



## REQUEST FOR BID

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

<b>DOCUMENT NUMBER:</b>	<b>SAQA 003/2022</b>
<b>RFB ISSUE DATE</b>	<b>31 August 2022</b>
<b>RFB CLOSING DATE AND TIME:</b>	<b>28 September 2022 @ 11H00</b>
<b>RFB VALIDITY PERIOD</b>	<b>120 Days (from RFB closing date)</b>
<b>DESCRIPTION</b>	<b>Provision of Legal Services to the South African Qualifications Authority (SAQA) for three (3) years</b>
<b>PERIOD</b>	<b>Three (3) years</b>
<b>BRIEFING SESSION</b>	<b>No briefing session will be held</b>
<b>RESPONSES/SUBMISSIONS</b>	<p><b>All responses/submissions should be hand-delivered to the following address:</b></p> <p><b>Tender Box located at Reception ground floor, SAQA House, 1067 Arcadia Street Hatfield, Pretoria 0083 and emailed to <a href="mailto:tenders@saqa.co.za">tenders@saqa.co.za</a></b></p>
<b>ENQUIRIES</b>	<p><b>Please direct all enquiries using the following e-mail address:</b></p> <p><b>Adv. P Matinyenya</b></p> <p><b>E-Mail Address: <a href="mailto:tenders@saqa.co.za">tenders@saqa.co.za</a></b></p>

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

### **1. INTRODUCTION**

- 1.1. The National Qualifications Framework (NQF) Act, 67 of 2008 mandates SAQA to oversee the further development and implementation of the NQF, advance its objectives and co-ordinate the three sub-frameworks.
- 1.2. The objectives of the NQF are designed to contribute to the full personal development of each learner and the social and economic development of the nation at large.
- 1.3. By implication, SAQA as the custodian of the NQF, therefore, plays an influential role in the entire education and training sector.

### **2. PURPOSE**

- 2.1. The purpose of this bid is to appoint an experienced legal services provider that can provide appropriate, timely and value-adding legal services to SAQA.
- 2.2. This document intends to provide the prospective Service Providers with adequate information to understand and respond to SAQA's requirements for the provision of legal services. It serves to ensure uniformity in responses and to provide a structured framework for the evaluation of proposals.
- 2.3. The appointment will be for three (3) years commencing on the date as prescribed in the Letter of Award and signed Service Level Agreement.

### **3. BACKGROUND**

- 3.1. The South African Qualifications Authority (SAQA) is a public entity listed in Schedule 3A of the Public Finance Management Act, 1 of 1999, and must meet the requirements of that Act.
- 3.2. From time to time, SAQA is named as a respondent in matters brought before the courts. SAQA does not have in-house capacity and therefore requires the services of a legal services provider to advise on the processes to be followed, preparation and filing of the required documents and representation in court if necessary.
- 3.3. The objective of appointing a legal services provider for three years is to ensure that SAQA has a provider that understands the legislative framework in which

SAQA operates and can respond promptly and appropriately to matters requiring legal consideration.

- 3.4. The legal services provider will work with the Executive Governance, People and Strategy, Manager Governance, Risk, Compliance and Legal, and/or any other employee that the CEO authorises.
- 3.5. The legal services provider must be operating legally in South Africa. Experience in the public education and training sector is essential.
- 3.6. These terms of reference are intended to provide a scope of work and deliverables, against which to appoint a provider of legal services.

#### **4. SCOPE OF SERVICES REQUIRED**

The appointed Legal Services Provider will be required to:

- 4.1 Provide legal advice and support relating to the National Qualifications Framework (NQF) Act, No. 67 of 2008; Treasury Regulations and any other legislative prescripts related to SAQA's mandate.
- 4.2 Litigate and provide litigation support relating to the areas as identified below in any court of law, statutory tribunal, or other body:
  - 4.2.1 Administrative and Public law
  - 4.2.2 Corporate and commercial law
  - 4.2.3 Interpretation of statutes and legislative drafting
  - 4.2.4 Constitutional law,
  - 4.2.5 Property law, and
  - 4.2.6 Ad hoc litigation services on any other areas of law.
- 4.3 Provide alternative dispute resolution services and represent SAQA during Conciliation, Mediation and Arbitration as and when required.
- 4.4 Provide legal opinions, taking into account all respective legislation.;
- 4.5 Draft and review contracts and legal correspondence as and when required.
- 4.6 Represent SAQA in contract negotiations or other settlement negotiations in accordance with SAQA instructions.

4.7 Recover the costs of litigation where appropriate.

4.8 Provide conveyancing services or property law related services such as property transfer and registration as and when required; and

4.9 Defend or institute civil actions/applications on behalf of SAQA in any court.

## 5. SERVICES LEVELS AND APPLICABLE PENALTIES

Service Description	Target	Penalty
Provide legal, opinions and reports on cases handled or under review.	100% provision on the date as agreed.	20% deduction of the total invoice amount, per incident.
Interpretation of statutes and legislative drafting	100% provision on the date as agreed.	20% deduction of the total invoice amount, per incident
Conduct contract negotiations or other settlement negotiations on behalf of SAQA	In accordance with SAQA instructions to obtain the best value for money for SAQA	20% of the applicable fees for the specific assignment.
Attend to property transfer, registration, and related services	100% provision on the date as agreed.	20% of the applicable fees for the specific assignment.
Draft and review contracts and legal correspondence.	100% provision on the date as agreed.	20% of the services rendered for the specific assignment.
Defend SAQA in court cases instituted against SAQA	Within the days stipulated in applicable court/other forum rules and act in accordance with SAQA's instructions	20% of the applicable fees for the specific assignment.
Institute legal action/application in any court of law on behalf of SAQA	Within the days stipulated in applicable court/other forum rules and act in accordance with SAQA's instructions.	20% of the applicable fees for the specific assignment.

Draft and review pleadings for ongoing cases	Finalise and lodge within the days stipulated in applicable court/other forum rules	20% of the applicable fees for the specific assignment.
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## 6. PENALTY MAXIMUM LIMIT AND SERVICE DISPUTES

- 6.1. The maximum penalties will be limited to 20% per month of the total monthly invoice amount, per incident.
- 6.2. Furthermore, should the 20% limit be reached four (4) times during the contract period, the SAQA reserves the right to immediately enter into a service dispute, that may result in the termination of the contract.
- 6.3. Notwithstanding the aforementioned, and without prejudice to any other rights SAQA has, the SAQA reserves the right to enter into service disputes at any point in time with the view of contract cancellation. During a service dispute, the service provider shall continue to render services in accordance with these service levels.

## **SECTION 2: EVALUATION CRITERIA**

### **1. The bid will be evaluated in four (4) stages:**

**Stage 1:** Administrative compliance and screening of mandatory documents

**Stage 2:** Mandatory requirements

**Stage 3:** Functionality evaluation

**Stage 4:** Price and B-BBEE

#### **1.1. STAGE 1: ADMINISTRATIVE COMPLIANCE CHECKS**

Bidders must make sure all standard bid documents are signed and the Central Supplier Database report or Unique Number or Supplier number from the CSD is attached to the proposal.

#### **1.2. STAGE 2: MANDATORY REQUIREMENTS**

Bidders must submit the following documents to advance to the Functionality Evaluation (stage 3):

1.2.1 Proof of registration with the Legal Practice Council (printed Legal Practice Council Digital Identity card or certified copy of Legal Practice Council Identity Card (hard copy)) of the Lead Attorney or Trust Account Advocate),

1.2.2 Certificate of good standing with the Legal Practice Council of South Africa and for an attorney, in addition, the Law Society of South Africa/Provincial Law Society (to be valid at the time of submission); and

1.2.2 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).

### 1.3. STAGE 3: FUNCTIONALITY EVALUATION

The functionality will be scored against the following criteria. Please note that where a “Minimum Rating to Qualify” for a criterion has been indicated, a bidder will be disqualified if a total of 90 points is not achieved.

FUNCTIONALITY: PHASE 1		
Criteria	Sub-criteria	Points
<p><b>Bidder’s relevant experience for the assignment:</b> (The bidder must attach duly signed by the authorised official, and dated, reference letter(s) relevant to the public education sector to qualify for the indicated points)</p>	<p>The reference letter must bear the letterhead of the organisation where the six areas of legal services stated below were provided. SAQA reserves the right to contact these organisations, without prior notice to the bidder.</p> <ol style="list-style-type: none"> <li>1. Bidder with no reference letter from a client in the education sector = <b>0 points</b></li> <li>2. Bidder with at least one relevant reference letter from a client in the education sector = <b>5 points</b></li> <li>3. Bidder with at least two relevant reference letters from a client in the education sector = <b>10 points</b></li> <li>4. Bidder with at least three relevant reference letters from a client in the education sector = <b>15 points</b></li> <li>5. Bidder with at least four relevant reference letters from a client in the education sector = <b>20 points</b></li> <li>6. Bidder with five or more relevant reference letters from a client in the education sector = <b>25 points</b></li> </ol> <p><b>NB:</b></p> <ul style="list-style-type: none"> <li>• Reference letters may not be replaced by letters of agreement, contracts, or purchase orders.</li> <li>• At least one reference letter should be from a client in the education and training sector</li> <li>• At least two letters must be from clients in the public sector</li> </ul>	<b>25</b>



<p><b>Experience of bidder’s Lead Attorney or Trust Account Advocate that will be assigned to the contract:</b></p> <p>(The bidder must attach the Curriculum Vitae (CV), and qualifications with 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 Lead Attorney / Trust Account Attorney will be used for the allocation of points as follows:</p> <ul style="list-style-type: none"> <li>• Lead Attorney / Trust Account Advocate with less than 2 years of relevant working experience and legal qualifications = <b>0 points</b></li> <li>• Lead Attorney / Trust Account Advocate with at least 2 years of relevant working experience and legal qualifications = <b>5 points</b></li> <li>• Lead Attorney / Trust Account Advocate with 3 to 4 years of relevant working experience and legal qualifications = <b>15 points</b></li> <li>• Lead Attorney / Trust Account Advocate with 5 or more years of relevant working experience and legal qualifications = <b>25 points</b></li> </ul> <p><b>NB:</b></p> <ul style="list-style-type: none"> <li>• The bidder is required to submit a list of all team members’ CVs who will be involved in the project, specifying the Lead Attorney/Trust Account Advocate.</li> <li>• The bidder is required to disclose if it will utilise/brief external legal counsel (Advocate).</li> <li>• SAQA reserves the right to verify the authenticity of the qualifications.</li> </ul>	<p><b>25</b></p>
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<p><b>Summary of judgements/evidence of successful engagement for services rendered in the past eight (8) years in the following areas:</b></p> <ol style="list-style-type: none"> <li>1. Public and Administrative law</li> <li>2. Corporate and commercial law</li> <li>3. Interpretation of statutes and legislative drafting</li> <li>4. Constitutional law</li> <li>5. Property law</li> <li>6. Ad hoc litigation in any other area of law</li> </ol>	<p>Judgement/evidence from successful engagement over the past eight (8) years:</p> <ul style="list-style-type: none"> <li>• 5 to 6 areas = <b>50 Points</b></li> <li>• 4 areas = <b>40 Points</b></li> <li>• 3 areas = <b>30 Points</b></li> <li>• 2 areas = <b>20 Points</b></li> <li>• 1 area = <b>10 Points</b></li> <li>• 0 areas = <b>0 Points</b></li> </ul> <p><b>NB:</b> Names and POPIA-restricted information may be redacted in the documents provided.</p>	<p><b>50</b></p>
<p><b>TOTAL POINTS</b></p>		<p><b>100</b></p>

## 2. MINIMUM SCORING

A bidder must have obtained a minimum of **90 points** out of the total points for functionality to qualify to be evaluated on prices and B-BBEE. After the functionality evaluation, the qualifying bids will be evaluated in accordance with the 80/20 preference point system, as contemplated in the Preferential Procurement Policy Framework Act (Act 5 of 2000), Preferential Procurement Regulation 2017.

### 3. Points awarded for B-BBEE status level of contributor

- (a) 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 (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

#### STAGE 4: PRICE AND B-BBEE

- 4.1. 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.
- 4.2 Bidders must complete the pricing schedule SBD 3.1.
- 4.3 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.
- 4.4 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:

**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.: **SAQA 003/2022**

CLOSING TIME: **11H00**

CLOSING DATE: **28 September 2022**

**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						
DESCRIPTION OF THE SERVICE	Duration (3 Years)	Designation	Hourly rate		Estimated Hours OR other applicable measure (for evaluation purposes only)	PRICE (including VAT and annual escalations)
Litigation: representation in court, drafting and review of pleadings; opinions on the interpretation of legislation affecting SAQA	Year 1	Partner	R		300	R
		Attorney	R		300	R
		Other: Professional	R		300	R
		Administrative	R		300	R
Interpretation of statutes and legal drafting		Partner	R	R	300	R 300
		Attorney	R	R	300	R 300
		Other: Professional	R	R	300	R 300
		Administrative	R	R	300	R 300

Contract drafting, reviews and negotiations		Partner	R	10	R	
		Attorney	R	contracts, 10 reviews and 30		
		Other: Candidate Attorney Administrative	R R R	hours of negotiations		
Drafting and reviewing of legal correspondence		Partner	R	Cost per	R	
		Attorney	R	correspondence drafted		
		Other: Candidate Attorney Administrative	R R			
ADR (Conciliation, Mediation, Arbitration)		Partner	R	300	R	
		Attorney	R			
		Other: Candidate Attorney Administrative	R R			

Property transfer and registration		Partner	R	Drafting 1	R
		Attorney	R	Deed of transfer, 1 property	
		Other: Candidate Attorney Administrative	R R	transfer of +/- R45,000,000	
<b>TOTAL FOR YEAR 1</b>					R
Litigation: representation in court, drafting and review of pleadings	Year 2	Partner	R	300	R
		Attorney	R	300	R
		Other: Candidate Attorney Administrative	R R	300 300	R

<b>Interpretation of statutes and legal drafting</b>	<b>Partner</b>	R	R	300	R	300
	<b>Attorney</b>	R	R	300		300
	<b>Other:</b> Candidate Attorney	R	R	300		300
	Administrative	R	R R R	300		300
<b>Contract drafting, reviews and negotiations</b>	<b>Partner</b>	R		10 contracts, 10 reviews	R	
	<b>Attorney</b>	R		and 30 hours of negotiations		
	<b>Other:</b> Candidate Attorney Administrative	R R				



Drafting and reviewing of legal correspondence	<b>Partner</b>	R	Cost per correspondence drafted	R	
	<b>Attorney</b>	R			
	<b>Other:</b> Candidate Attorney Administrative	R R			
ADR (Conciliation, Mediation, Arbitration)	<b>Partner</b>	R	300	R	
	<b>Attorney</b>	R			
	<b>Other:</b> Candidate Attorney Administrative	R R			
Property transfer and registration	<b>Partner</b>	R	Drafting 1 Deed of transfer, 1	R	
	<b>Attorney</b>	R	property transfer of +/-		
	<b>Other:</b> Candidate Attorney Administrative	R R	R45,000,000		
<b>TOTAL FOR YEAR 2</b>				<b>R</b>	

<b>Litigation: representation in court, drafting and review of pleadings</b>	<b>Year 3</b>	<b>Partner</b>	R		<b>300</b>	R
		<b>Attorney</b>	R		<b>300</b>	R
		<b>Other:</b> Candidate attorney	R		<b>300</b>	
Administrative		R		<b>300</b>	R	
		R				
<b>Interpretation of statutes and legislative drafting</b>		<b>Partner</b>	R		300	R
		<b>Attorney</b>	R		300	
		<b>Other:</b> Candidate attorney	R		300	
Administrative		R		300		
<b>Contract drafting, reviews and negotiations</b>	<b>Partner</b>	R	R	10	R	<b>300</b>
	<b>Attorney</b>	R	R	<b>contracts, 10 reviews and 30</b>		<b>300</b>
	<b>Other:</b> Candidate attorney	R	R	<b>hours of negotiations</b>		<b>300</b>
	Administrative	R	R			<b>300</b>
		R	R			

Drafting and reviewing of legal correspondence	Partner	R	Cost per	R	
	Attorney	R	correspon dence drafted		
	Other: Candidate attorney	R			
	Administrative	R			
ADR (Conciliation, Mediation, Arbitration)	Partner	R	300	R	
	Attorney	R			
	Other:	R			
	Candidate Attorney	R			
	Administrative	R			

<b>Property transfer and registration</b>	<b>Partner</b>	R	<b>Drafting 1</b>	R
	<b>Attorney</b>	R	<b>Deed of transfer, 1 property registration of R45,000,000</b>	
	<b>Other:</b> Candidate Attorney Administrative	R R		
<b>TOTAL YEAR 3</b>				R
<b>TOTAL BID PRICE FOR 1<sup>ST</sup>, 2<sup>ND</sup>, AND 3<sup>RD</sup> YEAR (VAT and escalations inclusive)</b>				R

**SECTION 4: INVITATION TO BID AND BIDDER'S PARTICULARS**

**INVITATION TO BID (SBD 1)**

**PART A  
INVITATION TO BID**

**YOU ARE HEREBY INVITED TO BID FOR THE REQUIREMENTS OF THE SOUTH AFRICAN QUALIFICATIONS AUTHORITY**

BID NUMBER:	<b>SAQA 003/2022</b>	CLOSING DATE:	<b>21 September 2022</b>	CLOSING TIME:	<b>11:00</b>
DESCRIPTION	<b>PROVISION OF LEGAL SERVICES TO THE SOUTH AFRICAN QUALIFICATIONS AUTHORITY FOR A PERIOD OF THREE (3) YEARS</b>				

**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:

<b>SOUTH AFRICAN QUALIFICATIONS AUTHORITY</b>	
<b>SAQA HOUSE BUILDING,1067, ARCADIA STREET,</b>	
<b>HATFIELD, PRETORIA,</b>	
<b>0083</b>	
<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				
	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)	<input type="checkbox"/>	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)		
AND NAME THE APPLICABLE IN THE TICK BOX	<input type="checkbox"/>	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)		
	<input type="checkbox"/>	A REGISTERED AUDITOR		
		NAME:		
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT (FOR EMEs&amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>				

<p>ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</p>	<p><input type="checkbox"/>Yes <input type="checkbox"/>No</p> <p>[IF YES ENCLOSE PROOF]</p>	<p>ARE YOU A FOREIGN-BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</p>	<p><input type="checkbox"/>Yes <input type="checkbox"/>No</p> <p>[IF YES ANSWER PART B:3 BELOW]</p>
<p><b>SIGNATURE OF BIDDER</b></p>	<p>.....</p>	<p><b>DATE</b></p>	
<p><b>CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid, e.g. resolution of directors, etc.)</b></p>			
<p><b>TOTAL NUMBER OF ITEMS OFFERED</b></p>		<p><b>TOTAL BID PRICE (ALL INCLUSIVE)</b></p>	
<p><b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:</b></p>		<p><b>TECHNICAL INFORMATION MAY BE DIRECTED TO:</b></p>	
<p>DEPARTMENT/ PUBLIC ENTITY</p>	<p><b>SAQA</b></p>	<p>CONTACT PERSON</p>	<p><b>Adv. P Matinyenya</b></p>
<p>CONTACT PERSON</p>	<p><b>Mr Jeremy Thomas</b></p>	<p>TELEPHONE NUMBER</p>	<p><b>(012) 431 5018</b></p>
<p>TELEPHONE NUMBER</p>	<p><b>(012) 431 5062</b></p>	<p>FACSIMILE NUMBER</p>	
<p>FACSIMILE NUMBER</p>		<p>E-MAIL ADDRESS</p>	<p><a href="mailto:tenders@saqa.co.za">tenders@saqa.co.za</a></p>
<p>E-MAIL ADDRESS</p>	<p><a href="mailto:tenders@saqa.co.za">tenders@saqa.co.za</a></p>		

## 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 THE 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 THE 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 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)?  
 YES  NO
- 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?  YES  
 NO
- 3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?  
 YES  NO
- 3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?  
 YES  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.**

**BIDDING STRUCTURE**

**1.1 Bidding Entity Type:**

Indicate the type of Bidding structure by marking with an 'X':		
1	Individual <i>Bidder</i>	
2	<i>Joint Venture</i>	
3	<i>Consortiums</i>	

**1.2 Individual Bidders:**

If individual bidder, indicate the following:		
1	Name of <i>Bidder</i>	
2	Registration Number	
3	Vat registration Number	
4	Contact Person	
5	Telephone Number	
6	Fax Number	
7	Email address	
8	Postal Address	
9	Physical Address	
10	Tax Registration Number	

**1.3 Joint Ventures:**

If Joint Venture or Consortium, indicate the following for the PRIME BIDDER		
1	Name of <i>Prime Bidder</i> organisation	
2	Registration Number	
3	Vat Registration Number	
4	Contact Person	
5	Telephone Number	
6	Fax Number	
7	Email address	
8	Postal Address	
9	Physical Address	
10	Tax Registration Number	

If Joint Venture or Consortium, complete for each PARTNER involved in the bid		
Partner 1		
1	Name of Partners	
2	Registration Number	
3	Vat Registration Number	
4	Contact Person	
5	Telephone Number	
6	Fax Number	
7	Email address	
8	Postal Address	
9	Physical Address	
10	Tax Registration Number	

Partner 2		
1	Name of Partners	
2	Registration Number	
3	Vat Registration Number	
4	Contact Person	
5	Telephone Number	
6	Fax Number	
7	Email address	
8	Postal Address	
9	Physical Address	
10	Tax Registration Number	

Partner 3		
1	Name of Partners	
2	Registration Number	
3	Vat Registration Number	
4	Contact Person	
5	Telephone Number	
6	Fax Number	
7	Email address	
8	Postal Address	
9	Physical Address	
10	Tax Registration Number	

Partner 4		
1	Name of Partners	
2	Registration Number	
3	Vat Registration Number	
4	Contact Person	
5	Telephone Number	
6	Fax Number	
7	Email address	
8	Postal Address	
9	Physical Address	
10	Tax Registration Number	

**BIDDER'S DISCLOSURE**

**1. PURPOSE OF THE FORM**

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

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

**2. Bidder's declaration**

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

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

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship with any

---

<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.

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.

<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.

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.

.....	.....
Signature	Date
.....	.....
Position	Name of bidder



## SECTION 6: PREFERENCE POINTS CLAIM IN TERMS OF PPR 2017 – SBD 6.1

### 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.**

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#### 4. GENERAL CONDITIONS

4.1. 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).

4.2.

a) The value of this bid is estimated to **not exceed** R50 000 000 (all applicable taxes included) and therefore the **80/20** preference point system shall be applicable;

4.3. Points for this bid shall be awarded for:

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

4.4. The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
TOTAL POINTS FOR PRICE AND B-BBEE MUST NOT EXCEED	100

4.5. 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.

4.6. 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.

## 5. 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 Bidder to provide goods or services in accordance with specifications as set out in the Bid documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
  - B-BBEE Status level certificate issued by an authorized body or person;
  - A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 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;

## 6. POINTS AWARDED FOR PRICE

### 6.1. 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

$P_s$  = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

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

7.1. 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

## 8. BID DECLARATION

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

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

8.1.2. 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.

## 9. SUB-CONTRACTING

9.1. Will any portion of the contract be sub-contracted?

**(Tick applicable box)**

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

9.1.1. If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE  
**(Tick applicable box)**

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

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

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

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

10.1. Name of company/firm:.....

10.2. VAT registration number:.....

10.3. Company registration number.....

10.4. TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

10.5. DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

10.6. COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

10.8. 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 .....

.....

## SECTION 7: GENERAL CONDITIONS OF CONTRACT (GCC)

### 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.

##### TABLE OF CLAUSES

1. Definitions	18. Contract amendments
2. Application	19. Assignment
3. General	20. Subcontracts
4. Standards	21. Delays in the supplier's performance
5. Use of contract documents and information; inspection	22. Penalties
6. Patent rights	23. Termination for default
7. Performance security	24. Dumping and countervailing duties
8. Inspections, tests and analysis	25. Force Majeure
9. Packing	26. Termination for insolvency
	27. Settlement of disputes

10. Delivery and documents	28. Limitation of liability
11. Insurance	29. Governing language
12. Transportation	30. Applicable law
13. Incidental services	31. Notices
14. Spare parts	32. Taxes and duties
15. Warranty	33. National Industrial Participation Programme (NIPP)
16. Payment	34. Prohibition of restrictive practices
17. Prices	

## General Conditions of Contract

1. **Definitions** 1. The following terms shall be interpreted as indicated:

- 1.1. "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5. "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6. "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of



components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

- 1.7. "Day" means calendar day.
- 1.8. "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9. "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10. "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
- 1.11. "Dumping" occurs when a private enterprise abroad market its goods on 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 SAQA or an organization acting on behalf of the SAQA.
- 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.