

**BID No: RSR/RFP/OCOO/BOILC/21/07/05**

**REQUEST FOR PROPOSALS:**

**APPOINTMENT OF A SERVICE PROVIDER TO RENDER SPECIALIST SERVICES IN CONDUCTING A BOARD OF INQUIRY (BOI) INTO COLLISIONS ON TFR LEVEL CROSSINGS.**

Issued by:
Railway Safety Regulator: Supply Chain Department
<b>Waterfall Point Building</b>
<b>Cnr Woodmead Drive and Waterfall Drive</b>
<b>WATERFALL CITY</b>
<b>1685</b>
Contact Person: Goitseone Kgwadibana
Tel: 087 284 6666
Email: <a href="mailto:goitseonek@rsr.org.za">goitseonek@rsr.org.za</a>

Full Name of Bidding/Tendering Entity: \_\_\_\_\_

Contact Person: \_\_\_\_\_

Tel Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Total Bid Amount (incl. VAT): R \_\_\_\_\_

**Advert Date: 03 August 2021**

**Closing Date and Time: 25 August 2021 @ 12:00**

Bidder's Authorised Signatory: Initials and Surname : \_\_\_\_\_

Signature : \_\_\_\_\_

## A. NOTICE TO TENDERERS

This tender is issued in terms of the Public Finance Management Act 1 of 1999 (PFMA), the Preferential Procurement Policy Framework Act 5 of 2000 (PPFFA), the Preferential Procurement Regulations, 2001 (PPR), Supply Chain Management Regulations issued by the National Treasury and BBBEE Act.

Parties that wish to submit proposals are required to indicate that they are willing to accept the General Conditions and Procedures of the RAILWAY SAFETY REGULATOR.

<b>DESCRIPTION</b>	Appointment of a service provider to render specialist services in conducting a Board of Inquiry (BOI) into collisions on TFR level crossings.
<b>ADVERTISEMENT DATE</b>	03 August 2021
<b>TENDER DOCUMENTS</b>	Not for sale. Copies of the bid documents are obtainable from on the e-Tender portal of the National Treasury website, <a href="http://www.etenders.gov.za">www.etenders.gov.za</a>
<b>CLOSING DATE</b>	25 August 2021 at 12:00 PM
<b>VALIDITY PERIOD</b>	90 Business Working Days from Closing Date. Tenderers are to note that they may be requested to extend the validity period of their tender, at the same terms and conditions, if the internal evaluation process has not been finalized within the validity period. However, once the adjudication body has approved the process and award of the business to the successful Tenderer(s), the validity of the successful Tenderer(s)' bid will be deemed to remain valid until a final contract has been concluded.
<b>SUBMISSION OF PROPOSALS</b>	Proposals must reach the offices of the RAILWAY SAFETY REGULATOR, located at Waterfall Point Building, Cnr Woodmead Drive and Waterfall Drive, Waterfall City before <b>... 12:00 PM.....</b>  Tender document shall be submitted as one (01) original and one (01) scanned copy (PDF) of the original completed in a Flash Drive with the proposal and forms required:  <b>a) REQUEST FOR PROPOSAL - RAILWAY SAFETY REGULATOR:</b> <b>b) APPOINTMENT OF A SERVICE PROVIDER TO RENDER SPECIALIST SERVICES IN CONDUCTING A BOARD OF INQUIRY (BOI) INTO COLLISIONS ON TFR LEVEL CROSSINGS.</b>  The tender box will only be available for the depositing of proposals between 08h00 and 16h30 on weekdays (excluding public holidays).  Please note that this RFP closes punctually at 12:00 PM on 25 August 2021. No late submissions will be considered under any circumstances.  The RAILWAY SAFETY REGULATOR shall not disclose any details pertaining to the responses received, to any other participant(s), as this is regarded as confidential information.

	<p>Envelopes must not contain documents relating to any RFP other than the one referred to in this RFP.</p> <p>The responses to the RFP will be opened as soon as is practical after the expiry of the time advertised for receiving them.</p> <p>Only the participants that are short-listed after the evaluation process will be informed of the results of their submission.</p>
--	---

### B. BID DOCUMENTS CHECKLIST:

The contents of the bid/tender document must be as follows, and numbered as per the numbering below, with each schedule punched, placed in a file and separated from the next schedule with a file divider.

Please complete the checklist below to verify your submission of the relevant documents:

Schedules	Description	COMPULSORY	Submitted – Indicate YES or NO
Schedule 1	Fully completed and duly signed SBD forms	X	
Schedule 2	Central Suppliers database (CSD) Registration	X	
Schedule 3	Tax compliant status (with (PIN)	X	
Schedule 4	B-BBEE certificate / B-BBEE sworn affidavit	X	
Schedule 5	Testimonials/Reference letters	X	
Schedule 6	CVs and qualifications of proposed resources	X	
Schedule 7	Approach to work/methodology	X	
Schedule 8	Project Plan	X	

### C. THE BIDDER MUST COMPLETE THE FOLLOWING RETURNABLE DOCUMENTS:

<i>(Bidders must tick the “Returnable Document” column to confirm documents have been completed and returned by inserting tick- <b>incomplete bids may lead to elimination</b>)</i>	Submitted: (tick box)
<b>Returnable Document Name:</b>	
SBD 1	
SBD 3.3	
SBD 4	
SBD 6.1	
SBD 8	
SBD 9	
General Conditions of Contract and/or Special Conditions of Contract	

## **1. TERMS OF REFERENCE**

### **1.1 INTRODUCTION**

- 1.1.1 The Railway Safety Regulator (RSR) was established in terms of the National Railway Safety Regulator Act, Act 16 of 2002 (“the Act”) as amended.
- 1.1.2 The RSR is an agency of the Department of Transport and comprises a Board of Directors, Chief Executive Officer (appointed by the Minister), Executive management and staff.
- 1.1.3 The primary legislative mandate of the RSR is to oversee and enforce safety performance by all railway operators in South Africa including those of the neighboring States whose rail operations enter South Africa. Notwithstanding the foregoing, operators are, in terms of the Act, primarily responsible and accountable for ensuring the safety of their railway operations.

### **1.2 BACKGROUND**

#### **1.2.1 Occurrence Investigations**

- 1.2.1.1 Section 38(1) of RSR Act 16 of 2002 (as amended) states that an operator must investigate every railway occurrence that takes place directly or indirectly in connection with that operator’s railway operations, among other things to identify the root cause or causes thereof, within a reasonable time after that occurrence.
- 1.2.1.2 Section 38(4) states that the Regulator may, or upon receipt of a directive from the Minister, investigate any railway occurrence for the purposes of preventing similar occurrences in the future.
- 1.2.1.3 Section 38(8) provides that the Regulator may appoint a suitably qualified person to carry out any investigation referred to in subsection (4).
- 1.2.1.4 Section 38(9) provides that an investigator appointed in terms of subsection (8) must furnish a written report to the Regulator upon completion of the investigation.

## 1.2.2 Analyses of Level crossing occurrence statistics

1.2.2.1 The RSR analysed level crossing collision statistics from the previous reporting period (2020/21) occurrence and incidents database. The analysis revealed that there was a total 74 level crossing collisions recorded under the reporting period. A total of 65 of these collisions involved Transnet Freight Rail (TFR) trains. These collisions resulted in 24 fatalities and 17 injuries to motorists. TFR accounted for 19 fatalities and 16 injuries in the country during the period under review.

1.2.2.2 The RSR selected one level crossing per province from the level crossing analyses for the BOI, see Table1 below.

No	Province	Place of Occurrence	Number of occurrences	Number of Fatalities	Number of Injuries
1	North West	Rustenburg - Kgalestad	1	2	0
2	Mpumalanga	Witbank	5	1	4
3	Northern Cape	Ariesfontein - Plateau	1	3	0
4	KwaZulu-Natal	Chieveley - Frere	1	3	1
5	Western Cape	Halt - Langeenheid	1	2	0
6	Free State	Tweespruit - Thaba Nchu	2	0	0
7	Eastern Cape	Perseverance	1	3	0
8	Gauteng	Rooikop - Mapleton	1	0	1
9	Limpopo	Kamkusi - Musina	1	0	0

**Table1:** Selected Level Crossings per province for the BOI

## 1.2.3 FACTORS LEADING TO LEVEL CROSSING COLLISIONS

1.2.3.1 A level crossing is a place approved by the network operator and/or the road authority where a road crosses the railway line(s) at grade. Level crossings are protected by several measures depending on the type of level crossing ranging from whistle boards, stop signs, level crossing signs, advanced warning signs, flashing lights, booms etc, to ensure safe crossing for motorists and trains.

- 1.2.3.2 Motorists are, by law supposed to stop at the stop sign when approaching level crossings, observe around for oncoming trains and cross the railway line only when it is safe to do so. Trains are required to blow the siren at whistle boards on approach to level crossings to warn motorists of approaching train.
- 1.2.3.3 Level crossing occurrences cause harm to people, damage to property and environment. Level crossing occurrences also cause serious disruption to train operations.
- 1.2.3.4 Analysis of TFR level crossing occurrence statistics indicates failures with the protections installed at level crossings. TFR had 65 level crossing occurrences during the period 2020/21. These occurrences resulted in 16 fatalities and 19 injuries to motorists. Contributing to these occurrences include the unsafe acts and conditions at level crossings, road users not adhering to traffic rules at level crossing as well as the design and/or layout of the level crossings.

### **1.3 STATEMENT OF INTENT**

- 1.3.1 The inquiry has been constituted in accordance with Section 38 of Railway Safety Regulator Act, Act 16 of 2002 (as amended)
- 1.3.2 The purpose of this Terms of Reference (TOR) is to appoint a service provider to render specialist services in conducting a Board of Inquiry (BOI) into collisions on TFR level crossings.
- 1.3.3 The Board of Inquiry will comprise a Chairperson, Signalling expert (with Train Operation experience), Human Factors expert and a Permanent Way expert.
- 1.3.4 The objective of the inquiry is not to allocate blame or liability, but the realisation of the following objectives:
  - 1.3.4.1 Establishment of the facts leading up to the occurrences;
  - 1.3.4.2 Determination of the immediate causes;
  - 1.3.4.3 Determination of the root (underlying) causes;
  - 1.3.4.4 Development of robust recommendations; and
  - 1.3.4.5 Succinct report covering all the elements of the Terms of Reference.

## **1.4 MANDATE**

- 1.4.1 The Board of Inquiry is required to investigate, make findings and report on the following:
- 1.4.1.1 The immediate and root/underlying causes leading up to and surrounding the occurrences and taking account of previous occurrences as well as the recommendations made from previous occurrence investigations.
  - 1.4.1.2 The immediate and underlying causes leading up to the level Crossing Collisions.
- 1.4.2 The Board of Inquiry is further mandated to make robust recommendations to prevent, reduce the risk of, and/or mitigate the consequences of recurrence of the level crossing occurrences.
- 1.4.3 The Board of Inquiry is requested to formulate their recommendations in such way that:
- 1.4.3.1 The recommendations are clear, specific and unambiguous as to what is expected from whom;
  - 1.4.3.2 The recommendations are measurable, practical and attainable;
  - 1.4.3.3 The recommendations are results orientated and coupled to specific time frames; and
  - 1.4.3.4 The recommendations highlight systemic issues or trends that have emerged over occurrences that are similar in nature.

## **1.5 SCOPE OF WORK**

- 1.5.1 The appointed service provider will conduct a Board of Inquiry (BOI) into collisions on TFR level crossings.
- 1.5.2 The RSR selected one level crossing per province from the occurrence statistics analyses.
- 1.5.3 The Board of Inquiry will:
- 1.5.3.1 Conduct an inspection in loco at each selected level crossing and assess the condition of the level crossing; conduct an inspection and assessment of the level of protection installed at these level crossings. The Board will also observe train and vehicle traffic traversing the level crossings.

- 1.5.3.2 Conduct interviews with following key personnel to establish the effectiveness of the controls to prevent collision occurrences at level crossings.
- Depot Engineer
  - Permanent Way Manager
  - Train Operations Manager
  - Area Safety Manager
  - Any other relevant personnel that can help the BOI with the investigation.
- 1.5.3.3 Request and peruse the following level crossing documents.
- Level Crossing Risk Assessments
  - Level Crossing Inspection reports
  - Level Crossing Maintenance reports
  - Level Crossing Investigation reports
  - Corrective Action Implementation
  - Any other documents that may help the BOI with the investigation.
- 1.5.3.4 Make recommendations to the RSR on how Level Crossing Collisions can be mitigated or eliminated.
- 1.5.3.5 Provide a project report covering the complete allocated scope.
- 1.5.3.6 The BOI receives its powers to conduct this investigation from section 33 of Act16 of 2002. The BOI members have the same powers as any RSR Inspector.
- 1.5.3.7 A total of 225 hours, per resource, will be allocated for this assignment.

## **1.6 PROJECT DELIVERABLES**

- 1.6.1 After the appointment of the BOI, the Chairperson of the Board of Inquiry shall submit the preliminary report of the inquiry (excluding all annexures that are supporting documents and not directly required to facilitate the understanding of the preliminary report) to Ms Tshepo Kgare (Chief Operations Officer of the Railway Safety Regulator) within 60 working days after the Board has convened for the first time. The purpose hereof is to ensure that the Board has met the conditions of the Terms of Reference and that the report reflect such.



- 1.6.2 Upon receipt of the preliminary report, the Chief Operations Officer (COO) will require 10 working days to scrutinise the preliminary report and to make recommendations and to provide direction, if any, to the Chairperson of the Board of Inquiry.
- 1.6.3 The Chairperson will incorporate inputs and corrections as discussed with the COO. The Chairperson shall submit the final report for the enquiry (in electronic format) back to the RSR COO within 15 working days of receiving inputs.

## **1.7 QUALIFICATIONS AND EXPERIENCE**

The Board of Inquiry shall comprise the following members:

- (a) Chairperson.
- (b) Secretariat (provided by the Chairperson).
- (c) Qualified and experienced expert in Signalling (with train operations experience).
- (d) Qualified and experienced expert in Human Factors.
- (e) Qualified and experienced expert in Permanent Way railway infrastructure.

### **1.7.1 CHAIRPERSON**

- a) The RSR requires services of a railway expert to be the Chairperson of the Board of Inquiry (BOI) into TFR level crossing collisions in the country. The BOI will focus on the level crossings as listed in Table1 above.
- b) The Chairperson of the Board of Inquiry shall have vast experience on rolling stock, railway infrastructure and railway operations.
- c) The person must be registered with Engineering Council of South Africa (ECSA) in terms of the Engineering Profession Act 46 of 2000 as a Professional Engineer or Technologist.
- d) The person must have extensive experience of the railway industry and in chairing Board of Inquiries.

### 1.7.2 HUMAN FACTORS EXPERT

- a) The RSR requires services of an Ergonomics/Human Factors expert to be a member of the Board of Inquiry (BOI) into TFR Level Crossing collisions in the country. The BOI will focus on the level crossings as listed in Table1 above.
- b) The person must be registered with Ergonomics Society of South Africa (ESSA).
- c) The person must have knowledge in railway train control operations and an excellent understanding of train operations.
- d) The person must have extensive knowledge in cognitive ergonomics and workload planning/management.
- e) The person must have extensive understanding of railway safety management systems.
- f) He/she must have experience in railway safety occurrence investigations, and in particular root cause analysis. Furthermore, it is required that he/she should be able to translate his/her findings and recommendations in layman's terms to other members of the BOI.
- g) The person must have workable knowledge of SANS 3000 series of standards.

### 1.7.3 PERMANENT WAY EXPERT

- a) The RSR requires services of a permanent way expert to be a member of the Board of Inquiry (BOI) into TFR level crossing collisions. ‘
- b) The BOI will focus on the level crossings as listed in Table1 above.
- c) The person must be registered with Engineering Council of South Africa (ECSA) in terms of the Engineering Profession Act 46 of 2000 as a Professional Engineer or Technologist.
- d) The person must have extensive experience in railway permanent way and an excellent understanding of train operations.
- e) The person must have extensive understanding of railway safety management.

- f) The person must have experience in railway safety accident investigations, and in particular root cause analysis. Furthermore, it is required that he/she should be able to translate his/her findings and recommendations in layman's terms to other members of the BOI.
- g) The person must have a workable knowledge of SANS 3000 series of standards.

#### **1.7.4 SIGNALLING EXPERT (WITH TRAIN OPERATIONS EXPERIENCE)**

- a) The RSR requires services of a Signalling expert (with train operations experience) to be a member of the Board of Inquiry (BOI) into TFR level crossing collisions.
- b) The BOI will focus on the level crossings as listed in Table1 above.
- c) The person must be registered with Engineering Council of South Africa (ECSA) in terms of the Engineering Profession Act 46 of 2000 as a Professional Engineer or Technologist.
- d) The person must have extensive experience in railway signalling and an excellent understanding of train operations.
- e) The person must have extensive understanding of railway safety management.
- f) The person must have experience in railway safety accident investigations, and in particular root cause analysis. Furthermore, it is required that he/she should be able to translate his/her findings and recommendations in layman's terms to other members of the BOI.
- g) The person must have a workable knowledge of SANS 3000 series of standards.

## **1.8 RESPONSIBILITY OF THE CHAIRPERSON**

1.8.1 The Chairperson of the Board of Inquiry shall be responsible to:

- a) Provide strategic direction and leadership necessary to give effect to the requirements of this Terms of Reference and the Mandate of the Board of Inquiry as stipulated in the National Railway Safety Regulator Act (RSR Act 16 of 2002, as amended);
- b) Provide the final comprehensive report for the Board of Inquiry meeting all the requirements of this Terms of Reference within the agreed timeframes;
- c) Immediately bring to the attention of the RSR Chief Operations Officer any safety concerns based on the ongoing investigation which require immediate attention for implementation by railway operators and which matters cannot wait for the finalization of the report;
- d) Consult timely with the RSR Chief Operations Officer on any issues or concerns related to the successful execution of this Terms of Reference and associate timelines;
- e) Nominate a coordinator within the Panel to be responsible for the logistical arrangements associated with a Board of Inquiry (arranging site visits, arranging venues for holding the inquiry, calling of witnesses, obtaining material evidence, making travel arrangements, organising refreshments, etc.). The coordinator shall work closely with the nominated RSR liaisons officer; and
- f) Submission of a detailed account supported by appropriate timesheets and invoices for payments made indicating the costs incurred in conducting the Board of Inquiry.
- g) In line with section 38(5) of the Act, the BOI may—
  - in its discretion, allow any person affected by or interested in the relevant investigation or the duly authorised representative of such person, to appear before it and—

- Give evidence or make oral or written representations relevant to such investigation;
- Call witnesses and lead evidence on any question relevant thereto; or
- Question any person who testified as a witness in such investigation;
- Summon any person who may reasonably be able to give material information concerning such investigation to appear before it to give evidence or to produce any document or object in their possession or custody or under their control which may reasonably have a bearing thereon;
- Call upon and administer an oath to or obtain an affirmation from any person present before it, who has been or might be summoned in terms of paragraph (b) or otherwise;
- Question any person who has been called upon under paragraph (c) or require such person to produce any document or object in their possession or custody, or under their control, which may reasonably have a bearing on the investigation.

## **1.9 RESPONSIBILITY OF THE RSR**

1.9.1 The RSR shall support the BOI with the following support specialist:

1.9.1.1 1 x RSR Principal Inspector. The Principal Inspector will serve as the BOI and Railway Operator Liaison Support.

1.9.1.2 1 x Legal Advisor. The Legal Specialist will support and assist the BOI on Legal matters and to ensure that evidence is processed in accordance with the rules of evidence

1.9.2 The RSR, hereby agree to remunerate the BOI members at the agreed hourly rates, including such other unavoidable incidental costs incurred in the execution of this Terms of Reference.

## **1.10 PROPOSAL SUBMISSION**

1.10.1 The bidder must provide a detailed proposal as part of the tender, addressing and including at least the following:

- 1.10.1.1 Organisation profile;
- 1.10.1.2 If applicable, A Joint Venture agreement signed by all parties in case of a Joint Venture / Consortium submission;
- 1.10.1.3 Central Supplier database (CSD) Registration;
- 1.10.1.4 Valid B-BBEE certificate / B-BBEE sworn affidavit. A valid B-BBEE certificate or sworn affidavit (the sworn affidavit must indicate the full date i.e., day, month and year of the financial year end e.g., 31 March 2021). A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate;
- 1.10.1.5 Valid tax compliance status report with PIN or international equivalent;
- 1.10.1.6 Fully completed and duly signed Standard Bidding Documents (SBD) Forms documents supplied with these Terms of Reference;
- 1.10.1.7 Proven previous experience, including testimonials from previous contracts security risk management; The testimonials/reference letter should be on a client's official letterhead with valid and traceable contact details, scope of the work and standard of service. RSR may contact the references to confirm the information provided;
- 1.10.1.8 Demonstrable capacity to deliver on all the desired services that include response to the project scope and allocated resources;
- 1.10.1.9 A detailed methodology on how the project scope will be delivered;
- 1.10.1.10 A Project Management plan, covering project management reports;
- 1.10.1.11 Tender document shall be submitted as one (01) original, and one (01) scanned copy (PDF) of the original completed in a Flash Drive with all exhibits and forms required included in the proposal length; and

1.10.1.12 All prices should be VAT Inclusive and exclude all travelling, and accommodation expenses as they will be arranged and paid for by the RSR utilizing the approved RSR Travel Policy.

## **1.11 SUB-CONTRACTING**

Sub-contracting of the services to other companies or individuals is not permitted without the prior written approval of RSR. A service provider is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

## **1.12 BID EVALUATION CRITERIA**

1.12.1 The proposals will be evaluated on a 4-phase approach consisting of:

### **1.12.1.1 Phase 1 - Pre-qualification Criteria**

To advance designated groups on the basis of B-BBEE Status Level of contributor, bidders will be prequalified on the basis of their B-BBEE Status of Level 1, Level 2, Level 3 and Level 4 contributor. A valid B-BBEE certificate or sworn affidavit (the sworn affidavit must indicate the full date i.e., day, month and year of the financial year period e.g., 31 March 2021). A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate. Bidders that do not meet the pre-qualification criteria stipulated will be disqualified from further evaluation.

#### 1.12.1.2 **Phase 2 - Administrative compliance documentation**

The evaluation of the administrative compliance requirements is indicated below. Failure to comply, may lead to disqualification.

- a) Fully completed and duly signed SBD forms.
- b) Central Supplier database (CSD) Registration.
- c) Tax compliant status report with PIN.

#### 1.12.1.3 **Phase 3 - Evaluation of Proposal**

The evaluation of the functional requirements as per **Section 1.12** below. Bidders must attain a minimum of **70 points** to be considered for Phase 4.

#### 1.12.1.4 **Phase 4 - The evaluation of price and B-BBEE**

Only bidders who score **70 points** and above in Phase 3 will be considered for the price and preference points evaluation. The prospective service providers' bids will be evaluated based on the 80/20 preference point system as stipulated in terms of the South African Preferential Procurement Policy Framework Act of 2017

### 1.13 **FUNCTIONALITY EVALUATION**

The suitable service provider must demonstrate capacity and capability to execute this project by complying with the functionality criteria Table 22 below:





<b>FUNCTIONALITY CRITERIA</b>		<b>100</b>
<b>1.12.2.3</b>	<p><b>Signaling Expert– (Max 10 points)</b></p> <p>1. Qualifications - Post graduate qualification preferably in Engineering [or its International Qualification equivalent as verified by SAQA]:</p> <p>a) Post-graduate (Incl. Post-Grad Diploma) = 5 points</p> <p>b) Bachelor’s Degree = 4 points</p> <p>c) National Diploma = 3 points</p> <p>d) No qualification = 0 points</p> <p>2. Years of work experience in participating in BOIs:</p> <p>a) 10 years or more = 5 points</p> <p>b) 05 years but below 10 years = 4 points</p> <p>c) Less than 5 years = 3 points</p> <p>d) No experience = 0 points</p>	<b>5</b>
<b>1.12.2.3</b>	<p><b>Human Factors Expert– (Max 10 points)</b></p> <p>1. Qualifications - Post graduate qualification preferably in Human Factors [or its International Qualification equivalent as verified by SAQA]:</p> <p>a) Post-graduate (Incl. Post-Grad Diploma) = 5 points</p> <p>b) Bachelor’s Degree = 4 points</p> <p>c) National Diploma = 3 points</p> <p>d) No qualification = 0 points</p> <p>2. Years of work experience in participating in BOIs:</p> <p>a) 10 years or more = 5 points</p> <p>b) 05 years but below 10 years = 4 points</p> <p>c) Less than 5 years = 3 points</p> <p>d) No experience = 0 points</p>	<b>5</b>
<b>1.12.3</b>	<b>APPROACH TO WORK</b>	<b>45 POINTS</b>
<b>1.12.3.1</b>	Structured Approach/Methodology and Project Plan covering management of the scope.	
<b>1.12.3.1.1</b>	<p><b>Structured Approach/Methodology</b></p> <ul style="list-style-type: none"> <li>Well defined approach methodology= 30 points</li> <li>Moderately defined approach methodology= 20 points</li> <li>Poorly defined approach methodology= 10 points</li> <li>No approach methodology= 0 points</li> </ul>	<b>30</b>
<b>1.12.3.1.2</b>	<p><b>Project Plan covering management of the scope</b></p> <ul style="list-style-type: none"> <li>Well defined Project Plan= 15 points</li> <li>Moderately defined Project Plan= 10 points</li> <li>Poorly defined Plan Plan= 5 points</li> <li>No project plan= 0 points</li> </ul>	<b>15</b>
	<b>TOTAL</b>	<b>100</b>

Only bidders that scored a minimum of **70 points** of the total points at the functionality phase will proceed to phase 4.

## 1.14 EVALUATION ON PRICE AND BBEE (PHASE 04)

1.14.1 Only bidders that score a minimum of 70 points on phase 3 will be considered for the price and points evaluation. Proposals will be evaluated in accordance with the prescripts of the Preferential.

1.14.2 Bids will be evaluated in accordance with the prescripts of the Preferential Procurement Policy Framework Act (PPPFA) and its regulations which stipulate **80/20 Preference point system [(for acquisition of goods or services for a Rand value equal to or above R30 000 and up to R50 million) (all applicable taxes included)]**.

1.14.3 To score points for preference (BBEE) bidders must submit a valid BBEE certificate or affidavit. A valid B-BBEE certificate or sworn affidavit (the sworn affidavit must indicate the full date i.e., day, month and year of the financial year period e.g., 31 March 2021). A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate.

## 1.15 PRICING SCHEDULE

Hours to be Spent for duration (Estimated)	Position	Rate per hour	Total
225 hours	Proposed Chairperson		
225 hours	Proposed Permanent Way Expert		
225 hours	Proposed Signalling Expert		
225 hours	Proposed Human Factors Expert		
<b>Sub Total</b>			
<b>VAT @ 15%</b>			
<b>Grand Total</b>			

All prices should include VAT and exclude all travelling, and accommodation expenses as they will be arranged and paid for by the RSR utilizing the approved RSR Travel Policy.

## **EXAMPLE REPORT**

### **THE OCCURRENCE INVESTIGATION REPORT**

The BOI will produce one report from the investigation on the level crossing collision occurrences.

The complete report of the Board of Inquiry shall conform to the following requirements:

- (a) Cover Page: Appropriate title and descriptive photograph if available
- (b) Table of contents
- (c) Executive Summary
- (d) Definitions
- (e) Narrative

#### **Part A: Title page with RSR reference number**

**Example:** Report of the Board of Inquiry into the circumstances which resulted into TFR Level Crossing collisions in the country.

#### **Part B: Statement of Intent**

**Example:** “The inquiry/investigation has been conducted with the objective of determining the facts of the occurrences, the immediate and underlying causes, and of making recommendations to prevent, or reduce the risk of recurrence. The report is for the use of persons with direct responsibility for overseeing, improving, or maintaining railway safety and as such the objective of the inquiry is not the allocation of blame and liability.”

#### **Part C: Copy of Terms of Reference**

#### **Part D: Details**

Details of the occurrences, including the dates, and as appropriate the trains involved, train crews involved, detail of the signaling system, track configurations, weather conditions, etc.

#### **Part E: A brief description of the sequence of events**

#### **Part F: A summary of the evidence consider relevant**

#### **Part G: Factors for consideration**

A summary of the factors taken into consideration by the Board of Inquiry, showing how the evidence provided has been assessed and the conclusions drawn.

#### **Part H: The conclusions (findings) including the immediate and underlying causes**

#### **Part I: The recommendations**

The recommendations are to be cross referenced with the relevant paragraphs in the report, in order to provide the justification for the recommendations. A clear indication shall be given as to whether the intentions of the recommendations are to:

- Prevent recurrence of such occurrences;
- Reduce the likelihood of recurrence;
- Reduce the consequences of such a recurrence; or
- A combination of these.

SBD1

**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE RAILWAY SAFETY REGULATOR</b>					
BID NUMBER:	RSR/RFP/OCOO/BOILC/21/07/05	CLOSING DATE:	25 August 2021	CLOSING TIME:	12:00
DESCRIPTION	Appointment of a service provider to render specialist services in conducting a Board of Inquiry (BOI) into collisions on TFR level crossings.				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
Railway Safety Regulator Head Office					
Waterfall Point Building					
Cnr Woodmead Drive and Waterfall Drive					
Waterfall City, 1685					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	Goitseone Kgwadibana		CONTACT PERSON	Eric Nkwinika	
TELEPHONE NUMBER	087 284 6666		TELEPHONE NUMBER	087 284 6666	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	<a href="mailto:goitseonek@rsr.org.za">goitseonek@rsr.org.za</a>		E-MAIL ADDRESS	<a href="mailto:ericn@rsr.org.za">ericn@rsr.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:		OR	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>ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</p>	<p><input type="checkbox"/>Yes                      <input type="checkbox"/>No [IF YES ENCLOSE PROOF]</p>	<p>ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</p>	<p><input type="checkbox"/>Yes                      <input type="checkbox"/>No [IF YES, ANSWER THE QUESTIONNAIRE BELOW ]</p>
--	---	---	--

<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>	
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<p><b>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.</b></p>	

## PART B TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION:</b>
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED- (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b>
1.3. 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.
1.4. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
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 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: .....





**PRICING SCHEDULE**  
**(Professional Services)**

NAME OF BIDDER: ..... BID NO.: ... RSR/RFP/OCOO/BOILC/21/07/05 CLOSING TIME 12:00 CLOSING DATE: 25 August 2021
---

OFFER TO BE VALID FOR ...90.....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 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. ....  
.....  
.....  
.....



**DECLARATION OF INTEREST**

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes an advertised competitive bid, a limited bid, a proposal or written price quotation). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

2.1 Full Name of bidder or his or her representative:.....

2.2 Identity Number:.....

2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>, member):  
.....

2.4 Registration number of company, enterprise, close corporation, partnership agreement or trust:.....

2.5 Tax Reference Number:.....

2.6 VAT Registration Number:.....

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / PERSAL numbers must be indicated in paragraph 3 below.

<sup>1</sup>“State” means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

<sup>2</sup>“Shareholder” means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder presently employed by the state? **YES / NO**

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

.....

Name of state institution at which you or the person connected to the bidder is employed:.....

Position occupied in the state institution: .....

Any other particulars:.....

.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you attach proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....  
.....  
.....

2.8 Did you or your spouse, or any of the company’s directors/ trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**

2.8.1 If so, furnish particulars:  
.....  
.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

2.9.1 If so, furnish particulars.  
.....  
.....  
.....

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? **YES/NO**

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

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

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

**3 Full details of directors / trustees / members / shareholders.**

Full Name(s)	Identity Number	Personal Income Tax Reference Number	State Employee Number/Personal Number

**4 DECLARATION**

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

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

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

Signature .....

Date.....

Name of Bidder .....

Position .....



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

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 The value of this bid is estimated not to exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 system shall be applicable.
- 1.3 Preference points for this bid shall be awarded for:
- (a) Price; and
  - (b) B-BBEE Status Level of Contribution.
- 1.4 The maximum points for this bid are allocated as follows:

	POINTS
<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>

- 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) **“prices”** 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. 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:

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) & \mathbf{or} & P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)
 \end{array}$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

#### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

4.1 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

#### 5. BID DECLARATION

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

#### 6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 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.

#### 7. SUB-CONTRACTING

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

(Tick applicable box)

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

7.1.1 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:

<b>Designated Group: An EME or QSE which is at last 51% owned by:</b>	<b>EME</b> √	<b>QSE</b> √
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		

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

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 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 .....

**DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
  - a. abused the institution’s supply chain management system;
  - b. committed fraud or any other improper conduct in relation to such system; or
  - c. failed to perform on any previous contract.
- 4 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury’s Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the audi alteram partem rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury’s website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		

4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website ( <a href="http://www.treasury.gov.za">www.treasury.gov.za</a> ) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

### CERTIFICATION

I, THE UNDERSIGNED (FULL NAME).....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

## **CERTIFICATE OF INDEPENDENT BID DETERMINATION**

This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> invited.

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

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

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



**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

---

(Bid Number and Description)

in response to the invitation for the bid made by:

---

(Name of Institution)

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

I certify, on behalf

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

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;

5. For the purposes of this Certificate and the accompanying bid, I understand that the word “competitor” shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
- (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

SBD 9

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

**<sup>3</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.**

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

## GENERAL CONDITIONS OF CONTRACT

### 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.

### GOVERNMENT PROCUREMENT

## 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. Dumping and countervailing duties
  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
  33. National Industrial Participation Programme (NIPP)
  34. Prohibition of restrictive practices

## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of anything 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 its 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**

- 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

## **analyses**

should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

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

## **9. Packing**

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

goods' final destination and the absence of heavy handling facilities at all points in transit.

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

**10. Delivery and documents**

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

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

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental Services**

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

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

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

- 14. Spare parts** 14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
  - (b) in the event of termination of production of the spare parts:
    - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.
- 15. Warranty** 15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.
- 16. Payment** 16.1 The method and conditions of payment to be made to the supplier under this

contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

**17. Prices**

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

**18. Contract**

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.

**amendments**

**19.**

**Assignment**

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

**20.**

**Subcontracts**

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

**21. Delays in the supplier's performance**

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

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

## **23. Termination for default**

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems

appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

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

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

must be open to the public. The Register can be perused on the National Treasury website.

- 24. Anti-dumping and countervailing duties and rights**
- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him
- 25. Force Majeure**
- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.
- 26. Termination for insolvency**
- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
- 27. Settlement of Disputes**
- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.



27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier.

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

**28. Limitation  
of  
Liability**

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

**29. Governing  
Language**

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

**30. Applicable  
Law**

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

**31. Notices**

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice

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

- 32. Taxes and Duties**
- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme**
- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34. Prohibition of Restrictive Practices**
- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.