



Establishment of a disaster recovery site

RFB 2012/MPL/ICT01

December 2012

PROBLEM STATEMENT

The Mpumalanga Provincial Legislature (MPL) is seeking a highly experienced service provider to establish a hot disaster recovery site.

A hot site is a duplicate of the original site of the organisation, with full computer systems as well as near-complete backups of user data. Real time synchronisation between the two sites is used to completely mirror the data environment of the original site using wide area network links and specialised software

1. INTRODUCTION

Mpumalanga Provincial Legislature (MPL) has developed a disaster recovery plan (DRP) as part of the Legislature's Business Continuity Management plans. The Legislature currently has no off-site Disaster Recovery Centre to which the approved DRP relates.

These terms of reference are intended to solicit partnership with a service provider that will undertake the process of establishing an off-site disaster recovery centre (hot site) for the Legislature.

The Legislature requests interested and suitably qualified companies to tender for this contract by responding to the requirements in section 15 of this document.

2. OVERVIEW**2.1 Executive Summary**

MPL's core mandate is to exercise oversight over governments departments and the provincial state owned entities, law-making and ensuring that the public participates in these processes. To achieve these objectives, the Legislature has, among other things, implemented the SAP system as its Enterprise Resource Planning (ERP) solution to manage its resources as from 01 April 2011. It is therefore important to ensure integrity of all ERP data and to ensure business continuity in the event of a major disaster.

The MPL therefore invites competent and qualified service provider to establish an off-site disaster recovery centre. The desired outcome is a hot-off-site disaster recovery centre as a full duplication of our current IT infrastructure.

2.2 Location

The Mpumalanga Legislature is located in building 1 of the Riverside Government Complex in Nelspruit. The Legislature also maintains an annexure office in the Vakasha Building in Nelspruit. The Legislature further maintains offices at the Constitution House in Cape Town, adjacent to the Parliamentary Precinct. The Government Complex is maintained by the Department of Public Works, Roads and Transport.

2.3 Current Infrastructure Organisation

The Legislature has three divisions, namely Financial Governance, Corporate Services and Parliamentary Services. Under these divisions are business units.

All staff members have either a PC or Laptop allocated and all public office bearers and managers have iPads. Hence approximately 200 people working in the Legislature have PCs or laptops on their desks and have access to printing facilities. Mobile solution management is therefore a priority.

The Legislature has standardised its operation on Microsoft platform and business solutions. These include SQL as a preferred database, Windows Network Operational Systems and Windows based business solutions (MS Office, MS Projects, MS Visio).

During the course of 2009 the Legislature took a decision to streamline and integrate all its accounting and core functions including Customer Relations, Human Resource and Procurement functions and as result SAP was introduced running on SQL backend.

2.4 Current Information Technology Infrastructure

- The Legislature runs on a leased line connectivity, provided by IS and a Cat6 network. This network is managed for a period of 3 years by an external service provider. All switches are PoE enabled (Juniper).

- The Legislature uses SAP as its main business process application, e.g. HR and Payroll, Finance, Asset Management, Procurement, Customer Relations Management and Document Management.
- MPL has 18 Servers installed on a Virtual Server environment (VMWare) and provides Active Directory and MS Exchange mail services to the clients. The servers run MS Server 2008 and the Legislature has 2 MS Exchange 2010 servers and 1 MS SQL server. The hardware infrastructure support was also bundled in the main contract which is expiring.
- MPL comprises of 150 users placed into two geographically separate buildings linked with a high speed fibre network connection with a 54Mbps PPTP Wi-Fi link.
- MPL Invested in leading edge HP Blade Technology and SAN technology which is the core that hardware houses the SAP and Infrastructure server.
- MPL has Enterprise Agreement with Microsoft with regard to licensing requirements.
- MPL internet services are currently hosted by Internet Solutions a division of Dimension Data.
- MPL has also invested in the Mimecast solution with mail integrated service which filters, archives and ensure business continuity in case of disaster or unplanned failures.
- MPL has improved security and internet filtering solutions which are Webmarshal and Eset NOD 32 as a first line of defence against viruses and malicious software
- There are networked computers, and multi-functional devices connected to the network.
- MPL runs an autonomous chamber/parliamentary system and video-conferencing facilities.
- The tele-communications are provided by a service provider contracted to the Department of Public Works, Roads and Transport.

There are currently 18 virtual Servers running Windows 2010. These servers are running numerous systems and services, including and not limited to inter alia:

- Microsoft Exchange 2010

- Windows Server 2008 with Active Directory, DNS, DHCP and other related services
- Webmarshall
- Eset Enterprise Antivirus
- MS Office Professional 2010
- MS SQL
- Windows 7 & Vista
- Symantec Backup Exec

2.5 SAP System

The following SAP modules are installed, providing integrated enterprise resource planning and management:

- SAP Finance and Control (FI/CO)
- SAP Asset Management (AM)
- SAP Materials Management (MM)
- SAP Inventory Management (IM)
- SAP Human Resource Management (HRM)
- SAP Travel Management
- SAP Document Management Systems (DMS)
- SAP Customer Relationship Management (CRM)
- SAP Netweaver Portal
 - Employee Self Service [ESS]
 - Manager Self Service [MSS]
- SAP Business Objects (BobJ)

3. OBJECTIVE

To seek a service provider that will establish a hot disaster recovery site for MPL, which complies with all relevant statutory requirements.

3.1 Key Objectives

The service provider should be able to provide the following services and competencies, not limited to inter alia, to the Legislature:

- Establish a hot site off-site disaster recovery centre. A hot site is a duplicate of the original site of the organization, with full computer systems as well as near-complete backups of user data. Real time

synchronization between the two sites will be used to completely mirror the data environment of the original site using wide area network links and specialized software. Following a disruption to the original site, the hot site exists so that the organization can relocate with minimal losses to normal operations. The capacity of the hot site will match the capacity of the original site.

- Procure and implement the hardware and networking infrastructure required to establish an off-site disaster recovery centre.
- Perform any system configurations that might be necessary;
- Improve business processes, procedures and policies to ensure optimum operational efficiency of the Off-site centre;
- Establish the foundation infrastructure that supports the strategic objectives of the legislature.
- Perform an assessment of the current IT infrastructure sizing and the technical health of the system and propose improvement plan if required.
- Enablement of innovation and flexibility
- Establish and ensure a stable network between the main complex and the off-site centre
- Provide proper infrastructure and backup strategy, plans and procedural documentation (Disaster Recovery and Backup Strategy, Policies, Procedures, Plans)
- Ensure hardware stability
- Setup, installation and training of running the off-site Centre
- Provisioning of the best solution link to the off-site centre which includes a wireless link for redundancy in the event of the main link is not available.

3.2 Deliverable

The service provider must order, setup and configure an off-site (hot site) Disaster Recovery Centre with all the necessary documentation, networking capabilities, hardware and training necessary to establish, maintain and run the off-site centre. Deliverables will include, but is not limited to, the following:

- HP Cabinets, VMWare vSphere Enterprise Software, Replication Software, Blade Servers, EVA Storage, MSL Backup Library System, Recovery, HP 3Year 4H 24x7 On-Site Support
- Establishing a link between the main complex and the off-site centre
- Installing networking between sites
- Provide the equipment as per Addendum A

3.3 Contract Duration

The duration of the contract for establishment of the site is three (3) months. Issues and duration of maintenance and support will be negotiated with the successful service provider.

4. ASSUMPTIONS

It is our assumption that our current IT infrastructure will be duplicated at an off-site location as per the AG requirements for an off-site centre.

All configuration and support will adhere to the policies and procedures of the Legislature and will be done within the business processes of the Legislature. The project will be implemented according to Prince2 project management principles. A project management office (PMO) will be established and all project risks, resources, plans and issues will be managed through the PMO. A project steering committee will be established which will meet on a weekly basis.

It is further our assumption that the service provider will put measures in place to mitigate associated risks as in section five (5) below.

5. OTHER CONSIDERATIONS

The service provider must also recognise that the Legislature has embraced the “Result driven philosophy”. Thus the service provider must include in their response a suggested mechanism in which the Legislature will measure performance of the service provider during the duration of the contract.

The service provider must also recognise that MPL is committed to success of National Development Plan with as far as Job creation is concerned. To this effect:

- All consultants on the project must be South African citizens
 - All knowledge transfer and skills development will be done to South African Citizens
 - The service provider must submit a detailed skills transfer plan and report quarterly on the skills transfer in the form of a matrix.

6. POTENTIAL RISKS

Some of the known associated risks with this project are, not limited to *inter alia*:

- All risks associated with an unavailable IT infrastructure, e.g. mail, SAP system, Authentication etc.
- Downtime of the system
- Loss of documents due to poor Document Management
- Unavailability of business owners for testing and sign off
- Inappropriate testing
- Qualified audit

7. PERFORMANCE INDICATORS

Performance reviews will be conducted on a regular basis throughout the project. The result of the review will determine the continuation of the contract. Regular reports will be submitted to the Senior Manager: IT.

8. CONTRACT MANAGEMENT

The Legislature has adopted a principle of no valid contract no payment, so it is imperative that the contract be concluded between the Legislature and the winning tenderer for the service to be provided to the Legislature. The Legislature and the service provider will enter into a Service Level Agreement (SLA) and the contract will be managed and evaluated against the metrics in the SLA. This will be a legally binding formal "contract". Amongst other requirements, it will outline uptime agreement of 99.75%, services, priorities, responsibilities, guarantees, and warranties. Each area of service scope should have the "level of service" defined, time management, turnaround time and performance penalties.

Progress reports referred to above must be submitted to the Senior Manager: IT and copies of the reports should also be filed in the office of the service provider. All reports must be written in English. The Legislature is responsible for approving the progress reports. The regular reports should address the following:

- Performance of the service provider
- Schedule of deliverables and payment schedule.
- Issues encountered related to the project.
- General report on other matters pertaining to the SLA.

Invoices will be submitted by the 20th of every month. Payment will be made within 30 days after receipt of invoice and evidence of the required deliverables.

9. EXPECTATIONS OF THE SERVICE TO BE PROVIDED BY THE CONTRACTOR

9.1 The successful service provider should provide MPL with knowledgeable South African citizen resources with the requisite skills, competencies and extensive experience.

9.2 Co-operation with any requests of the Auditor-General is required.

9.3 The contractor should be fully acquainted with the operations of MPL, and be prepared to advise on appropriate solutions to assist to the MPL's operational problems – preferably in a proactive manner.

9.4 MPL aims to maintain best-practice systems in relation to international benchmarks. The contractor must be willing to advise in this regard.

9.5 The Legislature does not perceive that it needs to always have the latest version of every software package. It is envisaged that upgrades will only take place when there is a clear operational advantage, and any such upgrades must be approved by the Senior Manager: IT (the contractor must remember that given "government" budgeting processes, such upgrades should be planned at least a year in advance).

9.6 It is imperative that the service contractor takes cognizance of the nature of the business of MPL and its Members. The core business of MPL is concentrated in supporting the Members and the legislative processes. The Parliamentary programme of MPL takes precedence in all scheduling matters.

9.7 Work additional to fixed contract. In exceptional circumstances, the contractor may be required to perform additional system maintenance / consultancy over and above the contracted specifications. Any such work must be approved in advance by the Senior Manager: IT, and will be carried out at the normal contract rates

9.8 Provide details of staff allocated to the contract. The contractor must provide a brief CV of each person to be allocated to work at MPL (whether such a person is employed by the contractor or sub-contracted must be clearly indicated). All such staff should then be available at reasonable notice to provide the required service to MPL. If a person whose CV was provided leaves the employ of the contractor (or is no longer sub-subtracted), a person with comparable qualifications and experience must be made available within the terms of the contract to meet MPL's needs. MPL may, at any time, request the names and details of those currently allocated.

9.9 Clearly, MPL cannot communicate its needs solely through the contract liaison person, but will need to discuss certain operational needs directly with the other contractor staff provided. The contractor will be expected to manage its own internal communications such that when operational instructions, directives, etc. are given by the Senior Manager: IT - or his/her nominee(s) - these should be automatically forwarded to the contract liaison person.

9.10 All change requests must be formalised and adhere to the Change Management Policy and Procedures.

9.11 MPL may, at its discretion, request the contractor to replace an allocated staff member if it considers that the service provided by that person is not acceptable on reasonable grounds.

9.12 It is envisaged that the contractor cannot terminate the agreement except on grounds of non-payment (within a reasonable period after confirmed receipt of

invoice). However, MPL reserves the right to terminate the agreement on the basis of non-delivery, reasonable cause, or - given notice - convenience.

9.13 MPL is not in a position to award profit incentives - given that it is not a profit institution. Consequently, the contractor must view the acquiring and maintenance of this prestigious contract as its incentive / reward.

9.14 Detailed expectations which should be included in the up-time agreement required include:

- 99.75% up-time to be maintained (exclusive of items in (c) below) between 07:45 and 16:15 every working day to allow users to access their data, the intranet & their e-mail, with a maximum down time of 30 minutes on any one day;
- at least 99% up-time to be maintained (exclusive of items in (c) below) for the remainder of each week to allow users to access their data, the intranet & their e-mail, with a maximum unplanned downtime of 1 hour;
- to carry out maintenance on the system during working hours whenever possible, after consultation with the Senior Manager: IT. Only in special circumstances will work be approved at the "after-hours" rates;
- to be able to respond to a major problem by having a person capable of resolving such issues on site within 30 minutes of the problem occurring (during office hours);
- to be able to respond to a problem after office hours within 1 hour of the problem occurring;
- to have sufficient support staff on site during office hours to be able respond to user help requests (based on approximately 300 users) without unreasonable delay.

10. REPORTING LINES

The service provider will report to the Senior Manager: Information Technology.

11. PRIME CONTRACT MANAGEMENT

The Prime Contract Manager Plan will be drawn, which will address the activities to be performed by contractor; these will include performance management, service level agreement, etc. The contract will adhere to the Prince 2 Project Management Principles. A Project Management Office will be established and regular project steering committee meetings will be held to discuss issues related to the project.

12. METHODOLOGY OVERVIEW

The performance of the contractor will be subjected to a review against the Service Level Agreement and deliverables. MPL will also conduct constant surveys of the quality of service provided.

13. MONITORING AND EVALUATION

The service provider must provide high quality reports indicating qualitative and quantitative work completed. A project sign-off and hand over report will be required and the last payment is dependent on the endorsement of the objectives and sign-off report. All defined objectives must be achieved. The Senior Manager: Information Technology of MPL is responsible for approving the reports and sign-off of invoices.

14. SECURITY CLEARANCE

MPL will conduct security clearance on the service provider staff in order to make sure the company meets MPL's security requirements. Should the contractor fail to achieve the required clearance, the contract will be terminated, and the contractor will be required to leave site immediately

15. ETHICS

The Contractor is expected to perform their functions in a professional, cost efficient and professional manner.

The Contractor is required to manage its own internal business ethically, and to ensure good labour practice is maintained by adhering to the Basic Conditions of Service Act, Workmen's Compensation Act, and all other appropriate legislation.

16. REQUIREMENTS FROM THE SERVICE PROVIDER

16.1 Provide details of any partnership, agency or supplier agreements between the contractor and any supplier / vendor involved in the IT industry.

16.2 Provide an outline of the company and its current operations in relation to these Terms of Reference

16.3 Provide an outline of the experience including exposure to software systems in relation to these Terms of Reference.

16.4 Define the category(s) of contract staff to be provided in terms of the contract (e.g. consultant, systems engineer, help-desk support person, etc.), and the relevant minimum qualifications / experience levels for each category.

16.5 Provide a brief summary of how to deal with issues regarding:

- Understanding and unpacking the Disaster Recovery Plan into a Business Continuity Plan.
- Provide a brief strategy on how the company can improve services delivery, productivity and performance of the IT support team and creating centre of excellence.
- Thorough understanding of network composite model and switches configuration.
- Strategy on information security, disaster recovery and back-up
- Network infrastructure and communication protocols
- Server hard- and software configurations
- Understanding of help desk concepts

16.6 Details of how the contractor will maintain the necessary security systems for users and its own employees to ensure data security – remembering that the elected politicians and their staff are not subject to disciplinary control from the MPL.

16.7 Provide a motivation of why MPL should award the tender to the company.

16.8 Provide original certified copy of the contractor's Authorised Certifications. MPL reserves the right to contact any other person, company or organisation to

obtain information relating to the service provided by the contractor, either prior to awarding the contract or during the contract term.

16.9 Where legally permitted, provide a full list of the contractor’s current clients, the service being contracted, and the start and end dates of the contract, and a contact person and contact number of the client. Where appropriate, similar information may be provided for previous clients for whom a comparable service has been provided.

16.10 Provide an up-time agreement of 99.75% detailing the standards of service to provide within the contract.

17. GENERAL CONDITIONS OF CONTRACT/BID

Bidders shall provide full and accurate answers to the mandatory questions posed in this document, and, are required to explicitly state either “Comply/Accept (with a)” or “Do not comply/Do not accept (with an X)” regarding compliance to the requirements. Where necessary the bidder shall substantiate their response to a specific question.

17.1

The laws of the Republic of South Africa shall govern this RFP and the bidders hereby accept that the courts of the Republic of South Africa shall have jurisdiction.	Accept	Not Accept

17.2

MPL will not be liable for any costs incurred by the bidder in the preparation of response to this RFP. The preparation of response will be made without obligation to acquire any of the items included in any vendor’s bid or to select any bid, or to discuss the reasons why such vendor’s or any other bid was accepted or rejected.	Accept	Not Accept

17.3

MPL may request written clarification or further information regarding any aspect of this bid. The bidders must supply the requested information in writing within twenty four (24) hours or as determined by MPL after the request has been made, otherwise the bid may be disqualified.	Accept	Not Accept

17.4	In the case of consortium/JV/subcontractors, bidders are required to provide copies of signed agreements stipulating the work split, competences, client references and Rand Value.	Accept	Not Accept
17.5	MPL reserves the right to: <ul style="list-style-type: none"> • Withdraw the tender for any reason whatsoever; • Not to award the bid to the lowest bidder; • Award the bid in part or in whole; and or • Not to award the bid at all. 	Accept	Not Accept
17.6	Bidders who are distributors and resellers are required to submit, back-to-back agreement and a service level agreement with their principals.	Accept	Not Accept
17.7	By submitting a bid in response to this RFB, the bidders accept the evaluation criteria as it stands.	Accept	Not Accept
17.8	Where applicable, MPL reserves the right to run benchmarks on equipment or services during and after the evaluation.	Accept	Not Accept
17.9	MPL reserves the right to conduct a pre-award survey during the source selection process to evaluate contractors' capabilities to meet the requirements specified in the RFB and supporting documents.	Accept	Not Accept
17.10	Only the solution commercially available at the bid closing date will be considered. No proposals for future solutions will be accepted.	Accept	Not Accept

17.11

Bidders must declare any form of relationship (family, friend or other) that they may have with any MPL employee/public office bearer, where it is known. (Bidders are further requested to declare any interests that an employee/public office bearer of the MPL may have in their company.)	Accept	Not Accept

17.12

The bidder should not qualify the bid proposal with own conditions of bids. Caution: If the bidder does not specifically withdraw its own conditions of bid when called upon to do so, the bid response will be declared invalid.	Accept	Not Accept

18.13

Should the bidder withdraw the bid before the bid validity period expires, MPL reserves the right to recover any additional expense incurred by MPL having to accept any less favourable bid or the additional expenditure incurred by MPL in the preparation of a new RFP and by the subsequent acceptance of any less favorable bid.	Accept	Not Accept

17.14

Delivery of and acceptance of correspondence between MPL and the bidder sent by prepaid registered post (by air mail if appropriate) in a correctly addressed envelope to either party's postal address or address for service of legal documents will be deemed to have been received and accepted after (2) two days from the date of postage to the South African Post Office Ltd.	Accept	Not Accept

17.15

Should the parties at any time after the award of the bid and prior to conclusion of the Contract fail to agree on any significant product price or service price adjustments, change in technical specification, change in service, etc. MPL shall be entitled on such failure to agree, to recall the letter of award and cancel the bid. Such cancellation shall mean that MPL reserves the right to award the same Proposal to next best Vendors on terms and conditions it deems fit.	Accept	Not Accept

17.16

In the case of a consortium or JV each of the authorized enterprise's members and/or partners of the different enterprises must co-sign this document.	Accept	Not Accept

17.17

COMMERCIAL AND LEGAL REQUIREMENTS		
1. Any amendment or change of any nature made to this RFP shall only be of force and effect if it is in writing, signed by MPL signatory and added to this RFP as an addendum.	Accept	Not Accept
Comment		
2. Failure or neglect by either party to (at any time) enforce any of the provisions of this Bid shall not, in any manner, be construed to be a waiver of any of that party's right in that regard and in terms of this Bid. Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Bid, or prejudice the right of that party to institute subsequent action.	Accept	Not Accept
Comment		
3. <u>Bidders who make use of sub-contractors.</u> The bid will however be awarded to the Bidder as a primary contractor who will be responsible for the management of the awarded Bid. No separate contract will be entered into between MPL and any such sub-contractors. Copies of the signed agreements between the relevant parties must be attached to the bid responses.	Accept	Not Accept
Comment		
4. All services supplied in accordance with this Bid must be certified to all legal requirements as per the South African Law.	Accept	Not Accept
Comment		
5. No interest shall be payable on accounts due to the successful Bid in an event of a dispute arising on any stipulation in the contract.	Accept	Not Accept
Comment		

17.18

<p>Evaluation of Vendor Proposals will be performed by an Evaluation Panel established by MPL.</p> <p>Proposals will be evaluated on the basis of conformance to the required specifications as outlined in the RFP and the evaluation criteria as set out in the bid conditions.</p>	Accept	Not Accept
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17.19

FRONTING		
<p>The MPL supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background the MPL condemn any form of fronting. Intentional misrepresentation by bidder (s) may constitute fraudulent practices.</p>	Accept	Not Accept
<p>Comment</p>		
<p>The MPL, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry / investigation, the onus will be on the bidder to prove that fronting does not exist. Failure to do so within a period of 5 days from date of notification shall invalidate the bid.”</p>	Accept	Not Accept
<p>Comment</p>		
<p>Bidder(s) are required to sign the attached Declaration Form: Consent by bidders to allow the MPL to report fronting practices to DTI is attached hereto.</p>	Accept	Not Accept
<p>Comment</p>		

17.20

SCREENING AND VETTING		
Acceptance of this bid is subject to the condition that the contracted service provider and all of its associates including personnel providing the service may be required to be cleared by the appropriate authorities to the level of CONFIDENTIAL/SECRET/TOP SECRET . If the principle contractor appoints a subcontractor with consent from the MPL, the same provisions and measures shall apply to the subcontractor.	Accept	Not Accept
Comment		

18. SCREENING CRITERIA

All proposals that do not meet the following screening criteria will not be considered.

1. Valid tax clearance certificate
2. Original certified copy of the business registration certificate (CK, etc.)
3. Fully completed and signed tender documents
4. Full compliance with requirements in section 16, above.

19. EVALUATION CRITERIA

19.1 90/10 preferential point system will be applicable.

19.2 Functionality

All proposals will be evaluated on the criteria provided in the table below.

19.2.1 Technical Evaluation

Technical Evaluation Criteria		Max Score
1	Company Track Record, Experience and Accessibility	60
	Bidder has been operating in the Disaster Recovery (DR) industry for at least 3 years (3 points for every year above 3 up to a maximum of 15 points)	15
	References letters from current and previous clients for DR services (3 points for every reference letter up to a maximum of 15 points)	15
	If any of the reference letters is from an organ of state on SAP system, an additional 5 points will be allocated for that reference letter up to a maximum of 10 points	10
	DR site accessibility: Available 24 hours a day (5 points) Available on weekends and public holidays (5 points)	10
	DR site amenities and accessibility:	10

Technical Evaluation Criteria		Max Score
	Facilities for people with disabilities are provided for according to National Building Regulations, SANS 0400 (10 points)	
2	Account Manager Experience	40
	Minimum 3 years' experience in managing business continuity accounts (2 points for every year above 3 up to a maximum of 10 points)	20
	Certification in business continuity management (2 points for every certificate up to a maximum of 10 points)	20
Maximum Total		100

NOTE: Bidders who obtain a score less than seventy (70) points will be disqualified from further evaluation.

19.2.2 Financial Evaluation

Financial Evaluation Criteria		Max Score
1	All inclusive price of delivery of the turnkey solution	90
Maximum Total		90

21. ENQUIRIES

All technical enquiries should be directed to Mr Thabo Pienaar at 013 7661406/1332 during office hours. Non-technical (submission) queries should be directed to Mr Mabula at 013 766 1340 or Ms Nkosi 013 7661416 during office hours.

INVITATION TO BID

**YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE MPUMALANGA
LEGISLATURE**

**BID NUMBER: RFB 2012/MPL/ICT01
CLOSING TIME: 16H00.**

CLOSING DATE: 16 JANUARY 2013

Establishment of a disaster recovery site

The successful bidder will be required to fill in and sign a written Contract Form (MBD 7).

BID DOCUMENTS MAY BE POSTED TO: Mpumalanga Provincial Legislature

Private Bag X 11289

NELSPRUIT

1200

OR

DEPOSITED IN THE BID BOX SITUATED AT

Mpumalanga Provincial Legislature

Riverside Government Complex

Government Boulevard

Building Number 1,

Upper Ground Entrance

Nelspruit

Bidders should ensure that bids are delivered timely to the correct address. If the bid is late, it will not be accepted for consideration.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THE FOLLOWING PARTICULARS MUST BE FURNISHED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER

.....

POSTAL ADDRESS

.....

STREET ADDRESS

.....

TELEPHONE NUMBER CODE.....NUMBER.....

CELLPHONE NUMBER

FACSIMILE NUMBER CODENUMBER.....

VAT REGISTRATION NUMBER.....

HAS AN ORIGINAL TAX CLEARANCE CERTIFICATE BEEN ATTACHED (MBD 2)?

YES/NO

SIGNATURE OF BIDDER

DATE.....

CAPACITY UNDER WHICH THIS BID IS SIGNED.....

TOTAL BID PRICE.....TOTAL NUMBER OF

ITEMS OFFERED.....

TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

1. In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
3. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
4. In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
5. Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za.
6. Applications for the Tax Clearance Certificates may also be made via e-Filing. In order to use this provision, taxpayers will need to register with SARS as e-Filers through the website www.sars.gov.za.

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2011**

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, 2011.

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 R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed R1 000 000 (all applicable taxes included) and therefore the 90/10 system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

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

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

	POINTS
1.3.1.1 PRICE	90
1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION	10
Total points for Price and B-BBEE must not exceed	100

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

2. DEFINITIONS

2.1 **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad -Based Black Economic Empowerment Act;

2.3 **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

- 2.4 **“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 services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 **“consortium or joint venture”** 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;
- 2.8 **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **“EME”** means any enterprise with annual total revenue of R5 million or less,
- 2.10 **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

- 2.12 “**non-firm prices**” means all prices other than “firm” prices;
- 2.13 “**person**” includes a juristic person;
- 2.14 “**rand value**” means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 “**sub-contract**” means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 “**total revenue**” bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 “**trust**” means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 “**trustee**” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the

successful bid must be the one scoring the highest number of preference points for B-BBEE.

- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

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

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

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_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

P_{\min} = Comparative price of lowest acceptable bid

5. Points awarded for B-BBEE Status Level of Contribution

- 5.1 In terms of Regulation 5 (2) and 6 (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	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- 5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.
- 5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE

status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

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

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1

- 7.1 B-BBEE Status Level of Contribution =
(Maximum of 10 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).

8 SUB-CONTRACTING

- 8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

- 8.1.1 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 subcontractor?.....
- (iv) whether the sub-contractor is an EME? YES / NO (delete which is not applicable)

9 DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm :

9.2 VAT registration number :

9.3 Company registration number :

9.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

9.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

9.7 Total number of years the company/firm has been in business?

9.8 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-BBEE status level of contribution indicated in paragraph 7 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 paragraph 7, 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 contribution 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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.

<p>..... SIGNATURE(S) OF BIDDER(S)</p> <p>DATE:</p> <p>ADDRESS:</p> <p>.....</p> <p>.....</p>
--

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state*, 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 and/or take an oath declaring his/her interest, 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, shareholder etc):

2.4 Company Registration Number:

2.5 Tax Reference Number:.....

2.6 VAT Registration Number:.....

* "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.

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

2.7.1 If so, furnish the following particulars:

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

Name of state institution to which the person is connected:

.....

Position occupied in the state institution:

Any other particulars:

.....

.....

.....

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

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?

2.9.1 If so, furnish particulars.

.....

.....

.....
2.10 Are you, or any person connected with the bidder, **YES / NO**
aware of any relationship (family, friend, other) between
the bidder and any person employed by the state who
may be involved with the evaluation and or adjudication of this bid?

2.10.1 If so, furnish particulars.

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

2.11 Do you or any of the directors /shareholders/ members of **YES / NO**
the company have any interest in any other related companies
whether or not they are bidding for this contract?

2.11.1 If so, furnish particulars:

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

DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2.1 TO
2.11.1 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY 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

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 fulfilment 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

SBD 7.2

CONTRACT FORM - RENDERING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. 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).
2. An official order indicating service delivery instructions is forthcoming.
3. 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)

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

SIGNED ATON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1

2

DATE:

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

Item	Question	Yes	No
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 <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

SBD 8

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

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

GENERAL CONDITIONS OF CONTRACT

The purpose of this document is to:

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

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 anything of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its Legislature 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.

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 record 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 purchase 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 Legislature or an organization acting on behalf of the Legislature.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

8.7 Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier

further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

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

9. Packing

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental Services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC: 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 fulfilment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier, provided there is no disputes.
- 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, 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 any organ of state.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

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

22. Penalties

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

23. Termination for default

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

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

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms 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 Legislature 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 will, at the discretion of the Accounting Officer, 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 actively associated.
- 23.6 If a restriction is imposed, the purchaser may, 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 State.

- 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 Legislature and/or The National Treasury are empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the

public. The Register can be perused on the National Treasury website.

24. Anti-dumping

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

25. Force Majeure

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

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

26. Termination for insolvency

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

27. Settlement of

Disputes 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract,

the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

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

28. Limitation of Liability

28.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6;

- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

29. Governing Language

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that 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 collected in person or 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 Legislature 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 Legislature of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.