



the gpaa

Department:
Government Pensions Administration Agency
REPUBLIC OF SOUTH AFRICA

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Government Pensions Administration Agency (GPAA)

GPAA 07/2023

Request for proposals (RFP)

Appointment of a panel of legal service providers for the government pensions administration agency for a period of five years

Publication Date	28 September 2023
Closing Date and Time	20 October 2023 11h00 am
Compulsory Briefing Session / Site Inspection	N/A
Tender Submission Address	Tender Box 34 Hamilton Street Arcadia Pretoria
Tender Validity	120 Days
Contract Duration	5 Years / 60 Months
Enquiries	tenderenquiries@gpaa.gov.za

1. OBJECTIVES

The Government Pensions Administration Agency (GPAA) intends to appoint a non-binding¹ panel of legal firms through an open competitive bidding process to assist the GPAA with legal matters in various specialist legal categories.

The non-binding panel is to be established through a quality-based selection approach (QBS), which will require the evaluation of the legal professional service providers based on capability as per the included evaluation criteria, as the second phase. The criteria will be applied to each specialist legal field listed in the RFP.

2. INTRODUCTION

2.1. Functions of the GPAA

The Government Pensions Administration Agency (GPAA) is a government component established in terms of the Public Service Act, 1994 which reports to the Minister of Finance. It administers funds and schemes on behalf of the Government Employees Pension Fund (GEPF) and National Treasury. It administers the pension affairs of approximately 1, 85 million government employees and those of pensioners, spouses and dependants.

2.2. Background

The GPAA as part of its mandate may be required to attend to legal matters pertaining to its public service conduct, its employees, beneficiaries and pensioners stretching over the following specialist legal fields; Public & Administrative Law, Employment Law, Commercial Law, Pension Law and Employee Benefits. The applicable legislations are the Pension Funds Act 24 of 1966, Government Employees Pension Law, Proclamation 21 of 1996, Associated Institutions Pension Fund 41 OF 1963, Temporary Employees Pension Fund Act 75 of 1979, General Pensions Act 29 of 1979, Special Pensions Act 69 of 1996 and the Military Pensions Act 84 of 1976 and other laws applicable to the public service. Furthermore, there may be a need for advice on Regulatory Compliance and Corporate Governance.

3. Terms of Reference

3.1. Project Scope

The purpose of this RFP is to appoint a panel of legal service providers who shall be engaged on a need basis to provide advisory and litigation services to the GPAA.

Bidders will be appointed to the GPAA Panel of Attorneys with a maximum of two (2) bidders per category. Appointment will be on a rotation basis within the category the firm is appointed. Bidders are required to indicate which category they are bidding for by making a selection against the categories of choice listed below in the table provided on page 5. The GPAA will be looking to appoint legal firms/individuals in the following specialist categories:

¹ Non-bidding means that the GPAA may from time to time during the period of the panel source legal companies directly from the CSD for specific legal projects.

- A. **Public and Administrative law** – including but not limited to the following areas of legal advice and litigation where required:
- Constitution of the Republic of South Africa, 1996,
 - Promotion of Access to Information Act 2 of 2000,
 - Prevention of Organised Crime Act 121 of 1998,
 - Promotion of Administrative Justice Act 3 of 2000,
 - Public Finance Management Act and related legislation;
 - Public Sector procurement;
 - Constitutionality of legislation affecting the GPAA and GEPF.
- B. **Employment Law** - including but not limited to Employment Law in the State - *inter alia* the Public Service Act, Proclamation 103 of 1994 and regulations thereto, PSCBC Resolutions, the Labour Relations Act 66 of 1995 and conditions of service in the State and:
- Advise on disputes that arise out of the employment relationship.
 - Advise on changing labour law and its potential impact (eg LRA, BCEA, Employment Equity etc).
 - Draft and vet contracts of employment, policies and procedures.
 - Provide litigation services in all areas of labour law.
 - Provide labour relations training as and when requested.
 - Provide litigation services in all areas of labour law.
- C. **Commercial Law** – including but not limited to Contract drafting and vetting of contracts, providing advice on commercial contracts and all legal issues arising from commercial transactions including information technology where applicable, lease agreements in relation to property, advisory services on taxation and debt matters related to our core business operations and:
- Provide advice or opinion on contractual issues.
 - Provide litigation services in all areas of contract law.
 - Draft and vet contracts.
 - Provide advice on commercial law matters.
 - Provide litigation services on commercial law matters.
 - Advise on all legal matters arising from the development, procurement and use of information technology by the GPAA.
 - Provide litigation services in all areas of information technology law.
 - Draft and negotiate information technology agreements.
 - Provide advise on all property related matters.
 - Draft and negotiate lease agreements.
 - Provide litigation services in all property related matters.
- D. **Pension Law and Employee Benefits** - including but not limited to the Pension Funds Act 24 of 1956, the Government Employees Pension Law, Proclamation 21 of 1996, the Associated Institutions Pension Fund 41 of 1963, the Temporary Employees Pension Fund Act 75 of 1979, the General Pensions Act 29 of 1979, the Special Pensions Act 69 of 1996 and the Military Pensions Act 84 of 1976. Post-retirement medical aid scheme subsidy and injury on duty award administration for Government Employees, pension industry and pension law in general and:
- Advice on the GEP Law 1996 (as amended) and pension law environment.
 - Provide litigation services on all areas of the GEP Law, 1996 (as amended) and related applicable pension laws .
 - Advice on all other funds administered on behalf of National Treasury.

E. **Regulatory Compliance and Corporate Governance** – including but not limited to advice on all regulatory compliance related matters and corporate governance, development of compliance risk management plans and related monitoring and reporting requirements applicable to the GPAA, regulatory law in general and:

- Draft and comment on all national legislation affecting GEPF and GPAA.
- Advise on all aspects of corporate governance, compliance, and regulatory matters.

Category	Select by ticking
A - Public and Administrative law	
B - Employment Law	
C - Commercial Law	
D - Pension Law and Employee Benefits	
E - Regulatory Compliance and Corporate Governance	

It is intended to appoint, two (2) legal service providers (firms) in the aforementioned respective specialist legal categories based on the separate proposals for each specialist legal category the legal service provider (firm) had opted to bid for. The firms will be ranked according to the highest scoring firm on price and preference, after qualifying on functionality (minimum qualifying points of 70) within each of the legal fields listed. It is important to note that the total price on the pricing schedule (SBD 3.3) will be used for evaluation purposes only, since this will be a specific term contract on which the number of requests is unknown

However, as qualified legal firms, it would be expected that as registered attorneys or advocates, advice may be sourced on legal matters that may be considered outside of the specific appointed specialist legal field for the duration of the panel.

The GPAA reserves the right to appoint or reject firms or individuals in respect of any of the aforementioned specialist fields; A, B, C, D, E since the GPAA intends to appoint a specific firm in one category only. Eg In the event that a bidder responds to all five (5) specialist categories and are successful i.t.o. functionality points in more than one category, the firm will be appointed in one category only.

3.2 Project Timing

The appointed service providers will be required to start immediately following the signature of a Service Level Agreement and provide the services for a period of five(5) years subject to annual review of the service provider's performance.

3.3 Legal Panel Deliverables / Outcomes

The preferred service provider will be required, depending on the nature of the matter, to provide the relevant Legal Service in line with the appropriate legislative and statutory requirements applicable to the GPAA. The service provider must be knowledgeable in the specific specialised category and be able to provide proven legal solutions and/or opinions by identifying and applying applicable laws relevant to the facts.

With reference to par 3.1, the following should be noted:

Area of work	Scope of work	Skills Required
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A	Public and Administrative law	Including but not limited to: <ul style="list-style-type: none"> - Providing legal services and advice on Public administration matters as set out in section 3.1 A - Related litigation 	Including but not limited to: Knowledge and understanding of the Constitution, PAJA, PAIA, PFMA, POCA and relevant legislation relating to Public and Administrative Law.
B	Employment Law	Including but not limited to: <ul style="list-style-type: none"> - Advising the organisation on labour related matters such as issues of mutual interest, unfair labour practice and disciplinary proceedings, PSCBC requirements and related litigation as set out in section 3.1 B. 	Including but not limited to: Experience in providing services in the labour law in relation to disputes referred before an arbitrator or labour courts including public sector employment law environment.
C	Commercial & Corporate	Including but not limited to: <ul style="list-style-type: none"> - Advising, reviewing, drafting and negotiating contracts and Lease agreements, ICT commercial matters, taxation, debt matters and related litigation as set out in section 3.3 C. 	Including but not limited to: Experience in providing advice and legal services in corporate and commercial law
D	Pension Law & Employee Benefits	Including but not limited to: <ul style="list-style-type: none"> - Advising on different pension fund and employee benefit matters, conditions of service and benefits 	Including but not limited to: Knowledge and understanding of the GEP Law, Military Pension, Special Pension, Injury on duty, Post-retirement medical assistance and relevant legislation

		- Related litigation as set out in section 3.1 D	relating to pension law.
E	Corporate Governance & Regulatory Compliance	Including but not limited to: Advise and legal services on corporate governance, compliance risk management plans and related monitoring and reporting requirements applicable as set out in section 3.1 E	Including but not limited to: An understanding of all corporate governance principles, compliance practices, processes and requirements

3.4. Project Team Resources

The proposed legal service providers should display relevant knowledge, skills and experience within the specialist legal categories (A to E) bid for.

3.5. Reporting Requirements

The services by the legal service providers will be provided under the supervision of the GPAA's Chief Director Legal Services and/or his/her delegate(s).

4. Submission Instructions

4.1. General Instructions.

- 4.1.1. Bidders must pay attention to the Standard Conditions of Tender and all other aspect of the RFP document attached.
- 4.1.2. Bid documents must be in an envelope(s) or any form of packaging and correctly sealed.
- 4.1.3. The GPAA prefers that the pricing schedule (SBD 3.3) must be in a separate envelope and must be clearly marked. Bidders should submit a SBD 3.3 for each category they intend to respond to and mark the respective envelope accordingly.
- 4.1.4. Similarly for the legal panel response, the bidders should prepare a technical response for each category they intend to respond to and mark the respective envelope accordingly. Eg. *Technical proposal-Category 1 Public and Administrative Law*
- 4.1.5. **In addition**, on the envelope(s) or any form of packaging, the full names of the company, address, contact number, email address, contact person and bid closing date must be written correctly.
- 4.1.6. Bids must be hand delivered into the tender box stipulated on the tender cover page.

- 4.1.7. Bid documents which are not received and/or deposited in the tender box before or by 11h00 on the closing date will be marked as late and posted back to the bidder un-opened.
- 4.1.8. It is the responsibility of the bidders to ensure that proper instructions are given to courier companies where to submit their bid. The GPAA will not be liable for any misplaced bid documents.

5. Pricing

- 5.1. Pricing information will be required at the submission of the bid by closing date and time. Bidders are required to include in their responses, fee proposals in respect of the nature and their expected remuneration for the services to be provided by them. In this regard, bidders are to indicate specific billing arrangements, hourly rates per professional level. **Bidders are also required to confirm that in respect of litigious matters they will align their pricing with the relevant Forum Tariff scale that is applicable to the forum where the matter is heard.**
- 5.2. Bidders are expected to populate the attached SBD 3.3, sign and submit it in a separate envelope. Bidder should note that the total price on the pricing schedule (SBD 3.3) will be used for evaluation purposes only.
- 5.3. Only the financial proposal of acceptable bidders, that is, bidders who qualify in terms of the qualifying threshold for functionality (70 Points) will be further evaluated. The GPAA reserves the right to negotiate on price with the firms appointed to the panel for specified portions of the pricing schedule, whilst some portions would remain firm for the duration of the established panel. The GPAA also reserves the right to negotiate on price prior to the finalising of the establishment of the panel.
- 5.4. No other form of pricing template will be accepted. Failure to comply will result in the disqualification of the bid.
- 5.5. An incomplete pricing schedule (SBD 3.3) will also result in a disqualification.

6. Evaluation Criteria

6.1. Overall Evaluation Process

This bid will follow a four-phase evaluation process.

- Phase 1 – Mandatory Requirements
- Phase 2 – Functionality Evaluation criteria (mandatory and rated criteria)
- Phase 3 – Administrative Compliance (refer to paragraph 6.4)
- Phase 4 – Price / Preference Evaluation

Should a bidder fail any of the preceding evaluation phases, they will be disqualified and not be considered further in the next evaluation phases.

6.2. Mandatory Requirements

The bidder must ensure that they comply with the following:

- Submit their response on or before the closing date and time in the tender box, specified on the cover page;
- Comply with the provisions in the standard conditions of tender and this RFP document.

- Bidders must be registered on the Central Supplier Database (CSD) and the bidder or any of its directors must not be restricted from doing business with the state;
- Submit the pricing schedule (SBD 3.3) fully completed; and
- Submit the functional/technical proposal, supporting their bid.

6.3. Functionality/Technical Evaluation

The functional / technical evaluation is sub-divided into:

- Mandatory Functional Criteria; and
- Rated Functional Criteria.

6.3.1. Mandatory Functional Criteria

Bidders must meet ALL of the following criteria to be considered for further evaluation. Should a bidder fail to meet one or more of the criteria below, the bidder will be disqualified and not be considered for further phases of evaluation.

Evaluation Criteria	Comply	Does not Comply	X-Ref to Proposal (** Bidder must complete this column)
Original Certified proof of Registration with Legal Practice Council (LCP) or Law Society. The firm/directors must be registered with the Legal Practice Council. Note: Bidders may be required to submit a valid letter of good standing issued by the LCP prior to an instruction being issued.			
Fidelity Fund Certificate			
Bidder must submit at least three (3) reference letters from previous clients (current or within the last three (3) years) where they have provided legal services in respect of the relevant specialised category the bidder wishes to bid for. The letters must be signed and printed on the clients' letterhead.			

Bidders should provide evidence for the aforementioned claims made. Bidders are requested to reference in column 3 the evidence as included in the proposal.

6.3.2. Rated Criteria

Criteria	Max Points
Company Experience in specialised category the bidder is bidding for: Less than 2 years – 0 Points	16 Points

Criteria	Max Points
<p>Two years up to 3 years – 10 Points (provide evidence of at least 4 cases/matters handled by the company in respect of the relevant specialised category)</p> <p>Over 3 years, but less than 5 years – 12 Points (provide evidence of at least 8 cases/matters handled by the company in respect of the relevant specialised category)</p> <p>5 years up to 10 years – 14 Points (provide evidence of at least 12 cases/matters in respect of the relevant specialised category)</p> <p>More than 10 years – 16 Points (provide evidence of at least 16 cases/matters in respect of the relevant specialised category)</p> <p>To claim points for number of years' experience the bidder must list the services they provided for different clients and indicate the period (years) that these services were undertaken as well as provide evidence of the number of cases/matters in respect of the relevant specialised category.</p>	
<p>Corporate career profiles of directors/partners/operational level professionals of legal service provider including Experience in relevant field</p> <p>Less than two (2) years - 10 Points</p> <p>Two (2) years up to four (4) years – 30 Points</p> <p>Over four (4) years up to six (6) years - 36 Points</p> <p>Over six (6) years up to eight (8) years – 42 Points</p> <p>Over eight (8) years – 44 Points</p> <p>NOTE: Points for experience will be allocated for years of experience in specialised category. Provide CV's to demonstrate years of experience in specialised category. Should the bidder not provide a CV's clearly indicating experience in the relevant field, the bidder may score zero points for experience.</p>	44 Points
<p>Methodology-a clear description of dealing with the specialised category or categories which demonstrates ability to deliver on instructions within applicable time frames and budget, knowledge of the public service regulatory environment, ability to offer legal solutions/services in a professional, timely and cost effective manner and commitment to skills transfer.</p> <p>No methodology – 0 Points</p> <p>Methodology with activities – 16 Points</p> <p>Methodology with activities and timelines for deliverables – 24 Points</p> <p>Methodology with activities; with timelines for deliverables linked to the activities and resources – 32 Points</p> <p>Methodology with activities with timelines and deliverables linked to the activities. Methodology also indicate responsibilities of key legal service provider resources, existing capacity and how resources will be utilized. – 40 Points</p>	40 Points
Total Points	100

N.B.: The minimum qualifying score for functionality is **70 points**. A bidder who fails to meet the minimum qualifying score will be disqualified and not be considered for the subsequent phases of evaluation.

6.4. Administrative Compliance Evaluation

During the administrative evaluation phase, bidders will be evaluated to verify the following:

- Tax Compliance;
- SBD1 and SBD4 must be completed in full.

Note: Bidders who do not submit the requested documents, will be given a maximum of 2 working/business days to submit, Failure will render the bid response/submission as unacceptable, and therefore be disqualified.

Bidders who are not tax compliant will be afforded seven working days to correct non-compliance in the CSD, failure will render the bid unacceptable, and be disqualified. Bidders must submit proof of tax compliance within the seven-day period.

6.5. Price and Preference Evaluation

Only acceptable bidders will be evaluated on price and preference as per the Preferential Procurement Regulations, 2022 (PPR2022) and the GPAA Preferential Procurement Policy.

The **80/20** Preference System will be used for this tender, where a maximum of 80 points are allocated to price and a maximum of 20 points allocated for specific goals as per the PPR2022.

The relevant formula for scoring price points and the methodology for scoring preference points (specific goals) are documented in the SBD6.1. Bidders must ensure that they complete the SBD 6.1 to claim points for specific goals. Bidders that do not submit the correctly completed SBD 6.1 with the original bid submission will not score points for specific goals.

The GPAA may conduct a due diligence exercise to verify that the bidder has the required capability and capacity to do work and to verify the claims made by a bidder in the bid responses. The GPAA may also conduct a financial risk assessment to ascertain that the bidder has the required financial resources to perform and complete the work required.

As per section 2(1)(f) of the Preferential Procurement Policy Framework Act, 2001, the GPAA may award the bid to a bidder that did not score the highest total points (price points plus points for specific goals), should objective criteria justify the award to another bidder.

Annexure A

(GPAA)

SCM

Standard Bid Documents

SBD1

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	GPAA 07/2023	CLOSING DATE:	20 October 2023	CLOSING TIME:	11h00 am
DESCRIPTION	Request for proposals (RFP) for: Appointment of a Panel of Legal Service Providers for the Government Pensions Administration Agency for a period of Five Years				

THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).

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

34 HAMILTON STREET
ARCADIA
PRETORIA

SUPPLIER INFORMATION

NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes
	<input type="checkbox"/> No				<input type="checkbox"/> No
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?					
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	<input type="checkbox"/>	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)			
	<input type="checkbox"/>	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)			
	<input type="checkbox"/>	A REGISTERED AUDITOR			
		NAME:			

[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT (FOR EMEs & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]

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

PART B

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:	
1.1.	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2.	ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR ONLINE
1.3.	BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.4.	WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.5.	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2022, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.
2. TAX COMPLIANCE REQUIREMENTS	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
2.4	BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
2.5	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
2.6	WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS	
3.1.	IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.2.	DOES THE BIDDER HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.3.	DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.4.	DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.	

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SBD 4

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest² in the enterprise, employed by the state? **YES/NO**

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

Full Name	Identity Number	Name of State institution

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

2.2.1 If so, furnish particulars:
.....
.....

² 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.

2.3 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 consortium³ will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

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.

SPECIFIC GOALS DECLARATION IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

TENDERS MAY BE LESS THAN R50,000,000 OR OVER R50,000,000 (Including all applicable taxes)

This specific goals form must form part of all tenders that may be less than R50,000,000 (including all applicable taxes) and may be over R50,000,000 (including all applicable taxes). It contains general information required by legislation and serves as the declaration for the specific goals claimed by the bidder.

NB: IN COMPLETING THIS FORM, BIDDERS MUST BE AWARE OF THE CONDITIONS OF TENDER, GENERAL CONDITIONS OF CONTRACT, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, THE PREFERENTIAL PROCUREMENT REGULATIONS 2022 AND THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT AND CODES OF GOODS PRACTICE.

1. GENERAL CONDITIONS

1.1 The following point systems are applicable to invitations to tender:

- the 80/20 system for requirements with a Rand value of up to R50,000,000 (all applicable taxes included).
- The 90/10 system for requirements with a Rand value over R50,000,000 (including all applicable taxes).
- Either the **90/10 or 80/20 preference point system** will be applicable in this tender. The lowest / highest acceptable tender will be used to determine the accurate system once tenders are received.

1.2 Points for this bid shall be awarded for:

1.2.1 Price; and

1.2.2 Specific goals.

1.3 The points for price and the points for specific goals will be added and subject to section 2(1)(f) of the PPPFA, the award will be to the bidder that scores the highest points.

1.4 Failure on the part of a bidder to declare or submit proof when requested, will be interpreted to mean that points for specific goals are not claimed.

1.5 GPAA 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 GPAA.

2. DEFINITIONS

2.1.1 "**Acceptable bid**" means a bid which in all respects complies with the specifications and Conditions of Tender as set out in the tender document.

- 2.1.2 “**African**” means people of the “African” ethnic group as assigned by the Department of Home Affairs and who are citizens of the Republic of South Africa by birth or descent; or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994; or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date. Previously referred to as Black African. Generally considered to be persons from the first nations of South Africa.
- 2.1.3 “**Black people**” means Africans, Coloureds and Indians (refer to the B-BBEE Act for more details).
- 2.1.4 “**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.1.5 “**Coloured**” means people identified by the Department of Home Affairs assigned to the Coloured ethnic group, and who are citizens of the Republic of South Africa by birth or descent; or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994; or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date. A composite and diverse category including descendants of relationships between white and African people; descendants of ‘Malay’ slaves brought from South-east Asia (categorised separately in 1951 but not thereafter), and (after 1970) descendants of the indigenous Khoi and San who inhabited the Western Cape prior to the arrival of either white or African people⁴.
- 2.1.6 “**Central Supplier Database**” means the database managed by National Treasury at www.csd.gov.za .
- 2.1.7 “**Disabled person**” means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being AND is in possession of a proof of disability.
- 2.1.8 “**EME**” means an Exempted Micro Enterprise in terms of the relevant code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act; An EME typically has less than R10m annual revenue, unless specified differently in a sector code. A Start-Up enterprise must be measured as an Exempted Micro-Enterprise for the first year following their formation or incorporation. This is regardless of the expected total revenue of the Start-up Enterprise.
- 2.1.9 “**Fronting**” means a deliberate circumvention or attempted circumvention of the B-BBEE Act and the Codes. Fronting commonly involves reliance on data or claims of compliance based on misrepresentations of facts, whether made by the party claiming compliance or by any other person.
- 2.1.10 “**Indian**” means people identified by the Department of Home Affairs assigned to the Indian ethnic group, and who are citizens of the Republic of South Africa by birth or descent; or who became citizens of the Republic of South Africa by naturalisation before 27 April 1994; or on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date. Generally considered to be people of South Asian descent.
- 2.1.11 “**Locality**” means that the enterprise has either its head office or an operational office located in that location AND they are in possession of proof of locality.
- 2.1.12 “**Ownership**” includes exercisable voting rights in the enterprise; economic interest in the enterprise (including Employee Share Ownership Programmes, Broad-based Ownership

⁴ Adapted from working 2007 paper by Jeremy Seekings on “Race, Discrimination and Diversity in South Africa”,

Schemes). The definition in the Ownership Element of the B-BBEE Amendment Act of 2013 and the codes of good practice provides more information on ownership.

2.1.13 **“Proof of Disability”** means:

2.1.13.1 A completed SARS “Confirmation of Diagnosis of Disability” form endorsed by a duly registered medical practitioner which will remain valid for 10 years where the disability is of a permanent nature;

2.1.13.2 A medical report and functional assessment report confirming the disability; or

2.1.13.3 A SASSA disability grant.

2.1.14 **“Proof of Locality”** means:

2.1.14.1 A municipal rates invoice in the name of the company submitting the bid that has been issued within the last three months;

2.1.14.2 An affidavit or equivalent from an authorised traditional leaders or local councillor in regions where municipal rates invoices are not available, showing the township name and ERF number or physical address;

2.1.14.3 A signed lease with a property owner located in that municipality/township (GPAA may request a recent statement from the landlord);

2.1.14.4 A utilities rates statement (examples, Eskom or Telkom fixed line service) showing the physical address and eh company or director name; or

2.1.14.5 A bank statement showing the company name and address.

2.1.15 **“Proof of Ownership”** means:

2.1.15.1 The percentage (%) ownership indicated on the Central Supplier Database. The CSD integrates with the systems at Home Affairs (demographic information); Companies and Intellectual Property Commission (CIPC) (for company information such as shareholding); and other databases (such as the banks).

2.1.16 **“Proof of B-BBEE status level of contributor”** means:

2.1.16.1 B-BBEE Status level certificate issued by an authorized body or person (such as a SANAS verification agent);

2.1.16.2 A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;

2.1.16.3 A CIPC B-BBEE certificate; or

2.1.16.4 Any other requirement prescribed in terms of the B-BBEE Act.

2.1.17 **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;

2.1.18 **“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; a QSE has between R10m and R50m annual revenue, unless specified differently in a sector code.

2.1.19 **“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of the tender invitation.

2.1.20 **“Specific Goals”** means those goals as contemplated in section 2(1)(d) of the PPPFA which may include contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender and disability including

the implementation of programmes of the Reconstruction and Development Programme as published in Government Gazette No. 16085 dated 23 November 1994.

- 2.1.21 “**tender for income-generating contracts**” means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions
- 2.1.22 “**Youth**” means persons between the ages of 14 and 35 as defined in the National Youth Commission Act of 1996.

3. PRICE FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1 POINTS AWARDED FOR PRICE - THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps} = \mathbf{80} \left(\mathbf{1} - \frac{\mathbf{Pt} - \mathbf{Pmin}}{\mathbf{Pmin}} \right) & \mathbf{or} & \mathbf{Ps} = \mathbf{90} \left(\mathbf{1} - \frac{\mathbf{Pt} - \mathbf{Pmin}}{\mathbf{Pmin}} \right) \end{array}$$

Where

- Ps = Points scored for price of the quotation or bid under consideration
Pt = Price of the quotation or bid under consideration
Pmin = Price of lowest acceptable quotation or bid

3.2 PRICE FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME-GENERATING CONTRACTS

3.3 POINTS AWARDED FOR PRICE - THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps} = \mathbf{80} \left(\mathbf{1} + \frac{\mathbf{Pt} - \mathbf{Pmax}}{\mathbf{Pmax}} \right) & \mathbf{or} & \mathbf{Ps} = \mathbf{90} \left(\mathbf{1} + \frac{\mathbf{Pt} - \mathbf{Pmax}}{\mathbf{Pmax}} \right) \end{array}$$

Where

- Ps = Points scored for price of the quotation or bid under consideration
Pt = Price of the quotation or bid under consideration
Pmax = Price of highest acceptable quotation or bid

4. GPAA SPECIFIC GOALS

- 4.1 The points awarded for price will be added to the points for Specific Goals.
- 4.2 THE GPAA Specific Goals that apply to bids above R1m (or in the event of panels, all quotations above R1m) include:

- 4.2.1 Ownership (South African Black African, Coloured, Indian/Asian); and
- 4.3 One or more of the following:
 - 4.3.1 Enterprises based in the locality where the goods and service are needed;
 - 4.3.2 Women-owned enterprises;
 - 4.3.3 Disabled-owned enterprises; or
 - 4.3.4 Youth-owned enterprises.

5. POINTS AWARDED FOR SPECIFIC GOALS FOR THIS BID

5.1 The following Specific Goals and points apply to this bid:

Note: Points out of 20/10 will proportionally be allocated for the specific goal applicable to this bid.

Specific Goals in terms of PPR2022 and Weighting (A (if applicable))	Points out of 20 for the 80/20 system (B1)	Points out of 10 for the 90/10 system (B2)	% Ownership To be completed by the bidder (C)	Points Claimed	Points Claimed
				80/20 To be completed by bidder (A x B1 x C =)	90/10 To be completed by bidder (A x B2 x C =)
See example in 5.3.1 below					
% African ownership (100% of max points)	10 max	10	%		
% Coloured ownership (80% of max points)			%		
% Indian ownership (50% of max points)			%		
% women owned	10 max	10	%		
% disabled owned	__ max	10	%		
% youth owned	__ max	10	%		
Enterprises based in the locality where the goods and service are needed	__ max	10			
TOTAL:	20	10			

N/A = Not applicable

5.2 Where reference is made to Locality, the following location and points apply:

	Desired Location (if applicable)
Municipality:

5.3 Points claimed calculations:

5.3.1 **Ownership.** The points claimed will be calculated by multiplying the race weighting % by the maximum points for that goal by the % ownership by the race. For example a 70% African owned enterprise will score a 100% x 70% x 10 max points = 7 points. If 30% of the enterprise is owned by coloured people, then an additional 80% x 30% x 10 max points = 2.4 points, i.e. a total of 9.4 points for ownership.

5.3.1.1 Note that if GPAA requests proof of ownership, and the proof can either not be provided OR if the proof is dated after the declaration date, this will be deemed to be misrepresentation and GPAA will begin the remedy outlined below.

5.3.2 **Locality.** The points claimed for locality will be the maximum points if the bidder declares that they have Proof of Locality at the time of the declaration. If no proof of locality for the location described exists, then zero points must be claimed.

5.3.2.1 Note that if GPAA requests proof of location, and the proof can either not be provided OR if the proof is dated after the declaration date, this will be deemed to be misrepresentation and GPAA will begin the remedy outlined below.

6. SUBCONTRACTING

6.1.1 Subcontracting will be treated as condition of contract and not a condition of tender. The implication of this is that points will not be allocated to companies that submit a proposal with subcontracting where this was not requested.

6.1.2 Where subcontracting has been included as a condition of contract, all bidders will be assumed to agree with the condition of contract and so there will be no additional advantage for scoring points (note the fronting statement that follows).

6.1.3 Should a bidder voluntarily submit a proposal that subcontracts more than 25% of the work to designated groups, the bid may come under further scrutiny for signs of fronting. Bidders are encouraged to understand the fronting indicators as described on the Department of Trade, Industry and Competition website.

7. SUBMISSIONS BY CONSORTIUMS AND JOINT VENTURES

7.1 If a submission is made by a consortium or Joint Venture, the points claimed for ownership must be detailed separately on an attachment showing the following:

7.1.1 The percentage (%) of the contract allocated to each JV member or consortium member. This should also be included in an agreement to be made available on request by GPAA.

7.1.2 The percentage ownership by race category of each JV member or consortium member in each of the specific goals relevant to this bid.

7.1.3 The total points claimed will be the sum of the percentage contract allocation for each partner multiplied by the percentage weighting for the race category, multiplied by the percentage ownership in the relevant specific goal.

7.1.4 An example of the point calculation for JVs or consortiums can be requested of GPAA if required.

7.2 For small enterprises, the full points can only be claimed if all consortium members or the joint venture partners are either EMEs or QSEs (as permitted by the codes of good practice).

7.2.1 The points claimed for small enterprises is calculated proportional to the number of members/partners that are either EMEs or QSEs. If 2 of 3 of the consortium members (i.e.,

66.67%) are either EME or QSE, then the points claimed will be 66.67% of the maximum points for small enterprises. For simplicity, points claimed for small enterprises will not be dependent on the percentage of the contract allocated to each JV member or consortium member.

7.3 For locality, full points can only be claimed if all consortium members or the joint venture partners are located in the specified area.

7.3.1 The points claimed for locality is calculated proportional to the number of members/partners located in the specified area. If 3 of 5 of the consortium members (i.e., 60%) have their businesses in the specified locality, then the points claimed will be 60% of the maximum points for locality. For simplicity, points claimed for locality will not be dependent on the percentage of the contract allocated to each JV member or consortium member.

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm.....

8.2 Company registration number:

8.3 CSD Number: MAAA.....

8.4 TYPE OF COMPANY/ FIRM

<input type="checkbox"/> Partnership/Joint Venture / Consortium	<input type="checkbox"/> Personal Liability Company
<input type="checkbox"/> One-person business/sole propriety	<input type="checkbox"/> (Pty) Limited
<input type="checkbox"/> Close corporation	<input type="checkbox"/> Non-Profit Company
<input type="checkbox"/> Public Company	<input type="checkbox"/> State Owned Company
<input type="checkbox"/> Consortium (Unincorporated JV)	<input type="checkbox"/> Joint Venture (Incorporated JV)
[TICK APPLICABLE BOX]	

8.5 For a consortium or joint venture, the names of each member in the JV/Consortium; together with the company registration number and corresponding MAAA number, must be detailed in a separate attachment to the SBD 6.1.

9. I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, declare the points claimed and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The points claimed are in accordance with the General Conditions as indicated in paragraph 1, 2, 5, 6 and 7 of this declaration;
- iii) In the event of a contract being awarded as a result of points claimed and any other information at the disposal of the GPAA, the bidder may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the points claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

<p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p>	
SURNAME AND NAME:
DATE:
ADDRESS

Annexure B

(GPAA)

SCM

Standard Conditions of Tender

1 General

1.1 Actions

1.1.1 The GPAA and each tenderer submitting a tender shall comply with these conditions of tender. In their dealings with each other, they shall discharge their duties and obligations as set out in Paragraph 2 and 3, timeously and with integrity, and behave equitably, honestly and transparently, comply with all legal obligations and not engage in anticompetitive practices.

1.1.2 GPAA and the tenderer and all their representatives and employees involved in the tender process shall avoid conflicts of interest and where a conflict of interest is perceived or known, declare any such conflict of interest, indicating the nature of such conflict. Tenderers shall declare any potential conflict of interest in their tender submissions. Employees, representatives and advisors of the GPAA shall declare any conflict of interest to whoever is responsible for overseeing the procurement process at the start of any deliberations relating to the procurement process or as soon as they become aware of such conflict and abstain from any decisions where such conflict exists or recuse themselves from the procurement process, as appropriate.

Note: 1) A conflict of interest may arise due to a conflict of roles which might provide an incentive for improper acts in some circumstances. A conflict of interest can create an appearance of impropriety that can undermine confidence in the ability of that person to act properly in his or her position even if no improper acts result.

2) Conflicts of interest in respect of those engaged in the procurement process include direct, indirect or family interests in the tender or outcome of the procurement process and any personal bias, inclination, obligation, allegiance or loyalty which would in any way affect any decisions taken.

1.1.3 The GPAA shall not seek and a tenderer shall not submit a tender without having a firm intention and the capacity to proceed with the contract.

1.2 Tender Documents

1.2.1 The documents issued by the GPAA for the purpose of a tender offer are listed in the technical specification.

1.3 Interpretation

1.3.1 The technical specification and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of these conditions of tender.

1.3.2 These conditions of tender, the technical specification and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

1.3.3 For the purposes of these conditions of tender, the following definitions apply:

- a) conflict of interest means any situation in which:
 - i) someone in a position of trust has competing professional or personal interests which make it difficult to fulfil his or her duties impartially;
 - ii) an individual or organisation is in a position to exploit a professional or official capacity in some way for their personal or corporate benefit; or
 - iii) incompatibility or contradictory interests exist between an employee and the organisation which employs that employee.

- b) comparative offer means the price after the factors of a non-firm price and all unconditional discounts have been taken into consideration;
- c) corrupt practice means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or representative in the tender process;
- d) fraudulent practice means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the GPAA, including collusive practices intended to establish prices at artificial levels;
- e) organisation means a company, firm, enterprise, association or other legal entity, whether incorporated or not, or a public body;
- f) functionality means the measurement according to the predetermined norms of a service or commodity designed to be practical and useful, working or operating, taking into account quality, reliability, viability and durability of a service and technical capacity and ability of a tenderer.

1.4 Communication and the GPAA's Representative

Each communication between the GPAA and a tenderer shall be to or from the GPAA Representative only, and in a form that can be readily read, copied and recorded. Communications shall be in the English language. The GPAA takes no responsibility for non-receipt of communications from or by a tenderer. The name and contact details of the GPAA Representative are stated in the SBD1.

1.5 Cancellation and Re-Invitation of Tenders

GPAA reserves the right to, prior to the award cancel a tender at any time.

GPAA may cancel a tender under the following conditions (but not limited to):

- due to changed circumstances, there is no longer a need for the services, works or goods requested; or
- funds are no longer available to cover the total envisaged expenditure;
- no acceptable tenders are received; or
- any other circumstance that may necessitate the GPAA to cancel the tender.

The decision to cancel a tender must be published in the e-Tender portal, the GPAA web site and any other media in which the original tender invitation was advertised.

After the cancellation of the tender process or the rejection of all tenders due to non-compliance with the thresholds, the GPAA may abandon the proposed work and services, have it performed in any other manner, or re-issue a similar invitation to tender at any time. The GPAA shall not be liable for any losses, claims or damages of whatsoever nature or howsoever arising which may be sustained by a tenderer or any other person as a result of its participation or any amendment, termination or suspension of the process set out in this Invitation to Tender or its exclusion from participating in the tender process at any point.

2 Tenderers Obligations

The tenderer shall comply with the following obligations when submitting a tender:

2.1 Eligibility

2.1.1 Submit a tender only if the tenderer complies with the criteria stated in the tender documents and the tenderer, or any of its principals, is not under any restriction to do business with the GPAA.

2.1.2 Notify the GPAA of any proposed material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used by the GPAA as the basis in a prior process to invite the tenderer to submit a tender offer and obtain the GPAA's written approval to do so prior to the closing time for tenders.

2.2 Cost of tendering

Accept that the GPAA will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer comply with requirements.

2.3 Check documents

Check the tender documents on receipt for completeness and notify the GPAA of any discrepancy or omission.

2.4 Confidentiality and copyright of documents

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the GPAA only for the purpose of preparing and submitting a tender offer in response to the invitation.

2.5 Reference documents

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached, but which are incorporated into the tender documents by reference.

2.6 Acknowledge addenda

Acknowledge receipt of addenda to the tender documents, which the GPAA may issue, and if necessary, apply for an extension to the closing time stated in the tender documents, in order to take the addenda into account.

2.7 Clarification meeting-Briefing Session

Attend, where required, a clarification meeting at which tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the tender documents, if applicable.

2.8 Seek clarification

Request clarification of the tender documents, if necessary, by notifying the GPAA at least five working days before the closing time stated in the tender documents.

2.9 Insurance

Be aware that the extent of insurance to be provided by the GPAA (if any) might not be for the full cover required in terms of the conditions of contract identified in the GCC and SCC. The tenderer is advised to seek qualified advice regarding insurance.

2.10 Pricing the tender offer

2.10.1 Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes, and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable on the publication date of the tender.

- 2.10.2 Show VAT payable by the GPAA separately as an addition to the tendered total of the prices.
- 2.10.3 Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the GCC and SCC.
- 2.10.4 State the rates and prices in Rand unless instructed otherwise in the tender documents.
- 2.10.5 Completion and submission of another form of pricing other than the template issued, incomplete completion of the pricing schedule or amendments made to the template will result in the bid being disqualified.

2.11 Alterations to documents

Do not make any alterations or additions to the tender documents, except to comply with instructions issued by the GPAA, or necessary to correct errors made by the tenderer. This includes the pricing schedule SBD 3.3, template shared as part of the bid document for tenderers to respond on with a pricing proposal. All signatories to the tender offer shall initial all such alterations necessary to correct errors made by the tenderer. Failure to comply with the condition on alteration of documents, which includes the template provided for pricing proposals (SBD 3.3) may result in the bid being disqualified.

2.12 Alternative tender offers

- 2.12.1 Unless otherwise stated in the tender documents, submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted as well as a schedule that compares the requirements of the tender documents with the alternative requirements that are proposed.
- 2.12.2 Accept that an alternative tender offer may be based only on the criteria stated in the tender documents or criteria otherwise acceptable to the GPAA.
- 2.12.3 An alternative tender offer may only be considered in the event that the main tender offer is the winning tender.

2.13 Submitting a tender offer

- 2.13.1 Submit one tender offer only, either as a single tendering entity or as a member in a joint venture or consortium to provide the whole of the works, services or supply identified in the GCC and SCC and described in the scope of works, unless stated otherwise in the tender documents.
- 2.13.2 Return all returnable documents to the GPAA after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing legibly in non-erasable ink.
- 2.13.3 Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender documents, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the GPAA.
- 2.13.4 Sign the original and all copies of the tender offer where required in terms of the tender documents. The GPAA will hold all authorized signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the GPAA shall hold liable for the purpose of the tender offer.
- 2.13.5 Seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the GPAA's

address and identification details stated in the tender documents, as well as the tenderer's name and contact address.

- 2.13.6 Where a two-envelope system is required in terms of the tender documents, place and seal the returnable documents listed in the tender documents in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the GPAA's address and identification details stated in the tender documents, as well as the tenderer's name and contact address. Refer to par 1.4.
- 2.13.7 Seal the original tender offer and copy packages together in an outer package that states on the outside only the GPAA's address and identification details as stated in the tender documents.
- 2.13.8 Accept that the GPAA will not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated. The bidder is responsible for the proper binding of tender documents. The GPAA will not be responsible for documents that were lost due to inadequate binding.
- 2.13.9 Accept that tender offers submitted by facsimile or e-mail will be rejected by the GPAA, unless stated otherwise in the tender documents.

2.14 Information and data to be completed in all respects

Accept that tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the GPAA as a non-acceptable tender.

2.15 Closing date and time

- 2.15.1 Ensure that GPAA receives the tender offer at the address and in the tender box or email address specified in the tender documents not later than the closing date and time stated in the tender documents. Proof of posting shall not be accepted as proof of delivery. GPAA will not accept a tender submitted via facsimile or e-mail, unless stated otherwise in the tender documents.
- 2.15.2 Accept that, if GPAA extends the closing time stated in the tender documents for any reason, the requirements of these Standard Conditions of Tender apply equally to the extended deadline. Tenderers are required to visit the eTender Portal or the GPAA website regularly in the case of an open tender to ensure they are informed of any changes in either the deadline for submission or any other amendments.

2.16 Tender validity

- 2.16.1 Hold the tender offer(s) valid for acceptance by the GPAA at any time during the validity period stated in the tender documents after the closing time stated in the tender documents).
- 2.16.2 If requested by the GPAA, consider extending the validity period stated in the tender documents for an agreed additional period with or without any conditions attached to such extension.
- 2.16.3 Accept that a tender submission that has been submitted to the GPAA may only be withdrawn or substituted by giving the GPAA's Representative written notice before the closing time for tenders that a tender is to be withdrawn or substituted.

2.17 Clarification of tender offer after submission

- 2.17.1 Provide clarification of a tender offer in response to a request to do so from the GPAA during the evaluation of tender offers. This may include providing a breakdown of rates or prices

and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the competitive position of tenderers or substance of the tender offer is sought, offered, or permitted.

2.18 Provide other material

2.18.1 Provide, on request by the GPAA, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), preferencing arrangements, or samples of materials, considered necessary by the GPAA for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the GPAA's request, the GPAA may regard the tender offer as unacceptable and disqualify the tenderer.

2.18.2 Dispose of samples of materials provided for evaluation by the GPAA, where required.

2.19 Inspections, tests and analysis

Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender documents.

2.20 Due Diligence

2.20.1 Accept that the GPAA may conduct a due diligence exercise to verify that the bidder has the required capability and capacity to do work and to verify the claims made by a bidder in the bid responses.

2.20.2 Provide, on request by the GPAA, any other material considered necessary by the GPAA for the purpose of conducting the due diligence exercise. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the GPAA's request, the GPAA may regard the tender offer as an unacceptable tender and reject the tender.

2.21 Submit securities, bonds and policies

If requested, submit for the GPAA's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the GCC and SCC.

2.22 Check final draft

Check the final draft of the contract provided by the GPAA within the time available for the GPAA to issue the contract.

2.23 Independent Tender

By submission of a Tender, the Tenderer warrants that:

- a) The prices in the Tender have been arrived at independently, without consultation, communication, agreement or understanding for the purpose of restricting competition, as to any matter relating to such prices, with any other Tenderer or with any competitor.
- b) Unless otherwise required by law, the prices which have been quoted in the Tender have not knowingly been disclosed by the Tenderer, directly or indirectly, to any other Tenderer or competitor, nor will they be so disclosed
- c) No attempt has been made or will be made by the Tenderer to induce any other person or firm to submit or not to submit a Tender for the purpose of restricting competition

3 The GPAA's undertaking

The GPAA and GPAA Representative, shall:

3.1 Respond to clarification questions.

- 3.1.1 Unless otherwise stated in the tender documents, respond to a request for clarification received on or before the deadline for clarification questions stated in the Tender documents and publish responses to bidders' questions on the GPAA website.
- 3.1.2 Consider any request to make a material change in the capabilities or formation of the tendering entity (or both) or any other criteria which formed part of the qualifying requirements used to prequalify a tenderer to submit a tender offer in terms of a previous procurement process and deny any such request if as a consequence:
- a) an individual firm, or a joint venture as a whole, or any individual member of the joint venture fails to meet any of the collective or individual qualifying requirements;
 - d) the new partners to a joint venture were not prequalified in the first instance, either as individual firms or as another joint venture; or
 - e) in the opinion of the GPAA, acceptance of the material change would compromise the outcome of the prequalification process.

3.2 Issue addenda

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date that tender documents are available until ten days before the tender closing time stated in the Tender documents. If, as a result a tenderer applies for an extension to the closing time stated in the Tender documents, the GPAA may grant such extension and, shall then publish the notice of closing time extension on the GPAA website and other media where the tender was advertised.

3.3 Return late tender offers

Return tender offers received after the closing time stated in the Tender documents, unopened, (unless it is necessary to open a tender submission to obtain a forwarding address), to the tenderer concerned.

3.4 Registration of tender submissions

- 3.4.1 Publish within ten days after bid closing the names of bidders that submitted tenders on the GPAA website and the eTender portal.

3.5 Non-disclosure

Not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

3.6 Grounds for rejection and disqualification

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his/her tender offer) if it is established that the tenderer engaged in corrupt or fraudulent practices or an effort by the tenderer to influence the tender process.

3.7 Test for acceptable tender

- 3.7.1 Determine before detailed evaluation, whether each tender offer properly received:
- complies with the requirements of these Conditions of Tender,

- has been properly and fully completed and signed, and
- complies with the requirements of the tender documents.

3.7.2 An acceptable tender is one that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the GPAA's opinion, would:

- detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,
- significantly change the GPAA's or the tenderer's risks and responsibilities under the contract, or
- affect the competitive position of other tenderers presenting acceptable tenders, if it were to be rectified.

3.7.3 Reject an unacceptable tender offer, and not allow it to be subsequently made acceptable by correction or withdrawal of the non-conforming deviation or reservation.

3.8 Arithmetical errors, omissions and discrepancies

3.8.1 Check the highest ranked tender or tenderer with the highest number of tender evaluation points after the evaluation of tender offers in accordance with 3.11 for:

- the gross misplacement of the decimal point in any unit rate;
- omissions made in completing the pricing schedule or bills of quantities; or
- arithmetic errors in:
 - line item totals resulting from the product of a unit rate and a quantity in bills of quantities or schedules of prices; or
 - the summation of the prices.

3.8.2 The GPAA must correct the arithmetical errors in the following manner:

- Where there is a discrepancy between the amounts in words and amounts in figures, the amount in words shall govern.
- If bills of quantities or pricing schedules apply and there is an error in the line item total resulting from the product or service of the unit rate and the quantity, the line item total shall govern and the unit rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.
- Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if bills of quantities or pricing schedules apply) to achieve the tendered total of the prices.

3.8.3 Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of the arithmetical error in the manner described above.

3.8.4 Where the GPAA provided the pricing schedule in an Excel spreadsheet format with the GPAA created formulae and one or more of the formulae is incorrect, then:

- The GPAA will correct the formulae and request the bidder to certify the correction(s); and

- Section 3.8.1 and 3.8.2 will not apply.

3.9 Specific Goals

3.9.1 Check the highest ranked tender or tenderer with the highest number of points in accordance with 3.11 for:

- Claims made in respect of specific goals;
- Errors in calculating or determining points for specific goals.

3.9.2 Where GPAA determines that the points for specific goals were incorrectly claimed, the GPAA may:

- Clarify with the tenderer the basis for their claim; and
- Initiate the appropriate steps to restrict the tenderer, should the GPAA believe the tenderer has misrepresented themselves.

3.10 Clarification of a tender offer

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer the GPAA believes the tenderer has misrepresented themselves.

3.11 Evaluation of tender offers

3.11.1 General

Reduce each acceptable tender offer to a comparative offer and evaluate them using the tender evaluation methods and associated evaluation criteria that are specified in the tender document. The evaluation method for this tender is described in the specification document.

3.11.2 Method 1: Price and Preference

In the case of a price and preference:

- 1) Score points for price
- 2) Score points for specific goals as per Preferential Procurement Regulations, 2022
- 3) Add the points scored for price and specific goals.

3.11.3 Method 2: Functionality, Price and Preference

In the case of a functionality, price and preference:

- 1) Score functionality, rejecting all tender offers that fail to achieve the minimum number of points for functionality as stated in the Tender documents.
- 2) No tender must be regarded as an acceptable tender if it fails to achieve the minimum qualifying score for functionality as indicated in the tender invitation.
- 3) Tenders that have achieved the minimum qualification score for functionality must be evaluated further in terms of the preference points system prescribed in paragraphs 4 and 5 below.

The 80/20 preference point system for acquisition of services, works or goods up to a Rand value of R50 million

- 4)(a) The following formula must be used to calculate the points out of 80 for price in respect of tenders of an invitation for tender with a rand value equal or below R 50 million, inclusive of all applicable taxes:

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

Where

P_s = Points scored for comparative price of tender or offer under consideration;

P_t = Comparative price of tender or offer under consideration; and

P_{min} = Comparative price of lowest acceptable tender or offer.

- 4)(b) A maximum of 20 points may be awarded to a tenderer for the specific goal specified for the tender.
- (4)(c) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- (4)(d) Subject to section 2(1)(f) of the Preferential Procurement Policy Framework Act, 2001 the contract must be awarded to the tenderer who scores the highest total number of points.

The 90/10 preference point system for acquisition of services, works or goods with a Rand value above R50 million

- 5)(a) The following formula must be used to calculate the points out of 90 for price in respect of tenders of an invitation for tender with a rand value above R 50 million, inclusive of all applicable taxes:

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

Where

P_s = Points scored for comparative price of tender or offer under consideration; *P_t*

= Comparative price of tender or offer under consideration; and

P_{min} = Comparative price of lowest acceptable tender or offer.

- 5)(b) A maximum of 10 points may be awarded to a tenderer for the specific goal specified for the tender.
- 5)(c) The points scored for the specific goal must be added to the points scored for price and the total must be rounded off to the nearest two decimal places.
- 5)(d) Subject to section 2(1)(f) of the Preferential Procurement Framework Act, 2001 the contract must be awarded to the tenderer scoring the highest total number of points.

3.11.4 Method 3: Any other evaluation method described in the tender document.

The GPAA may also decide on any other evaluation method described in the tender document.

3.12 Acceptance of tender offer

Accept the tender offer, if in the opinion of the GPAA, it does not present any risk and only if the tenderer:

- a) is not under restrictions, or has principals who are under restrictions, preventing participating in the GPAA's procurement;

- b) can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources;
- c) equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract;
- d) has the legal capacity to enter into the contract;
- e) not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing
- f) complies with the legal requirements, if any, stated in the tender documents; and
- g) is able, in the opinion of the GPAA, to perform the contract free of conflicts of interest.

3.13 Prepare contract documents

3.13.1 If necessary, revise documents that shall form part of the contract and that were issued by the GPAA as part of the tender documents to take account of:

- a) addenda issued during the tender period,
- b) inclusion of some of the returnable documents, and
- c) other revisions agreed between GPAA and the successful tenderer.

3.14 Publication of successful tenderer

3.14.1. Notify the successful tenderer of the GPAA's acceptance of his tender offer by sending an award letter to the successful tenderer before the expiry of the validity period stated in the tender documents, or agreed additional period.

3.14.2. After the successful tenderer has been notified of the GPAA's acceptance of the tender, publish the award details in the media that the tender was initially published in.

3.15 Provide copies of the contracts

Provide to the successful tenderer the number of copies stated in the Tender documents of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

3.16 Provide written reasons for actions taken

Provide upon written request written reasons to tenderers for any action that is taken in applying these conditions of tender, but withhold information which is not in the public interest to be divulged, which is considered to prejudice the legitimate commercial interests of tenderers or might prejudice fair competition between tenderers.

Annexure C

(GPAA)

SCM

Special Conditions of Contract

Special Conditions of Contract

General Notes

The purpose of this Special Conditions of Contract (SCC) is to:

- (i) Draw special attention to certain special conditions applicable to Bids, Contracts, Agreements and Orders of the Government Pensions Administration Agency (GPAA); and
- (ii) To ensure that all bidders are familiar with the special provisions, requirements and conditions that will be applicable in the undertaking of the project and which will form part of the contract documentation and of which due cognisance must be taken in the bidding process.

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 (GCC) also forms part of all bidding documents and must be read in conjunction with this Special Conditions of Contract.

Whenever there is a conflict between the GCC and the SCC, the provisions in the SCC shall prevail.

Bidders should submit a SBD 3.3 for each category they intend to respond to and mark the respective envelope accordingly.

Similarly for the legal panel response, the bidders should prepare a technical response for each category they intend to respond to and mark the respective envelope accordingly. Eg. Technical proposal-Category 1 Public and Administrative Law

Annexure D

(GPAA)

SCM

General Conditions of Contract

GPAA PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

The purpose of this Annexure is to:

- i. Draw special attention to certain general conditions applicable to GPAA 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 GPAA.
 - In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.
 - The General Conditions of Contract will form part of all bid documents and may not be amended.
 - Special Conditions of Contract (SCC) relevant to a specific bid should be compiled separately for every bid if applicable and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties

1. DEFINITIONS

The following terms shall be interpreted as indicated:

- 1.1. **“Closing time”** means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. **“Contract”** means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. **“Contract price”** means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. **“Corrupt practice”** means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public employee in the procurement process or in contract execution.
- 1.5. **“Countervailing duties”** are imposed in cases where an enterprise abroad is subsidized by its GPAA 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 employee written order issued for the supply of goods for 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 96 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 State Tender Bulletin. The State Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.employee.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

- 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:
 - 7.3.1. 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
 - 7.3.2. 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 is 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 Energy Board 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 OF 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:
- performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - a. furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - b. furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
 - c. 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
 - d. 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. 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.
- 15.6. 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.
- 16.4. Payment will be made in Rand unless otherwise stipulated in SCC.

17. PRICES

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

18. CONTRACT AMENDMENTS

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

19. ASSIGNMENT

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

20. SUBCONTRACTS

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

21. DELAYS IN THE SUPPLIERS 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 local authorities.
- 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 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.

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.

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

28. LIMITATION OF LIABILITY

28.1. 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.

28.2. 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.

No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid, GPAA 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