INVITATION TO BID

APPOINTMENT OF A SERVICE PROVIDER (LEGAL FIRMS) TO PROVIDE EXPERT AND STRATEGIC SUPPORT TO THE PROVINCES IN HANDLING THE MEDICO-LEGAL CASES FOR A PERIOD OF 3 YEARS.

NDOH 14 / 2017-2018
CONDITIONS FOR COMPLETION OF BID DOCUMENTS

NB: The two envelope bidding system will be applicable (Pricing schedule must be submitted in a separate envelope)

If any of the following bid forms are not completed and signed or not handed in with your bid proposal on closing date and time, your proposal will be immediately disqualified.

- SBD1 (Invitation to bid) (Make sure it is signed)
- SBD2 (Tax Clearance Certificate/ SARS Pin)
- SBD 31/3.1 or 3.3 (Pricing Schedule) If not filled please refer to an Annexure or addendum where price is mentioned.
- SBD 4 (Declaration of interest) (Make sure it is signed)
- SBD 6.1 (Preference claim form) Must be signed regardless if points are claimed or not. (Make sure it is signed)
- Certified copy of a B-BBEE Rating certificate from a SANA accredited rating agency or a registered Auditor approved by IRBA or a registered auditor or a sworn affidavit in terms of the amended B-BBEE codes
- SBD 8 (Declaration of Bidder’s past supply chain management practices) (Make sure it is signed)
- SBD 9 (Bid rigging) Make sure it is signed and completed
- Please note: No tippex is allowed. All changes must be scratched out and a signature next to each change.
- Bid documents must be completed with ink (blue or black) and not typed.
- Proof of registration with the National Central Supplier Database (CSD)

IF NONE OF THE ABOVE MENTIONED CONDITIONS IS MET, YOUR BID WILL BE DISQUALIFIED.

Certified copy of B-BBEE Rating Certificate from a SANAS Accredited rating agency or a Registered Auditor approved by IRBA or a letter from an Accounting Officer as contemplated in the CCA.

A sworn affidavit in terms of amended B-BBEE Codes
INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/PUBLIC ENTITY)

BID NUMBER: NDOH 14/2017-2018          CLOSING DATE: 19/02/2018          CLOSING TIME: 11:00

DESCRIPTION: Appointment of a service provider (legal firms) to provide expert and strategic support to the provinces in handling the medico-legal cases for a period of 3 years.

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

BID DOCUMENTS MAY BE POSTED TO: Department of Health, Private Bag X 828, Pretoria, 0001. Attention: Mr. SD Dlamini

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)
Department of National Health, c/o Struben and Thabo Sehume streets, Civitas building, Pretoria

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

The bid box is generally open 24 hours a day, 7 days a week. Underneath you will find a map of where the BID box is situated.

PRETORIA CITY CENTRE

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

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

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT
THE FOLLOWING PARTICULARS MUST BE FURNISHED
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER
........................................................................................................................................

POSTAL ADDRESS
........................................................................................................................................

STREET ADDRESS
........................................................................................................................................

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

CELLPHONE NUMBER
........................................................................................................................................

FACSIMILE NUMBER
CODE NUMBER ......................................................................................................................

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

VAT REGISTRATION NUMBER
........................................................................................................................................

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2)   YES or NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (SBD 6.1)   YES or NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)..............

A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS);

OR........................................................................................................................................

A REGISTERED AUDITOR .........................................................................................................

[TICK APPLICABLE BOX]

(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR
PREFERENCE POINTS FOR B-BBEE)

ARE YOU THE ACCREDITED REPRESENTATIVE
IN SOUTH AFRICA FOR THE GOODS / SERVICES / WORKS OFFERED?   YES or NO

[IF YES ENCLOSE PROOF]

SIGNATURE OF BIDDER
........................................................................................................................................

DATE
........................................................................................................................................

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

TOTAL BID PRICE..........................................................TOTAL NUMBER OF ITEMS OFFERED..................
TAX CLEARANCE CERTIFICATE REQUIREMENTS

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

1. In order to meet this requirement bidders are required to complete in full the attached form TCC 001 “Application for a Tax Clearance Certificate” and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.

2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.

3. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.

4. In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.

5. Copies of the TCC 001 “Application for a Tax Clearance Certificate” form are available from any SARS branch office nationally or on the website www.sars.gov.za.

6. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.
1. The accompanying information must be used for the formulation of proposals.

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

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

4. PERSON AND POSITION

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

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

**"all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance contributions and skills development levies.**
5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

<table>
<thead>
<tr>
<th>DESCRIPTION OF EXPENSE TO BE INCURRED</th>
<th>RATE</th>
<th>QUANTITY</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
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</table>

TOTAL: R.................................

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

7. Estimated man-days for completion of project

8. Are the rates quoted firm for the full period of contract? *YES/NO

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

........................................................................
........................................................................
........................................................................
........................................................................
DECLARATION OF INTEREST

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

- the bidder is employed by the state; and/or

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

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

2.1 Full Name of bidder or his or her representative: ……………………………………………………………

2.2 Identity Number: ………………………………………………………………………………………………………

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

2.4 Company Registration Number: ………………………………………………………………………………….

2.5 Tax Reference Number: ……………………………………………………………………………………………

2.6 VAT Registration Number: ………………………………………………………………………………………

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

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

²“Shareholder” means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.
2.7 Are you or any person connected with the bidder presently employed by the state? YES / NO

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder / member: ............................................................
Name of state institution at which you or the person connected to the bidder is employed: ............................................................
Position occupied in the state institution: ............................................................

Any other particulars:
........................................................................................................................................
........................................................................................................................................
........................................................................................................................................

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

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

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

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

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

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

2.8.1 If so, furnish particulars:

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

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

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

2.10.1 If so, furnish particulars.

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

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

2.11.1 If so, furnish particulars:

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

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

<table>
<thead>
<tr>
<th>Full Name</th>
<th>Identity Number</th>
<th>Personal Tax Reference Number</th>
<th>State Employee Number / Persal Number</th>
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</table>
4 DECLARATION

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

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

................................................. .................................................................
Signature                           Date

................................................. .................................................................
Position                           Name of bidder

May 2011
This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution.

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

### 1. GENERAL CONDITIONS

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

1.2
   a) The value of this bid is estimated to exceed R50 000 000 (all applicable taxes included) and therefore the 90/10 preference point system shall be applicable; or

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

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

<table>
<thead>
<tr>
<th></th>
<th>POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRICE</td>
<td>90</td>
</tr>
<tr>
<td>B-BBEE STATUS LEVEL OF CONTRIBUTOR</td>
<td>10</td>
</tr>
<tr>
<td>Total points for Price and B-BBEE must not exceed</td>
<td>100</td>
</tr>
</tbody>
</table>

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

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

3. POINTS AWARDED FOR PRICE
3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS
A maximum of 80 or 90 points is allocated for price on the following basis:

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

Where
\[
P_s = \text{Points scored for price of bid under consideration}
\]
\[
P_t = \text{Price of bid under consideration}
\]
\[
P_{\text{min}} = \text{Price of lowest acceptable bid}
\]

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR
4.1 In terms of Regulation 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:
<table>
<thead>
<tr>
<th>B-BBEE Status Level of Contributor</th>
<th>Number of points (90/10 system)</th>
<th>Number of points (80/20 system)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>9</td>
<td>18</td>
</tr>
<tr>
<td>3</td>
<td>6</td>
<td>14</td>
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<tr>
<td>4</td>
<td>5</td>
<td>12</td>
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<td>5</td>
<td>4</td>
<td>8</td>
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<tr>
<td>6</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>8</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Non-compliant contributor</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

5. **BID DECLARATION**

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

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

6.1 B-BBEE Status Level of Contributor: . = ...........(maximum of 10 or 20 points)

   (Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.)

7. **SUB-CONTRACTING**

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

   *(Tick applicable box)*

   [YES] [NO]

7.1.1 If yes, indicate:

   i) What percentage of the contract will be subcontracted.................................%

   ii) The name of the subcontractor.................................................................

   iii) The B-BBEE status level of the subcontractor..............................................

   iv) Whether the sub-contractor is an EME or QSE *(Tick applicable box)*

   [YES] [NO]

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

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

<table>
<thead>
<tr>
<th>EME</th>
<th>QSE</th>
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<tbody>
<tr>
<td>√</td>
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</table>

   Black people

   Black people who are youth

   Black people who are women
8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.........................................................

8.3 Company registration number:...................................................

8.4 TYPE OF COMPANY/ FIRM

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

(Tick Applicable Box)

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

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

(Tick Applicable Box)

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

i) The information furnished is true and correct;

ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;

iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

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

WITNESSES

1. ........................................

2. ........................................

SIGNATURE(S) OF BIDDER(S)

DATE: ....................................
ADDRESS  ................................
.................................
DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

1. This Standard Bidding Document must form part of all bids invited.

2. It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.

3. The bid of any bidder may be disregarded if that bidder, or any of its directors have-

   a. abused the institution’s supply chain management system;
   b. committed fraud or any other improper conduct in relation to such system; or
   c. failed to perform on any previous contract.

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

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

4.4.1 If so, furnish particulars:

SBD 8

CERTIFICATION

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

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

..................................................  ..................................................
Signature                  Date

..................................................  ..................................................
Position                    Name of Bidder

Js365bW
CERTIFICATE OF INDEPENDENT BID DETERMINATION

1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.

2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a \textit{pe se} prohibition meaning that it cannot be justified under any grounds.

3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:

   a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution’s supply chain management system and or committed fraud or any other improper conduct in relation to such system.

   b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.

4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

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

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

I, the undersigned, in submitting the accompanying bid:

___________________________________________________ _____________________

(Bid Number and Description)

in response to the invitation for the bid made by:

___________________________________________________ ___________________________

(Name of Institution)

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

I certify, on behalf of:__________________________________________________ _____

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word “competitor” shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:

   (a) has been requested to submit a bid in response to this bid invitation;
   (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
   (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder.
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.

7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
   (a) prices;
   (b) geographical area where product or service will be rendered (market allocation)
   (c) methods, factors or formulas used to calculate prices;
   (d) the intention or decision to submit or not to submit, a bid;
   (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
   (f) bidding with the intention not to win the bid.

8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

............................................................... .............................................................
Signature                                            Date

............................................................... .............................................................
Position                                             Name of Bidder

Js914w 2
GOVERNMENT PROCUREMENT:
GENERAL CONDITIONS OF CONTRACT

July 2010
NOTES

The purpose of this document is to:

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

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

- The General Conditions of Contract will form part of all bid documents and may not be amended.

- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.
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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.

1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

1.5 “Countervailing duties” are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 “Day” means calendar day.

1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.

1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.

1.10 “Delivery into consignee’s store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 “Dumping” occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the
RSA.

1.12 “Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

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

1.14 “GCC” means the General Conditions of Contract.

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

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

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

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

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

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

1.21 “Purchaser” means the organization purchasing the goods.

1.22 “Republic” means the Republic of South Africa.

1.23 “SCC” means the Special Conditions of Contract.

1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such
obligations of the supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

2. Application

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

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

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

3. General

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

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

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

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

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

6. Patent rights

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

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

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier’s failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser’s country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or

(b) a cashier’s or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier’s performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

8.1 All pre-bidding testing will be for the account of the bidder.

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

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

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

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

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

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

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

9. Packing

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

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

10. Delivery and documents

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

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

11. Insurance

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

12. Transportation

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

13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

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

(e) training of the purchaser’s personnel, at the supplier’s plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

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

14. Spare parts

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

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and

(b) in the event of termination of production of the spare parts:
   (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
   (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

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

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take
such remedial action as may be necessary, at the supplier’s risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

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

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

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

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

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier’s performance

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

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

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

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the
supplier’s point of supply is not situated at or near the place where the supplies are required, or the supplier’s services are not readily available.

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

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

22. Penalties

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

23. Termination for default

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

(a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;

(b) if the Supplier fails to perform any other obligation(s) under the contract; or

(c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

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

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

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

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

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
(i) the name and address of the supplier and / or person restricted by the purchaser;
(ii) the date of commencement of the restriction
(iii) the period of restriction; and
(iv) the reasons for the restriction.

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

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

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

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

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

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

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

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

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

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
(b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

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

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

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<th>Section</th>
<th>Description</th>
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<tr>
<td><strong>29. Governing language</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>30. Applicable law</strong></td>
<td>30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.</td>
</tr>
<tr>
<td><strong>31. Notices</strong></td>
<td>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.</td>
</tr>
<tr>
<td><strong>32. Taxes and duties</strong></td>
<td>32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser’s country. 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser. 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.</td>
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<tr>
<td><strong>33. National Industrial Participation (NIP) Programme</strong></td>
<td>33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.</td>
</tr>
<tr>
<td><strong>34. Prohibition of Restrictive practices</strong></td>
<td>34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging). 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.</td>
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</table>
34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.
1. INVITATION FOR PROPOSAL

1.1 Tenders are hereby invited for the provision of expert and strategic support services to the Provinces in handling the Medico-Legal cases for a period of 3 years.

1.2 Firms with offices within South Africa, and have established offices in respective Provinces, may apply.

2. BACKGROUND

2.1 In terms of Section 23 (1) (a) (vi) of the National Health Act, 2003 (Act No. 63 of 2003) (“the Act”), the National Health Council must advise the Minister on policy concerning any matter that will protect, promote, improve and maintain the health of the population, including equitable financial mechanisms for the funding of health services. The Provincial Health Departments of Health are faced with the scourge of Medico-Legal claims. These claims are paid from the operational budgets of the relevant health establishments.

2.2 In terms of Section 25 (2) (f) (k) (m) and (n) of the, the Head of Provincial Health Department of Health is mandated to, in accordance with national health policy and the relevant provincial health policy in respect of or within the relevant province do the following among others:

(a) plan, co-ordinate and monitor health services and must evaluate the rendering of health services;
(b) control and manage the cost and financing of public health establishments and public health agencies;

(c) provide and co-ordinate emergency medical services and forensic pathology, forensic clinical medicines and related services, including the provision of medico-legal mortuaries and medico-legal services; and

(d) control the quality of all health services and facilities.

2.3 The Public Finance Management Act, 1999 (Act No. 1 of 1999 (PFMA) requires the Accounting Officer:

(a) to ensure that the Department has and maintains the effective, efficient and transparent systems of financial, risk management and internal controls;

(b) to be responsible for the effective, efficient, economical and transparent use of the resources;

(c) to take effective and appropriate steps to prevent losses resulting from criminal conduct; and

(d) to take effective and appropriate disciplinary steps against an official who commits or undermines the financial management and internal control system of a department or commits or fails to comply with the legislative prescripts.

2.4 Due to the scourge of Medico-Legal Claims affecting the Provinces, it has become necessary that the National Department of Health to take the lead and significantly increases its focus on and coordination of investigations and Medico-Legal litigation matters. In this regard, the National Department of Health is seeking to appoint competent service providers in terms of the PFMA and other regulatory policies and standards. The appointment of the service providers is for a period of 3 years.
providers will be based on the understanding that the said service providers has
the necessary experience and expertise in matters relating to:

(a) The Constitution of the Republic of South Africa, 1996;

(b) The Public Finance Management Act, 1999 (Act No. 1 of 1999 (PFMA);

(c) The Public Service, 1994 (Act No. 103 1994);

(d) The Public Audit Act, 2004 (Act No. 25 of 2004);

(e) The Prevention and Combating of Corrupt Activities Act, 2004 (Act No.
    12 of 2004);

(f) The Protected Disclosures Act, 2000 (Act No. 26 of 2000);

(g) The Division of Revenue Act, 2002 (Act No. 5 of 2002);

(h) Treasury Regulations issued in terms of the PFMA;

(i) The Public Service Anti-Corruption Strategy;

(j) The Minimum Anti-Corruption requirements;

(k) All legislative prescripts relating to investigations, forensic, compliance
    and white collar crime matters; and

(l) King Report on Corporate Governance.

3. SCOPE OF WORK

3.1 The service providers will be responsible for the provision of expert and
strategic support services to the Provinces in handling the Medico-Legal
Litigation cases. In this regard, the service providers shall support and assist the
Provinces in the following areas:
(a) Developing a secure case management system;

(b) Support the reporting of criminal matters to the respective law enforcement agencies;

(c) Maintain an up-to-date case management system, and using this for trend analysis;

(d) Support the respective Legal units with investigation of cases and negotiation of reasonable settlement agreements (where necessary);

(e) Provide expert opinions including attending court cases and testify as expert witnesses in cases referred through the courts;

(f) Assisting with compiling and putting together acceptable and reliable evidence;

(g) Comprehensive Anti-Fraud & Corruption Strategy (incorporating Fraud Risk Prevention Plan) relating to Medico-Legal Litigation (including theft of medical records and involvement of staff in touting); and

(h) Eradicating the current backlog of cases.

4. MANDATORY REQUIREMENTS

4.1 Bidders must submit proposals containing the following elements:

(a) A brief background of the company and its organisational structure.

(b) Prospective bidders must provide their Central Supplier Database MAAA number.

(c) Key Personnel must have proof of valid registration with the law society.
(d) Key Personnel must have proof of valid Fidelity Fund Certificate.

(g) All fully completed and signed SBD forms (SBD1, SBD4, SBD6, SBD8 and SBD9) as attached.

(h) In the event where bidders have formed a joint venture (JV), the JV agreement signed by all relevant parties and must be provided. The JV must clearly state in respect for which services the agreement has been drawn and all the terms and conditions are mutually agreed upon; including payment for services.

4.2 The Bidders must indicate which Province do they have a footprint

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<th>MP</th>
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<th>NW</th>
<th>WC</th>
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</table>

N.B. For every Province the Bidder claims footprint, proof in a form of Lease Agreement or utility bill in the name of the Bidder must be provided.

5. SPECIAL CONDITIONS

5.1 The following are the special conditions applicable to this transversal tender:

(a) The service providers and/or companies including the individuals who will be assigned to work on this project be required to have a security clearance from State Security Agency. If not, they will be subjected to a security vetting process by or through the National Department of Health or its relevant stakeholders.

(b) The appointment of the service providers will be linked to a Service Level Agreement with the relevant Provincial Health Department which will guide how the Parties should work together.

(c) All materials used by/made available to Service Provider remain the property of the relevant Provincial Department of Health and shall be
handed over to the respective Provincial Health Department when required or immediately on termination of the contract.

(d) All information obtained as a result of undertaking the assignment shall be treated in strict confidence and a confidentiality letter needs to be signed in connection herewith.

(e) All personnel nominated to work on this assignment will be required to sign a Declaration of Interest form and Confidentiality Agreement.

(f) The team assigned to the respective projects should not comprise of first year trainees; very junior personnel should be limited to ensure effective execution of the projects and skills transfer.

(g) The successful service providers will be expected to utilize their own tools of trade.

(h) Where the bid is submitted as a consortium, this should be clearly indicated and the relevant documentation of the participating companies should be submitted for evaluation purposes.

(j) The successful bidders should be able to commence with the assignment within 30 days after appointment subject to the signing of the Service Level Agreement, detailing inter alia:

(i) Duration
(ii) Service standards;
(iii) Obligations of the service provider
(iv) Roles and responsibilities of Provincial Health Department
(v) Service Level Management and Reporting
(vi) Terms of payment and invoices
(vii) Terms and conditions
(viii) Performance appraisal
(ix) Penalties for unsatisfactory performance
(x) Assignment, cession and delegation
(xi) Intellectual property ("IP")
(xii) Confidentiality
(xiii) Force majeure
(xiv) Breach and termination
(xv) Settlement of disputes
(xvi) Amendment of this SLA
(xvii) Indemnity
(xviii) Fraud and corruption
(xix) Audits and inspections

(k) The successful service providers shall be expected to report to the Provincial Heads of Legal Services or Medico-Legal Units.

(l) This is a call for Legal Services providers to be on the pre-approved panel. Pricing will be considered once the request for quotations have been made by the respective Provincial Health Departments.

(m) Payment for delivery of the work will be conducted on the basis of identified milestones, projected cash flows and project plan as agreed in the service level agreement with the service provider.

(n) Display an understanding of the Public Service, and in particular the public health sector and entire Provincial Health Department.

6. EVALUATION OF THE BIDS

6.1 Non-adherence to any of the mandatory requirements and conditions indicated on this ToR by the bidders will result in the bid being considered as a non-responsive tender and will be disqualified. As a result, it will not be taken further in the process for evaluation.

6.2 The bids shall be evaluated in terms of Regulation 5 and 6 of the Preferential Procurement Regulations of 2017 pertaining to the Preferential Procurement Framework Act, 2000 (Act No. 5 of 2000), as follows:

(a) functionality - refer below for functionality criteria; and
6.3 Point allocation for functionality

Threshold for functionality is 70% and service providers which do not achieve this will automatically be considered as being non-responsive and disqualified for further evaluation.

The following are functionality criteria against which interested bidders will be evaluated:

<table>
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<th>Comply</th>
<th>Do not comply</th>
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<tr>
<td><strong>Technical Ability</strong></td>
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<tr>
<td><strong>Substantiate:</strong> A summary of the work experience the company has undertaken in relation to the terms of reference herein articulated and relevant references that can validate the experience of the company. The names of at least the last two recent, contactable referees (contact person and telephone number; name of the project done and completed; and the duration of the project).</td>
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<tr>
<td><strong>Competency and Profile of Key Personnel</strong></td>
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<tr>
<td><strong>Substantiate:</strong> Management profile and the skills matrix of the key personnel.</td>
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<tr>
<td><strong>Technical Capacity</strong></td>
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<tr>
<td><strong>Substantiate:</strong> Experience in similar processes - A track record of successful and timely performance of similar assignments.</td>
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</table>
TERMS OF REFERENCE FOR THE APPOINTMENT OF SERVICE PROVIDERS (LEGAL FIRMS) TO PROVIDE EXPERT AND STRATEGIC SUPPORT TO THE PROVINCES IN HANDLING THE MEDICO-LEGAL CASES FOR A PERIOD OF 3 YEARS

**Comply** | **Do not comply**
---|---

### Proposed Approach in the Execution Of Services

**Substantiate:** Proposed operational method - Detailed explanation of methodology and process to be adopted to fulfill the assignment. Project Management, Technical and Analytical skills.

Bidders to provide their methodology on how they will handle the files post the termination or expiry of the contract.

### Skills transfer methodology

**Substantiate:** The proposal must specify the methodology on how skills transfer to the existing and responsible officials within the Provincial Health Department will be executed.

6.4 Evaluation Criteria Matrix

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<th>Weight</th>
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<td>Technical Capacity</td>
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<td>Proposed Approach in the Execution Of Services</td>
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<tr>
<td>Skills transfer methodology</td>
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<td><strong>TOTAL</strong></td>
<td><strong>100</strong></td>
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**Scoring** | **Definition**
---|---

Page 9 of 10
Calculation of 90/10 points

Point scored will be rounded off to the nearest 2 decimals.

**Points for B-BBEE level contributor:**

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<th>B-BBEE level contributor</th>
<th>Number of point (90/10) system</th>
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The Director General: *NAME OF DEPARTMENT*

I/we hereby request and authorise you to pay any amounts, which may accrue to me/us to the credit of my/our account with the mentioned bank.

I/we understand that the credit transfers hereby authorised will be processed by computer through a system known as "ACB - Electronic Fund Transfer Service", and I/we understand that not additional advice of payment will be provided by my/our bank, but that the details of each payment will be printed on my/our bank statement or any accompanying voucher. (This does not apply where it is not customary for banks to furnish bank statements).

I/we understand that the Department will supply a payment advice in the normal way, and that it will indicate the date on which the funds will be made available on my/our account.

This authority may be cancelled by me/us by giving thirty days notice by prepaid registered post. Please ensure information is validate as per required bank screens.

I/we understand that bank details provided should be exactly as per the records held by the bank.

I/we understand that the Department will not assume responsibility for any delayed payments, as a result of incorrect information supplied.

---

### Supplier Maintenance:

**Company / Personal Details**

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**Address Detail**

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(Compulsory if Supplier)

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**New Detail**

- [ ] New Supplier information
- [ ] Update Supplier information

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Department Number
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*Please include CC/CK where applicable

Practise Number

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Email Address

Contact Person:

Bank stamp

It is hereby confirmed that this details have been verified against the following screens

**ABSA-CIF screen**

**FNB-Hogans system on the CIS4**

**STD Bank-Look-up-screen**

**Nedbank: Banking Platform under the Client Details Tab**

**Contact Details**

**Supplier Signature**

**Regional Office Sender**

**Print Name**

**Print Name**

**Rank**

**Date (dd/mm/yyyy)**

**Date (dd/mm/yyyy)**

**PLEASE RETURN TO THE RELEVANT REGIONAL OFFICE THAT SUPPLIED THE FORM OR THE FOLLOWING ADDRESS:**

**NB: All relevant fields must be completed**