



## REQUEST FOR BID

The South African Qualifications Authority (SAQA) invites all interested parties to submit bids for the requirements stipulated below:

<b>RFB DOCUMENT NUMBER:</b>	SAQA 0002/2022
<b>RFB ISSUE DATE</b>	31 August 2022
<b>RFB CLOSING DATE AND TIME:</b>	21 September 2022
<b>RFB VALIDITY PERIOD</b>	120 days from the RFB closing date
<b>DESCRIPTION</b>	To appoint a suitably qualified service provider with the relevant expertise to provide labour and employment law advisory, litigation, and related services to SAQA as and when required for three (3) years (36 months).
<b>PERIOD OF CONTRACT</b>	Three years (36) months
<b>BRIEFING SESSION</b>	No briefing session will be held
<b>RESPONSES/SUBMISSIONS</b>	<p>Responses to this RFB must be hand-delivered to the following address:</p> <p>SAQA tender box located at the reception, ground Floor, SAQA House, 1067 Arcadia Street Hatfield, Pretoria 0028.</p> <p>Submissions should be in the form of one original copy and one soft copy on a USB.</p>
<b>ENQUIRIES</b>	<p>Please direct all enquiries in writing to the following contact person and e-mail address:</p> <p>Adv P Matinyenya</p> <p>E-Mail Address: <a href="mailto:tenders@saqa.co.za">tenders@saqa.co.za</a></p>

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## **SECTION 1: TERMS OF REFERENCE**

### **1. INTRODUCTION**

- 1.1. The South African Qualifications Authority (SAQA) is a public entity listed in Schedule 3A of the Public Finance Management Act (PFMA). It is mandated by the National Qualifications Framework (NQF) Act, 67 of 2008, to oversee the further development and implementation of the NQF, advance the objectives of the NQF and coordinate its three Sub-Frameworks.
- 1.2. SAQA always strives for good and healthy relations with its employees thereby ensuring compliance with applicable labour-related legislation. To uphold the good image of SAQA and continue in its quest to be an employer of choice, it is critical that SAQA also complies with all relevant legislation.

### **2. PURPOSE**

- 2.1. The purpose of this Request for Bid (RFB) is to identify and appoint a suitably qualified service provider to provide SAQA with labour and employment law advisory, labour law litigation and other labour law-related services as and when required.

### **3. SCOPE OF SERVICES**

- 3.1. The successful service provider will be required to render services to SAQA on a wide range of labour and employment law matters.
- 3.2. The services to be delivered in line with service level standards will include the following:

<b>Area of Work</b>	<b>Scope of Work</b>	<b>Skills required</b>
<b>1. Labour and Employment Law</b>	<ul style="list-style-type: none"><li>• Provide legal opinions on labour, employment law and employment benefits</li><li>• Assist in disciplinary hearings, conciliation, arbitrations and other dispute resolution matters</li><li>• Represent SAQA at the CCMA / Labour Court when necessary</li></ul>	<ul style="list-style-type: none"><li>• Experience in labour and employment law litigation</li><li>• Understand the regulatory framework governing Labour and Employment Laws in South Africa</li><li>• Understand labour and employment law jurisprudence for purposes of providing legal opinions.</li><li>• Knowledge of bargaining councils, CCMA, and other dispute resolution fora.</li></ul>

	<ul style="list-style-type: none"> <li>• Provide advice on Union matters</li> </ul>	<ul style="list-style-type: none"> <li>• Understand Union negotiations, advise and provide training to both Employer and Union leaders</li> <li>• Ability to take over existing litigation cases and work together with SAQA's appointed counsel for continuity.</li> </ul>
<b>2. Pension Law</b>	Provide legal advice on pension laws, including special and social pensions	<ul style="list-style-type: none"> <li>• Understand pension fund laws/legislation and administration</li> </ul>
<b>3. Adhoc Services</b>	Provide ad-hoc legal advice on an as and when required basis.	<ul style="list-style-type: none"> <li>• General legal advisory services for public entities.</li> </ul>

#### 4. SERVICES LEVELS AND APPLICABLE PENALTIES

Service	Description	Target	Penalty
Provide labour and employment law advice, litigation and related services when required to do so	Provide legal opinions on Labour, employment law and employment benefits	Provision of legal opinions on labour, employment law and employee benefits with 100% compliance with applicable legislation	20% of total costs of the services rendered for a specific assignment
	Conduct disciplinary hearings, conciliation, arbitrations and other dispute resolution matters	Conducting and implementation of Labour laws, 100% compliance with applicable legislation	20% of total costs of the services rendered for a specific assignment
	Providing advice on Labour related matters when required	5 working days after the requestor as per the agreed timeline	20% of total costs of the services rendered for a specific assignment
	Represent SAQA in litigious matters in any court or forum	Meet all lodgment/submission deadlines per the applicable Court/forum rules	20% of the applicable fees for the specific assignment.

	on labour law/employment matters.	and act in accordance with the SAQA instructions	
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**Penalty Maximum Limit and Service Disputes:**

- 4.1. Furthermore, should the 20% limit be reached four (4) times during the contract period, SAQA reserves the right to immediately enter a service dispute that may result in the termination of the contract.
  
- 4.2. Notwithstanding the aforementioned, and without prejudice to any other rights SAQA has, SAQA reserves the right to enter service disputes at any point in time with the view of contract cancellation. During a service dispute, the service provider shall continue to renderservices in terms of these service levels.
  
- 4.3. Service Level Agreement
  - 4.3.1 The successful bidder will be required to enter a Service Level Agreement which will be provided by SAQA. Under no circumstances will SAQA accept:
    - 4.3.1.1 A Service Provider’s terms and conditions.
    - 4.3.1.2 Any changes to the scope of work as outlined in this RFB; or
    - 4.3.1.3 Any changes to the proposal and costing model submitted in response to this RFB.
  
  - 4.3.2 SAQA reserves the right to have a service provider blacklisted on the Government National Supplier Database should SAQA fail to conclude the Service Level Agreement with such a service provider due to a contravention of any of the provisions in the sub-clause above.

## 5. EVALUATION OF BID

5.1. The bid will be evaluated in 4 stages:

- 5.1.1. Stage 1: Administrative compliance
- 5.1.2. Stage 2: Mandatory requirements
- 5.1.3. Stage 3: Functionality evaluation
- 5.1.4. Stage 4: Price and B-BBEE

### 5.2. **Stage 1: Administrative compliance**

- 5.2.1. Bids will be screened to ensure compliance with all administrative requirements.
- 5.2.2. Bidders must ensure that they complete and sign all bid documents and that they attach all required documents, including the Central Supplier Database details and information required by the RFB.
- 5.2.3. Bidders that do not comply with administrative compliance may be disqualified by SAQA.

### 5.3. **Stage 2: Mandatory requirements**

- 5.3.1. Bids will be evaluated to ensure compliance with all mandatory requirements.
- 5.3.2. Bidders must ensure that they comply with the following mandatory requirements of the RFB and provide the following to advance to Stage 3: Functionality Evaluation:
  - a) Proof of registration with the Legal Practice Council (printed Legal Practice Council Digital identity card or certified copy of the Legal Practice Council identity card (hard copy) indicating the details of the lead/senior labour expert), and

- b) An accreditation certificate/ letter of good standing/confirmation from any of the following:
  - a. The Arbitration Foundation of South Africa (AFSA), or
  - b. The Law Society of South Africa/ Provincial Law Society, or
  - c. Registrar of the High Court in which the lead/senior labour expert practice, or
  - d. The Legal Practice Council – (must be separate from 5.3.2 (a) above, and
  
- c) Proof of Fidelity Fund Certificate issued in terms of s84(1) of the Legal Practice Act, 2014 (Act No. 28 of 2014) (to be valid at the time of submission).

5.3.3. Bidders that do not comply with the mandatory requirements will be disqualified by SAQA.

5.4. **Stage 3: Functionality evaluation**

5.4.1. Bids will be evaluated and scored against the evaluation criteria set out below. A bid will be disqualified if it does not meet the minimum 90% threshold score.

<b>Functionality</b>		
<b>Criteria</b>	<b>Sub-criterion</b>	<b>Points</b>
<p>Proof of educational qualifications in the field of Law and specialisation in Labour / Employment Relations Law or related qualifications of the Senior Labour Expert assigned to SAQA.</p> <p>(To qualify for points the bidder must submit copies of their qualifications)</p>	<p>Relevant Master's degree and above = <b>10 points</b></p> <p>Relevant Honours Degree = <b>6 points</b></p> <p>Relevant Undergraduate Degree = <b>4 points</b></p> <p>Relevant National Diploma = <b>2 points</b></p> <p><b>NB:</b> SAQA reserves the right to verify the qualifications without notice to Bidders.</p>	<b>10</b>
<p>The service provider must demonstrate by attaching the full CV of the Senior Labour Expert that they have experience, sufficient knowledge, skills, and ability to provide SAQA with the required services as well as their proof of registration with the relevant professional body to qualify for points.</p>	<p>The Curriculum Vitae (CV), Qualifications and proof of registration with the relevant professional body, of the Senior Labour Expert will be used for the allocation of points as follows:</p> <ul style="list-style-type: none"> <li>• Senior Labour Expert with less than 2 years of relevant working experience = <b>0 points</b></li> <li>• Senior Labour Expert with at least 2 years of relevant working experience = <b>5 points</b></li> <li>• Senior Labour Expert with 3 to 4 years of relevant working experience = <b>15 points</b></li> <li>• Senior Labour Expert with 5 years of relevant working experience = <b>20 points</b></li> </ul>	<b>30</b>



	<ul style="list-style-type: none"> <li>• Senior Labour Expert with 6 years of relevant working experience = <b>25 points</b></li> <li>• Senior Labour Expert with 7 and more years of relevant working experience = <b>30 points</b></li> </ul>	
<p>Attach reference letters on the company's letterhead where Labour law services were provided.</p> <p>The reference letters must be duly signed by the authorised official and dated accordingly.</p>	<p>SAQA reserves the right to contact these organisations, without prior notice to the bidder.</p> <ul style="list-style-type: none"> <li>• A bidder with no reference letters of similar services = <b>0 points</b></li> <li>• A Bidder with up to four reference letters of similar services = <b>10 points</b></li> <li>• A Bidder with five reference letters of similar services = <b>15 points</b></li> <li>• A Bidder with six reference letters of similar services = <b>20 points</b></li> <li>• A Bidder with seven reference letters of similar services = <b>25 points</b></li> <li>•</li> <li>• A bidder with eight or more reference letters of similar services = <b>30 points</b></li> </ul>	<b>30</b>

	<b>NB:</b> Reference letters may not be replaced by letters of agreement, contracts, or purchase orders.	
Summary of cases litigated / judgments/evidence of engagement for services rendered over the past 3 years or more in the following areas: 1. Labour and Employment Law 2. Pension law 3. Union matters 4. Ad-hoc services	Successful judgments/evidence of engagement in the past 3 years or more: <ul style="list-style-type: none"> <li>• 0 field = <b>0 points</b></li> <li>• 1 field = <b>10 points</b></li> <li>• 2 fields = <b>15 points</b></li> <li>• 3 fields = <b>20 points</b></li> <li>• 4 fields = <b>30 points</b></li> </ul> <b>NB:</b> Bidders may provide redacted copies of cases not in the public domain yet.	<b>30</b>
<b>TOTAL</b>		<b>100</b>

## 5.5 Price and B-BBEE Evaluation

5.5.1. A bidder must obtain a minimum of **90 points** for functionality to qualify for evaluation on Price and B-BBEE. Bids scoring less than **90 points** for functionality will be disqualified.

5.5.2 Bidders must complete the pricing schedule SBD 3.1.

5.5.3 Only qualifying bids will be evaluated in accordance with the 80/20 preference point system, as contemplated by the Preferential Procurement Framework Act 5 of 2000 and the Preferential Procurement Regulations, 2017.

5.5.4 Preference points will be awarded as contemplated by Regulations 6(2) and 7(2) of the Preferential Procurement Regulations, 2017 for attaining the B-BBEE status level in accordance with the table below:

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

5.5.5 Bidders must complete and submit the preference points claim form SBD 6.1 with satisfactory proof of B-BBEE status level if they wish to claim preference points.

## **6. VALIDITY PERIOD OF PROPOSAL**

The tender proposal must remain valid in all respects for at least 120 days after the tender closing date.

## **7. ALTERED OR QUALIFIED BID PROPOSALS**

7.1. If a bidder alters the wording of this RFB or the standard bid documentation in its bid proposal, SAQA will disqualify the bid proposal.

- 7.2. Bid proposals that are qualified by a bidder's conditions may be disqualified by SAQA. The terms of the RFB take precedence over any of the bidder's conditions.

## **8. REQUESTS FOR INFORMATION, PRESENTATIONS AND DEMONSTRATIONS**

- 8.1. SAQA may request clarification or additional information regarding any aspect of a bidder's proposal. The bidder must supply the requested information within 24 hours after the request has been made, otherwise, the bid may be disqualified.
- 8.2. SAQA may request a presentation or demonstration, and bidders must comply with such a request within 24 hours.

## **9. BIDDER ENQUIRIES**

- 9.1. Should it be necessary for a bidder to obtain clarity on any matter arising from or referred to in this RFB, queries must be addressed, in writing, to the contact SAQA person(s) listed in the invitation to bid SBD 1.
- 9.2. Under no circumstances may a bidder approach any other SAQA employee for any information or clarity regarding the RFB. Any such approach may result in the disqualification of the bid.
- 9.3. SAQA reserves the right to place any enquiry received and SAQA's corresponding response on SAQA's website.

## **10. BRIEFING SESSION**

- 10.1. There will be no briefing session.

## **11. LANGUAGE**

- 11.1. The bidder's proposal and all correspondence and documents related to the RFB must be in English.

- 11.2. Supporting documents and printed literature furnished by the bidder with its proposal may be in another language if they are accompanied by an accurate translation in English. For the purposes of interpretation of the bid, the English translation will prevail.

## **12. CONFIDENTIALITY**

- 12.1. The information contained in the RFB, and other documents supplied by SAQA in connection with the RFB may be confidential and all copyright and Intellectual Property therein vests with SAQA.
- 12.2. Except as may be required by operation of law, by a court or by a regulatory authority with jurisdiction, no bidder may disclose any information contained in or relating to the RFB or any other documents supplied by SAQA in connection with the RFB or a bidder's proposal.
- 12.3. No part of the RFB or any other documents supplied by SAQA in connection with the RFB may be distributed, reproduced, stored, or transmitted to any party, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing the bidder's proposal.
- 12.4. The RFB and any other documents supplied by SAQA in connection with the RFB remain proprietary to SAQA and must be promptly returned to SAQA upon request together with all copies, electronic versions, excerpts, or summaries thereof or work derived therefrom.
- 12.5. Failure to adhere to these confidentiality requirements may result in disqualification from the bid process and civil action.

## **13. MEDIA RELEASES**

Bidders or their agents shall not make any media statements, comments or releases concerning this RFB or the awarding of the tender or any resulting contract without the prior written consent of SAQA.

## **14. BIDS BY CONSORTIUMS, JOINT VENTURES, AND SUB-CONTRACTING**

- 14.1. In the case of bids submitted by a consortium, joint venture or with a sub-contracting proposal, bidders must provide a copy of the signed consortium, joint venture or sub-contracting agreement stipulating the work split between the parties and must complete the information in SBD 1 in respect of each party.
- 14.2. A consortium or joint venture (including unincorporated consortiums and joint ventures) must submit a SANAS consolidated B-BBEE Status Level Verification Certificate to qualify to claim B-BBEE status level points.
- 14.3. If SAQA awards the bid to a consortium, joint venture or with a sub-contracting proposal, the bid will be awarded to the primary bidder and no separate agreements shall be concluded by SAQA with other members of the consortium or joint venture or with the subcontractors of the primary bidder. The primary bidder shall solely be responsible, accountable, and liable for the fulfilment of the responsibilities and obligations of the contract. Any subcontracting shall be subject to SAQA's prior written approval.

## **15. AWARD OF TENDER**

- 15.1. SAQA reserves the right to shortlist bidders and to enter into negotiations regarding the terms and conditions of contract, including prices, before awarding the tender.
- 15.2. SAQA may, in its sole discretion –
  - 15.2.1. award the tender, in part or in full, to one or more bidders on a non-exclusive basis.
  - 15.2.2. decide not to award the tender.
- 15.3. SAQA may, on reasonable and justifiable grounds, award the tender to a bidder that does not score the highest number of points.

- 15.4. The tender will be deemed awarded only on signature by the authorized representatives of SAQA and the successful bidder of both the contract form SBD 7.2 and/or a service level agreement.

## **SECTION 2: SPECIAL CONDITIONS OF CONTRACT**

The following special conditions shall apply to the award of this bid:

### **1. BIDDER'S WARRANTIES**

The bidder warrants and represents to SAQA that:

- 1.1. The bidder has adequate personnel, resources, and facilities to carry out the services.
- 1.2. The bidder shall carry out the services in professional and diligent manner and in accordance with Best Industry Practice. Without derogating from the generality of this warranty, the bidder shall assign performance of the services to personnel having the skills, experience and expertise, capacity and knowledge required to perform the services.
- 1.3. The bidder shall not engage in any activities that would detract from the proper performance of the services.
- 1.4. The bidder shall avoid any material conflict between its interests and those of SAQA and, where such conflict is unavoidable, will disclose the details of such conflict to SAQA.
- 1.5. The bidder shall provide the services in a cost-effective manner that ensures that SAQA receives value for money.
- 1.6. All information that the bidder provides to SAQA in relation to the services shall be accurate in all respects; and

1.7. The bidder shall at all times act reasonably, honestly and in good faith in its dealings with SAQA.

## 2. **SARS GOOD STANDING AND B-BBEE RATING**

The bidder shall remain in good standing with the South African Revenue Services and maintain or improve its B-BBEE rating. Failure to maintain SARS compliance will result in SAQA being entitled to terminate the contract.

## 3. **CO-OPERATION WITH SAQA AND ITS REPRESENTATIVES**

3.1. The bidder shall furnish to SAQA or its authorised representatives any information, records, documents, accounts, letters, and papers within the bidder's possession or under its control relating to the services, within 7 days of written notice from SAQA to do so.

3.2. The Service Provider shall co-operate fully with any request of the Auditor-General of South Africa relating to the services.

## 4. **CONTRACT PAYMENTS**

4.1. Invoices submitted by the bidder shall comply with all of SAQA's requirements.

4.2. All amounts payable by SAQA to the bidder for delivery of the services shall be paid by electronic transfer into the official bank account of the bidder as reflected on the National Treasury Central Supplier Database ("**CSD**").



## 5. **PERFORMANCE PENALTIES**

SAQA shall be entitled, without prejudice to any other remedies, to deduct from any monies payable to the bidder, an amount equivalent to the value of any substandard performance or non-performance of any or all the services by the bidder. SAQA, acting reasonably, shall in its own discretion determine the amount of the deduction.

## 6. **CONFIDENTIALITY**

6.1. SAQA may disclose or make accessible Confidential Information to the bidder for purposes of providing the services. The bidder agrees that the sole purpose of the Confidential Information being disclosed or made accessible to it is in connection with the services and undertakes not to use the Confidential Information for any other purpose or in any manner that is adverse or detrimental to the interests of SAQA.

6.2. The bidder shall not disclose, in whole or in part any Confidential Information to any third party without the prior written approval of SAQA.

6.3. The bidder shall only disclose so much of the Confidential Information and at such time as may be strictly necessary to enable any of its employees, agents, associates, or professional advisors to fulfil their function as such and only after advising them of the bidder's confidentiality obligations and obtaining from them a signed undertaking of confidentiality restricting the use of the Confidential Information. The bidder warrants that such employee, agent, associate, or professional advisor shall comply with the confidentiality undertaking.

## 7. **INTELLECTUAL PROPERTY**

7.1. All right, title and ownership of any code, forms, algorithms, methodologies, frameworks, or materials developed by the bidder for SAQA shall become the sole property of SAQA and form part of SAQA's Intellectual Property.

- 7.2. All intellectual property embodied in any services rendered by the bidder shall vest in SAQA and form part of SAQA's Intellectual Property. bidder shall deliver to SAQA all codes, forms, algorithms, methodologies, and materials relating to such services.
- 7.3. The bidder shall not use or disclose to any third party, in whole or in part any of SAQA's Intellectual Property aforesaid, without the prior written approval of SAQA.

## 8. **INDEMNITY**

The bidder indemnifies and holds SAQA harmless, against any claims that may arise from any acts and omissions of the bidder and that of the bidder's employees, consultants, agents, representatives, or sub-contractors in rendering the services.

## 9. **SUB-CONTRACTING**

- 9.1. The bidder shall not sub-contract any of its obligations to a third party unless it has received the prior written approval of SAQA.
- 9.2. Any sub-contracting so approved by SAQA shall not absolve the bidder from complying with its obligations and the bidder indemnifies and holds SAQA harmless against any loss, harm, or damage which SAQA may suffer as a result of such sub-contracting.

## 10. **TERMINATION OF CONTRACT**

- 10.1. SAQA shall be entitled, at its own discretion, and without prejudice to any other remedies, to –
- 10.1.1. terminate the contract or temporarily suspend all or part of the services by at least 60 days' written notice to the bidder, should funds no longer be available to pay for the services.
- 10.1.2. terminate or temporarily suspend the contract in whole or in part for convenience and without cause at any time by at least 60 days prior written notice to the bidder.
- 10.2. SAQA, when giving written notice, shall specify the extent of the termination or suspension, and the effective date of the termination or suspension.

- 10.3. The bidder, upon receipt of written notice, shall discontinue the rendering of services under the contract to the extent specified, and on the date specified in the notice.
- 10.4. If SAQA terminates or suspends the contract, in whole or in part, under this clause, SAQA shall pay the bidder for services already satisfactorily rendered under the contract, up to and including the date of termination or suspension specified in the notice.
- 10.5. SAQA shall not be liable for any consequential loss resulting from the termination or suspension of this contract under this clause, including, without limitation, any loss of profits or any costs associated with the termination or suspension of any subcontracts entered by the bidder.

#### **11. RETURN OF DOCUMENTS AND CLOSE OUT REPORT**

The bidder shall upon the termination of the contract, furnish SAQA with any and all records, documents, accounts, letters and papers within its possession or under its control relating to the services and where required by SAQA, a close-out report.

**PRICING SCHEDULE – FIRM PRICES  
(SERVICES)**

**NOTE: NOTWITHSTANDING THAT THE PRICES WILL BE ESTIMATES (AS FINAL TOTAL HOURS MAY VARY PER SERVICE). ONLY FIRM TOTAL PRICES PER YEAR BASED ON THE HOURS REFLECTED BELOW WILL BE ACCEPTED. NON-FIRM HOURLY RATES AND TOTAL PRICES PER YEAR (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED.**

NAME OF BIDDER: .....	BID NO.: <b>002/2022</b>
CLOSING TIME: <b>11H00</b>	CLOSING DATE: <b>21 September 2022</b>

**OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.**

1. The SAQA bid box shall be locked at exactly 11h00 on the bid closing date. Bids arriving late will not be accepted under any circumstances. A bid will be considered late if it arrived only one second after 11h00 or any time thereafter. Bidders are therefore strongly advised to ensure that bids are dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid.
2. The accompanying information must be used for the formulation of proposals.
3. 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.

**TOTAL: R .....**

4. The ceiling price must include all applicable taxes, including value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

5. The bidder confirms the correctness of the prices and rates quoted in its pricing proposal and is solely responsible for and bound by the pricing proposal submitted for this bid, including all calculations. The bidder accepts that any errors contained therein regarding prices, rates and calculations are at the bidder's own risk.

## SUMMARY OF COST BREAKDOWN - YEAR 1

DESCRIPTION OF THE SERVICE	Duration (3 Years)	Designation	Hourly rate	Estimated Hours for evaluation purposes only	PRICE (including VAT)
<b>Litigation in the High Court/Labour Court</b>	<b>Year 1</b>	Partner	R	120	R
		Senior Associate	R	120	R
		Others (Associates/candidate attorney)	R	120	R
		Counsel	R	120	R
<b>Representation at the CCMA/Similar forum</b>	<b>Year 1</b>	Partner	R	120	R
		Senior Associate	R	120	R
		Others (Associates/candidate attorney)	R	120	R
<b>Drafting legal opinions</b>	<b>Year 1</b>	Partner	R	60	R
		Senior Associate	R	60	R
		Others (Associates/candidate attorney)	R	60	R

<b>Drafting Pleadings e.g., statement of claim/defense</b>	<b>Year 1</b>	Partner	R	90	R
		Senior Associate	R	90	R
		Others (Associates/candidate attorney)	R	90	R
<b>Consultation with SAQA to receive instructions</b>	<b>Year 1</b>	Partner	R	60	R
		Senior Associate	R	60	R
		Others (Associates/candidate attorney)	R	60	
<b>Chairing labour-related disputes at SAQA (e.g., disciplinary hearings)</b>	<b>Year 1</b>	Partner	R	170	R
		Senior Associate	R	170	R
		Others (Associates/candidate attorney)	R	170	R
<b>Providing legal advisory services on labour /employment law, pension law matters</b>	<b>Year 1</b>	Partner	R	60	R
		Senior Associate	R	60	R
		Others (Associates/candidate attorney)	R	60	R
<b>BID PRICE FOR YEAR 1 (VAT and Disbursements included)</b>					<b>R</b>

## SUMMARY OF COST BREAKDOWN - YEAR 2

DESCRIPTION OF THE SERVICE	Duration (3 Years)	Designation	Hourly rate	Estimated Hours for evaluation purposes only	PRICE (including VAT)
<b>Litigation in the High Court/Labour Court</b>	<b>Year 2</b>	Partner	R	120	R
		Senior Associate	R	120	R
		Others (Associates/candidate attorney)	R	120	R
		Counsel	R	120	R
<b>Representation at the CCMA/Similar forum</b>	<b>Year 2</b>	Partner	R	120	R
		Senior Associate	R	120	R
		Others (Associates/candidate attorney)	R	120	R
<b>Drafting legal opinions</b>	<b>Year 2</b>	Partner	R	60	R
		Senior Associate	R	60	R
		Others (Associates/candidate attorney)	R	60	R



<b>Drafting Pleadings e.g., statement of claim/defense</b>	<b>Year 2</b>	Partner	R	90	<b>R</b>
		Senior Associate	R	90	<b>R</b>
		Others (Associates/candidate attorney)	R	90	<b>R</b>
<b>Consultation with SAQA to receive instructions</b>	<b>Year 2</b>	Partner	R	60	<b>R</b>
		Senior Associate	R	60	<b>R</b>
		Others (Associates/candidate attorney)	R	60	
<b>Chairing labour-related disputes at SAQA (e.g., disciplinary hearings)</b>	<b>Year 2</b>	Partner	R	170	<b>R</b>
		Senior Associate	R	170	<b>R</b>
		Others (Associates/candidate attorney)	R	170	<b>R</b>
<b>Providing legal advisory services on labour /employment law, pension law matters</b>	<b>Year 2</b>	Partner	R	60	<b>R</b>
		Senior Associate	R	60	<b>R</b>
		Others (Associates/candidate attorney)	R	60	<b>R</b>
<b>BID PRICE FOR YEAR 2 (VAT and Disbursements included)</b>					<b>R</b>

## SUMMARY OF COST BREAKDOWN - YEAR 3

DESCRIPTION OF THE SERVICE	Duration (3 Years)	Designation	Hourly rate	Estimated Hours for evaluation purposes only	PRICE (including VAT)
<b>Litigation in the High Court/Labour Court</b>	<b>Year 3</b>	Partner	R	120	R
		Senior Associate	R	120	R
		Others (Associates/candidate attorney)	R	120	R
		Counsel	R	120	R
<b>Representation at the CCMA/Similar forum</b>	<b>Year 3</b>	Partner	R	120	R
		Senior Associate	R	120	R
		Others (Associates/candidate attorney)	R	120	R
<b>Drafting legal opinions</b>	<b>Year 3</b>	Partner	R	60	R
		Senior Associate	R	60	R
		Others (Associates/candidate attorney)	R	60	R

<b>Drafting Pleadings e.g., statement of claim/defense</b>	<b>Year 3</b>	Partner	R	90	<b>R</b>
		Senior Associate	R	90	<b>R</b>
		Others (Associates/candidate attorney)	R	90	<b>R</b>
<b>Consultation with SAQA to receive instructions</b>	<b>Year 3</b>	Partner	R	60	<b>R</b>
		Senior Associate	R	60	<b>R</b>
		Others (Associates/candidate attorney)	R	60	
<b>Chairing labour-related disputes at SAQA (e.g., disciplinary hearings)</b>	<b>Year 3</b>	Partner	R	170	<b>R</b>
		Senior Associate	R	170	<b>R</b>
		Others (Associates/candidate attorney)	R	170	<b>R</b>
<b>Providing legal advisory services on labour /employment law, pension law matters</b>	<b>Year 3</b>	Partner	R	60	<b>R</b>
		Senior Associate	R	60	<b>R</b>
		Others (Associates/candidate attorney)	R	60	<b>R</b>
<b>BID PRICE FOR YEAR 3 (VAT and Disbursements included)</b>					<b>R</b>
<b>TOTAL BID PRICE FOR YEARS 1, 2 AND 3 (VAT AND DISBURSEMENTS INCLUDED)</b>					<b>R</b>

## **SECTION 4: BID SUBMISSION REQUIREMENTS**

1. An original copy plus one soft copy of the bid in a memory stick, i.e., 1 original document plus memory stick must be deposited in the SAQA bid box at the address indicated in the invitation to bid SBD1 before the bid closing date and time. The SAQA bid box can be reached during office hours 07h30 – 16h30 South African time.  
**NB:** Bidders are to indicate on the cover of each document whether it is the original or a copy.
2. Bids should be in a single sealed envelope, marked on the cover with:
  - Bid Number: **SAQA 002/2022**
  - Bid closing date and time: **21 September 2022 @ 11H00**
  - The name and address of the Bidder.....
3. The SAQA bid box shall be locked at exactly 11h00 on the bid closing date. Bids arriving late will not be accepted under any circumstances. A bid will be considered late if it arrived only one second after 11h00 or any time thereafter. Bidders are therefore strongly advised to ensure that bids are dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid.
4. Bidders must complete all the necessary bid documents and undertakings required in this bid document.
5. Bidders are advised that their bid proposals should be concise, written in plain English and simply presented.
6. **Bidders must scan out their proposal in the following format on a memory stick:**
  - a) **Completed Bid Document**
  - b) **Administrative supporting documents**
  - c) **Mandatory Requirements Documents**
  - d) **Bidders CV's, Qualifications and proof of registration with professional body**
  - e) **Bidders Reference letters**
  - f) **Bidders' summary of successful cases/litigation/evidence of agreements**
  - g) **Bidders price proposal.**
7. Bidders must complete and submit all required Standard Bid Documents: SBD 1, SBD 3.1, SBD 4, and SBD 6.1

8. Bidders must state their National Treasury (CSD) Central Supplier Database's Supplier Number or Unique number and Tax Pin in their bids to enable SAQA to confirm their tax status.  
**NB.** Bidders must submit a recent CSD report with their bids.

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

**SECTION 5: INVITATION TO BID – SBD 1**

SBD 1

**PART A****INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE SOUTH AFRICAN QUALIFICATIONS AUTHORITY (SAQA)</b>					
BID NUMBER:	<b>SAQA 002/2022</b>	CLOSING DATE:	<b>21 September 2022</b>	CLOSING TIME:	<b>11H00</b>
DESCRIPTION	<b>Provision of Labour Law Services to SAQA for three (3) years</b>				
<b>BID RESPONSE DOCUMENTS MUST BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
<b>SAQA TENDER BOX LOCATED AT:</b>					
<b>RECEPTION, GROUND FLOOR</b>					
<b>SAQA HOUSE, 1067 ARCADIA STREET</b>					
<b>HATFIELD, PRETORIA, 0083</b>					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	<b>Mr Jeremy Thomas</b>	CONTACT PERSON	<b>Adv P Matinyenya</b>		
TELEPHONE NUMBER	<b>(012) 431 5062</b>	TELEPHONE NUMBER	<b>(012) 432 5018</b>		
FACSIMILE NUMBER		FACSIMILE NUMBER			
E-MAIL ADDRESS	<a href="mailto:tenders@saqa.co.za">tenders@saqa.co.za</a>	E-MAIL ADDRESS	<a href="mailto:tenders@saqa.co.za">tenders@saqa.co.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>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No  [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?

YES  NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA?

YES  NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?

YES  NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?

YES  NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?

YES  NO

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

**IF THE BIDDER IS A CONSORTIUM, JOINT VENTURE OR INTENDS TO SUBCONTRACT THE SERVICES OR PART THEREOF, THE PRIMARY BIDDER MUST:**

- **COMPLETE THE SUPPLIER INFORMATION ABOVE.**
- **PROVIDE THE RELEVANT INFORMATION IN RESPECT OF THE OTHER PARTIES TO THE CONSORTIUM OR JOINT VENTURE, OR THE SUBCONTRACTOR BELOW; AND**
- **SUBMIT AN ORIGINAL CONSORTIUM, JOINT VENTURE OR SUBCONTRACTING AGREEMENT SIGNED BY THE AUTHORISED REPRESENTATIVES OF THE PARTIES AND INDICATING THE WORK SPLIT**

<b>NAME AND CAPACITY OF PARTY 1</b>			
POSTAL ADDRESS			
STREET ADDRESS			
TELEPHONE NUMBER	CODE		NUMBER
CELLPHONE NUMBER			
FACSIMILE NUMBER	CODE		NUMBER



E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>NAME AND CAPACITY OF PARTY 2</b>					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	MAAA

B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>NAME AND CAPACITY OF PARTY 3</b>					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>NAME AND CAPACITY OF PARTY 4</b>					

POSTAL ADDRESS				
STREET ADDRESS				
TELEPHONE NUMBER	CODE		NUMBER	
CELLPHONE NUMBER				
FACSIMILE NUMBER	CODE		NUMBER	
E-MAIL ADDRESS				
VAT REGISTRATION NUMBER				
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No: MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No

## PART B

## TERMS AND CONDITIONS FOR BIDDING

**1. BID SUBMISSION:**

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

**2. TAX COMPLIANCE REQUIREMENTS**

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF 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:**

.....

**1. PURPOSE OF THE FORM**

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

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

**2. Bidder's declaration**

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise,

employed by the state?

**YES/NO**

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

<b>Full Name</b>	<b>Identity Number</b>	<b>Name of State institution</b>

---

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


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

2.2.1 If so, furnish particulars:  
 .....  
 .....

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

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

**3 DECLARATION**

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

- 3.1 I have read, and I understand the contents of this disclosure.
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect.
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However,

communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.

- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

---

<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

.....

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:

	<b>POINTS</b>
<b>PRICE</b>	
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	
<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 6.1 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		NO	
-----	--	----	--

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		NO	
-----	--	----	--

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

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
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 .....

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## **SECTION 8: GENERAL CONDITIONS OF CONTRACT (GCC)**

### **GOVERNMENT PROCUREMENT GENERAL CONDITIONS OF CONTRACT JULY 2010**

#### **NOTES**

The purpose of this document is to:

- Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.
- In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.
- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if (applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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## GENERAL CONDITIONS OF CONTRACT

### 1. Definitions

The following terms shall be interpreted as indicated:

- 1.1. "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. "Corrupt practice" means the offering, giving, receiving, or soliciting of 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 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" mean the General Conditions of Contract.

- 1.15. “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16. “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17. “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18. “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19. “Order” means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20. “Project site,” where applicable, means the place indicated in bidding documents.
- 1.21. “Purchaser” means the organization purchasing the goods.
- 1.22. “Republic” means the Republic of South Africa.
- 1.23. “SCC” means the Special Conditions of Contract.
- 1.24. “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

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

## **2. Application**

- 2.1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2. Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3. Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

## **3. General**

- 3.1. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2. With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za).

## **4. Standards**

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

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

- 5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any

person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

- 5.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3. Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4. The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

## **6. Patent rights.**

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

## **7. Performance security**

- 7.1. Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2. The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

- 7.3. The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- a. A bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - b. A cashier's or certified cheque
- 7.4. The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

## **8. Inspections, tests and analyses**

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

not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

- 8.6. Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7. Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## **9. Packing**

- 9.1. The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 9.2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

## **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 those 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 actions 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 the 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 the 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 contract 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 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 ten (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:
- a. The name and address of the supplier and / or person restricted by the purchaser;
  - b. The date of commencement of the restriction
  - c. The period of restriction; and
  - d. 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 antidumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

#### **25. Force Majeure**

25.1. Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2. If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

## **26. Termination for insolvency**

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

## **27. Settlement of Disputes**

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

## **28. Limitation of liability**

- 28.1. Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;
- a. The supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss

- of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- b. The aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

## **29. Governing language**

- 29.1. The contract shall be written in English. All correspondence and other documents pertaining to the contract that 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 the 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.