



## REQUEST FOR BIDS

### BID DETAILS

<b>BID NUMBER:</b>	<b>FB-SETA (22-23) T0007</b>	
<b>CLOSING</b>	<b>Date:</b>	<b>17 August 2022</b>
	<b>Time:</b>	<b>11:00 am</b>
<b>DESCRIPTION:</b>	<b>INVITATION TO BID FOR THE APPOINTMENT OF A CYBER SECURITY SERVICE PROVIDER FOR A PERIOD OF TWO YEARS.</b>	
<b>VIRTUAL COMPULSORY BRIEFING SESSION:</b>	<b>Date</b>	<b>03 August 2022</b>
	<b>Time</b>	<b>10:00 am</b>
	<b>Location</b>	<b>Microsoft Teams</b>
<b>Validity Period</b>	<b>120 days</b>	

#### DETAILS OF BIDDER

**Organisation/individual:** .....

**Contact person:** .....

**Telephone/ Cell number:** .....

**E-mail address:** .....

**TOTAL BID PRICE (inclusive of VAT)** .....

## GLOSSARY

<b>AWARD</b>	<b>Conclusion of the procurement process and final notification to the effect to the successful bidder</b>
<b>B-BBEE</b>	<b>Broad-based Black Economic Empowerment in terms of the Broad-based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003) and the Codes of Good Practice issued thereunder by the Department of Trade and Industry</b>
<b>BID</b>	<b>Written offer in a prescribed or stipulated form in response to an invitation by FOODBEV SETA for the provision of goods, works or services</b>
<b>SERVICE PROVIDER</b>	<b>Organisation with whom FOODBEV SETA will conclude a contract and potential service level agreement after the final award of the contract based on this Request for Bid</b>
<b>CORE TEAM</b>	<b>The core team are those members who fill the non-administrative positions against which the experience will be measured.</b>
<b>DTI</b>	<b>Department of Trade and Industry</b>
<b>EME</b>	<b>Exempted Micro Enterprise in terms of the Codes of Good Practice</b>
<b>GCC</b>	<b>General Conditions of Contract</b>
<b>GRAP</b>	<b>A set of concepts that function as guidelines for the accounting processes in the public sector</b>
<b>IP</b>	<b>Intellectual Property</b>
<b>FOODBEV SETA (FBS)</b>	<b>Food and Beverage Manufacturing Sector Education and Training Authority</b>
<b>ORIGINAL BID</b>	<b>Original document signed in ink, or Copy of original document signed in ink,</b>
<b>ORIGINALLY CERTIFIED</b>	<b>To comply with the principle of originally certified, a document must be both stamped and signed in original ink by a commissioner of oaths.</b>
<b>SCM</b>	<b>Supply Chain Management</b>
<b>SLA</b>	<b>Service Level Agreement</b>
<b>SCHEDULE 3A ENTITY</b>	<b>As per the classification by National Treasury these refer to other National public entities</b>

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**INVITATION TO BID FOR THE APPOINTMENT OF A CYBER SECURITY  
SERVICESERVICESERVICE PROVIDER FOR A PERIOD OF TWO YEARS.****SECTION A****1. INTRODUCTION**

FoodBev SETA is a Schedule 3A Public Entity established in terms of the Skills Development Act 97 of 1998. FoodBev is currently operating in Johannesburg at number 07 Wessel Street, Rivonia. FoodBev SETA's function is to promote, facilitate and incentivize skills development in the food and beverages manufacturing sector. FoodBev SETA is one of 21 sector education and training authorities (SETAs) across the economy mandated to deliver on the National Skills Development Plan (NSDP) outcomes.

**2. OBJECTIVES**

The objective is to appoint a cyber security service provider to perform a full ICT (Information, Communication and Technology) and cybersecurity risk management, and implementing recommended solutions to improve the current systems and policies in accordance with relevant legislative requirements and international recognized practices.

**3. BACKGROUND**

The occurrence of the COVID-19 pandemic, which resulted to a national state of disaster and lockdown in South Africa, fast tracked the adoption of technological capabilities by many organizations to continue business operations remotely (home). This saw many businesses moving from traditionally physical and office-based model of working to remote and technologically enabled way of working. The technological based model came with its own challenges such as:

- Increased dependence on the organizational IT capacity for maintenance and support of technological tools and systems used by employees. The IT support service has been stretched to cater for remote user support which is more complicated and sometimes time consuming.
- Increase in the cyber security threats as cyber attackers are seeking to exploit the vulnerabilities and IT weaknesses that came with the pandemic induced and fast-tracked adoption of business technological capabilities. This is witnessed by the increase in number of cyber hacking incidences that have recently occurred in many organizations in South Africa.

In consideration of the above, FoodBev SETA is seeking to enhance its cybersecurity capacity by appointing an experienced and suitable service provider to provide cybersecurity services.

**4. SCOPE OF WORK**

FoodBev SETA invites bids from suitably qualified cyber security service provider for a period of two (2) years. The service provider will be required to place resource service provider at FoodBev SETA. The service provider is responsible for understanding and responding to threats to the security of all information, networks, and computer systems, whether on premise or cloud. The individual(s) assigned(s) assigned will monitor a variety of services and tools (including firewalls, internal account activity tools and threat information services) to predict, detect and diagnose threats and direct or participate in the mitigation of these threats to the business together with the FoodBev SETA ICT and Internal Audit team.

**4.1. Responsibilities of the service provider:**

The service provider will be responsible for the entire management of IT security environment of the FoodBev SETA in consultation with internal FoodBev SETA ICT and third parties responsible for outsourced services. The high-level approach to integrated cybersecurity is as follows:

Risk Management and Governance	Operations	Business enablement
<ul style="list-style-type: none"> <li>• Strategic Planning</li> <li>• Cybersecurity Audit</li> <li>• Risk Management</li> <li>• Compliance</li> <li>• Business Continuity Planning</li> </ul>	<ul style="list-style-type: none"> <li>• Identify</li> <li>• Protect</li> <li>• Detect</li> <li>• Repsond</li> <li>• Recover</li> </ul>	<ul style="list-style-type: none"> <li>• Product Security</li> <li>• Cloud Computing</li> <li>• Mobile Security</li> <li>• Emerging Technologies security</li> <li>• Security Awareness Trainings</li> </ul>

The Service provider must provide the for the following services (but not limited to):

- Monitor information systems, computers, and networks to detect cyber threats and respond to cyber threats and finally to remediate information security threats and vulnerabilities.
- Analyse, design, and facilitate capabilities, solutions, or preventative/remediation controls to protect proprietary/confidential data and systems in accordance with industry standards and governance/compliance requirements.

- Develop and review the current procedures in information security, Technical Incident Response Planning and Business Continuity Planning and advice whether they require revision.
- Synthesize solution design, architectural patterns, policy and regulatory frameworks, privacy considerations, and risks in the creation of holistic solutions that span technologies and capabilities.
- Support the defence of networks, protecting information from unauthorized access and violations. Analyse and assess potential security risks, develop plans to deal with such incidents by putting measures in place such as firewall, IPS/IDS, Encryption, monitoring and auditing systems for abnormal activity, and executing corrective actions.
- Carry out tests on a system to expose weaknesses in security. Report on findings and then develop and implement remedial action plan.
- Analyse computer and server logs and uncover links between events, groups and individuals through pursuit of data trails
- Work across different operating system platforms and technologies to design holistic security designs that treat identified risks and enable strategic and/or tactical business or IT solutions
- Research/investigate emerging business application security topics, threats, capabilities, and solution options to create/update policy and governance, technology strategies, solution architecture and vulnerability assessments
- Apply industry standard risk management technique and knowledge across various business application security capabilities, that is, technical, application, data and mobile to determine effectiveness of controls and to create action plans that remediate identified risks
- Apply broad-based knowledge of security technologies with an in-depth/specialized knowledge of security tools like Nmap, Open VAS, Snort, Wireshark, Kali Linux etc.
- Apply systems analysis techniques, including facilitation and or training with users to determine security specifications
- Suggest and provide advice on the best solutions to backup sensitive and confidential data on the cloud for disaster recovery

## **5.DURATON OF THE SERVICES**

- 5.1.** The contract period will be for a period of two (2) years from the date of appointment.

**SECTION B**

**6. THE BID EVALUATION PROCESS**

The bid evaluation process comprises three stages as outlined below:

**6.1. STAGE 1: PRE-QUALIFICATION CRITERIA**

<b>DESCRIPTION OF THE CRITERIA</b>	The tenderer must have a minimum of level 3 (three) B-BBEE status level of contribution.
<b>MEANS OF VERIFICATION</b>	<ul style="list-style-type: none"> <li>▪ Valid - original or certified copy of the bidders B-BBEE Certificate/ SWORN affidavit.</li> <li>▪ The bidders certified copies of shareholders certificates.</li> </ul>

Bids that do not comply with the prequalification requirements will not be considered for stage 2 evaluation.

**6.2. STAGE 2: MANDATORY REQUIREMENTS**

<b>No</b>	<b>DESCRIPTION OF THE CRITERIA</b>	<b>MEANS OF VERIFICATION</b>
1.	<b>The Bidder(s) must have a physical office within the Gauteng Province.</b>	Proof must be submitted in the form of a lease agreement, rental office agreements, sale agreement, or municipal statements.
2.	<b>Submission format &amp; compliance documents</b>	The Potential bidder must submit three (3) bid proposals as follows: <ul style="list-style-type: none"> <li>i. Two (2) hard copies; and</li> <li>ii. one (1) electronic copy in PDF format saved in a memory stick, clearly marked, and indexed.</li> <li>iii. Bid proposals must be properly bonded, punched and numbered in line with the response format detailed in section 8 of this bid document.</li> <li>iv. Submit fully completed and signed documents required in section 8.3 of this bid document.</li> </ul>

Bids that do not comply with the mandatory requirements will not be considered for stage 3 evaluation.

**6.3. STAGE 3: FUNCTIONAL EVALUATION CRITERIA:**

6.2.1. Bidders must meet the minimum functionality of **80,00** points out of **100,00** points in order to be evaluated further in terms of stage 3. Any bid that does not meet the minimum threshold will be automatically disqualified. See detailed scoring criteria below.

DETAILED FUNCTIONALITY EVALUATION CRITERIA:		WEIGHTING ALLOCATED
<b>1. Experience of the Service provider in Cyber Security</b>		
<p>A CV of the proposed person to be deployed. The Service provider resource deployed must have a minimum of five (5) years' experience in cyber security. The CV must indicate the following:</p> <ul style="list-style-type: none"> <li>i. Personal information.</li> <li>ii. Qualification(s)                             <ul style="list-style-type: none"> <li>a. Minimum requirement: NQF 7 qualification in Computer Science, IT or similar) and</li> <li>b. Minimum requirement: in Certified Information Systems Security Professional (CISSP),</li> <li>c. Additional Certifications (added advantage): Certificate Ethical Hacker (CEH – Master), Certified Information System Auditor (CISA), Ethical Hacker, COBIT</li> <li>d. Provide ITIL and COBBIT certified copies of qualifications).</li> </ul> </li> <li>iii. Work experience.</li> </ul> <p>Please note that points will only be awarded if bidder submits both the CV and relevant qualifications.</p>		
<ul style="list-style-type: none"> <li>• CV submitted demonstrating 10 or more years' experience providing cyber security service and minimum qualifications requirement plus additional certifications (at least two certifications)</li> </ul>	<b>40,00</b>	<b>40,00</b>
<ul style="list-style-type: none"> <li>• CV submitted demonstrating 5 to 9 experience providing cyber security services, minimum qualifications requirement plus additional certifications (at least two certifications)</li> </ul>	<b>30,00</b>	
<ul style="list-style-type: none"> <li>• CV submitted demonstrating less than 5 years cyber security services, with only minimum qualifications requirement</li> </ul>	<b>10,00</b>	
<b>2. Experience of the Bidder in similar work</b>		
<p>Bidders must provide written reference letters (not older than five (5) years) on the bidder's client letterhead to whom cyber security services or related services are/were provided. The reference letters must include:</p> <ul style="list-style-type: none"> <li>i. Contact person.</li> <li>ii. Confirmation of services rendered; and whether the client/s were satisfied of the service rendered</li> </ul>		
<ul style="list-style-type: none"> <li>• Five (5) or more reference letters</li> </ul>	<b>40,00</b>	<b>40,00</b>
<ul style="list-style-type: none"> <li>• Four (4) reference letters</li> </ul>	<b>30,00</b>	
<ul style="list-style-type: none"> <li>• Three (3) reference letters</li> </ul>	<b>20,00</b>	
<ul style="list-style-type: none"> <li>• Two (2) reference letters</li> </ul>	<b>15,00</b>	
<ul style="list-style-type: none"> <li>• One (1) reference letter</li> </ul>	<b>10,00</b>	



<b>DETAILED FUNCTIONALITY EVALUATION CRITERIA:</b>		<b>WEIGHTING ALLOCATED</b>
<ul style="list-style-type: none"> <li>No reference letters submitted</li> </ul>	<b>0.00</b>	
<b>3. Project Implementation Plan</b>		
Response to the scope of work- (Implementation Plan and Timeframes). The bidder must provide a plan which indicates how the deliverables expected from this service will be executed. The plan must have activities, deliverables and timelines.		
<ul style="list-style-type: none"> <li>Implementation plan provided is fully completed and displays detailed activities, deliverables, and timeframes.</li> </ul>	<b>20,00</b>	<b>20,00</b>
<ul style="list-style-type: none"> <li>Implementation plan provided is fully completed and displays detailed activities, deliverables, and timeframes.</li> </ul>	<b>10,00</b>	
<ul style="list-style-type: none"> <li>Implementation plan provided is not fully completed and displays not clear detailed activities, deliverables, and timeframes.</li> </ul>	<b>0,00</b>	
<b>TOTAL POINTS</b>	<b>100,00</b>	<b>100,00</b>

**6.4. Stage 4 - PRICING SCHEDULE**

<b>No.</b>	<b>Description</b>	<b>Rates</b>
<b>Professional Services (Hourly rate)</b>		
1.	Cyber Security Service provider	
	<b>Total Monthly Rate (160 hours)</b>	
	<b>Total over two years (Duration of the contract)</b>	

6.4.1. The rates will be fixed for the duration of the appointment, will form part of the Services Agreement, and will apply to appointments arising out of this Bid.

**6.4.2 Stage 4: The Preferential Procurement Policy Framework Regulations**

The 80/20 preference points system for the acquisition of goods or services with a Rand value equal to or above R30 000 and up to R50 million as follows:

<b>Criteria</b>	<b>Means of verification</b>	<b>Points</b>
Price	Total Bid Price	80.00
B-BBEE Status Level Verification certificate from accredited verification agencies/or SWORN Affidavits	B-BBEE Level Contributor	20.00
<b>Total Points</b>		<b>100.00</b>

6.4.3. Key Personnel Information

Candidate Resume Template	
<b>Brief Profile</b>	
<b>Personal Details</b>	
<b>Name and Surname:</b>	
<b>Residential Address:</b>	
<b>Contact Details (Cellphone No.):</b>	
<b>Driver's Licence Code:</b>	
<b>Educational Background</b>	
<b>Highest Qualification:</b> (Minimum NQF 7 qualification in Computer Science, IT or similar)	
<b>Relevant Certifications:</b> (CISSP minimum requirement)	
<b>Work Experience</b> (Provide details on employment/placement history, you may add more employers as per below)	
<b>Employer Name:</b>	
<b>Job Title:</b>	
<b>Period in the job:</b>	
<b>Duties:</b>	
<b>Experience on Cybersecurity Tools</b> (You may add more tools as per below)	
<b>Cybersecurity Tool:</b>	
<b>Years of experience on the tool:</b>	
<b>Functionalities of the tool:</b>	

## SECTION C

### 7. TENDER SUBMISSION INSTRUCTIONS

- 7.1. Tenders should be submitted in triplicate consisting of Two hard copies (one original and one copy) and one electronic copy, all bound in a sealed envelope endorsed **FB-SETA (22-23) T0007**: The appointment of a service providers to bid for the appointment of a Cyber Security Specialist. The sealed envelope must be placed and be deposited in the FoodBev SETA Tender Box, Ground Floor, 07 Wessel St, Rivonia, Sandton, 2128 no later than closing time and date.
- 7.2. Bids must be submitted in a prescribed response format herewith enclosed as 'Response Format'.
- 7.3. The closing date, company name and the return address must also be endorsed on the envelope.
- 7.4. If a courier service company is being used for delivery of the tender document, the tender description must be endorsed on the delivery note/courier packaging and the courier must ensure that documents are placed / deposited into the tender box. FoodBev SETA will not be held responsible for any delays where tender documents are handed to the FoodBev SETA Receptionist and/or arrives late.
- 7.5. No bids received by telegram, telex, email, facsimile, or similar medium will be considered.
- 7.6. Where a tender document is not in the tender box at the time of the tender closing, such a tender document will be regarded as a late tender. FoodBev SETA reserves the right not to consider/evaluate any late tender response.
- 7.7. All the documentation submitted in response to this bid must be in English.
- 7.8. The bidder is responsible for all the costs that they shall incur related to the preparation and submission of the tender document.
- 7.9. Bids submitted by bidders must be signed by a person or persons duly authorised thereto by a resolution of a Board of Directors (if applicable), a copy of which Resolution, duly certified be submitted with the Tender.
- 7.10. Bidders should check the numbers of the pages to satisfy themselves that none are missing or duplicated. No liability will be accepted by FoodBev SETA regarding anything arising from the fact that pages are missing or duplicated.
- 7.11. A valid tax clearance certificate or confirmation of pin must be included in the bid response.
- 7.12. A copy(s) of certificates from the organizations/ bodies that the bidder is affiliated to must be included in the bid response.

## 8. RESPONSE FORMAT

✦ **Bidders are requested to note that this is a mandatory criteria and failure to comply with the requirements as set below will result in a bidder's submission being rejected. The soft and hard copy responses from all bidders must be prepared in line with the following section:**

✦ Bidders shall submit their responses in accordance with the response format specified below (each schedule must be clearly marked, indexed and /or numbered):

**8.1. Cover Page:** The cover page must clearly indicate the bid reference number, bid description and the bidder's name.

### 8.2. Schedule 1:

**8.2.1 Experience of the Service provider in Cybersecurity Services:** A CV of the proposed person to be provided using the attached Candidate CV Template. Service provider

**8.2.2 Experience of the Bidder in similar work:** Bidders must provide written reference letters (not older than five (5) years) on the bidder's client letterhead to whom services are/were provided. The reference letters must include

**8.2.3 Project Implementation Plan:** Response to the scope of work- (Implementation Plan and Timeframes). The bidder must provide a plan which indicates how the deliverables expected from this service will be executed. The plan must have activities, deliverables and timelines.

### 8.3. Schedule 2:

8.3.1. Valid tax clearance certificate or confirmation of pin.

8.3.2. Certified copies of the bidders CIPC / or company registration documents listing all members with percentages, in case of a CC. Or latest certified copies of all share certificates in case of a company.

8.3.3. Original certified copy of the company's professional accreditation (not a copy of a certified copy)

8.3.4. Certified ID copies of all directors.

8.3.5. A certified copy of the B-BBEE certificate (or an original affidavit signed by a Commissioner of Oaths regarding the B-BBEE status)

8.3.6. Submission of proof of the bidder's registration on the CSD (Full report)

**Note: If a Consortium, Joint Venture or Subcontractor, the documents listed above must be submitted for each Consortium/ JV member or subcontractor. A consolidated B-BBEE certificate is required for Joint Venture bidders**

**SECTION D**

**9. Compliance Documents and Conditions to Tender**

<b>1)</b>	<b>GENERAL</b>
1.1	The Bidder must clearly state if a deviation from these special conditions are offered and the reason therefor. If an explanatory note is provided, the paragraph reference must be indicated in a supporting appendix to the application submission.
1.2	Should Bidders fail to indicate agreement/compliance or otherwise, the FoodBev SETA will assume that the Bidder is complying or in agreement with the statement(s) as specified in this bid.
1.3	Bids not completed in this manner may be considered incomplete and rejected.
1.4	FoodBev SETA shall not be liable for any expense incurred by the Bidder in the preparation and submission of a bid.
<b>2)</b>	<b>CANCELLATION OF PROCUREMENT PROCESS</b>
2.1	This procurement process can be postponed or cancelled at any stage at the sole discretion of FoodBev SETA provided that such cancellation or postponement takes place prior to entering a contract with a specific service provider to which the bid relates.
<b>3)</b>	<b>BID SUBMISSION CONDITIONS, INSTRUCTION AND EVALUATION PROCESS/CRITERIA</b>
3.1	The Bid submission conditions and instructions as well as the evaluation process/criteria have been noted. Noncompliance to any of these will result in a bid being rejected.
<b>4)</b>	<b>NEGOTIATION AND CONTRACTING</b>
4.1	FoodBev SETA have the right to enter negotiation with one or more Bidders regarding any terms and conditions, including price(s), of a proposed contract.
4.2	Under no circumstances will negotiation with any Bidders, including preferred Bidders, constitute an award <sup>1</sup> or promise/ undertaking to award the contract.
4.3	FoodBev SETA shall not be obliged to accept the lowest or any bid, offer or proposal.
4.4	A contract will only be deemed to be concluded when reduced to writing in a formal contract and Service Level Agreement (if applicable) signed by the designated responsible person of both parties. The designated responsible person of FoodBev SETA is the CEO.

<sup>1</sup> See GLOSSARY.

4.5	FoodBev SETA also reserves the right to enter one contract with a Bidder for all required functions or into more than one contract with different Bidders for different functions.
<b>5)</b>	<b>ACCESS TO INFORMATION</b>
5.1	All bidders will be informed of the status of their bid once the procurement process has been completed.
5.2	Requests for information regarding the bid process will be dealt with in line with the FoodBev SETA SCM Policy and relevant legislation.
<b>6)</b>	<b>REASONS FOR REJECTION</b>
6.1	FoodBev SETA shall reject a proposal for the award of a contract if the recommended Bidder has committed a proven corrupt or fraudulent act in competing for the particular contract.
6.2	The FoodBev SETA may disregard the bid of any bidder if that bidder, or any of its directors: <ul style="list-style-type: none"> <li><input type="checkbox"/> Have abused the SCM system of the FoodBev SETA.</li> <li><input type="checkbox"/> Have committed proven fraud or any other improper conduct in relation to such system.</li> <li><input type="checkbox"/> Have failed to perform on any previous contract and the proof exists.</li> </ul> Such actions shall be communicated to the National Treasury.
<b>7)</b>	<b>GENERAL CONDITIONS OF CONTRACT</b>
7.1	The General Conditions of Contract must be accepted.
<b>8)</b>	<b>ADDITIONAL INFORMATION REQUIREMENTS</b>
8.1	During evaluation of the bids, additional information may be requested in writing from Bidders. Replies to such request must be submitted, within 2 working days or as otherwise indicated. Failure to comply, may lead to your bid being disregarded.
8.2	No additional information will be accepted from any individual Bidder without such information having been requested
<b>9)</b>	<b>CONFIDENTIALITY</b>
9.1	The bid and all information in connection therewith shall be held in strict confidence by Bidders and usage of such information shall be limited to the preparation of the bid. Bidders shall undertake to limit the number of copies of this document.
<b>10)</b>	<b>INTELLECTUAL PROPERTY, INVENTIONS AND COPYRIGHT</b>
10.1	Copyright of all documentation relating to this contract belongs to the client. The successful Bidder may not disclose any information, documentation, or products to other clients without the written approval of the accounting authority or the delegate.
10.2	This paragraph shall survive termination of this contract.

<b>11)</b>	<b>NON-COMPLIANCE WITH DELIVERY TERMS</b>
11.1	As soon as it becomes known to the contractor that he/she will not be able to deliver the services within the delivery period and/or against the quoted price and/or as specified, FoodBev SETA must be given immediate written notice to this effect. FoodBev SETA reserves the right to implement remedies as provided for in the GCC.
<b>12)</b>	<b>WARRANTS</b>
12.1	The bidder warrants that it can conclude this Agreement to the satisfaction of FoodBev SETA.
<b>13)</b>	<b>PARTIES NOT AFFECTED BY WAIVER OR BREACHES</b>
13.1	The waiver (whether express or implied) by any Party of any breach of the terms or conditions of this contract by the other Party shall not prejudice any remedy of the waiving party in respect of any continuing or other breach of the terms and conditions hereof.
13.2	No favour, delay, relaxation or indulgence on the part of any Party in exercising any power or right conferred on such Party in terms of this contract shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right under this agreement.
<b>14)</b>	<b>RETENTION</b>
14.1	On termination of this agreement, the bidder shall, on demand hand over all documentation provided as part of the project and all deliverables, etc., without the right of retention, to FoodBev SETA.
14.2	No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force and effect unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.
<b>15)</b>	<b>CENTRAL SUPPLIER DATABASE</b>
15.1	It is a requirement that all suppliers/ services providers to FoodBev SETA shall be registered on the National Treasury Central Supplier Database (CSD).
15.2	Bidders are therefore required to register as a supplier on the CSD before submitting a bid. The CSD website can be accessed on the following link: <a href="http://ocpo.treasury.gov.za/Pages/default.aspx">http://ocpo.treasury.gov.za/Pages/default.aspx</a>
15.3	Bidders are therefore required to submit proof of their registration on the CSD, or if not yet registered, provide proof of their application to be registered, with their bid.
15.4	No bid will be awarded, and a contract concluded with a bidder who is not registered on the CSD.

<b>16)</b>	<b>FORMAT OF BIDS</b>
16.1	Bidders must complete all the necessary bid documents and undertakings required in this bid document. Bidders are advised that their proposal should be concise, written in plain English and simply presented.
16.2	<b>Bidders are to set out their proposal in the format prescribed hereunder.</b> This means that the proposal must be structured in the parts noted below. <u>Information not submitted in the relevant part, may not be considered for evaluation purposes.</u>
16.3	<b>Part 2: SARS Tax Clearance Certificate(s)</b>
16.3.1	<p>Bidders must ensure compliance with their tax obligations.</p> <p>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. Application for tax compliance status (TCS) or PIN may also be made via e-filing. To use this provision, taxpayers will need to register with SARS as e-filers through the website <a href="http://www.sars.gov.za">www.sars.gov.za</a>.</p> <p>Bidders may also submit a printed TCS together with the bid.</p> <p>In bids where consortia/ joint ventures/ sub-contractors are involved; each party must submit a separate proof of TCS/ PIN/ CSD number.</p> <p>Where no TCS is available, but the bidder is registered on the Central Supplier Database (CSD), a CSD number must be provided.</p> <p>Bids submitted without any one of the above, will be deemed to be non-responsive.</p>
16.4	<b>Declaration of Interest</b>
16.4.1	<p><b>Each party</b> to the bid must complete and return the “Declaration of Interest”</p> <p>Bids submitted without a complete and signed Declaration of Interest <b>will</b> be deemed to be non-responsive.</p>
16.5	<b>Declaration of Bidder’s past Supply Chain Management practices</b>
16.5.1	<p><b>Each party</b> to the bid must complete and return the “Declaration of bidder’s past Supply Chain Management practices”</p> <p>Bids submitted without a completed and signed Declaration of bidder’s past Supply Chain Management practices <b>will</b> be deemed non-responsive.</p>
16.6	<b>Certificate of Independent Bid Determination</b>
16.6.1	<p><b>Each party</b> to the bid must complete and sign the Certificate</p> <p>Bids submitted without a completed and signed Certificate of Independent Bid Determination <b>will</b> be deemed non-responsive.</p>
16.7	<b>Invitation to Bid</b>
16.7.1	Bidders must complete, sign and return the full “Invitation to Bid” document.



	Bids submitted without a completed and signed Invitation to Bid <b><u>will</u></b> be deemed to be non-responsive.
<b>16.8</b>	<b>Pricing Schedule</b>
16.8.1	Any budget amount that may be indicated in this document shall be deemed to be a guide only and Bidders are expected to submit a costing that is fair and reasonable.
16.8.2	All costs related to this assignment are to be allowed for in the pricing schedule and in the formats prescribed and must be returned as part of the submission. Bids submitted without a price or with an incomplete price, <b><u>will</u></b> be deemed to be non-responsive.
16.8.3	A pricing schedule with one of the specified elements (fees and reimbursable costs) omitted from the costing, may be considered non-responsive.
<b>16.9</b>	<b>Registration on the CSD</b>
16.9.1	In this part, bidders must submit proof of their registration, or proof that they have applied for registration on the Central Supplier Database. Bids submitted without the required proof, <b><u>will</u></b> be deemed to be non-responsive.
<b>16.10</b>	<b>Registration Certificates</b>
16.10.1	Registration with professional bodies Bids submitted without proof <b><u>will</u></b> be deemed to be non-responsive.

I/we herewith accept all the above-mentioned special conditions of the bid. If I/we do consider a deviation therefrom, I have noted those as per the instruction in above.

Name of Bidder: \_\_\_\_\_

Signature of Bidder: \_\_\_\_\_

Date: \_\_\_\_\_

**SBD 1 - INVITATION TO BID**

**YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE FOOD AND BEVERAGE MANUFACTURING SETA**

BID NUMBER:		CLOSING DATE:		CLOSING TIME:	
-------------	--	---------------	--	---------------	--

DESCRIPTION

**BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)**

--

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<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>	<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>
---	--

CONTACT PERSON		CONTACT PERSON	
----------------	--	----------------	--

TELEPHONE NUMBER		TELEPHONE NUMBER	
------------------	--	------------------	--

FACSIMILE NUMBER		FACSIMILE NUMBER	
------------------	--	------------------	--

E-MAIL ADDRESS		E-MAIL ADDRESS	
----------------	--	----------------	--

**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]	B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX]
--	----------------------	-------------------------------------	-----------------------

<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> 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	<input type="checkbox"/> Yes <input type="checkbox"/> No	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--	--	--

[IF YES ENCLOSE PROOF]	[IF YES, ANSWER THE
------------------------	---------------------

--	--

FOR THE GOODS /SERVICES /WORKS OFFERED?		/WORKS OFFERED?	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**

<p><b>1. BID SUBMISSION:</b></p> <p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b></p> <p>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.</p> <p>1.4. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b></p>
<p><b>2. TAX COMPLIANCE REQUIREMENTS</b></p> <p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>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.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE <a href="http://WWW.SARS.GOV.ZA">WWW.SARS.GOV.ZA</a>.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>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.</p> <p>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.”</p>

**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: .....

**SBD 3.3: PRICING SCHEDULE: PROFESSIONAL SERVICES**

NAME OF BIDDER: .....  
 BID NO. ....  
 CLOSING TIME .....  
 CLOSING DATE .....

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

ITEM DESCRIPTION BID PRICE IN RSA CURRENCY  
 NO \*\* (ALL APPLICABLE TAXES INCLUDED)

1. The accompanying information must be used for the formulation of proposals.

2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.

R.....

3. PERSONS WHO WILL BE INVOLVED WITH THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST RENDERED IN TERM HEREOF)

4.	PERSONS AND POSITION	HOURLY RATE	DAILY RATE
	.....	R.....	R.....
	.....	R.....	R.....
	.....	R.....	R.....
	.....	R.....	R.....
	.....	R.....	R.....
	.....	R.....	R.....

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN DAYS TO BE SPENT

.....	R.....	R.....
.....	R.....	R.....
.....	R.....	R.....
.....	R.....	R.....

5.1. Travel expenses (specify, for example rate/km and total km, class of air travel, etc.). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF THE EXPENSES	RATE	QUANTITY	AMOUNT
.....	.....	.....	R.....
.....	.....	.....	R.....

..... R.....  
 ..... R.....

5.2. Other expenses, for example accommodation (specify, e.g. Three-star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). Based on these, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF THE EXPENSES	RATE	QUANTITY	AMOUNT
.....	.....	.....	
.....	.....	.....	
.....	.....	.....	
.....	.....	.....	

TOTAL: R.....

6. Period required for commencement with the project after acceptance of bid

7. Estimated man-days for completion of project  
 R.....

8. Are the rates quoted firm for completion of project? \*YES/NO

9. If not firm for the period, provide details of the basis on which adjustments will be applied for, for example consumer index.'

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

Any enquiries regarding bidding process may be directed to –

FoodBev SETA  
 07 Wessel Street  
 Rivonia, Sandton  
 2128

Tel: 011 253 7300  
 scm@FoodBev.co.za  
 Katleho Mashego  
 Tel: 011 253 7300

**SBD 4: 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>2</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 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:  
 .....  
 .....

---

<sup>2</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.

**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>3</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

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



## SBD 6.1 - PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

**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.**

### GENERAL CONDITIONS

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).
2. 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;
3. Points for this bid shall be awarded for:
  - (a) Price; and
  - (b) B-BBEE Status Level of Contributor.
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

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.
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.

### DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
  - 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

**POINTS AWARDED FOR PRICE**

**THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS**

A maximum of 80 or 90 points is allocated for price on the following basis:

**80/20 or 90/10**

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

- P<sub>s</sub> = Points scored for price of bid under consideration
- P<sub>t</sub> = Price of bid under consideration
- P<sub>min</sub> = Price of lowest acceptable bid

**POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR**

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

**BID DECLARATION**

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

**B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4**

B-BBEE Status Level of Contributor: = ..... (maximum of 10 or 20 points)  
 (Points claimed in respect of paragraph 6 must be in accordance with the table reflected in paragraph 4 and must be substantiated by relevant proof of B-BBEE status level of contributor.

**SUB-CONTRACTING**

1. Will any portion of the contract be sub-contracted?  
**(Tick applicable box)**

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

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 the 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		

**DECLARATION WITH REGARD TO COMPANY/ FIRM**

Name of company/firm: .....  
 VAT registration number: .....  
 Company registration number: .....  
 TYPE OF COMPANY/ FIRM

**(Tick applicable box)**

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

**DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....

.....

.....

.....

**COMPANY CLASSIFICATION**

**(Tick applicable box)**

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

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

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.

<p>WITNESSES</p> <p>1. .... .....</p> <p>2. .... .....</p>	<p>.....</p> <p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE: .....</p> <p>ADDRESS: .....</p> <p>.....</p> <p>.....</p> <p>.....</p>
--	---

## CONTRACT FORM - RENDERING OF SERVICES

**THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.**

### **PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)**

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid .
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
  - (i) Bidding documents, viz
    - Invitation to bid;
    - Tax clearance certificate;
    - Pricing schedule(s);
    - Filled in task directive/proposal;
    - Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011;
    - Declaration of interest;
    - Declaration of bidder's past SCM practices;
    - Certificate of Independent Bid Determination;
    - Special Conditions of Contract;
  - (ii) General Conditions of Contract; and
  - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .....

CAPACITY .....

SIGNATURE .....

NAME OF FIRM .....

DATE .....

WITNESSES	
1	.....
2	.....
DATE: .....	

**SBD 7.2 CONTRACT FORM - RENDERING OF SERVICES PART 2 (TO BE FILLED IN BY THE PURCHASER)**

- I..... in my capacity as..... accept your bid under reference number .....dated.....for the rendering of services indicated hereunder and/or further specified in the annexure(s).
- An official order indicating service delivery instructions is forthcoming.
- I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

DESCRIPTION OF SERVICE	PRICE (ALL APPLICABLE TAXES INCLUDED)	COMPLETION DATE	B-BBEE STATUS LEVEL OF CONTRIBUTION	MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)

- I confirm that I am duly authorised to sign this contract.

SIGNED AT ..... ON.....

NAME (PRINT) .....

SIGNATURE .....

## GENERAL CONDITIONS OF CONTRACT

TABLE OF CLAUSES	
1.	Definitions
2.	Application
3.	General
4.	Standards
5.	Use of contract documents and information; inspection
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## **1. Definitions**

The following terms shall be interpreted as indicated:

- 1.1. "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. "Corrupt practice" means the offering, giving, receiving, or soliciting of 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 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
- 5.3 except for purposes of performing the contract.
- 5.4 Any document, other than the contract itself mentioned in GCC clause
- 5.5 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.
- 5.5 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 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 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' 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 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 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 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 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 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. 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 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;
- (c) If the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier; the supplier will be allowed a time period of not more than fourteen

(14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

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

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

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

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

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

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

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

## **25. Force Majeure**

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



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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

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

**29. Governing language**

- (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.

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

**30. Applicable law**

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

**31. Notices**

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

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

**32. Taxes and duties**

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

**33. National Industrial Participation (NIP) Programme**

33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

**34. Prohibition of Restrictive practices**

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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