

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	LPT 001/2020	CLOSING DATE:	26/03/2021	CLOSING TIME:	11:00
DESCRIPTION	PANEL TO PROVIDE FORENSIC INVESTIGATION SERVICES				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
ISMINI TOWERS TENDER BOX					
LIMPOPO PROVINCIAL TREASURY					
46 HANS VAN RENSBURG STREET					
POLOKWANE					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	MAPHANGA T.H		CONTACT PERSON	MPHAHLELE MT	
TELEPHONE NUMBER	015 298 7055		TELEPHONE NUMBER	015 291 8755	
FACSIMILE NUMBER	015 295 7010		FACSIMILE NUMBER	015 295 7010	
E-MAIL ADDRESS	maphangath@treasury.limpopo.gov.za		E-MAIL ADDRESS	mphahlelemt@treasury.limpopo.gov.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] ☐ Yes ☐ No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] ☐ Yes ☐ No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		☐ Yes ☐ No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				☐ YES ☐ NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE 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.

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:

.....

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PRICING SCHEDULE – FIRM PRICES (PURCHASES)

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of bidder.....	Bid number.....
Closing Time 11:00	Closing date 26 March 2021

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

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY ** (ALL APPLICABLE TAXES INCLUDED)
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- | | | |
|---|--|--------------------------|
| - | Required by: | |
| - | At: | |
| - | Brand and model | |
| - | Country of origin | |
| - | Does the offer comply with the specification(s)? | *YES/NO |
| - | If not to specification, indicate deviation(s) | |
| - | Period required for delivery | |
| | | *Delivery: Firm/not firm |
| - | Delivery basis | |

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

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

*Delete if not applicable

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

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

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

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

2.3 Position occupied in the Company (director, trustee, shareholder²):

2.4 Company Registration Number:

2.5 Tax Reference Number:

2.6 VAT Registration Number:

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

¹"State" means -

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

²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

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

2.7.1 If so, furnish the following particulars:

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

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

Position occupied in the state institution:

Any other particulars:

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

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

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

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

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

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

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

2.8.1 If so, furnish particulars:

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

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

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2.9.1 If so, furnish particulars.

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

2.10 Are you, or any person connected with the bidder,
aware of any relationship (family, friend, other) between
any other bidder and any person employed by the state
who may be involved with the evaluation and or adjudication
of this bid?

YES/NO

2.10.1 If so, furnish particulars.

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

2.11 Do you or any of the directors / trustees / shareholders / members
of the company have any interest in any other related companies
whether or not they are bidding for this contract?

YES/NO

2.11.1 If so, furnish particulars:

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

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

Full Name	Identity Number	Personal Tax Reference Number	State Employee Number / Persal Number

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4 DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF
PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION
PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

May 2011

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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 80/20 preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

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B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

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

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

6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

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

(Tick applicable box)

YES	☐	NO	☐
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7.1.1 If yes, indicate:

- What percentage of the contract will be subcontracted.....%
- The name of the sub-contractor.....
- The B-BBEE status level of the sub-contractor.....
- Whether the sub-contractor is an EME or QSE

(Tick applicable box)

YES	☐	NO	☐
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- Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME ✓	QSE ✓
Black people		
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		

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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

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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

•• 00000012

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		

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4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		

SBD 8

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

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CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:
(Name of Bidder)

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

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

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LIMPOPO

PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

PROVINCIAL TREASURY

**TERMS OF REFERENCE FOR THE
FORMULATION OF A PANEL FOR
FORENSIC INVESTIGATION SERVICES
FOR A PERIOD OF THREE YEARS**

2020/21 – 2022/23

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1. INTRODUCTION

- 1.1. The Limpopo Provincial Treasury (LPT) has been established according to section 17 of the Public Finance Management Act (PFMA) 1 of 1999 (as amended by Act 29 of 1999). Its functions and powers are provided in the Act under section 18 (1) and (2). LPT is directly responsible for implementing, managing and overseeing the following legislation and the relevant regulations:
 - a) Public Finance Management Act (PFMA) of 1999 (as amended by Act 29 of 1999);
 - b) Treasury Regulations as Amended
 - c) Municipal Finance Management Act (MFMA) 56 of 2003;
 - d) Annual Division of Revenue Act (DoRA); and
 - e) Preferential Procurement Policy Framework Act (PPPFA).
- 1.2. LPT is also responsible for assisting the National Treasury in enforcing compliance with the measures established in terms of section 216 (1) of the Constitution.
- 1.3. The Provincial Treasury requires qualified professional firms to be sourced within Office of the Provincial Accountant General (Governance, Monitoring and Compliance) to provide forensic investigation services in all spheres of the Limpopo provincial government (Departments, Public Entities and Municipalities).
- 1.4. The Provincial Treasury intends to carry out a procurement exercise to solicit proposals from experienced and professional forensic investigation firms. The firms selected will be required to provide their services through a dedicated team of qualified investigators and any other specific expertise that will be required, based on the nature of the assignment to be investigated at that point in time.

2. OBJECTIVES AND SCOPE

2.1 The Companies appointed will among others perform the following activities:

- a) Conduct forensic investigations of allegations of fraud, corruption and any other irregularities;

- b) Perform lifestyle audit of individuals as identified.
 - c) Support disciplinary actions relating to incidents of fraud, corruption and any other irregularities against State officials, including testifying during disciplinary proceedings (this includes period beyond term of their contract);
 - d) Refer criminal allegations of fraud, corruption and any other irregularities to the relevant law enforcement agency or other appropriate agencies/bodies. In this regard the Office of the Provincial Accountant General (Governance, Monitoring and Compliance) will pursue a formal arrangement through its participation in the Anti-Corruption Task Team, to ensure that the support of the relevant law enforcement agency is guaranteed; and
 - e) Support criminal proceedings and give testimony against State officials, service providers and other parties involved in fraud and corruption incidents not limited to Public Procurement (the testimony in criminal proceedings will include periods beyond the contract agreement).
- 2.2 The successful firms or consortium of firm(s) will be expected to conduct forensic investigations within Limpopo Provincial Government Departments, Public Entities and Municipalities.
- 2.3 The companies would carry out general reviews of activities to highlight risks arising either out of fraud or from any other source with the purpose of initiating focused reviews of particular areas, targeting specific threats to the Limpopo provincial government.
- 2.4 Depending on the circumstances, the forensic audits/investigations will focus on one or more of the following aspects:
- a) lifestyle audit of individuals as identified.
 - b) broad financial management of State funds (e.g. examination of the use of State funds in all spheres of government on public procurement);
 - c) procedural (e.g. Supply Chain Management processes and regulations);
 - d) systems (i.e. internal control system, legacy financial transversal systems); and

- e) performance (economic acquiring of resources, efficiency and effectiveness in the utilisation of State resources) and, or the role of staff and employees.

3. CODE OF PROFESSIONAL ETHICS

The forensic Investigating firm(s) are expected to apply and uphold the following guiding principles:

- a) **Professionalism and Diligence:** The Company shall, at all times, demonstrate a commitment to professionalism and diligence in the performance duties.
- b) **Legal & Ethical:** A firm(s) shall not engage in any illegal or unethical conduct, or any activity which would constitute a conflict of interest.
- c) **Integrity:** A firm(s) shall, at all times, exhibit the highest level of integrity in the performance of all professional assignments and will accept only assignments for which there is reasonable expectation that the assignment will be completed with professional competence.
- d) **Objectivity:** A firm(s) will comply with lawful orders of the courts and will testify to matters truthfully and without bias or prejudice.

4. FORENSIC INVESTIGATION PROCESS

- 4.1 The forensic audit/ investigation assignment will be structured around phases based on consultation and agreement with the Provincial Treasury Project Management team, which will be responsible for the co-ordination of each assignment.

4.2 The Project Management Team will be controlled and directed by the Director: Governance, Monitoring and Compliance within the Office of the Provincial Accountant-General and this will be the Firm's main point of contact in the Provincial Treasury.

4.3 The panel contract will be valid for a period of three years

5. QUALIFICATIONS AND EXPERIENCE REQUIRED

5.1 The qualifications and experience required from the firms will depend on the type, scope and nature of the forensic investigation / assignment ordered by Provincial Treasury.

5.2 The following are minimum expertise and capacity requirements:

- i. Have the necessary skill, knowledge, capacity and resources to meet the needs of Provincial Treasury and to carry out the obligations;
- ii. Have knowledge and a comprehensive understanding of the public sector; and demonstrate an understanding of public sector legislations and related regulations (e.g. financial and supply chain management);
- iii. Have as a minimum of the category of personnel (Partner, Investigation Manager/Senior and Senior Investigator) . The engagement partner must be directly involved in every engagement review undertaken;
- iv. Have a quality control unit responsible for ensuring that the reports are of appropriate quality;
- v. Demonstrate a clear forensic investigation approach and methodology;
- vi. Demonstrate a clear understanding of performing life style audits and performance reviews/audits; and
- vii. Possess or have available appropriate IT solutions for forensic investigation.

5.2.1 Matters relating to foreign nationals

- a) Any foreign nationality on the team should possess the necessary clearance from the relevant law enforcement agencies
- b) At the time of appointment, the service providers nominated on the panel should ensure that all foreign qualifications of team members are cleared by SAQA.
- c) When a firm is going to utilise foreign Nationals, it must observe Act No. 4 of 2014: Employment Services Act, and Act No. 13 of 2002 IMMIGRATION ACT.
- d) The firm will also be expected to prove that:
 - i. The firm has exhausted all avenues to acquire that particular skill within the country;
 - ii. The personnel have valid work permit;
 - iii. The personnel will only work on projects, provided that they are granted a positive South African security clearance

5.3 Generally, three categories of experts will be considered as follows:

a) **Category 1 – Partner (ANNEXURE A)**

Highly qualified experts, possessing relevant university/university of technology qualifications and assuming or having assumed important responsibilities in their area of specialization. They must have at least **10-15 years** of professional experience of which 10 years' professional experience must include leading a multidisciplinary forensic investigation team. The partner should be authorized to certify the accounts by the law of the country in which the service provider has its registered place of business.

b) **Category 2 – Investigation Manager/Senior (ANNEXURE B)**

Qualified experts, possessing relevant university/university of technology qualifications and a good knowledge of the sector(s) concerned. They must have at least **6-10 years'** professional experience, including experience of leading a multidisciplinary forensic investigation team.

c) Category 3 – Senior forensic Investigator (ANNEXURE C)

Qualified experts possessing relevant university/university of technology qualifications and at least **3-5 years'** professional experience in the sector concerned by the investigation.

- 5.4 The service provider must provide curriculum vitae for team members proposed to participate on assignments to be allocated by Treasury for the purpose of evaluation for inclusion on the panel. If and when special expertise in a specific area of the assignment is required, this will be indicated in the specific terms of reference for the phase of the assignment concerned.

6. EVALUATION PROCESS

Eligibility
The bidder must have the necessary skill, knowledge, capacity and resources to meet the needs of Provincial Treasury and to carry out the obligations;
The bidder must have knowledge and a comprehensive understanding of the public sector; and demonstrate an understanding of public sector legislations and related regulations (e.g. financial and supply chain management);
The bidder must have as a minimum the category of personnel (Partner, Investigation Manager/Senior and Senior Investigator). The engagement partner must be directly involved in every engagement review undertaken
The bidder must have a quality control unit responsible for ensuring that the reports are of appropriate quality;
The bidder must demonstrate a clear forensic investigation approach and methodology;
The bidder must possess or have available appropriate IT solutions for forensic investigation

Service providers shall submit a proposal including the composition of the investigating team, the investigating team's profiles and applicable fees for each

category to be utilized in the assignments. Please limit the CV's to 3 per category. If you have more than three (3) officials per category, you can list other officials beyond the number of three (3) per category.

It should be noted that no consideration will be made to any bidder, that has provided profiles for their resources/ experts, which are also provided by another competitor in this same bid, this is considered collusive tendering.

6.1 Evaluation of bids will be conducted in two (2) phases as follows:

a) **Phase 1: Administrative compliance**

The following are minimum requirements for completion of the bid document: -

- I. Bidders are required to complete the entire bid document in terms of the requirements contained herein.
- II. All bid documents, certificates, schedules (including additional schedules as mentioned above) and all forms required by this **bid must be completed in black ink and signed by the authorized signatory.**
- III. Only original bid document shall be accepted.
- IV. Bidder to sequentially number, index all pages submitted in the bid document and attachments.
- V. Bidders shall ensure that there are no missing or duplicated pages. Limpopo Provincial Treasury shall not accept liability in regard to claims by bidders that pages are missing or duplicated
- VI. **Use of correction fluid is not allowed** and any cancellation, alteration or amendment on the bid document must be signed for by the authorized signatory.
- VII. Completed bid document with supporting documents shall be packaged, sealed, marked and submitted strictly as stipulated in this bid documents.
- VIII. **ATTACHMENTS**

Bidders must also attach the following documentation: -

- A copy or original valid B-BBEE verification certificate from a verification agency accredited by the South African Accreditation System (SANAS), or
- Original Sworn affidavit signed and stamped by a Commissioner of Oath indicating the names of the certifying institution and designated Commissioner of Oath
- Failure to submit the certificate will be interpreted to mean that preference points for B-BBEE verification status level of contribution are not claimed.

IX. REGISTRATIONS ON THE CENTRALIZED SUPPLIER DATABASE (CSD)

- Bidders must be registered on the CSD as service providers prior to submitting their bids. Bidders must therefore only furnish their CSD No. and Unique Security Code as a proof of registration as follows: -
 - CSD Registration No.:
 - Unique Security Code:
- Bidders are not required to submit the following copies as validation is done automatically on the CSD system:
 - Original Tax Clearance Certificate
 - CIPC registration
 - ID Copies of directors / shareholders

Bidders will be evaluated according to administrative requirements which include the submission of mandatory information or documentation. Bidders that fail to meet the administrative requirements of the bid will not be considered further for evaluation on technical requirements i.e. Phase 2.

b) Phase 2 – Technical/Functional Evaluation

The minimum qualifying score for functionality is 70%. All bids that fail to achieve the minimum qualifying score on functionality shall not be considered for inclusion into the panel.

Scoring Values:

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1= Poor; 2 = Average; 3 = Good; 4 = Very good; 5 = Excellent

Technical/Functional Evaluation Criteria	MEANS OF VERIFICATION	Weight score	Scoring Criteria
Evaluation Criteria			
<u>Functionality:</u> 1. Demonstration of a sound Forensic investigation approach and methodology The firm is expected to provide a thorough forensic investigation approach and methodology	Approach and methodology document	30	5 = Excellent 4 = Very good 3 = Good 2 = Average 1 = Poor
5= Excellent (Meets and exceeds the expected level in terms of understanding the Provincial and Local sphere of government together with applicable prescripts governing such spheres and ability to perform the necessary investigation project in terms of project planning, execution, reporting). 4= Very good (Above average in terms of understanding the Provincial and Local sphere of government together with applicable prescripts governing such spheres and above average ability to perform the necessary investigation project in terms of project planning, execution, reporting). 3= Good (Satisfactory understanding the Provincial and Local sphere of government together with applicable prescripts governing such spheres and satisfactory ability to perform the necessary investigation project in terms of project planning, execution, reporting). 2= Limited understanding of the Provincial and Local sphere of government together with applicable prescripts governing such			

Technical/Functional Evaluation Criteria	MEANS OF VERIFICATION	Weight score	Scoring Criteria
Evaluation Criteria spheres and limited ability to perform the necessary investigation project in terms of project planning, execution, reporting). 1= Poor (Unacceptable, no implementation plan submitted or the bidder does not understand Provincial and Local sphere of government together with applicable prescripts governing such spheres and ability to perform the necessary investigation project in terms of project planning, execution, reporting)			
2. Previous experience in forensic investigation within the public sector. (Provide nature of investigation; and the Rand value of the bid/contract investigated on such projects and at least three (3) contactable references for all projects (Provincial Treasury reserves the right to determine number of contactable references) 5= Above 10 similar project, relevance, value, time and complexity in the public sector 4= Between 6 to 10 similar project, relevance, value and time in the public sector 3= Between 4 to 6 similar project and relevance in the public sector 2= Between 1 to 4 similar projects in the public sector 1= None in the public sector	Itemised listing of assignments	30	Number of projects and relevance 5 = Excellent 4 = Very good 3 = Good 2 = Average 1 = Poor

Technical/Functional Evaluation Criteria	MEANS OF VERIFICATION	Weight score	Scoring Criteria
Evaluation Criteria			
3. Level of expertise and qualifications of all personnel that will be directly engaged in the execution of the project. Partner 5= NQF Level 9+ 4= NQF Level 8 3= NQF Level 7 2= NQF Level 6 1= NQF Level 4 and 5 Investigations Manager/Senior 5= NQF Level 9+ 4= NQF Level 8 3= NQF Level 7 2= NQF Level 6 1= NQF Level 4 and 5 Senior Investigators 5= NQF Level 9+ 4= NQF Level 8 3= NQF Level 7 2= NQF Level 6 1= NQF Level 4 and 5	Attached certified and valid copies of professional qualifications of the team	15	5 = Excellent 4 = Very good 3 = Good 2 = Average 1 = Poor

Technical/Functional Evaluation Criteria	MEANS OF VERIFICATION	Weight score	Scoring Criteria
Evaluation Criteria			
4. Digital/Cyber Resources 5= Excellent (Access to 6+ different data/information tools and platforms). 4= Very Good (Access to 4 different data/information tools and platforms). 3= Good (Access to 3 different data/information tools and platforms). 2= Average (Access to 2 different data/information tools and platforms). 1= Poor (Access to 1 different data/information tools and platforms).	Provide proof of availability of appropriate IT solutions for forensic investigation and suitable qualified personnel. In the case where the service is to be outsourced, the firm is expected to provide proof of the arrangement made with the suitable service provider and demonstrate that the service provider has the appropriate IT solutions for forensic investigation and suitable qualified personnel	10	5 = Excellent 4 = Very good 3 = Good 2 = Average 1 = Poor

Technical/Functional Evaluation Criteria	MEANS OF VERIFICATION	Weight score	Scoring Criteria
Evaluation Criteria			
5. Demonstration of availability of multiple teams at a given time to perform multiple investigations Team is made of at least 1 Manager/Senior and 2 to 3 investigators 5= Excellent (5 teams). 4= Very Good (4 teams). 3= Good (3 teams). 2= Average (2 teams). 1= Poor (1 team).	Credentials of available and alternative team attached	5	5 = Excellent 4 = Very good 3 = Good 2 = Average 1 = Poor
6. Demonstration of locality of the company in Limpopo	Signed lease agreement or copy of local municipal account for payment of services	10	5 = <u>Official head office located in Limpopo Province</u> 3 = <u>For having foot print in Limpopo Province (e.g. regional office)</u> 0 = <u>no presence in Limpopo Province</u>
Total		100	
Threshold		70%	

7. ACCEPTANCE OF BID(S)

7.1 Methodology

The recommended bidder will be required to provide a methodology on investigation assignment.

The methodology should cover various phases in a forensic investigation including the following:

- a) The profiles of the Firm's project team to execute an assignment;
- b) Fee structure; and
- c) Reporting requirements and process to other law enforcement agencies.

7.2 Professional Registration

Where applicable, proof of professional registration of the service provider must be submitted in the form of certified copies of the relevant registration documents.

7.3 Screening and Vetting

Acceptance of bid is subject to the condition that both the contracting firm and its personnel providing the service must be cleared by the appropriate authorities to the level of CONFIDENTIALITY/SECRET/TOP SECRET. Obtaining a positive recommendation is the responsibility of the Provincial Treasury. If the principal contractor appoints a subcontractor, the same provisions and measures will apply to the subcontractor.

7.4 Central Supplier Database registration

The service provider/companies to be included on the database, should be registered on the central supplier database on National Treasury.

7.5 Right to Procure Elsewhere & with more than one contractor

Provincial Treasury reserves the right to procure its requirements elsewhere should the minimum contract specified by the bidder be more than that of the institution's requirements or if services are promptly required and not appropriate available from the panel members, or in other cases or urgency.

Provincial Treasury reserves the right to arrange contracts with more than one contractor.

7.6 Appointment

Should the bid be accepted, a written letter of acceptance will be issued by Provincial Treasury and in addition a formal agreement will be entered between Provincial Treasury and the appointed firm(s) on the basis of an approved implementation plan for each phase of the assignment.

7.7 Price

- a) The price proposal will be noted, but not be evaluated.
- b) The financial proposal must be based on the fees stated in the framework contract for each category of the investigating team, the proposed fees should be compatible with the professional rates, as published by the office of the Auditor General of South Africa.
- c) The travel costs by air will be reimbursed on the basis of the most economic tariff (economy class).
- d) The Service provider should retain evidence of travel and accommodation expenses and other travel documents (for example boarding passes). Such documents may have to be presented to the Provincial Treasury for inspection.
- e) Other transport costs are reimbursed in accordance with the rules applicable for service contracts.
- f) The financial proposal must be submitted in South African Rand.

- g) Provincial Treasury reserves the right to negotiate hourly charge-out rates submitted by bidders.

8. Bid validity period

8.1 The bid will be valid for a period of **120** days.

9. SUBMISSION OF BID

9.1 Please note, it is mandatory that bid documents must be submitted in a sealed Envelope(s) marked as follows:

BID No: LPT 001/2020

**To: Limpopo Provincial Treasury
Ismini Building
46 Hans Van Rensburg Street
Polokwane
0699
Closing Time: 11h00
Closing Date: 26 March 2021**

10. SIGNING OF THE CONTRACT AND SERVICE LEVEL AGREEMENT

10.1 The bid will be awarded on condition that the successful bidder signs the contract and Service Level Agreement with Limpopo Provincial Treasury based on the contents of this document, bid offer and letter of award.

**NB: FAILURE TO COMPLY WITH THE ABOVE MINIMUM REQUIREMENTS MAY
LEAD TO DISQUALIFICATION OF THE BIDDER AT THE SOLE DISCRETION**

OF LIMPOPO PROVINCIAL TREASURY.

FURTHERMORE, LIMPOPO PROVINCIAL TREASURY WILL NOT BE RESPONSIBLE FOR ANY COSTS INCURRED BY BIDDERS IN THE PREPARATION AND SUBMISSION OF THIS BID. BIDDER'S OWN TERMS OR CONDITIONS SHALL NOT BE ACCEPTED.

11. RESERVATION OF RIGHTS

Limpopo Provincial Treasury reserves the right to:

- 11.1** Appoint a maximum of 15 service providers based on the points scored through functionality. The scores would be allocated from the highest to the lowest points. Drawing of lots would be applicable in circumstances whereby there would be equal points scored amongst the potential bidders.
- 11.2** Request further information from any bidder after the closing date of the bid;
- 11.3** Communicate only with the shortlisted bidders as and when necessary.
- 11.4** Verify information and documentation of respective bidder from the National Treasury's Centralized Supplier Database (**CSD**) system, South African Revenue Services (**SARS**), Private Security Industry Regulatory Authority (**PSIRA**), Companies & Intellectual Property Commission (**CIPC**), National Treasury or any other relevant entity or visit the premises of the bidder at any time without notice. Any information received which does not correspond with the one provided in the bid document will render the bid null and void;
- 11.5** Award the bid to a bidder who did not score the highest points;
- 11.6** Not make an award;
- 11.7** Appoint a third party to evaluate the service provider's compliance with any aspect of this bid;
- 11.8** Cancel the contract, if it is satisfied that any person (being an employee, partner, director or shareholder of the bidder or a person acting on behalf of or with the knowledge of the bidder), firm or company (The expression "person, firm or company" shall include an authorized employee or agent

of such a person, firm or company

11.8.1 *is executing a contract with government unsatisfactorily; has offered, promised or given a bribe or other gift or remuneration to any officer or employee in the Public Service in connection with obtaining or executing a contract;*

11.8.2 *has acted in a fraudulent manner or in bad faith or in any other unsatisfactory manner in obtaining a contract with any government department, provincial administration, public body, company or person, or that he has managed his affairs in such a way that he has in consequence there-of been found guilty of a criminal offence;*

11.8.3 *has approached an officer or employee in the Public Service before or after bids have been called for, to influence the award of the contract in his favour;*

11.8.4 *has withdrawn or amended his bid after the time set for the receipt and opening of bids;*

11.8.5 *when advised that his bid has been conditionally accepted, has given notice of his inability to execute or sign the contract or to furnish any security required;*

11.8.6 *has entered into any agreement or arrangement, whether legally binding or not, 7has disclosed to any other person, firm or company the exact or approximate with any other person, firm or company to refrain from bidding for this contract, or as to the amount of the bid to be submitted by either party; and*

11.8.7 *amount of his proposed bid except where disclosure, in confidence, was necessary to obtain insurance premium quotations for the preparation of the bid; the Limpopo Provincial Treasury may, in addition to any other legal recourse which it may have, cancel the contract between Treasury department and such person , firm or company and /or resolve that no bid from such a person, firm or company will be favourably considered for a specific period.*

NB: LPT reserves the right to negotiate the final price.

12. ENQUIRIES INTO THE PROJECT:

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QUERY	NAME	CONTACT DETAILS
Technical Information relating to the bid	Mr M.T. Mphahlele Director: Governance, Monitoring and Compliance	Tel No. 015 291 8755 Email: mphahlelemt@treasury.limpopo.gov.za
Administrative and Bid related matters	Mr T.H Maphanga Deputy Director: SCM	Tel No. 015 298 7055 Email: maphangath@treasury.limpopo.gov.za

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

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GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

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

RSA.

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

obligations of the supplier covered under the contract.

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

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

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

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

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

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

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

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

9. Packing

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

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

10. Delivery and documents

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

11. Insurance

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

12. Transportation

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

13. Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

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

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

14. Spare parts

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

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

15. Warranty

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

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

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

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

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

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

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

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

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

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

17. Prices

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

18. Contract amendments

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier's performance

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

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

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

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

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

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

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

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

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

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may be due to him

25. Force Majeure

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

28. Limitation of liability

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

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

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

Js General Conditions of Contract (revised July 2010)