



**INDEPENDENT POLICE INVESTIGATIVE
DIRECTORATE**

Private Bag X941, PRETORIA, 0001. City Forum Building, 114 Madiba Street, PRETORIA
Tel: (012) 399 0000, Fax: (012) 399 1440, Email: complaints@ipid.gov.za

LEGAL SERVICES BID

TERMS OF REFERENCE

TENDER NUMBER: IPID 04 18/19

**APPOINTMENT OF SERVICE PROVIDERS TO RENDER LEGAL ADVISORY
AND REPRESENTATION SERVICES FOR THE INDEPENDENT POLICE
INVESTIGATIVE DIRECTORATE NATIONALLY, IN ALL NINE PROVINCES,
FOR A PERIOD OF THREE (3) YEARS**

**CLOSING DATE:
VALIDITY PERIOD:**

- All bid documents shall be marked IPID 04 18/19 and delivered to:
 Independent Police Investigative Directorate
 Reception: Ground Floor
 114 City Forum Building, (Cnr Madiba and Sophie De Bruyn Street)
 Pretoria

Briefing session will be held as follows:

OFFICE	DATE	ADDRESS	TIME
IPID 7 Floor Boardroom		114 Madiba Street, (Cnr Madiba and Sophie de Bruyn Streets) Pretoria 0083	10:00

- Attendance of the briefing session is highly recommended.
- Please note: Bid documents must be properly indexed and bound.

1. DURATION AND CONDITIONS OF THE TENDER

The Independent Police Investigative Directorate wishes to appoint three (3) legal firms for the provision of expert legal advice for a period of three (3) years.

This bid and all contracts emanating therefrom will be subject to the General Conditions of Contracts issued in accordance with the Treasury Regulations 16A published in terms of the Public Finance Management Act, 1999 (Act 1 of 1999). The Special Conditions of Contract are supplementary to that of the General Conditions of Contract. Where, however, the Special Conditions of Contract are in conflict the General Conditions of Contract, the Special Conditions of Contract takes precedence.

2. BACKGROUND

IPID's legislative mandate is based on section 206(6) of the Constitution of the Republic of South Africa, 1996, which makes provision for the establishment of an independent police complaints body established by national legislation, being the IPID Act, 2011.

IPID is mandated to ensuring oversight of the South African Police Service (SAPS) and Municipal Police Services (MPS). It investigates complaints against police conduct and makes appropriate recommendations, including referral to the National Prosecuting Authority for prosecution of criminal conduct by members of SAPS and MPS.

IPID's Legal Services Chief Directorate ensures that the organization's legal risks are managed adequately and seeks to reduce IPID's exposure to litigation.

3. SERVICE REQUIREMENTS

3.1 Service condition

- (i) The preferred legal services providers will be responsible for providing objective, value adding and innovative legal advisory and legal representation services to IPID. To this end, IPID seeks to establish a panel of external attorneys from whom assistance shall be sought on a needs basis. Therefore, IPID requests bids from capable legal firms or practitioners of good standing within the legal fraternity.
- (ii) Only legal practices established in accordance with the provisions of the Attorneys Act, 1979 (Act No. 53 of 1979 as amended) will be considered for this tender.
- (iii) Firms bidding for this tender should be in possession of valid Fidelity Fund certificate.

- (iv) A service level agreement will be signed with each firm appointed to the panel. The firms of attorneys will also be required to sign confidentiality and indemnity agreements with IPID on being appointed to the legal panel.
- (v) The required legal advisory services have been categorized into four (4) categories as reflected below:

ITEM	SERVICES CATEGORIES
1.	Criminal law and civil litigation, including the following: <ul style="list-style-type: none"> (a) Legal opinions and guidance on investigations reports outcomes; (b) Ensuring compliance with legal principles of both criminal and civil law; (c) Drafting of legal documents; and (d) Legal representation in criminal and civil courts and complex arbitrations.
2.	Labour law, including the following: <ul style="list-style-type: none"> (a) Advice on labour matters; (b) Disciplinary chairing; (c) Prosecuting misconduct matters; (d) Drafting of charge sheets; (e) Dispute resolution at CCMA/Bargaining Council; and (f) Labour litigation and arbitrations
3.	Commercial Contracts law and Government Procurement, including the following: <ul style="list-style-type: none"> (a) Advice on intellectual property rights and contracts; (b) Procurement processes; (c) Drafting and vetting contracts; and (d) Commercial litigation and arbitrations
4.	Constitutional law and administrative law, including the following: <ul style="list-style-type: none"> (a) Advice on constitutional and legislative compliance; (b) Advice on administrative powers, actions and legality; (c) PAJA and PAIA matters; (d) Policies and Practices; and (e) Litigation up to the Constitutional Court

Note: The bidder must ensure that they provide adequate information in their bid documents as to their field of expertise to the above categories.

Note: Bidder must submit their latest Financial Statements as proof of their financial stability as confirmed by an independent accountant.

3.2 Scope of Work

The firms require the expertise as indicated in the table under 3.1 above.

4. GENERAL CONDITIONS OF CONTRACT

4.1 Any award made to a bidder(s) under this bid is conditional, amongst others, upon –

- a. The Bidder(s) accepting the terms and conditions contained in the General Conditions of Contract as the minimum terms and conditions upon which IPID is prepared to enter into a contract with the successful Bidder(s).
- b. The bidder submitting the General Conditions of Contract to IPID together with its bid, duly signed by an authorized representative of the bidder.

5. SPECIAL CONDITIONS

- 5.1 Service delivery levels and quality of the work will be a measure of appointment and retention in the panel.
- 5.2 Supplier Performance Management is viewed by the IPID as a critical component in ensuring value for money acquisition and good supplier relations between the IPID and all its suppliers.
- 5.3 The successful bidder shall upon receipt of written notification of an award be required to conclude a standard Service Level Agreement (SLA) with IPID, which will form an integral part of the supply agreement.
- 5.4 A firm of attorneys assigned any work may not cede, assign or sub-contract any part thereof to any person unless with the written consent of IPID.
- 5.5 Fees shall be charged in accordance with a Service Level Agreement contemplated in paragraph 6 below and milestones mentioned therein. The Service Level Agreement will be signed with the successful bidders.
- 5.6 There will be no guarantee that attorneys will receive instructions if they are appointed onto IPID'S Panel of attorneys.
- 5.7 All instruction(s) to selected Attorneys on the panel of attorneys shall be given, in writing, by a duly authorized representative of IPID in the Chief Directorate: Legal Services.
- 5.8 IPID shall be entitled, in its discretion, to remove a firm of attorneys from the panel before the expiry of the said 3 years period by written notice and recall all the files in the possession of the said law firm.
- 5.9 The director/partner of firm who will be dealing with IPID matters shall have at least 10 years post admission legal experience.
- 5.10 Intellectual property rights:
 - 5.10.1 All copyright and intellectual property rights that may result as consequences of the work to be performed will become the property of IPID;
 - 5.10.2 Firms of attorneys must hand over all documents and information in any format, including copies thereof, that relate to the assignment immediately after completion of the assignments to IPID;

5.10.3 Firms of attorneys shall deliver to IPID, on completion of an assignment, any security devices, passwords or protective mechanisms to the soft versions of documents that were written and IPID will have the right to amend and change these without obligation whatsoever to the firms of attorneys upon completion of the assignment;

5.10.4 IPID reserves the right, under exceptional circumstances, to appoint attorneys outside the panel attorneys.

5.11 The following compulsory documents must be attached:

- 5.11.1 Provide and attach a valid and Original Tax Clearance Certificate;
- 5.11.2 Bid document must be completed in full and sign all declaration of interests;
- 5.11.3 Provide and attach a copy of CIPC Company Registration Certificates;
- 5.11.4 Provide and attach a valid and certified copy of Fidelity Fund Certificate;
- 5.11.5 Provide and attach a valid and certified Copy of Admission Certificate to the relevant Law Society;
- 5.11.6 Provide and attach set of recent audited annual financial statements prepared in terms of a recognised accounting framework;
- 5.11.7 The company historical information relating to experience per practice specialist area and relevant reference letters;
- 5.11.8 The company must provide a company profile, including curriculum vitae of the directors and the number of criminal, civil, labour and constitutional/administrative law cases presented in court on behalf of an organ of state.

NB: All certified copies may not be older than 3 months.

5.12 Security background checks/vetting in respect of the preferred bidders and the Director(s) shall be conducted and they will be required to sign oath of secrecy upon assumption of duty. Appointment of preferred bidders will be done subject to positive background checks.

5.13 The Preferred bidders must at least have five (5) years' experience in the rendering of legal services in the public institutions and state departments.

5.14 To support this, Bidders are required to submit reference letters as proof of that they have successfully facilitated/ performed/ executed or that they have been providing similar services. Three (3) reference letters per each of the four categories are required. The reference letter/s should include the contact details for verification purposes.

5.15 Please hereby complete the below mandatory table (Attach separate sheet with all details as requested, mention all previous and current contracts).

Department/Institution	Contract Period	Nature of contract (e.g. Legal advice i.t.o Criminal Law)	Value of Contract (tender price)	Contact person at company	Contact numbers at the Company

5.16 Please hereby complete the below mandatory Statistical tables (Attach separate sheet with all details as requested).

5.16.1 Criminal law and civil litigation

Description	2016/2017	2017/2018
Criminal law and civil litigation, including the following:		
Number of Legal opinions and guidance on investigations reports outcomes		
Number of court cases and Drafting of legal documents		
Total		

5.16.2 Labour law

Description	2016/2017	2017/2018
Labour law, including the following:		
Number of Advice on labour matters		
Number of Disciplinary chairing		
Number of Prosecuting misconduct matters		
Number of Drafting of charge sheets		
Number of Dispute resolution at CCMA/Bargaining Council		
Number of Labour litigation and arbitrations cases		
Total		

5.16.3

Description	2016/2017	2017/2018
Commercial Contracts law and Government Procurement, including the following:		
Number of Advice on intellectual property rights and contracts		
Number of Procurement processes		
Number of Drafting and vetting contracts		
Number of Commercial litigation and arbitrations cases		
Total		

5.16.4

Description	2016/2017	2017/2018
Constitutional law and administrative law, including the following:		
Number of Advice on constitutional and		

legislative compliance		
Number of Advice on administrative powers, actions and legality		
Number of PAJA and PAIA matters		
Number of Policies and Practices		
Number of Litigation up to the Constitutional Court cases		
Total		

- 5.17 Preferred bidders must be in a position to assume duty a month after acceptance of the bid.
- 5.18 The General Conditions and or special conditions of contract will apply in respect of termination of this bid.
- 5.19 The contract will be terminated immediately should the preferred bidders not perform satisfactorily and an average of 80% success rate will be the measure of performance assessment.
- 5.20 The preferred bidders must notify the Department immediately should they no longer meet the qualifications or conditions.
- 5.21 The contract is for a period of 36 months but the Department reserves the right to terminate the contract with one month written notice for breach of contract.
- 5.22 Bidders must note that amendments to any of the general or special conditions of bid will result in the invalidation of bidder's proposal.

6. BID PRICE

- 6.1.1 A firm price is required for this bid.
- 6.1.2 IPID remunerates attorneys for legal services rendered by way of a set tariff structure (to be indicated in the below table) and fees shall be charged in accordance with IPID's Service Level Agreement (SLA) and Milestones mentioned therein.
- 6.1.3 By submitting this bid, bidder agrees that only the tariffs indicated below will be applicable to appointments arising from this bid. The rates applied will be the prevailing rate at the time of the service being rendered.
Note: The maximum amount will be adjusted with CPI on an annual basis.
- 6.1.4 The Bidder is required to specify the rates to be charged per position per area of specialisation that will also be used for pricing evaluation purposes. The rates indicated should be inclusive of VAT. In the event that personnel hold a position different to the stipulated ones, the Bidder is required to allocate those personnel to an existing position and indicate the actual position in brackets next to their name.
- 6.1.5 Please complete the attached pricing schedule that will form the basis of your fees agreement:

PRICING SCHEDULE

AREA OF SPECIALISATION	POSITION	NAMES OF EXISTING PERSONNEL IN POSITION	HOURLY & DAILY FEE (Including VAT)
	Director/ Partner		
	Senior Associate		
	Associates		
	Candidate Attorneys		

NB: The price that is going to be evaluated is the bid price and it must be vat inclusive. PLEASE complete in full, incomplete pricing schedules will result in the bid being regarded as non-responsive.

7. EVALUATION CRITERIA

7	EVALUATION CRITERIA
7.1	In the awarding of the bid, it will be evaluated in three phases.
7.1.1	<p>Phase one: Mandatory requirements:</p> <ul style="list-style-type: none"> (a) Preferred bidder must be registered on Central Supplier Database. Preferred bidder must ensure that the CSD numbers should be reflected on the proposal. Proof of CSD full report must be attached. (b) Company profile including contact details, addresses number of director/partners and senior associates and experience in the areas of work for which IPID requires services; (c) SBD Forms completed and signed: <ul style="list-style-type: none"> • SBD 1 (Invitation to Bid) • SBD 3.3 (Pricing schedule) • SBD 4 (Declaration of Interest) • SBD 6.1 (Preferential Procurement Regulations 2011) • SBD 8 (Declaration of bidder's past supply chain management practices) • SBD 9 (Certificate of Independent Bid Determination); (d) Compulsory reference template as provided (refer to 5.15 and 5.16); (e) Compulsory detailed pricing schedule as provided (refer to 6.1.5); (f) CVs of all Directors and senior associates; (g) Valid certified copies of Identity Documents for all Directors; (h) Valid certified Fidelity Fund certificates; (i) All documents mentioned under paragraph 5.11 above; (j) Bank confirmation letter not older than 3 months, confirming banking details; <p><i>Copies of certified copies are not allowed</i></p>

(NB: A bid that does not comply with these requirements might be eliminated)

7.1.2 Phase two: Functionality:
 The bids will be evaluated according to the following:
 Functional criteria (100);
 (A bidder who scored less than 80 out of 100 points will not be considered for further evaluation)

FUNCTIONALITY CRITERIA

Sub criteria	Description	Weight
Understanding of the legislative framework applicable to the IPID and experience of providing legal services to organs of state relating to the categories of services required by IPID-		Maximum Points 70
Criminal law and civil litigation, including the following:		20
(a) Legal opinions and guidance on investigations reports outcomes;	<ul style="list-style-type: none"> The number of legal opinions/advice drafted in the past 2 years should be indicated and a minimum of 20 is required; 	(10)
(b) Ensuring compliance with legal principles of both criminal and civil law;		
(c) Court cases and Drafting of legal documents.	<ul style="list-style-type: none"> The number of court cases and legal document drafted in the past 2 years should be indicated and a minimum of 20 is required; 	(10)
Labour law, including the following:		20
(a) Advice on labour matters;	<ul style="list-style-type: none"> The number of advice on labour matters drafted in the past 2 years should be indicated and a minimum of 20 is required; 	(4)
(b) Disciplinary chairing;	<ul style="list-style-type: none"> The number of disciplinary hearing chaired in the past 2 years should be indicated and a minimum of 20 is required; 	(4)
(c) Prosecuting misconduct		(4)

<p>matters;</p> <p>(d) Drafting of charge sheets;</p> <p>(e) Dispute resolution at CCMA/Bargaining Council; and</p> <p>(f) Labour litigation and arbitrations cases.</p>	<ul style="list-style-type: none"> • The number of prosecuting misconduct matters in the past 2 years should be indicated and a minimum of 20 is required; • The number of drafting of charge sheets in the past 2 years should be indicated and a minimum of 20 is required; • The number of dispute resolution at CCMA/Bargaining Council in the past 2 years should be indicated and a minimum of 20 is required; • The number of labour litigation and arbitrations in the past 2 years should be indicated and a minimum of 20 is required 	<p>(2)</p> <p>(2)</p> <p>(4)</p>
<p>Commercial Contracts law and Government Procurement, including the following:</p> <p>(a) Advice on intellectual property rights and contracts;</p> <p>(b) Procurement processes;</p> <p>(c) Drafting and vetting contracts; and</p> <p>(d) Commercial litigation and</p>	<ul style="list-style-type: none"> • The number of advice on intellectual property rights and contracts in the past 2 years should be indicated and a minimum of 20 is required • The number of advice on procurement processes in the past 2 years should be indicated and a minimum of 20 is required • The number of drafting and vetting contract in the past 2 years should be indicated and a minimum of 20 is required • The number of 	<p>10</p> <p>(2)</p> <p>(3)</p> <p>(3)</p> <p>(2)</p>

<p>arbitrations cases.</p> <p>Constitutional law and administrative law, including the following:</p> <p>(a) Advice on constitutional and legislative compliance;</p> <p>(b) Advice on administrative powers, actions and legality;</p> <p>(c) PAJA and PAIA matters;</p> <p>(d) Policies and Practices; and</p> <p>(e) Litigation cases up to the Constitutional Court</p>	<p>commercial litigation and arbitrations in the past 2 years should be indicated and a minimum of 20 is required</p> <ul style="list-style-type: none"> • The number of advice on constitutional and legislative compliance in the past 2 years should be indicated and a minimum of 20 is required • The number of advice on administrative powers, actions and legality in the past 2 years should be indicated and a minimum of 20 is required • The number of PAJA and PAIA matters dealt with in the past 2 years should be indicated and a minimum of 20 is required • The number of policies and practices dealt with in the past 2 years should be indicated and a minimum of 20 is required • The number of litigation up to the Constitutional Court dealt with in past 2 years should be indicated and a minimum of 20 is required 	<p>20</p> <p>(4)</p> <p>(4)</p> <p>(4)</p> <p>(4)</p> <p>(4)</p>
<p>Experience of Key Staff (Project team) in the specified area(s) of specialisation as required by IPID (CV/Profiles to be attached)</p> <p>General Experience (total duration of professional activity) of the Directors</p>	<ul style="list-style-type: none"> • Directors have 20 years or more experience 	<p>Maximum points 30</p> <p>30</p>

for each area of the categories of services required by IPID	<ul style="list-style-type: none"> • Directors have 15 years or more experience • Directors have 10 years or more experience • Directors have less than 10 years' experience 	<p>20</p> <p>10</p> <p>0</p>
TOTAL	<p>A bidder who scored less than 80 out of 100 points will be eliminated.</p> <p>The 6 top scoring bidders will be considered for site visits. On the discretion of the Bid Evaluation Committee, additional companies might be visited if the top 6 companies fail to score 8 out of 10 points on the site visit.</p>	100
<p>Site visits (10)</p> <p>10 points made up of 2 in terms of each of the following :-</p> <ul style="list-style-type: none"> • Availability of an office which must be an immovable structure (proof of ownership, title deed or lease agreement); • Scanner and photocopier; • Fixed landline and fax/email; • Strong rooms or lockable cabinets for safekeeping and confidentiality of files; • Operational Business 		

7.1.3 Phase three: Evaluation on Price and BBBEE Contribution Level

7.1.3.1 A shortlisted companies will be evaluated in phase three in terms of price and BBBEE points.

7.1.3.2 It is expected that the services required will not exceed R50 million inclusive of VAT for a period of 36 months and in line with National Treasury Supply Chain Management Prescripts, the 80/20 Preference Point System shall be applicable.

7.1.3.3 The points obtained will then be converted to 80% of the total points as follows:

$$P_s = 80 \left(1 - \frac{P_l - P_{\min}}{P_{\min}} \right)$$

PRICE AND B-BBEE SCORE		100
7.1.3.3(a)	PRICE The bid price offered must be vat inclusive and other related costs as well as be competitive.	80
7.1.3.3(b)	BBBEE SCORE	20
TOTAL		100

7.2 Points

7.2.1 The Preferential Procurement Regulations 2017 were gazetted on 20 January (No.40553) with effect from 1 April 2017. These regulations require bidders provide relevant proof of their B-BBEE Status Level, the 80/20 preference points systems will be applied in accordance with the formula and applicable points provided for in the respective status level contributor tables in the Regulations.

7.2.2 Valid BBBEE Certificate original or certified copy; An EME and QSE is required to submit a sworn affidavit confirming their annual total revenue and level of black ownership or a BBBEE level verification certificate to claim points as prescribed by the Preferential Regulations, 2017. Bidders other than EMEs and QSEs are required to submit an original or certified copy of BBBEE status level certificates (Failure to attach the certificate bidder will forfeit points).

7.3 The table below depicts the B-BBEE status level of contribution

B-BBEE Status Level of Contributor	Number of points (80/20)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-Compliant	0

7.4 Failure to capture the required status and to submit the required B-BBEE status level certificates will lead to a zero (0) status level for non-compliant service provider

- (a) The points scored by a bidder in respect of points indicated above will be added to the points scored for price.
- (b) Bidders are requested to complete the various preference claim forms in order to claim preference points.
- (c) Only a bidder who has completed and signed the declaration part of the preference claim form will be considered for B-BBEE status.

- (d) Points scored will be rounded off to the nearest 2 decimals.
- (e) In the event that two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for B-BBEE status. Should two or more bids be equal in all respects, the award shall be decided by drawing of lots.
- (f) A contract may, on reasonable and justifiable grounds, be awarded to a bid that did not score the highest number of points.

Enquiries (For More Information Please Contact):

	NAME	E-MAIL ADDRESS	TELNO
1.	Ms M Sebei	msebei@ipid.gov.za	Tel (012) 399 0099
2.	Ms M Moroasui	mmoroasui@ipid.gov.za	Tel (012) 399 0000

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	IPID 04 - 18/19	CLOSING DATE:	07/09/2018	CLOSING TIME:	11:00 (am)
DESCRIPTION	APPOINTMENT OF SERVICE PROVIDERS TO RENDER LEGAL ADVISORY AND REPRESENTATION SERVICES FOR THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE NATIONALLY, IN ALL NINE PROVINCES, FOR A PERIOD OF THREE (3) YEARS				
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
BID BOX, GROUND FLOOR, 114 MADIBA STREET, IPID, PRETORIA					
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	<input type="checkbox"/> Yes	
	<input type="checkbox"/> No			<input type="checkbox"/> No	
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?					
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	<input type="checkbox"/>	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)			
	<input type="checkbox"/>	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)			
	<input type="checkbox"/>	A REGISTERED AUDITOR			
		NAME:			
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT (FOR EMEs & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	[IF YES ENCLOSE PROOF]			[IF YES ANSWER PART B:3 BELOW]	
SIGNATURE OF BIDDER	.....		DATE		
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)					
TOTAL NUMBER OF ITEMS OFFERED			TOTAL BID PRICE (ALL INCLUSIVE)		
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:			TECHNICAL INFORMATION MAY BE DIRECTED TO:		
DEPARTMENT/ PUBLIC ENTITY	IPID		CONTACT PERSON	ADV M Muroausi / Mr V Maaka	
CONTACT PERSON	MR M DIALE		TELEPHONE NUMBER	012 399 0054/0053	
TELEPHONE NUMBER	012 399 0089		FACSIMILE NUMBER		
FACSIMILE NUMBER			E-MAIL ADDRESS	mmoroausi@ipid.gov.za	
E-MAIL ADDRESS	mdiale@ipid.gov.za				

PART B TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:	
1.1.	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2.	ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR ONLINE
1.3.	BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.4.	WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.5.	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 LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.
2. TAX COMPLIANCE REQUIREMENTS	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4	BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
2.5	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
2.6	WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS	
3.1.	IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.2.	DOES THE BIDDER HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.3.	DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.4.	DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.	

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.



Application for a Tax Clearance Certificate

Purpose

Select the applicable option Tenders Good standing

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

Particulars of applicant

Name/Legal name
(Initials & Surname
or registered name)

Trading name
(if applicable)

ID/Passport no

Income Tax ref no

VAT registration no 4

Customs code

Telephone no

E-mail address

Physical address

Postal address

Company/Close Corp.
registered no

PAYE ref no 7

SDL ref no L

UIF ref no U

Fax
no

Particulars of representative (Public Officer/Trustee/Partner)

Surname

First names

ID/Passport no

Telephone no

E-mail address

Physical address

Income Tax ref no

Fax
no

Particulars of tender (If applicable)

Tender number

Estimated Tender amount R

Expected duration of the tender year(s)

Particulars of the 3 largest contracts previously awarded

Date started	Date finalised	Principal	Contact person	Telephone number	Amount
--------------	----------------	-----------	----------------	------------------	--------

Audit

Are you currently aware of any Audit investigation against you/the company? YES NO
If "YES" provide details

Appointment of representative/agent (Power of Attorney)

I the undersigned confirm that I require a Tax Clearance Certificate in respect of Tenders or Goodstanding to apply to and receive from
I hereby authorise and instruct SARS the applicable Tax Clearance Certificate on my/our behalf.

Signature of representative/agent
Name of representative/agent

Date

Declaration

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

Signature of applicant/Public Officer
Name of applicant/
Public Officer

Date

Notes:

- It is a serious offence to make a false declaration.
- Section 75 of the Income Tax Act, 1962, states: Any person who
 - fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
 - without just cause shown by him, refuses or neglects to-
 - furnish, produce or make available any information, documents or things;
 - reply to or answer truly and fully, any questions put to him ...
 As and when required in terms of this Act ... shall be guilty of an offence ...
- SARS will, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.**
- Your Tax Clearance Certificate will only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO.: IPID 04 - 18/19
CLOSING TIME 11:00	CLOSING DATE 7/09/2018.

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)
---------	-------------	--

APPOINTMENT OF SERVICE PROVIDERS TO RENDER LEGAL ADVISORY AND REPRESENTATION SERVICES FOR THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE NATIONALLY, IN ALL NINE PROVINCES, FOR A PERIOD OF THREE (3) YEARS

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.....

Name of Bidder:

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

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

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

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

*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

(INSERT NAME AND ADDRESS OF DEPARTMENT/ENTITY)

NAME: MR M DIALE
EMAIL: mdiale@ipid.gov.za
TEL : 012 399 0089

Or for technical information –

NAME: ADV M MOROASUI
EMAIL: mmoroasui@ipid.gov.za
Tel: 012 399 0054

SBD 4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, 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, shareholder², 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.

"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.

²"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.

.....

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

.....
Position

.....
Name of bidder

**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

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

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	
B-BBEE STATUS LEVEL OF CONTRIBUTOR	
Total points for Price and B-BBEE must not exceed	100

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.

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:

Designated Group: An EME or QSE which is at least 51% owned by:	EME √	QSE √
Black people	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are youth	<input type="checkbox"/>	<input type="checkbox"/>
Black people who are women	<input type="checkbox"/>	<input type="checkbox"/>

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		
OR		
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? (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 <i>audi alteram partem</i> rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) 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	<p>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 (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>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?</p>	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:		

SBD 8

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

Js365bW

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

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

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ 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.

³ 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

Js914w 2

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

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 any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

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

obligations of the supplier covered under the contract.

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

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

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

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

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

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

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

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

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

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

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

may be due to him

- 25. Force Majeure**
- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.
- 26. Termination for insolvency**
- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.
- 27. Settlement of Disputes**
- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.
- 28. Limitation of liability**
- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation (NIP) Programme** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

Js General Conditions of Contract (revised July 2010)