Yes                      <input type="checkbox"/>No</p> <p>[IF YES ENCLOSE PROOF]</p>	<p><b>2. ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</b></p>	<p><input type="checkbox"/>Yes                      <input type="checkbox"/>No</p> <p>[IF YES, ANSWER THE QUESTIONNAIRE BELOW]</p>
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**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 R  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.**

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

- 1. BID SUBMISSION:**
- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
  - 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
  - 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
  - 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

- 2. TAX COMPLIANCE REQUIREMENTS**
- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
  - 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF THE STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
  - 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
  - 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
  - 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
  - 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
  - 2.7 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."

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....  
(Proof of authority must be submitted e.g., company resolution)

DATE: .....

## **BID TIMELINES**

<b>Publication date</b>	31 May 2024
<b>Briefing Session</b>	None
<b>Bid Enquiries due date</b>	13 June 2024
<b>Closing date and time</b>	21 June 2024 at 11h00am
<b>Envisaged Evaluation/Adjudication date</b>	19 July 2024
<b>Envisaged Appointment and Award date</b>	31 July 2024
<b>Project Start Date</b>	01 August 2024
<b>Validity period</b>	<b>120 Days</b>

## 1. BACKGROUND TO CATHSSETA

- 1.1. The Skills Development Act (No 97 of 1998) (SDA) makes provision for the establishment of Sector Education and Training Authorities (SETAs) for each national economic sector and thereby aims to develop the skills of the South African workforce by increasing the investment in education and training in the labour market; and encouraging employers to play a meaningful role in developing employees, particularly the previously disadvantaged.
- 1.2. The Culture, Arts, Tourism, Hospitality and Sport Sector Education and Training Authority (CATHSSETA) was established through the SDA, to research and establish a nationally recognised Sector Skills Plan (SSP) supported by skills development programmes serving the interest of the following sectors:
  - 1.2.1 Arts, Culture and Heritage;
  - 1.2.2 Conservation;
  - 1.2.3 Gaming and Lotteries;
  - 1.2.4 Hospitality;
  - 1.2.5 Sport, Recreation and Fitness; and
  - 1.2.6 Tourism and Travel Services.
- 1.3. These sectors are diverse and unique, and they play a significant role not only in the economy but also in the broader quest for social cohesion and formulation of a unique South African national identity.

## 2. OVERALL OBJECTIVE

- 2.1. The purpose of this Terms of Reference (TOR) is to solicit proposals from potential bidder(s) for the appointment of a panel of legal service(s) providers to provide legal assistance/services to the CATHSSETA.
- 2.2. This TOR document details and incorporates, as far as possible, the tasks and responsibilities of the potential bidder(s) required by the CATHSSETA in the appointment of a panel of legal service providers.
- 2.3. This TOR does not constitute an offer to do business with the SETA but merely serves as an invitation to the bidder(s) to facilitate a requirements-based decision process.

## 3. DETAILED SCOPE OF WORK

- 3.1. CATHSSETA requests proposals from service providers with the knowledge, expertise, and resources to provide legal and compliance services in **ONLY** one (1) of the areas as configured below on an as-and-when basis:

## GROUP A

Area of Specialisation	Description
<b>1. Corporate, Commercial and Civil services</b>	<ul style="list-style-type: none"> <li>• Draft and/or vet Contracts;</li> <li>• Draft and/or vet Service Level Agreements;</li> <li>• Provide compliance and governance reviews; and</li> <li>• Prepare Legal Opinions on governance and other related matters.</li> </ul>
<b>2. Litigation and Investigation Services</b>	<ul style="list-style-type: none"> <li>• Conduct normal and forensic investigations; and</li> <li>• Initiate and/or attend to litigation against the SETA.</li> </ul>

## GROUP B

Area of Specialisation	Description
<b>1. Labour Law or Employment Services</b>	<ul style="list-style-type: none"> <li>• Advise on Employment relation matters;</li> <li>• Preside on disciplinary hearings or initiate the process and produce reports;</li> <li>• Representing the SETA at the Commission for Conciliation, Mediation and Arbitration (CCMA) and high courts that have jurisdiction on labour-related matters;</li> <li>• Conduct mediation and dispute resolutions;</li> <li>• Initiate civil litigation on behalf of the SETA;</li> <li>• Draft summons responding to litigation initiated against the SETA; and</li> <li>• Represent the SETA in courts or equivalent forums.</li> </ul>
<b>2. Litigation and Investigation Services</b>	<ul style="list-style-type: none"> <li>• Conduct normal and forensic investigations; and</li> <li>• Initiate and/or attend to litigation against the SETA.</li> </ul>

3.2. Functions to be performed by the Service Providers:

### 3.2.1. Group A: Law Firms that offer all the following Services.

#### 3.2.1.1. Corporate, Commercial and Civil services:

- (a) Reviewing and drafting service-level agreements.
- (b) Advising on applicable rules, practices, and relevant legislation by which CATHSSETA is governed including, governance structures, duties and liabilities.
- (c) Advising on corporate governance-related matters.
- (d) Providing legal advisory services through legal opinions; and
- (e) Providing support to the CATHSSETA Compliance function with complex compliance matters.
- (f) Initiate civil litigation on behalf of the SETA.
- (g) Draft summons responding to litigation initiated against the SETA; and
- (h) Represent the SETA in courts or equivalent forums.

### 3.2.1.2. **Litigation and Investigation Services**

Upon receiving a brief and instruction the appointed service provider shall perform the following activities:

- (a) Conduct normal investigations and produce reports; and
- (b) Conduct forensic investigations.

### 3.2.2. **GROUP B: The service provider provides the following services.**

#### 3.2.2.1. **Labour and Employment Law Services:**

The service provider must perform the following functions:

- (a) Upon receiving the brief and instruction the incumbent shall prepare and represent the CATHSSETA in all labour forums including the CCMA, Labour or High Court, Supreme Court, or Constitutional Court.
- (b) Investigations of misconduct matters.
- (c) Presiding over disciplinary matters; and
- (d) Representation of the employer in disciplinary matters.

#### 3.2.2.2. **Litigation and Investigation Services**

Upon receiving a brief and instruction the appointed service provider shall perform the following activities:

- (a) Conduct normal investigations and produce reports; and
- (b) Conduct forensic investigations.

## 4. **EXPECTED OUTPUTS/DELIVERABLES**

4.1. The Service Provider(s) will have to specialise in one (1) of the following practice areas:

**4.1.1.** Corporate, Commercial and Civil Law, and Litigation and Investigations; or

**4.1.2.** Labour and Employment Law; and Litigation and Investigations

4.2. The Service Provider(s) will be required to respond to **ONLY** one (1) area of specialisation and will be considered for appointment under the chosen area of specialisation.

4.3. The Service Provider(s) must have experience in the legal practice area they respond to identified in clauses 4.1.1 to 4.1.2 above.

4.4. The Service Provider(s) will be required to deliver as per the scope and brief of their respective area of specialisation as and when required.

4.5. Service Provider(s) to demonstrate the ability to deliver the required services within the set parameters and scope.



- 4.6. Demonstrate a proven track record concerning the services required; and
- 4.7. Demonstrate compliance with the CATHSSETA requirements and briefs submitted.

## **5. SERVICE PROVIDER COMPETENCIES AND QUALIFICATION REQUIREMENTS**

### **5.1. Qualifications, experience, and knowledge of Lead attorney and working team**

The service provider/firm (s) will be required to attach the following information and support documentation:

- 5.1.1.** Curriculum Vitae of the Lead Attorney and team who will be rendering the service. Curriculum Vitae is to be comprised of not more than 4 (four) pages indicating the skill set of the Lead Attorney and team.
  - 5.1.2.** Certified copies of the Lead attorney and team's valid qualifications and admission certificate; and
  - 5.1.3.** Brief outline in 200 words or less the issues considered to be pertinent to the rendering of the services in the area of speciality/category as advertised.
- 5.2. Proposals must demonstrate knowledge of relevant legislation, regulations, dispute resolution, labour and employment law, commercial law and legal advisory services by demonstrating the following:
- a) Experience in Labour and Employment law.
  - b) Experience in Corporate and Commercial Law.
  - c) Experience in Dispute Resolution.
  - d) Experience in litigation.
  - e) Experience in legal advisory services.
  - f) Experience in contract drafting.
  - g) Experience in translating legislation to policy; and understanding regulatory functions and requirements.
  - h) Skills and capacity; and
  - i) Experience in initiating, facilitating, and chairing disciplinary hearings as well as timely issuing reports after the hearings.
- 5.3. Service provider/firm(s) must provide evidence of previous relevant experience. References to work done must be listed. Further, evidence of the quality of work rendered in similar projects must be provided in:
- a) Number of contracts drafted.
  - b) Number of litigated cases and success rate.
  - c) Complexity of matter(s) handled and success rate.
  - d) Extent of engagement; and
  - e) Dispute resolution.

**5.4. Milestones and date of completion of service**

5.4.1. Service providers/firms to propose work plans and estimated timelines in line with the contract period.

**5.5. Rules of engagement and awarding once appointed to the legal panel are as follows:**

**5.5.1.** The cost of every assignment will be as per the pricing schedule with the relevant panel members and a letter of appointment or instruction to proceed will be issued for each assignment awarded.

**5.5.2.** CATHSSETA will appoint six (6) service providers or law firms to serve on the panel of legal experts. Three (3) of the six shall specialise in labour and employment law under Group B and the other three (3) shall specialise in corporate and commercial law as outlined under section 3.2 above.

**5.5.3.** Panel members are not guaranteed any work under this proposal. The basis of engaging the firms of attorneys shall be on an assignment (as and when required) basis.

**5.5.4.** CATHSSETA shall source quotations and award assignments on a rotational basis to all panel members to ensure fairness and equitability. The award of the assignment shall be amongst others, based on the functional strength and/or expertise of the panel members, at the discretion of CATHSSETA after the specific goals points have been considered.

**5.5.5.** CATHSSETA may at its sole discretion and under specific circumstances, award an assignment or any part thereof to more than one (1) panel member.

**5.5.6.** CATHSSETA may at its discretion vary an instruction to include more work or exclude work areas. In the case of the latter, the firm of attorneys will not be entitled to claim for any additional costs.

**5.5.7.** CATHSSETA reserves the right to interview panel members and review their sustainability for assignments on an ongoing basis and for specific assignments.

**5.5.8.** The panel members should not cede nor assign any part of its agreement with CATHSSETA nor subcontract any part of the work assigned to them without the prior written authorisation of the SETA; and

**5.5.9.** The panel members must keep the same team members' profiles as per the submission throughout the contract period. Should there be any changes within the firm's structure or team profile, an authorisation in writing should be sought from CATHSSETA.

5.6. To be considered for this bid, interested service provider(s) must be law firms and the Lead Legal Practitioner (Director/Partner) must be registered with the Legal Practice Council.

- 5.7. The Service Provider must submit a valid Fidelity Fund Certificate issued to the relevant Lead Legal Practitioner (Partner/Director) by the Legal Practice Council.
- 5.8. Bidders must have a Certificate of Good Standing issued by the Legal Practice Council or relevant Law Society.

**6. PERIOD OF PERFORMANCE (CONTRACT PERIOD)**

- 6.1. The appointed service provider/firm(s) will enter into a contractual agreement with CATHSSETA for a period of 36 months commencing from the appointment date.
- 6.2. A Service Level Agreement shall be signed with the preferred service provider, upon appointment and acceptance thereof.

**7. PRICING SCHEDULE**

- 7.1. The bidder must provide a signed costing proposal on the company letterhead. The bidder’s proposed costing model must indicate the following:

<b>FOCUS AREAS</b>	<b>POSITION</b>	<b>NAMES OF EXISTING PERSONNEL IN POSITION AND THEIR QUALIFICATIONS AND WORK EXPERIENCE</b>	<b>HOURLY &amp; DAILY FEE (Including VAT)</b>
<b>For all focus areas</b>	<b>Director/Partner</b>		Hourly Rate:
			Daily Rate:
	<b>Senior Associate</b>		Hourly Rate:
			Daily Rate:
	<b>Associate</b>		Hourly Rate:
			Daily Rate:
	<b>Candidate Attorney</b>		Hourly Rate:
			Daily Rate:
<b>Total hourly rates</b>			
<b>Total Daily rates</b>			

**8. EVALUATION CRITERIA**

- 8.1. For this assessment, the Bidder will be required to attach the following information and support documentation to the memorandum:
  - 8.1.1. Curriculum Vitae of the Lead Attorney(s) who will be rendering the service must be provided and should comprise not more than 4 (four) pages.
  - 8.1.2. Certified copies of the Lead Attorney(s) qualifications and admission certificate(s) who shall be rendering the service; and
  - 8.1.3. Brief outline (200 words or less) of the issues considered to be pertinent to the rendering of the services in the area of speciality/category as tendered for.

8.2. Responses will be evaluated in accordance with the following functionality criteria and the tenderer requires a minimum score of 75 points to qualify for **specific goals** evaluation and the appointment to the panel would be based on the highest points scored.

Evaluation Criteria for Functionality		Weight
1.	General approach and methodology	35
2.	Experience/proven track record in legal and compliance work	25
3.	Experience of the Lead Attorney	25
4.	Contactable Reference Letters on official letterhead (within the last 6 years)	15
Total		<b>100</b>

Functionality Evaluation		
Practice Area	Criteria	Weight
<p><b>8.2.1. Provision of Corporate/Commercial/Civil Services; Litigation And Investigation Services (Group A)</b></p> <p><b>OR</b></p> <p><b>8.2.2. Provision of Labour and Employment Law Services; Litigation and Investigation Services (Group B)</b></p>	<p><b>General approach and methodology</b></p> <p>The bidder must provide a clear approach and methodology for the chosen field (Group A or B), on how a typical legal instruction relating to the chosen field will be carried out (e.g., how a litigation and or legal opinion service will be provided, including resources to be allocated, applicable timelines, and engagements with the SETA etc.)</p> <ul style="list-style-type: none"> <li>• <b>Allocated Resources</b></li> </ul> <p>The bidder must clearly state and demonstrate how its resources will be implemented. For example, the team that will be allocated to carry out the task, and how such resources will be utilised.</p> <ul style="list-style-type: none"> <li>• <b>Timelines</b></li> </ul> <p>The bidder must clearly state the timelines for the chosen field of specialisation they are bidding for. For example, the bidder must state the timelines regarding preparing opinions, drafting contracts, etc. (NB! Litigation matters are to be excluded as these vary from case to case).</p> <ul style="list-style-type: none"> <li>• <b>Engagements with the SETA</b></li> </ul> <p>The bidder's responsiveness to the allocated matter(s), for example, the provision of feedback on allocated matters, detailing the</p>	

Functionality Evaluation			
Practice Area	Criteria	Weight	
	<p>process to be followed when engaging with the SETA.</p> <ul style="list-style-type: none"> <li>- The bidder's approach and methodology respond fully to all three (3) criteria. <b>35</b></li> <li>- The bidder's approach and methodology respond to two (2) criteria. 20</li> <li>- The bidder's approach and methodology respond to one (1) criterion. 10</li> </ul>		
	<p><b>Experience/proven track record in legal and compliance work: Bidder demonstrates experience/proven track record in legal and compliance work</b> in the related field as indicated in either <b>Group A or B</b></p> <ul style="list-style-type: none"> <li>• The law firm has more than 10 years of legal and compliance experience. <b>25</b></li> <li>• The law firm has between 5-9 years of legal and compliance experience. 20</li> <li>• The law firm has between 1-4 years of legal and compliance experience. 10</li> </ul>		
	<p><b>Experience of the Lead Attorney</b></p> <p>The lead attorney must demonstrate at least seven (7) years of relevant post-admission experience in the chosen field in respect of which the bid is submitted.</p> <p>The bidder should indicate the legal project(s)/ or legal work that the lead attorney has done and led for the relevant/applicable period of their indicated experience.</p> <p>7 years of experience <b>25</b></p> <p>5-6 years of experience 20</p> <p>Below 5 years of experience 10</p>		
	<p><b>Contactable Reference Letters on official letterhead (within the last 6 years)</b></p> <p>An excellent track record in the chosen field/group, substantiated by references/letters from clients where relevant service has been rendered.</p>		

Functionality Evaluation		
Practice Area	Criteria	Weight
	7 or more reference letters	15
	6 – 5 reference letters	10
	3 – 4 reference letters	5
	Less than 3 reference letters	0

**NB! Bids that do not meet the minimum qualifying score for functionality will be eliminated from further evaluation.**

**9. Technical Specification(s)/ Technical proposal based on TOR:**

9.1. The technical proposal should address the following content: **Refer to Evaluation Criteria above:**

9.1. Background information of service provider.

- Service provider Profile / Management structure.

9.2. Proposal regarding the scope of services to be rendered.

- Approach, Plan and Timelines.
- Project Organisation and logistical arrangements;
- Methodology to ensure successful completion of contract; and
- Business arrangement approach.
  - ✓ An overview of the proposed business arrangement;
  - ✓ How CATHSSETA and the service provider will manage risks and realise benefits;

9.2. Information and evidence to address the evaluation criteria set in the bid documents:

- Proven Credentials and Team Expertise.
- Details of any professional associations the respondents belong to and indicate the length of membership;
- Performance capabilities;
- Performance abilities relevant to the scope of services to be rendered;
- Senior Management Experience;
- Reference sites and contact details where a project of this nature was conducted;
- Major client profile / including government;
- Required details regarding references; and
- CVs of key project personnel.

9.3. All bid proposals must at least adhere to the minimum requirements as specified in the Terms of Reference.

9.4. If the bidder suggests certain changes to the General conditions of contract or the special conditions of contract, the proposed changes will be evaluated and if acceptable by

CATHSSETA such suggested changes may be included into the contract as special conditions of contract.

- 9.5. If the suggested changes are unacceptable, the General conditions of contract and the special conditions of contract will stand. The potential bidder will then have to decide to abide by the decision or to withdraw its bid proposal.
- 9.6. If any clarity needs to be obtained for evaluation purposes CATHSSETA may require the potential service provider to substantiate certain information, or to allow officials to undertake a financial/ physical inspection to assure that capacity and ability is proven.
- 9.7. Supporting documentation should be attached as annexures and cross-referenced to the appropriate section of the bid.

## **10. BID SUBMISSION REQUIREMENTS**

- 10.1. The completed response and submissions must be returned to:

**CATHSSETA Head Office 270 George Road,  
Noordwyk, Midrand (Johannesburg),  
Attention: Supply Chain Office**

**NB!** Bid proposals must consist of **one (1)** hard copy and **one (1)** electronic copy (USB)

- 10.2. Incomplete submissions including the insufficient number of printed or electronic copies will result in disqualification.
- 10.3. E-mail or fax proposals are not acceptable.
- 10.4. Questions for clarification of issues will be considered by the CATHSSETA up to the close of business on **13 June 2024**, all bid-related queries to be sent via email to [tenders@cathsseta.org.za](mailto:tenders@cathsseta.org.za). No verbal requests for information or clarification will be accepted. Answers to queries shall be posted to the CATHSSETA website [www.cathsseta.org.za](http://www.cathsseta.org.za) (under Bids) and will therefore be in the public domain.
- 10.5. All documentation and responses will be supplied and exchanged utilising standard Microsoft Office (Word, Excel, and PowerPoint) products.
- 10.6. Any attempt to gain information in a manner deemed to be fraudulent or disadvantageous to other respondents or any attempt to influence the outcome of the response evaluation will result in immediate disqualification from the bid process. It should also be noted that any attempt at collusion or fronting, may be reported to SAPS in terms of Section 34 of the Prevention and Combating of the Corrupt Activities Act (PRECCA, 2004).

## **11. MANDATORY REQUIREMENTS – GATE ONE**

- 11.1. Bidders are required to indicate in the checklist below (using a tick) whether they have submitted all the mandatory documents.
- 11.2. **Please note non-submission of mandatory documents will disqualify the bidder from proceeding to the next stage of technical specification evaluation.**

<b>MANDATORY REQUIREMENTS CHECKLIST – GATE ONE</b>	<b>YES</b>
Invitation to Bid – SBD Form 1	
Pricing Schedule – Professional Services – SBD Form 3.3	
Bidder’s Disclosure– SBD Form 4	
Preference Points Claim Form – SBD Form 6.1	
Contract Form – Rendering of Services – SBD Form 7.2 (Part 1)	
General Conditions of Contract (GCC)	
Valid Tax Clearance Compliance Certificate with Pin (Issued by SARS)	
Valid BBBEE Certificate/Sworn Affidavit	
Company Registration Documents (CIPC)	
Central Supplier Database (CSD) Summary Report	
1 x Hardcopy Proposal & 1 x Electronic Proposal (USB)	

**12. DISCLAIMER**

- 12.1. The SETA reserves the right not to appoint a service provider and is also not obliged to provide reasons for the rejection of any proposal.
- 12.2. CATHSSETA reserves the right to:
  - 12.2.1. Award contract or any part thereof to one or more Service Providers.
  - 12.2.2. Reject all bids.
  - 12.2.3. Consider any bids that may not conform to any aspect of the bidding requirements.
  - 12.2.4. Decline to consider any bids that do not conform to any aspect of the bidding requirements.
  - 12.2.5. Request further information from any Service Provider after the closing date; and
  - 12.2.6. Cancel this tender or any part thereof at any time.

**13. BIDDERS’ NOTIFICATION**

- 13.1. Unsuccessful respondents will be notified by e-mail.
- 13.2. All Standard Bid documents must be completed and signed and will form part of a signed contract.



**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: .....	BID NO.: .....
CLOSING TIME 11:00	CLOSING DATE.....

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

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(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 contributions and skills development levies.

**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

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:  
 .....  
 .....

---

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

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?  
**1. YES/NO**

2.3.1 If so, furnish particulars:  
 .....  
 .....

**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 bids 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

2 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.

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.

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

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL  
PROCUREMENT REGULATIONS 2022**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for specific goals.

- iv) **NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BEE, 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 **To be completed by the organ of state:**

- 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

1.3 Points for this bid shall be awarded for:

- (a) Price; and  
(b) Specific Goals.

1.4 **To be completed by the organ of state:**

The maximum points for this bid are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	<b>80</b>
<b>SPECIFIC GOALS</b>	<b>20</b>
<b>Total points for Price and Specific Goals must not exceed</b>	<b>100</b>

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

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

## 2. DEFINITIONS

- (a) **“highest acceptable tender”** means a tender that complies with all specifications and conditions of tender and that has the highest price compared to other tenders;
- (b) **“lowest acceptable tender”** means a tender that complies with all specifications and conditions of tender and that has lowest price compared to other tenders;
- (c) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (d) **“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation;
- (e) **“specific goals”** means specific goals as contemplated in section 2(1)(d) of the Act which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including the implementation of programmes of the Reconstruction and Development Programme as published in *Government Gazette* No. 16085 dated 23 November 1994;
- (f) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation.
- (g) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and;
- (h) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

## 3. POINTS AWARDED FOR PRICE

### 3.1 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**

$$Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right) \text{ or } Ps = 90 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

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

#### 3.2.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc} 80/20 & \text{or} & 90/10 \\ Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right) & \text{or} & Ps = 90 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right) \end{array}$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

## 4. POINTS AWARDED FOR FOR SPECIFIC GOALS

4.1 In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2 In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

4.3 **Table 1:** Specific goals for the tender and points claimed are indicated per the table below:

4.3.1. **Note to organs of state:** Whether the 80/20 or 90/10 preference point system is applicable, corresponding points must also be indicated as such; and

4.3.2. **Note to tenderers:** The tenderer must indicate points they are claiming for each preference point system.

Table 1

Specific goal(s)	(80/20 system) Specific Goals point system	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Black People Ownership (51% or more)	8		
Black Women Ownership (30% or more)	4		
Black Youth Ownership (30% or more)	4		
People with Disability (PwD) Ownership (20% or more)	4		
Total Points allocated/claimed for Specific Goals	<b>20</b>		

**5. DECLARATION WITH REGARD TO COMPANY/FIRM**

5.1 Name of company/firm.....

5.2 Company registration number: .....

5.3 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One-person business/sole propriety
- Close corporation
- Public Company

- Personal Liability Company
- (Pty) Limited
- Non-Profit Company
- State Owned Company

[TICK APPLICABLE  
BOX]

5.4. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The specific goals 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 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering 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 tenderer or contractor, its shareholders, and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted 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, if deemed necessary.

<p>..... SIGNATURE(S) OF TENDERER(S)</p> <p>DATE: .....</p> <p>ADDRESS .....</p> <p>.....</p>	<p>WITNESSES</p> <p>1. ....</p> <p>2. ....</p>
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### CONTRACT FORM - RENDERING OF SERVICES

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

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

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid .
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
    - Declaration of interest;
    - Declaration of bidder’s past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1	.....
2	.....
DATE: .....	

**CONTRACT FORM - RENDERING OF SERVICES**  
**PART 2 (TO BE FILLED IN BY THE PURCHASER)**

1. I..... in my capacity as..... accept your bid under reference number .....dated.....for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

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

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

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

NAME (PRINT) .....

SIGNATURE .....

OFFICIAL STAMP

WITNESSES

1 .....

2 .....

DATE: .....

**THE NATIONAL TREASURY**

**Republic of South Africa**



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**GOVERNMENT PROCUREMENT:  
GENERAL CONDITIONS OF CONTRACT**

**July 2010**

**GOVERNMENT PROCUREMENT**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**NOTES**

The purpose of this document is to:

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

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

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

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1. Definitions
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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 "Day" means calendar day.
  - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
  - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
  - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

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

**2. Application**

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

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

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

**3. General**

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

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

**4. Standards**

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

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

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

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

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

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

**6. Patent rights**

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



**7. Performance security**

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

**8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

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

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

**9. Packing**

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

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

**10. Delivery and documents**

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

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

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental services**

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

**14. Spare parts**

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

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

**15. Warranty**

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

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
  - 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
  - 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
  - 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
  - 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
  - 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
  - 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

## **23. Termination for default**

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

**24. Anti-dumping and countervailing duties and rights**

- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which

may be due to him

**25. Force Majeure**

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

**27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

		(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
<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 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.
<b>33. National Industrial Participation Programme (NIP)</b>	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.
<b>34 Prohibition of Restrictive practices</b>	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.

Js General Conditions of Contract (revised July 2010)