



# GAUTENG PROVINCE

HUMAN SETTLEMENTS  
REPUBLIC OF SOUTH AFRICA

<b>DEPARTMENT</b>	DEPARTMENT OF HUMAN SETTLEMENTS
<b>TENDER DESCRIPTION</b>	APPOINTMENT OF A PANEL OF ATTORNEYS TO PROVIDE AND RENDER LEGAL SERVICES TO GAUTENG PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENTS FOR A PERIOD OF THIRTY-SIX (36) MONTHS .
<b>TENDER NUMBER</b>	HLA 4/2/4-2022/02

<b>BRIEFING SESSSION</b>	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	<b>SESSION COMPULSORY</b>	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
<b>BRIEFING</b>	<b>VENUE</b>	MICROSOFT TEAMS		<b>TIME</b>	11H00
	<b>DATE</b>	18 <sup>TH</sup> NOVEMBER 2022			

<b>CLOSING DATE</b>	06 DECEMBER 2022
<b>CLOSING TIME</b>	11H00
<b>VALIDITY PERIOD</b>	120 DAYS

**Notes:**

- All bids / tenders must be deposited in the Tender Box at the advertised address:
- Bids / tenders must be deposited in the Tender Box on or before the closing date and time.
- Bids / tenders submitted by fax will not be accepted.
- This bid is subject to the preferential procurement policy framework act and the preferential procurement regulations 2017, the General Conditions of Contract (GCC) 2010 and, if applicable, any other special conditions of contract.
- **ALL REQUIRED INFORMATION MUST BE COMPLETED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)**



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Tender Number	Service	Briefing Session	Closing Date
HLA 4/2/4-2022/02	Appointment of a panel of attorneys to provide and render legal services to Gauteng Provincial Department of Human Settlements for a period of thirty-six (36) months.	<p>There will be a Non-Compulsory Briefing Session on Microsoft Teams on the <b>18<sup>th</sup> November 2022 @ 11h00.</b></p> <p>For all bidders who are interested to attend the briefing session kindly note that the link is in the e-tender portal. Alternatively, you can request a link by sending your request to <a href="mailto:Nkele.Maleka@gauteng.gov.za">Nkele.Maleka@gauteng.gov.za</a> and <a href="mailto:Cyril.Chauke@gauteng.gov.za">Cyril.Chauke@gauteng.gov.za</a> on or before 16 November 2022.</p>	<p><b>Date: 06 December 2022</b>  <b>Venue: Department of Human Settlements</b>  <b>11 Diagonal Street</b>  <b>6<sup>th</sup> Floor Reception</b>  <b>Newtown,</b>  <b>Johannesburg</b>  <b>2107</b></p>

B-BBEE points to be used for implementation of the panel

B-BBEE Status Level Contributor	80/20	90/10
1	20	10
2	18	9
3	14	6
4	12	5
5	8	4
6	6	3
7	4	2
8	2	1
Non-compliant	0	0

The Department adheres to all relevant Acts , including BEE Act , No 53 Of 2003 , PPPFA No 2 of 2000 and its Regulations.

Documents can only be downloaded from Treasury website from: Website <http://e-tenders.gauteng.gov.za/Pages/Home.aspx> 2. E-mail [tender.admin@gauteng.gov.za](mailto:tender.admin@gauteng.gov.za) 3.Human Settlements website [www.gauteng.gov.za](http://www.gauteng.gov.za) >>> **Human Settlements >>> Announcement >>> Human Settlements Advertised Tenders** from the **11 November 2022** . Completed tender documents clearly marked with the relevant reference number and placed in a sealed envelope must be deposited in the tender box on the 6<sup>th</sup> Floor Reception Department of Human Settlements ,11 Diagonal Street, Newtown, Johannesburg, 2107 no later than 11:00 on or before the relevant stipulated date above.

All enquiries related to the content of the Terms of Reference may be directed in writing for attention to [Nkele.Maleka@gauteng.gov.za](mailto:Nkele.Maleka@gauteng.gov.za), [Lebina.Shabe@gauteng.gov.za](mailto:Lebina.Shabe@gauteng.gov.za) and [Vusi.Sifile@gauteng.gov.za](mailto:Vusi.Sifile@gauteng.gov.za). Any other enquiry related to bid process may be directed in writing for attention to Ms Suzy Mokobane and Mr Cyril Chauke at [Suzy.Mokobane@gauteng.gov.za](mailto:Suzy.Mokobane@gauteng.gov.za) and [Cyril.Chauke@gauteng.gov.za](mailto:Cyril.Chauke@gauteng.gov.za) . The bid number should be mentioned in all correspondences. Telephonic requests for clarification will not be accepted.



## **GAUTENG PROVINCE**

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**All the bids advertised will remain valid for 120 days from the official bid closing date. Only companies who have submitted all the information required will be considered for the evaluation process. Please note that should you be not contacted 120 days after the closing date, consider your bid unsuccessful. All shortlisted bidders may be subjected to undergo a security screening in terms of Section 2 (1)(b) of the National Security Intelligence Act 7 of 2002 as amended.**



## GAUTENG PROVINCE

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REPUBLIC OF SOUTH AFRICA

### IT IS A CONDITION OF BIDDING THAT –

- 1.1 The taxes of the successful bidder **must** be in order, or that satisfactory arrangements have been made with the South African Revenue Service to meet his / her tax obligations.
- 1.2 The South African Revenue Service (SARS) from the 18 April 2016 has introduced an enhanced Tax Compliance Status System, whereby taxpayers will obtain their Tax Compliance Status (TCS) PIN instead of original Tax Clearance Certificate hard copies.
- 1.3 Bidders are required to submit their unique Personal Identification Number (PIN) issued by SARS to enable the organ of state to view the taxpayer's profile and Tax Status.
- 1.4 Application for Tax Compliance Status (TCS) or PIN may also be made via e-filing. In order to use this provision, taxpayers will need to register with SARS as e-filers through the website [www.sars.gov.za](http://www.sars.gov.za).
- 1.5 Please note that not all Government Institutions will be able to utilise the Tax Compliance Status PIN at this stage and in such instances, bidders must supply printed Tax Clearance Certificate**
- 1.6 In bids where Consortia / Joint Ventures / Sub-contractors are involved each party must submit a separate Tax Compliance Status (TCS) / PIN / CSD Number.
- 1.7 Where no TCS is available but the bidder is registered on the Central Supplier Database (CSD), a CSD Number must be provided.



# GAUTENG PROVINCE

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REPUBLIC OF SOUTH AFRICA

## REQUIREMENTS FOR REGISTERED BIDDERS ON CENTRAL SUPPLIER DATABASE PLEASE NOTE:

SUPPLIERS ARE REQUIRED TO PROVIDE THEIR REGISTERED CENTRAL SUPPLIER DATABASE (CSD) NUMBER \_\_\_\_\_

Registered Suppliers to ensure that all details completed below are CURRENT

MANDATORY SUPPLIER DETAILS	
CSD Supplier number	
Company name (Legal & Trade as)	
Company registration No	
Tax Number	
VAT number (If applicable)	
Street Address	Postal Address
CONTACT DETAILS	
Contact Person	
e-mail address	
Telephone Number	
Cell Number	

*NB: Bidders are requested to include their CSD reports in their submission of the tender documents.*

**I HEREBY CERTIFY THAT THIS INFORMATION IS CORRECT**

Name(s): \_\_\_\_\_

Signature(s): \_\_\_\_\_

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



## **GAUTENG PROVINCE**

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REPUBLIC OF SOUTH AFRICA

### **Submission of Financial Statements**

Where applicable the latest financial statements for the last two years are required (except if it is a new or a dormant entity)

- a) Financial statements must be signed by the auditor (in the case of companies) or the accounting officer (in the case of close corporations) the owner (in case of sole proprietors). Signatures must be on the accounting officer's / auditors report on the auditor's /accounting officer's letterhead.
- b) Financial statements must be signed by the member/s (in the case of close corporations) or by the director/s (in the case of companies.)
- c) In bids where consortia/joint ventures/sub-contractors and partnerships are involved, all bidders must submit their financial statements.
- d) If it is a new or dormant entity an opening set of financial statements must be submitted with the tender document. A letter from the auditor (in the case of companies) or the accounting officer (in the case of close corporations) stating that the entity has not yet traded must be attached.
- e) In cases where an entity has operated for a period less than a year the Management Accounts Report for the period in operation must be submitted signed accordingly as stated in paragraph (a) and (b) of this document.
- f) In cases where the entity has operated for a period more than a year but less than three years, then the financial statement for the two years of operation signed accordingly as per paragraph (a) and (b) of this document must be submitted.

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DEPARTMENT OF HUMAN SETTLEMENTS FOR THE APPOINTMENT OF A PANEL OF ATTORNEYS TO PROVIDE AND RENDER LEGAL SERVICES TO GAUTENG PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENTS FOR A PERIOD OF THIRTY-SIX (36) MONTHS.</b>					
BID NUMBER:	HLA 4/2/4-2022/02	CLOSING DATE: 6 DECEMBER 2022		CLOSING TIME:	11:00
DESCRIPTION	APPOINTMENT OF A PANEL OF ATTORNEYS TO PROVIDE AND RENDER LEGAL SERVICES TO GAUTENG PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENTS FOR A PERIOD OF THIRTY-SIX (36) MONTHS.				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
<b>Department of Human Settlements</b>					
<b>11 Diagonal Street</b>					
<b>6<sup>th</sup> Floor Reception</b>					
<b>Newtown, Johannesburg, 2107</b>					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	Nkele Maleka		CONTACT PERSON	Vusi Sifile	
TELEPHONE NUMBER			TELEPHONE NUMBER		
E-MAIL ADDRESS	<a href="mailto:Nkele.Maleka@gauteng.gov.za">Nkele.Maleka@gauteng.gov.za</a>		E-MAIL ADDRESS	<a href="mailto:Vusi.Sifile@gauteng.gov.za">Vusi.Sifile@gauteng.gov.za</a>	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.</b>	



**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION:</b>
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</b></p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p> <p>1.4. <b>THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</b></p>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p> <p>2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."</p>

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

(Proof of authority must be submitted e.g. company resolution)

DATE:

.....

**BIDDER'S DISCLOSURE**

**1. PURPOSE OF THE FORM**

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

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

**2. Bidder's declaration**

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

**YES/NO**

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

Full Name	Identity Number	Name of State institution

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

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

2.2.1 If so, furnish particulars:

.....  
.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

**YES/NO**

2.3.1 If so, furnish particulars:

.....  
.....

**3 DECLARATION**

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious

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

will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....  
Signature Date

.....  
Position Name of bidder

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL  
PROCUREMENT REGULATIONS 2017**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

**1. GENERAL CONDITIONS**

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
  - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

- 1.2
- a) The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or
  - b) The 80/20 preference point system will be applicable to this tender

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

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

	<b>POINTS</b>
<b>PRICE</b>	
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

- 1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“price”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
  - 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

## 3. POINTS AWARDED FOR PRICE

### 3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

**80/20 or 90/10**

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

Where

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

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

4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

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

**5. BID DECLARATION**

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

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

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

**7. SUB-CONTRACTING**

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

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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7.1.1 If yes, indicate:

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

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
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**SBD 6.1**

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

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

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

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

**8.4 TYPE OF COMPANY/ FIRM**

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

[Tick applicable box]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

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

**8.6 COMPANY CLASSIFICATION**

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

[Tick applicable box]

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status



**SBD 6.1**

level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

.....

SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....



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**TERMS OF REFERENCE**

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**FOR THE APPOINTMENT OF THE PANEL OF ATTORNEYS BY THE GAUTENG DEPARTMENT OF HUMAN SETTLEMENTS FOR A PERIOD OF THIRTY-SIX (36) MONTHS**

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**1. PROJECT BACKGROUND AND GOAL**

**Purpose**

The purpose of this project is to appoint panel of attorneys to provide and render legal services to Gauteng Provincial Department of Human Settlements for a period thirty-six (36) months.

**Background**

The Gauteng Department of Human Settlements (hereinafter “GDHS”) seeks to appoint panel of attorneys to provide and render legal services to the GDHS for a period of 36 months.

The GDHS is from time to time required to utilize legal advice or service on complex legal matters and the Department has thus decided to appoint a legal service provider to efficiently meet that need.

This requires the alignment of specific needs of the GDHS to the skills, competencies, availability and general capacity of a legal service provider. Due to the unknown nature of the complexity, duration, seniority as well as the number of resources that would be required in the period, the service provider must provide the Department with the proposed hourly rates that are in line with the salary scale that is published by the Department of Public Service and Administration as rates for consultants.

**Goal of the Project**

The goal of the project is to appoint a skilled professional external legal service providers that can be utilised by GDHS on as and when basis when the need for legal services arises for the purposes of obtaining specialized legal advice. The tendered external legal services must be duly admitted practicing Attorneys and qualified professionals in the category of their specialized services.

The external legal service provider will bridge the resource gap within GDHS whilst improving efficiency and access to technical skills that are currently not readily available within GDHS institutions.



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### **2. SCOPE OF WORK**

Work will be assigned by the Department, on an as and when basis, when specific expertise is required. The assignment will be captured in an engagement letter to the service provider. The appointed service provider must be able to commence work as specified in the engagement letter with Department. Generally, timeframes cannot be pre-determined; therefore, the duration of any given assignment will depend on the operational urgency of the Department's needs as well as the nature and scope of the work to be done. Failing to comply with this requirement, the suspensive condition indicated in the Terms of Reference shall apply and the Department reserves the right to terminate the appointment of such Service Provider. The legal service provider is required to use legal experts that are sufficiently skilled in handling the specific legal matters and preferably experienced in dealing with the public sector.

**The following are the specific areas of expertise that are required:**



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No.	Area of Work	Scope of Work	Required skills
1.	Housing Law and related legislation	<ul style="list-style-type: none"> <li>Assist the Department with legal opinion and advice on housing related matters.</li> <li>Dispose instructions related to the various Housing Programmes within the Department</li> </ul>	<ul style="list-style-type: none"> <li>5 to 10 years' experience in housing legislation, different housing programmes and other frameworks relating to housing matters.</li> </ul>
2.	Property Law, Conveyancing and notarial Law	<ul style="list-style-type: none"> <li>Provide legal opinions on property law and conveyancing notarial practice.</li> <li>Facilitate the issuance of deeds of transfer and similar documents</li> </ul>	<ul style="list-style-type: none"> <li>5 to 10 years of experience in Property law, Conveyancing and notarial practice matters</li> </ul>
3.	Construction Law	<ul style="list-style-type: none"> <li>Provide legal advise on construction contracts and various aspects relating to construction</li> </ul>	<ul style="list-style-type: none"> <li>5 to 10 years' experience in construction law</li> </ul>
4.	Constitutional, International Law & Administrative Law, including the Public Administration Management Act 11 of 2014 and the Protection of Personal Information Act 4 of 2013;	<ul style="list-style-type: none"> <li>Provide legal opinions in respect of constitutional, administrative and international law matters.</li> <li>Ensure technical quality, adherence to best practice and consistency with the constitution and Acts of Parliament</li> <li>Provide advice on legal interpretation and legal implications of existing or proposed regulations.</li> </ul>	<ul style="list-style-type: none"> <li>Experience in providing legal opinions in constitutional, administrative and international law matters.</li> <li>5 to 10 years of experience in drafting, vetting and interpretation of international, administrative and constitutional law.</li> </ul>
5.	Labour Law including, without limitation, the Public Service Act, Proclamation 103 of 1994, the Public Service regulations, 2001 and the entire regulatory framework applicable to public sector labour law;	<ul style="list-style-type: none"> <li>Provide legal opinion and advice on labour, employment benefits and employment law related matters.</li> <li>Assist with/handling disciplinary hearings, arbitrations, and other labour dispute resolutions.</li> <li>Provide representation on Labour matters.</li> </ul>	<ul style="list-style-type: none"> <li>5 to 10 years of experience in labour and employment law litigation</li> <li>Understanding of the regulatory framework governing public service employment</li> <li>Understanding of labour law and employment law jurisprudence for purposes of providing legal opinions</li> </ul>



## **GAUTENG PROVINCE**

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No.	Area of Work	Scope of Work	Required skills
			<ul style="list-style-type: none"> <li>• Knowledge of bargaining council and any dispute resolution forum.</li> </ul>
6.	Civil Law	<ul style="list-style-type: none"> <li>• Conduct litigation on behalf of the Gauteng Provincial Government.</li> <li>• Ensure effective and efficient litigation process is followed</li> <li>• Provide custody of all pleadings and documents in litigation matters</li> <li>• Provide oral and written legal advice throughout the litigation process</li> <li>• Avoid prescriptions, barring and default judgements</li> </ul>	<ul style="list-style-type: none"> <li>• 5 to 10 years of experience in providing opinions in legal matters</li> <li>• Knowledge of litigation processes and procedures in various forums and Court</li> <li>• Comprehensive and coherent understanding of all laws and regulations</li> </ul>
7.	Corporate Governance and Compliance	<ul style="list-style-type: none"> <li>• Provide advice on governance related issues</li> <li>• Provide advice on regulatory and compliance related issues</li> </ul>	<ul style="list-style-type: none"> <li>• 5 to 10 years of experience in handling compliance matters within government</li> <li>• Understanding of regulatory framework governing public and trading entities</li> </ul>
8.	Procurement Law including, without limitation, BBBEE, local content and economic development requirements and Law of contract	<ul style="list-style-type: none"> <li>• Provide advice on public procurement. Handle procurement litigation</li> <li>• Assist where necessary with public procurement processes</li> </ul>	<ul style="list-style-type: none"> <li>• 5 to 10 years of experience in public procurement matters, commercial law and law of contract</li> </ul>
9.	Corporate and Commercial Law	<ul style="list-style-type: none"> <li>• Provide advice on projects, transactions of corporate law nature;</li> <li>• Provide legal opinions of a corporate law nature;</li> <li>• Drafting, review and advise on commercial agreements</li> <li>• Advise on legal issues arising from asset, risk, forensic and debt management</li> </ul>	<ul style="list-style-type: none"> <li>• 5 to 10 years of experience in working with transactions of corporate law nature;</li> <li>• Excellent research and drafting skills for the purposes of preparing legal opinions of corporate law nature</li> <li>• Experience in providing advice and delivering on time in terms of outputs</li> </ul>



## **GAUTENG PROVINCE**

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<b>No.</b>	<b>Area of Work</b>	<b>Scope of Work</b>	<b>Required skills</b>
10.	Litigation	<ul style="list-style-type: none"><li>• Manage all phases of the litigation process from the investigation, pleadings and discovery through to the pre-trial, trial, settlement, and appeal processes.</li></ul>	<ul style="list-style-type: none"><li>• 5 to 10 years of experience in managing litigation process</li></ul>

### 3. EVALUATION METHODOLOGY

The evaluation of bids will be done in terms of the PFMA, the GDHS Supply Chain Policy (SCM Policy for Infrastructure Procurement and Delivery Management) and the Preferential Procurement Policy Framework Act 5 of 2000, read with the Preferential Procurement Regulations, 2017.

The first stage will be the evaluation of bids on **Pre-qualification for Preferential Procurement, and Administrative Compliance**. During these stages, bids that do not meet the Pre-qualification requirements will be disqualified and will not be considered for further evaluation on **Functionality**. Bids not meeting the minimum threshold of 80 points on **Functionality**, will not be considered to form part of the panel.

Bids will be evaluated on the stages listed below:

Stage 1A: Prequalification for preferential procurement

Stage 1B: Administrative compliance

Stage 1C: Functionality

#### 3.1 PREQUALIFICATION CRITERIA:

In line with the Preferential Procurement Regulations 2017, Reg 4(1) (a). Only bidders with a minimum B-BBEE status contributor level 8 and above (i.e. 1-8) will be considered for this pre-approved list of contractors.

**Based on the above bidders are required to submit the following documents together with their bids:**

- Valid B-BBEE Certificate.
- Tenderers who qualify as Exempted Micro Enterprises (EME) must submit a valid Sworn Affidavit signed by the EME representative and attested by a Commissioner of Oaths in line with the justices of the Peace and Commissioners of Oaths Act, 1963. Alternatively, the bidder must submit a valid B-BBEE Certificate for Exempted Micro Enterprises issued by the Companies & Intellectual Property Commission (CIPC) on behalf of the Department of Trade and Industry (This certificate serves as a sworn affidavit in terms of Code Series 000, Section 4.5 of the Amended codes 2013.)
- In the case of Qualifying Small Enterprises (QSE), if the bidding entity is more than 51% black-owned, then no B-BBEE Certificate is required as a valid Sworn Affidavit signed by the QSE representative and attested by a Commissioner of Oaths in line with the justices of the Peace and Commissioners of Oaths Act, 1963 will suffice. If the QSE is less than 51% black-owned, then the bidding entity will be required

to provide an original and valid B-BBEE Certificate (issued by an agency accredited by SANAS) or certified copies thereof.

- Only B-BBEE Status Level Verification Certificates issued by agencies accredited by SANAS.
- In case of a trust, consortium or joint venture, all bidders must submit a valid consolidated B-BBEE Status Level Verification Certificate issued by an agency accredited by SANAS or certified copies thereof, will be accepted. Note that a sworn affidavit as explained above is to be signed by a commissioner of oath on the same date as the deponent.

**NB: Bidders who do not comply with the pre-qualification criteria will be disqualified from further evaluation.**

### 3.2. ADMINISTRATIVE COMPLIANCE EVALUATION

Administrative compliance comprises of checking if bidders have complied with the requirements as listed below:

- 3.2.1 Complete, sign and submit all (Standard Bidding Documents) SBD documents, i.e.
- SBD 1- Invitation to bid;
  - SBD 4- Declaration of Interest;
  - SBD 6.1 – Preference Points Claim Form;
  - Tax compliance status pin
  - Proof of registration with Central Supplier Database
  - Company CIPC registration documents
  - Company profile
  - Bidders are required to submit the soft copy of their Bids in a PDF format on a USB or CD together with their manual documents (submissions via email will not be accepted).

### 3.3. FUNCTIONALITY CRITERIA

FUNCTIONALITY / QUALITY CRITERIA	POINTS
EXPERIENCE OF THE SERVICE PROVIDER AS AN ORGANISATION (TRACK RECORD)	50
<p><b>Important notes to the bidder:</b></p> <p>1. Appointment and corresponding Reference letters must be aligned to similar relevant works which have been successfully concluded in the last five years.</p>	



<p>2. These letters must be signed and dated by the company for which the work was done; it must clearly specify the date that the scope of work was conducted; and it must be on an official letterhead of the company for which the work was done.</p> <p>3. The maximum points a bidder can score in this section is 50 points and the lowest score a bidder can score in this section is zero points.</p> <p><b>Reference letters must be aligned to the following work aspects (categories in which bids are submitted):</b></p> <p>Category 1    Housing Law and related legislation;</p> <p>Category 2    Property Law, Conveyancing and notarial Law;</p> <p>Category 3    Construction Law;</p> <p>Category 4    Constitutional, International Law &amp; Administrative Law, including the Public Administration Management Act 11 of 2014 and the Protection of Personal Information Act 4 of 2013;</p> <p>Category 5    Labour Law including, without limitation, the Public Service Act, Proclamation 103 of 1994, the Public Service regulations, 2001 and the entire regulatory framework applicable to public sector labour law;</p> <p>Category 6    Civil Law;</p> <p>Category 7    Corporate Governance and Compliance;</p> <p>Category 8    Procurement Law including, without limitation, BBBEE, local content and economic development requirements and Law of contract;</p> <p>Category 9    Corporate and Commercial Law;</p> <p>Category 10    Litigation</p> <p><b>Note: Reference letters must be aligned to work done in respect of the relevant category listed above which has been concluded successfully in the last five years.</b></p> <ul style="list-style-type: none"> <li>- More than 7 Projects <b>(50 Points)</b></li> <li>- 6 – 7 projects <b>(30 points)</b></li> <li>- 1- 5 projects <b>(10 points)</b></li> <li>- Less than 1 project <b>(0 point)</b></li> </ul>	
<b>EXPERIENCE OF THE FIRM</b>	<b>40</b>
<ul style="list-style-type: none"> <li>- more than 10 years <b>(40 points)</b></li> <li>- 5 – 10 years <b>(20 Points)</b></li> <li>- Less than of 5 years <b>(0 Points)</b></li> </ul>	
<b>QUALITY OF THE PROPOSAL</b>	<b>10</b>
The bid documents will be evaluated on the following criteria:	

<ul style="list-style-type: none"> <li>• Company profile attached <b>(5 Points)</b></li> <li>• Documents indexed and bound <b>(5 Points)</b></li> </ul>	
<b>Threshold</b>	<b>80</b>
<b>Total Technical Evaluation</b>	<b>100</b>

#### **4. PROJECT DURATION**

The project duration will be for a period of 36 months.

#### **5. PAYMENT CONDITIONS**

Service providers will be paid within thirty (30) days after receipt of invoices. Payments will be processed per deliverable accomplished to the satisfaction of the Head of Department. On delivery and completion of each milestone an invoice can be submitted for work completed and POE provided. Payment to suppliers within 30 days of invoice receipt is a national priority. In support of this and towards compliance to section 38(1)(f) of the PFMA and Treasury Regulation 8.2.3 an executive decision was taken to make Electronic Invoice Submission (EIS) registration compulsory for all GPG suppliers whose tenders are successful. Assistance will be provided to the successful supplier(s) in this regard once the tender adjudication and warning processes have been concluded and a supplier or supplier(s) appointed.

**NB: COMPANY MUST BE REGISTERED ON CENTRAL SUPPLIER DATABASE (CSD)**

#### **6. FORMAT AND SUBMISSION OF BID**

All submissions must be 01 Hard copy and 01 USB. The proposals must be submitted in (One) 01 sealed envelope containing the proposal. The submissions must be clearly marked with the description and the RFP number and submitted at 11 Diagonal Street, 6<sup>th</sup> floor, Newtown, Johannesburg.

The bidder must ensure that they provide submissions that are packaged professionally, i.e. document indexed.

**NB: please note that submissions via email will not be accepted.**

## 7. ENQUIRIES

- All enquiries related to the content of the Terms of Reference may be directed in writing for attention to Mr Vusi Sifile @ [Vusi.Sifile@gauteng.gov.za](mailto:Vusi.Sifile@gauteng.gov.za) and Mr Lebina Shabe @ [Lebina.Shabe@gauteng.gov.za](mailto:Lebina.Shabe@gauteng.gov.za).
- Any other enquiry related to bid process may be directed in writing for attention to Ms Nkele Maleka @ [Nkele.Maleka@gauteng.gov.za](mailto:Nkele.Maleka@gauteng.gov.za) and Mr. Cyril Chauke @ [Cyril.Chauke@gauteng.gov.za](mailto:Cyril.Chauke@gauteng.gov.za). The bid number should be mentioned in all correspondences. Telephonic requests for clarification will not be accepted.

Each Request for Proposal (RFP) shall comprise of clearly indexed and bound returnable documents as follows:

1	Standard Bid documents
2	Copy of Companies and Intellectual Property Commission (CIPC) registration previously known as CK
3	Valid Tax SARS Issued Pin Code (Which will be verified)
4	Valid BBBEE certificate/ Sworn Affidavit in case of EME's and QSE's
5	Proof of company registration on Central Supplier Database (CSD)
6	Company Profile
7	JV/Consortium Agreement
8	Functionality supporting documents
9	Other Documents

## 8. BRIEFING SESSION

There will be a **non-compulsory briefing session** for this tender. Briefing session will be conducted through Microsoft teams. For all bidders who are interested to attend the briefing session kindly note that the link is in the e-tender portal. Alternatively, you can request a link by sending your request to [Nkele.Maleka@gauteng.gov.za](mailto:Nkele.Maleka@gauteng.gov.za) and [Cyril.Chauke@gauteng.gov.za](mailto:Cyril.Chauke@gauteng.gov.za) on or before 16 November 2022.

**Details of the briefing session are as follows:**

Briefing Session Date: 18<sup>th</sup> November 2022

## SPECIAL CONDITIONS OF CONTRACT

PROJECT NAME	PANEL OF ATTORNEYS AND LEGAL SERVICES
DESCRIPTION	APPOINTMENT OF A PANEL OF ATTORNEYS TO PROVIDE AND RENDER LEGAL SERVICES TO GAUTENG PROVINCIAL DEPARTMENT OF HUMAN SETTLEMENTS FOR A PERIOD OF THIRTY-SIX (36) MONTHS.
CLOSING DATE	06 DECEMBER 2022
CLOSING TIME	11H00
VALIDITY PERIOD	120 DAYS

### 1. EVALUATION

The evaluation of bids will be done in terms of the PFMA, the GDHS Supply Chain Policy Bid Evaluation Charter and the Preferential Procurement Policy Framework Act 5 of 2000, read with the Preferential Procurement Regulations, 2017.

The evaluation of bids will be done in two stages as follows: pre-qualifying criteria, Administrative Compliance and Functionality. During the functionality evaluation stages, bids that do not meet the minimum threshold for functionality will be disqualified and will not be considered for the establishment of a framework agreement.

After the establishment of the framework agreements and during the implementation of this contract both price and B-BBEE will be considered for the appointment of attorneys to provide and render legal services to Gauteng Provincial Department of Human Settlements for a period of thirty-six (36) months.

### 2. B-BBEE

Bidders are required to submit proof of B-BBEE Status Level of contributor. Proof includes valid B-BBEE Status Level Verification Certificates or a valid Sworn Affidavit together with their tenders to substantiate their B-BBEE rating claims.

#### Calculation of points for B-BBEE status level contributor

Points will be awarded to a bidder for attaining the B-BBEE status level of contributor in accordance with the table below:

Depending on the value of the project, either 80/20- or 90/10-point system would apply.

**Table 1**

B-BBEE Status Level of Contributor	Number of points (80/20 and 90/10 system)

1	20/10
2	18/9
3	14/6
4	12/5
5	8/4
6	6/3
7	4/2
8	2/1
Non-compliant contributor	0

### 3. CENTRAL SUPPLIER DATABASE REGISTRATION

Bidders must ensure that they are registered on the Central Supplier Database prior to the closing of this tender. For those companies that are not registered on the Central Supplier Database (CSD) please log onto [www.csd.gov.za](http://www.csd.gov.za) to register your company details.

### 4. COMPLETION OF SBD DOCUMENTS

Bidders are required to complete SBD 1, SBD 4 and SBD 6.1.

### ENQUIRIES

All enquiries related to the content of the Terms of Reference may be directed in writing for attention to Mr Vusi Sifile @ [Vusi.Sifile@gauteng.gov.za](mailto:Vusi.Sifile@gauteng.gov.za) and Mr Lebina Shabe @ [Lebina.Shabe@gauteng.gov.za](mailto:Lebina.Shabe@gauteng.gov.za).

Any other enquiry related to bid process may be directed in writing for attention to Ms Nkele Maleka @ [Nkele.Maleka@gauteng.gov.za](mailto:Nkele.Maleka@gauteng.gov.za) and Mr. Cyril Chauke @ [Cyril.Chauke@gauteng.gov.za](mailto:Cyril.Chauke@gauteng.gov.za). The bid number should be mentioned in all correspondences. Telephonic requests for clarification will not be accepted.

## **Annexure A**

### **GOVERNMENT PROCUREMENT**

#### **GENERAL CONDITIONS OF CONTRACT**

##### **NOTES**

The purpose of this document is to:

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

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

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

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1. Definitions
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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 government and encouraged to market its products internationally.
  - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 “Day” means calendar day.
  - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
  - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
  - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.



1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable.

Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 "GCC" means the General Conditions of Contract.

1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 "Project site," where applicable, means the place indicated in bidding documents.

1.21 "Purchaser" means the organization purchasing the goods.

1.22 "Republic" means the Republic of South Africa.

1.23 "SCC" means the Special Conditions of Contract.

- 1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.
- 2. Application**
- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.
- 3. General**
- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
- 4. Standards**
- 4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection.**
- 5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.
- 5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

**6. Patent rights**

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

**7. Performance security**

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

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

**8. Inspections,  
tests and  
analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## **9. Packing**

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

- 10. Delivery and documents**
- 10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2 Documents to be submitted by the supplier are specified in SCC.
- 11. Insurance**
- 11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 12. Transportation**
- 12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 13. Incidental services**
- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

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

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

**14. Spare parts**

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

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

**15. Warranty**

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

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

- 15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.
- 15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.



- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

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

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

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

## **22. Penalties**

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

23.1 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:

## **23. Termination for default**

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

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

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a

period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard

the intended penalty as not objected against and may impose it on the supplier.

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

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

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

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

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

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

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

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or

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

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security,

damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

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

**26. Termination for insolvency**

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

**27. Settlement of Disputes**

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

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

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and





- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

**29. Governing language**

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

**30. Applicable law**

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

**31. Notices**

- 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

**32. Taxes and duties**

- 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

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

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

General Conditions of Contract (revised February  
2008)