

Bid No.	USAASA – LEGAL/04/2018	
Bid Description	TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF LEGAL ADVISERS FOR A PERIOD OF THREE (3) YEARS	
Contact Person/s:		
Technical Terms of reference:	Name:	Phumi Mtimkulu
	Email address:	phumi@usasa.org.za
Bid Procedures:	Name:	Phumi Mtimkulu or Daisy Maraba
	Telephone No:	011 564 1600
	Email address:	phumi@usasa.org.za or daisy@usaasa.org.za
Non-Compulsory bid briefing session	Venue, Date and Time	USAASA Head Office, Building 01, Thornhill Office Park, 94 Bekker Road, Vorna Valley, Midrand , 23 January 2019 at 11h00.
Closing time and date for bid submission and venue		11:00 on the 07 February 2019 at USAASA Head Office, Building 01, Thornhill Office Park, 94 Bekker Road, Vorna Valley, Midrand
	Condition	Bids received after the closing time and date will not to be accepted for consideration. Bids should be in a sealed envelope or box clearly marked with the above bidding company, bid number, bid description and addressed to USAASA SCM Office.
Delivery address and conditions for delivery of bids	Delivery address:	USAASA Head Office, Building 01, Thornhill Office Park, 94 Bekker Road, Vorna Valley, Midrand. (Bid Box is placed in the Reception at the ground floor)
		Bidders must ensure that their bids are delivered timeously to the correct address and directly to the bid box. USAASA will not take any responsibility for late mailed/couriered bids. The bid box is open from Monday to Friday – 08h00 to 16h30.

NB: THE NATIONAL TREASURY SCM INSTRUCTION NOTE NO 4A OF 2016/17 STATE THAT BIDS MAY ONLY BE AWARDED TO SUPPLIERS AFTER VERIFYING THAT THEY ARE REGISTERED AS PROSPECTIVE SUPPLIERS ON THE CENTRAL SUPPLIER DATABASE (CSD). IN ORDER FOR USAASA TO VERIFY YOUR COMPANY'S REGISTRATION WITH CENTRAL SUPPLIER DATABASE (CSD) PLEASE PROVIDE THE FOLLOWING INFORMATION:

CSD SUPPLIER NUMBER:	
UNIQUE REGISTRATION REFERENCE NUMBER:	

(NB: ATTACH A COPY OF CSD REGISTRATION REPORT)

- The SBD 1 and all other application forms attached as Part 4 must be completed and signed in the original that is in ink.
- Forms with photocopied signatures or other such reproduction of signatures will be rejected.

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DEFINITIONS

The rules of interpretation and defined terms contained in the General Conditions of Contract (GCC) shall apply to this invitation to bid unless the context requires otherwise.

In addition, the following terms used in this invitation to bid shall, unless indicated otherwise, have the meanings assigned to such terms in the table below.

USAASA	Means The Universal Service and Access Agency of South Africa
Invitation to bid	means this invitation to bid comprising <ul style="list-style-type: none"> o The cover page and the table of content and definitions o Part 1 which details the Conditions of Bid; o Part 2 special instructions and notices to bidders regarding the completion of bidding document and Authority to sign a bid; o Part 3 which details the Terms of Reference relating to the service o Part 4 which contains all the requisite bid forms and certificates; As read with GCC – General Conditions of Contract
Services	means the services defined on the cover page of this invitation to bid and described in detail in the Terms of Reference;
Specifications /Terms of Reference	means the specifications or terms contained in Part 3 of this invitation to bid;

INVITATION TO BID

SBD 1

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/PUBLIC ENTITY)				
BID NUMBER:	USAASA-LEGAL/04/2018	CLOSING DATE:	07 February 2019	CLOSING TIME: 11:00
DESCRIPTION	TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF LEGAL ADVISERS FOR A PERIOD OF THREE (3) 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)				
SCM OFFICE, USAASA HEAD OFFICE				
BUILDING 1, THORNHILL OFFICE PARK				
94 BEKKER ROAD, VORNA VALLEY				
MIDRAND , 1686				
SUPPLIER INFORMATION				
NAME OF BIDDER				
CONTACT PERSON				
POSTAL ADDRESS				
STREET ADDRESS				
TELEPHONE NUMBER	CODE		NUMBER	
CELLPHONE NUMBER				
FACSIMILE NUMBER	CODE		NUMBER	
E-MAIL ADDRESS				
VAT REGISTRATION NUMBER				
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No: MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] Yes <input type="checkbox"/> No <input type="checkbox"/>		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] Yes <input type="checkbox"/> No <input type="checkbox"/>
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]				
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	Yes <input type="checkbox"/> [IF YES ENCLOSE PROOF]	No <input type="checkbox"/>	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES/WORKS OFFERED?	Yes <input type="checkbox"/> No <input type="checkbox"/> [IF YES ANSWER PART B:3 BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS				
SIGNATURE OF BIDDER				
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of				
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE (ALL INCLUSIVE)		
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:		
DEPARTMENT/ PUBLIC ENTITY	USAASA	CONTACT PERSON	Phumi Mtimkulu	
CONTACT PERSON	Phumi Mtimkulu	E-MAIL ADDRESS	phumi@usaasa.org.za	
TELEPHONE NUMBER	011 564 1600			
E-MAIL ADDRESS	phumi@usaasa.org.za			

ADMINISTRATIVE CONDITIONS FOR BIDDING

1.	BID SUBMISSION:	<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED- (NOT TO BE RE-TYPED) OR ONLINE</p> <p>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.</p> <p>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.</p> <p>1.5. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.</p>
2.	TAX COMPLIANCE REQUIREMENTS	<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>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.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p>
3.	QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS	<p>3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>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.</p>

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

PART 1

General Conditions of Bid

1. OFFER AND SPECIAL CONDITIONS

- 1.1. Without detracting from the generality of clause below, bidders must submit a completed and signed Invitation to Bid form (SBD1) and requisite bid forms attached as (Part 4) with its bid. Bidders must take careful note of the special conditions.
- 1.2. **All bids submitted in reply to this invitation to bid should incorporate all the forms, parts, certificates and other documentation forming part of this invitation to bid, duly completed and signed where required.**
- 1.3. In the event that any form provided in this invitation to bid does not have adequate space for the bidder to provide the requested details, the bidder should attach an annexure to such form on which the requested details should be provided and the bidder should refer to such annexure in the form or certificate provided.

2. CLOSING TIME OF BIDS AND PROVISIONS RELATING TO SUBMISSION OF BID PROPOSALS

- 2.1. The closing date and time for the receipt of bid proposals in response to this invitation to bid is detailed on the cover page of this invitation to bid.
- 2.2. All bids must be submitted in a sealed envelope or box bearing the bidding company name, bid number, bid description and closing date and addressed to the SCM Office.
- 2.3. All bids must be deposited in the bid box before the stipulated closing time and date, at the address detailed on the cover page of this invitation to bid.

3. ENQUIRIES

Should any bidder have any enquiries relating to this invitation to bid, such enquiries may only be addressed to the person/s detailed on the cover page to this invitation to bid in writing.

4. PRICING

- 4.1. The bidder(s) must submit a detailed pricing scheduling and must duly complete and submit SDB 3.3 together with the bid proposal in a separate sealed envelope which must be labelled "**Pricing Proposal**".
- 4.2. Pricing must be stipulated **INCLUSIVE OF VALUE ADDED TAX**
- 4.3. It is an express requirement of this invitation to bid that the bidders provide some transparency in respect to their pricing approach. In this regard, bidders must indicate the basis on which they have calculated their pricing by completing all aspects of the Pricing Schedule form (SBD 3.3) which is attached as Part 4 –Annexure C

5. DECLARATION OF INTEREST

The bidder should submit a duly completed and signed declaration of interest (SBD 4) together with the Bid proposal. The declaration of interest is attached as Part 4 –Annexure D.

6. PREFERENTIAL POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS OF 2017

The bidder must complete the preferential points claim form (SBD 6.1) and sign accordingly to submit with the bid proposal. The preferential points claim form is attached as Part 4 –Annexure E.

7. DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

The bidder must complete the declaration and sign accordingly to submit with the bid. The declaration of bidder's past supply chain management practices (SBD 8) is attached as Part 4 –Annexure F

8. CERTIFICATE OF INDEPENDENT BID DETERMINATION

The bidder must complete the certificate of independent bid determination and sign accordingly to submit with the bid. The certificate of independent bid determination (SBD 9) is attached as Part 4 – Annexure G

9. PARTNERSHIPS AND LEGAL ENTITIES

In the case of the bidder being a partnership all certificates reflecting the names, identity numbers and address of the partners, members or directors (as the case may be) must be submitted with the bid.

10. CONSORTIUM / JOINT VENTURE

10.1. It is recognized that bidders may wish to form consortia to provide the Services.

10.2. A bid in response to this invitation to bid by a consortium shall comply with the following requirements: -

10.2.1. It shall be signed so as to be legally binding on all consortium members;

10.2.2. One of the members shall be nominated by the others as authorized to be the lead member and this authorization shall be included in the agreement entered into between the consortium members;

10.2.3. The lead member shall be the only authorized party to make legal statements, communicate with USAASA and receive instructions for and on behalf of any and all the members of the consortium;

10.2.4. A copy of the agreement entered into by the consortium members shall be submitted with the bid;

10.2.5. The lead member must comply with all the requirements of the bid;

10.2.6. Preference points will be only awarded when a consolidated BBBEE Certificate is submitted.

11. VALIDITY

Bid documentation submitted by the bidder will be valid and open for acceptance for a period of **(120)** calendar days from the closing date and time stipulated on the front cover of this invitation to bid.

12. ACCEPTANCE OF BIDS

USAASA does not bind itself to accept either the lowest or any other bid and reserves the right to accept the bid which it deems to be in the best interest of USAASA.

13. NO RIGHTS OR CLAIMS

- 13.1.** Receipt of the invitation to bid does not confer any right on any party in respect of the Services or in respect of or against USAASA.
- 13.2.** USAASA reserves the right, in its sole discretion, to withdraw by notice to bidders any Services or combination of Services from the bid process, to terminate any party's participation in the bid process or to accept or reject any response to this invitation to bid on notice to the bidders without liability to any party. Accordingly, parties have no rights, expressed or implied, with respect to any of the Services as a result of their participation in the bid process.
- 13.3.** USAASA nor any of their respective directors, officers, employees, agents, representatives or advisors will assume any obligations for any costs or expenses incurred by any party in or associated with any appraisal and/or investigation relating to this invitation to bid or the subsequent submission of a bid in response to this invitation to bid in respect of the Services or any other costs, expenses or liabilities of whatsoever nature and howsoever incurred by bidders in connection with or arising out of the bid process.

14. NON DISCLOSURE, CONFIDENTIALITY AND SECURITY

- 14.1.** The invitation to bid and its contents are made available on condition that they are used in connection with the bid process set out in the invitation to bid and for no other purpose. All information pertaining to this invitation to bid and its contents shall be regarded as restricted and divulged on a "need to know" basis with the approval of USAASA's delegated authority.
- 14.2.** In the event that the bidder is appointed pursuant to this invitation to bid such bidder may be subject to security clearance prior to commencement of the Services.

15. ACCURACY OF INFORMATION

- 15.1.** The information contained in the invitation to bid has been prepared in good faith. USAASA nor any of its respective directors, advisors, officers, employees, agents, representatives make any representation or warranty or give any undertaking express or implied, or accept any responsibility or liability whatsoever, as to the contents, accuracy or completeness of the information contained in the invitation to bid, or any other written or oral information made available in connection with the bid and nothing contained herein is, or shall be relied upon as a promise or representation, whether as to the past or the future.
- 15.2.** This invitation to bid may not contain all the information that may be required to evaluate a possible submission of a response to this invitation to bid. The bidder should conduct its own independent analysis of the operations to the extent required to enable it to respond to this bid.

15.3. The premises of the bidder/bidders should be made available at all reasonable hours for inspection by the representatives of USAASA. This will be done in order to confirm any information provided by the bidder(s).

16. **COMPETITION**

16.3. Bidders and their respective officers, employees and agents are prohibited from engaging in any collusive action with respect to the bidding process which serves to limit competition amongst bidders.

16.4. In general, the attention of bidders is drawn to Section 4(1) (iii) of the Competition Act 1998 (Act No. 89 of 1998) (the Competition Act) that prohibits collusive bidding.

16.5. If bidders have reason to believe that competition issues may arise from any submission of a response to this bid invitation they are encouraged to discuss their position with the competition authorities before submitting a response.

16.6. Any correspondence or process of any kind between bidders and the competition authorities must be documented in the responses to this invitation to bid.

17. **RESERVATION OF RIGHTS**

17.3. Without limitation to any other rights of USAASA (whether otherwise reserved in this invitation to bid or under law), USAASA expressly reserves the right to: -

17.3.1. Request clarification on any aspect of a response to this invitation to bid received from the bidder, such requests and the responses to be in writing;

17.3.2. Amend the bidding process, including the timetables, closing date and any other date at its sole discretion;

17.3.3. Reject all responses submitted by bidders and to embark on a new bid process;

17.3.4. USAASA may request the shortlisted bidders to present their proposals to the Bid Committee;

17.3.5. To verify information provided for references to claim points;

17.3.6. To disqualify any tender/bidder who misrepresented information to claim points and

17.3.7. USAASA reserve the right to award this tender to more than one bidder.

PART 2

SPECIAL INSTRUCTIONS AND NOTICES TO BIDDERS REGARDING THE COMPLETION OF BIDDING FORMS

PLEASE NOTE THAT THIS BID IS SUBJECT TO TREASURY REGULATIONS 16A ISSUED IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999, USAASA SUPPLY CHAIN MANAGEMENT POLICY 2015, PREFERENTIAL PROCUREMENT REGULATIONS 2017 AND THE GENERAL CONDITIONS OF CONTRACT.

1. Unless inconsistent with or expressly indicated otherwise by the context, the singular shall include the plural and visa versa and with words importing the masculine gender shall include the feminine and the neuter.
2. Under no circumstances whatsoever may the bid forms be retyped or redrafted. Photocopies of the original bid documentation may be used, but an original signature must appear on such photocopies.
3. The bidder is advised to check the number of pages and to satisfy himself that none are missing or duplicated.
4. **The bidder must submit in two separate sealed envelopes, where one must contain the bid proposal document and must be labelled TECHNICAL PROPOSAL and the other must contain the pricing proposal which must be labelled PRICING PROPOSAL (SDB 1 AND SDB3.3 MUST BE IN THE PRICING PROPOSAL ENVELOPE).**
5. **The bidder must submit one (1) original bid proposal document and four (4) copies and one (1) original pricing proposal and four (4) copies. Both the original documents and copies must be signed and initialed where applicable.**
6. **Bidders are required to respond to all aspects of the evaluation criteria in the same sequence as the evaluation criteria. Any bidder who responds partly to the evaluation criteria will be rendered non-responsive as support for all modules is mandatory.**
7. Bids submitted must be complete in all respects. All Annexures must be completed and signed where applicable.
8. Bids shall be submitted at the address indicated not later than the closing time specified for their receipt, and in accordance with the directives in the bid documents.
9. Each bid shall be addressed in accordance with the directives in the bid documents and shall be submitted in a **sealed envelope or box**, with the name and address of the bidder, the bid number and closing date indicated on the envelope or date and addressed to the SCM Office. The envelope shall not contain documents relating to any bid other than that shown on the envelope. If this provision is not complied with, such bids may be rejected as being invalid.
10. All bids received in sealed envelopes or box with the relevant bid numbers on the envelopes are kept unopened in safe custody until the closing time of the bids. Where, however, a bid is received open, it shall be sealed. If it is received without a bid number on the envelope or box, it shall be opened, the bid number ascertained, the envelope or box sealed and the bid number written on the envelope or box.
11. A specific tender box is provided for the receipt of bids, and no bid found in any other box or elsewhere subsequent to the closing date and time of bid will be considered.
12. No bid sent through the post or courier will be considered if it is received after the closing date and time stipulated in the bid documentation, and proof of posting will not be accepted as proof of delivery.
13. No bid submitted by electronic means will be considered.

14. Any alteration made by the bidder must be initialed.
15. Use of correcting fluid is prohibited.
16. Bids submitted will be read out in public on the day of the closing for bid submissions and the list of bidders will be published on the USAASA website within 7 days after the closing date for bid submissions.

**FAILURE TO COMPLY WITH THE FOLLOWING ABOVE MENTIONED INSTRUCTIONS
2,7,9, 12,14 MAY LEAD TO YOUR BID BEING REJECTED**

**FAILURE TO COMPLY WITH THE FOLLOWING ABOVE MENTIONED INSTRUCTIONS
4, 5, 6, 13, 15 WILL LEAD TO YOUR BID BEING REJECTED**

AUTHORITY TO SIGN A BID

A. COMPANIES

If a Bidder is a company, a certified copy of the resolution by the board of directors, personally signed by the chairperson of the board, authorising the person who signs this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the company must be submitted with this bid, that is before the closing time and date of the bid

AUTHORITY BY BOARD OF DIRECTORS

By resolution passed by the Board of Directors on..... 20.....

Mr/Mrs.....

(whose signature appears below) has been duly authorised to sign all documents in connection with this bid on behalf of

(Name of Company)

IN HIS/HER CAPACITY AS:

SIGNED ON BEHALF OF COMPANY:

(PRINT NAME)

SIGNATURE OF SIGNATORY: **DATE:**

WITNESSES: 1 **DATE:**

2 **DATE:**

B. SOLE PROPRIETOR (ONE - PERSON BUSINESS)

I, the undersigned..... hereby confirm that I am the sole owner of the business trading as

SIGNATURE..... **DATE**.....

C. PARTNERSHIP

The following particulars in respect of every partner must be furnished and signed by every partner:

Full name of partner	Residential address	Signature
.....
.....
.....
.....

We, the undersigned partners in the business trading as

hereby authoriseto sign this bid as well as any contract resulting from the bid and any other documents and correspondence in connection with this bid and /or contract on behalf of

.....
SIGNATURE	SIGNATURE	SIGNATURE
.....
DATE	DATE	DATE

D. CLOSE CORPORATION

In the case of a close corporation submitting a bid, a certified copy of the Founding Statement of such corporation shall be included with the bid, together with the resolution by its members authorising a member or other official of the corporation to sign the documents on their behalf.

By resolution of members at a meeting on20.....at

Mr/Ms....., whose signature appears below, has been authorised to sign all documents in connection with this bid on behalf of

(Name of Close Corporation)

.....

SIGNED ON BEHALF OF CLOSE CORPORATION:
(PRINT NAME)

IN HIS/HER CAPACITY AS **DATE:**

SIGNATURE OF SIGNATORY **DATE:**

WITNESSES: 1 **DATE:**

2..... **DATE:**

E. CO-OPERATIVE

A certified copy of the Constitution of the co-operative must be included with the bid, together with the resolution by its members authoring a member or other official of the co-operative to sign the bid documents on their behalf. By resolution of members at a meeting on 20..... at

Mr/Ms....., whose signature appears below, has been authorised to sign all documents in connection with this bid on behalf of (Name of cooperative)
.....

SIGNATURE OF AUTHORISED REPRESENTATIVE/SIGNATORY:

IN HIS/HER CAPACITY AS:

DATE:

SIGNED ON BEHALF OF CO-OPERATIVE:

NAME IN BLOCK LETTERS.....

WITNESSES: 1 **DATE:**

2..... **DATE:**

F. JOINT VENTURE

If a bidder is a joint venture, a certified copy of the resolution/agreement passed/reached signed by the duly authorised representatives of the enterprises, authorising the representatives who sign this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the joint venture must be submitted with this bid, before the closing time and date of the bid.

AUTHORITY TO SIGN ON BEHALF OF THE JOINT VENTURE

By resolution/agreement passed/reached by the joint venture partners on.....20.....

Mr/Mrs.....Mr/Mrs.....

.....Mr/Mrs.....and

Mr/Mrs..... (whose signatures appear below) have been duly authorised to sign

all documents in connection with this bid on behalf of:

(Name of Joint Venture).....

IN HIS/HER CAPACITY AS:.....

SIGNED ON BEHALF OF (COMPANY NAME):.....

(PRINT NAME)

SIGNATURE.....**DATE:**.....

IN HIS/HER CAPACITY AS:.....

SIGNED ON BEHALF OF (COMPANY NAME):.....

(PRINT NAME)

SIGNATURE:.....**DATE:**.....

IN HIS/HER CAPACITY AS:.....

SIGNED ON BEHALF OF (COMPANY NAME):.....

(PRINT NAME)

SIGNATURE:.....**DATE:**.....

IN HIS/HER CAPACITY AS:.....

SIGNED ON BEHALF OF (COMPANY NAME):.....

(PRINT NAME)

SIGNATURE:.....**DATE:**.....

G. CONSORTIUM

If a bidder is a consortium, a certified copy of the resolution/agreement passed/reached signed by the duly authorised representatives of concerned enterprises, authorising the representatives who sign this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the consortium must be submitted with this bid, before the closing time and date of the bid.

AUTHORITY TO SIGN ON BEHALF OF THE CONSORTIUM

By resolution/agreement passed/reached by the consortium on.....20.....

Mr/Mrs.....

(whose signature appear below) have been duly authorised to sign all documents in connection with this bid on behalf of:

(Name of Consortium)

IN HIS/HER CAPACITY AS:

SIGNATURE:.....**DATE:**.....

PRE – QUALIFICATION REQUIREMENTS

1.1	Bid Document - All pages must be completed and signed (where signature is applicable) by the Bidder
1.2	Invitation to bid must be fully Completed and signed (SBD 1)
1.4	Pricing Schedules must be fully completed and signed (SBD 3.3)
1.5	Declaration of Interest must be fully completed and signed (SBD 4)
1.6	Preference Points Claim Forms must be fully completed and signed (SBD 6.1)
1.7	Declaration of Bidder's Past Supply Chain Management Practices must be fully completed and signed (SBD 8)
1.8	Certificate of Bid Determination must be fully completed and signed (SBD 9)
1.9	JV or Consortium Agreement where applicable must be attached
FAILURE TO COMPLY WITH THE ABOVE MENTIONED PRE-QUALIFICATION INSTRUCTIONS MAY LEAD TO DISQUALIFICATION	



Universal Service and Access Agency of South Africa

PART 3 – TERMS OF REFERENCE

TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF LEGAL ADVISERS FOR A PERIOD OF THREE (3) YEARS

1. PURPOSE

The purpose of this request for proposals (RFP) is to create a database of suitable, qualified and competent legal firm of advisers with adequate capacity and experience in dealing with legal matters. Qualifying submissions will be used to create a pool or panel of preferred legal services providers who will be requested to provide quotations to USAASA in line with the legal service required on a needs basis. The appointed panel of legal firm of advisers will be called on to serve USAASA on a needs basis and this shall not constitute a retainer.

2. BACKGROUND

The Universal Service and Access Agency of South Africa (“the Agency”) is established in terms of Section 80 of the Electronic Communications Act Number 36 of 2005 (“the ECA”) as a statutory body with a sole mandate of promoting the goal of universal access and universal service to electronic communications network services (“ECNS”), electronic communications services (“ECS”) and Broadcasting Services (“BS”).

In accordance with Section 82(5) of the ECA, and amongst other legislative functions, the Agency is required to:

Manage the Universal Service and Access Fund (“USAF”). The USAF is established in terms of Section 87 of the ECA and generated through the universal service obligation defined by the Independent Communications Authority of South Africa (“ICASA”) through provisions of Section 89 of the ECA.

The request for proposals seeks to ensure that USAASA complies with all applicable legislative requirements and laws and that it manages its legal risks effectively. From time to time USAASA requires the services of legal counsel in diverse matters, these legal needs are generally unplanned and require immediate attention. Prospective bidders will be selected on basis of competency and capability in their area of service. Selected bidders will be listed on the panel of service provider contracted to render legal services to USAASA. It is for this purpose that an invitation is issued to all prospective bidders for listing on the USAASA panel of legal practitioners.

Bidders are advised to select an area (s) of expertise as listed on the table hereunder (see section 3).

3. SCOPE OF WORK

Prospective bidders are expected to indicate in their proposal one or more areas of work according to their expertise or specialization (for which they must have a proven record) from the below table. Bidders who have the required skills and are able to render the scope of works as described in each of the areas of work, must indicate their selected competency area.

Table: 1 – Scope of Works Checklist

No.	Area of work	Scope of work	Skills required	Indicate the work you are bidding for with a YES or NO
1	Constitutional, administrative & international law	<ul style="list-style-type: none"> • Provide legal opinions in respect of constitutional, administrative & international law matters • Assist in drafting of public or private law agreements to be entered into by USAASA. • Ensure technical quality, adherence to best practice and consistency with the Constitution and other Act of Parliament. • Advise on the legal interpretation and legal implications of existing or proposed public or private international agreements to be entered into by USAASA • Litigation and litigation support relating to areas as identified above including any other courts of law, statutory tribunals and other bodies • Legal opinion on legal matters 	<ul style="list-style-type: none"> • Experience in providing opinions in constitutional & international law matters. • Extensive knowledge of international law. • Extensive experience in the drafting, vetting and interpretation of public & private international law. • Experience in regulatory framework governing international dispute resolutions 	
2	Labour and employment law	<ul style="list-style-type: none"> • Provide legal opinion on labour, employment benefits and employment law related matters. • Assist in disciplinary hearing, arbitrations and other dispute resolutions. <p>Expertise in labour and employment law matters are required, more</p>	<ul style="list-style-type: none"> • Experience in labour & employment law litigation • Experience in regulatory framework governing public service employment. 	

		<p>specifically:</p> <ul style="list-style-type: none"> • Ability to prosecute senior level employees in disciplinary hearings; • Advise on procedural and substantive issues relating to disciplinary hearings conducted; • Advise on disciplinary codes, policies and governing legislation; • Representation at the CCMA, Labour Court and Labour Appeal Court; • Advise and assist in process and compliance with Section 189 of the Labour Relations Act 66 of 1995 procedures; • Negotiation and settlement of labour disputes whether with individual employees or the bargaining unit represented by a union; • Provision of Legal Opinion; • Investigation of alleged misconduct. • Legal opinion on legal matters 	<ul style="list-style-type: none"> • Applied knowledge of labour law and employment law for purposes of providing legal opinions. • Applied knowledge of Bargaining Council and other dispute resolution forums. 	
3	Civil law	<ul style="list-style-type: none"> • Conduct litigation on behalf of USAASA • Ensure effective and efficient litigation process is follow. • Provide custody of all pleadings and documents in litigation matters. • Provide oral and written legal advice throughout litigation process. • Avoid prescriptions, barring and default judgements. 	<ul style="list-style-type: none"> • Experience in providing opinions. • Applied knowledge of litigation processes and procedures in various forums including but not limited to the High Court, SCA, Constitutional Court and Magistrate Court. • Comprehensive and coherent understanding of all laws and regulations. 	

		<ul style="list-style-type: none"> Defending or instituting civil actions instituted by or against USAASA in any court; Legal opinion on legal matters 		
5	Insurance Law	<ul style="list-style-type: none"> Provide legal opinions on insurance 	<ul style="list-style-type: none"> Experience in insurance law Comprehensive understanding of laws applicable to insurance and related matters 	
6	PFMA Matters	<ul style="list-style-type: none"> Provide advice on public procurement Assist with advice where necessary with public procurement processes. recovery of irregular, unauthorised or wasteful expenditure; Legal opinion on legal matters 	<ul style="list-style-type: none"> Experience Constitutional law on procurement, PFMA Experience in Preferential Procurement Policy Framework Act (PPFA), Preferential Procurement Regulations as amended, BBBEE Act, National Treasury Regulation, NT Instruction Notes and Circulars, National Treasury General Conditions of Contract. Comprehensive understanding of public procurement law and related matters e.g. private public partnerships, transversal contracts. 	
7	Information and Communications Law	<ul style="list-style-type: none"> Provide legal opinion and advice 	<ul style="list-style-type: none"> Experience in deal with matters relating to the ECA , ECT 	
8	Labour Relations Law	<ul style="list-style-type: none"> Provide legal advice on pension law and medical aid schemes 	<ul style="list-style-type: none"> Experience in giving legal opinions. 	

		<ul style="list-style-type: none"> • Salary matters • Disciplinary matters • Legal opinion 	<ul style="list-style-type: none"> • Experience in dealing with and advising on senior and executive management disciplinary matters. 	
9	Regulatory Compliance	<ul style="list-style-type: none"> • Provision of regulatory support and legal advice relating to either or collectively with regard to emphasis to Public Finance Management Act, Treasury Regulations and any other legislative prescripts • Legal opinion 	<ul style="list-style-type: none"> • Litigation experience • Public sector experience • Knowledge of the PFMA , National Treasury Regulations, Electronic Communications Act, BBBEE Act 	
10	Legislative Interpretation	Legal opinion on legal matters	<ul style="list-style-type: none"> • Litigation experience in the legislative interpretation • electronic communications network services (“ECNS”), electronic communications services (“ECS”) and Broadcasting Services (“BS”). 	
11	Commercial and Contract Law	<ul style="list-style-type: none"> • Advise on matters of contract law nature; • Provide legal opinion of a corporate law nature; • Advise on matters relating to contracts and SLA's; 	<ul style="list-style-type: none"> • Experience in working with transactions of corporate law nature; • Excellent research and drafting skills, for purposes of preparing legal opinions of a corporate law nature; • Ability to work and deliver on specific outputs on time. 	

Any other specialist field that the firm of advisers has expertise in and that is relevant to the working environment of USAASA will be on request.

4. REPORTING RELATIONSHIP

The respective firm of advisers will report to the Senior Manager: Legal Services of USAASA.

5. PROFESSIONAL FEES

The persons available to provide the service must be identified and their CV's provided. An assignment fee will be negotiated for every assignment issued.

- 5.1.1. USAASA will remunerate the legal firm for legal services rendered by way of agreed fees.
- 5.1.2. For competitive purposes, hourly rate will become the bidder bid price on the 80/20 score card, please provide fees in the table format provided below in section 7.5.
- 5.1.3. Fees should be indicated in an hourly rate. Distinction should be made between fees for a Director/Partner, Senior Associate, Associate, Professional Assistant and Candidate Attorney where applicable.

6. DELIVERABLES

The services required will strictly be on an as if and when required basis and the services must be delivered within the timeframes provided for in legislation and/or the rules of the Court with competent jurisdiction in which the legal services will be required.

The successful bidder must submit monthly reports on all matters dealt with on behalf of USAASA.

7. PRICING

- 7.1. Pricing must be inclusive of applicable rates and taxes.
- 7.2. All bid proposals must be submitted with the following information, bid proposal in response to the bid, pricing inclusive of vat, name of bidder, completed and signed standard bidding documentation (SBD forms), contact person, contact details, postal address, physical address, email address, telephone number, fax number.
- 7.3. Prices and rates in proposal must be detailed and all inclusive, submitted price must be firm for the period of the services until finalization and acceptance of the final report.
- 7.4. Kindly complete the attached Standard Bidding Document (SBD) 3.3 form
- 7.5. Table format of detailed pricing schedule

Table 2 – Pricing Schedule

Hourly Rates		
Resources	Years of experience	VAT inclusive
Senior Partner		
Partner		
Senior Associate		
Associate		
Disbursements		
Cost for email communication		
Cost for telephonic communication		
Cost for drafting documents e.g. letters		

8. BID CONDITIONS

- 8.1. USAASA reserves the right not to appoint should the bid proposals be inadequate in terms of functionality.
- 8.2. USAASA reserves the right to withdraw this bid or extend the validity period of this bid before the validity period expires.
- 8.3. Failure to comply with any condition of this request for a proposal will invalidate respective tender proposal.
- 8.4. USAASA reserves the right to contact the references.
- 8.5. USAASA reserves the right to award part of a bid and not the whole bid.
- 8.6. USAASA reserves the right to withdraw this bid or extend the validity period of this bid before the validity period expires.
- 8.7. The validity period for this bid is 120 days, therefore all price proposals must be valid for 120 days before the award of the bid.
- 8.8. USAASA reserves the right not to accept the lowest proposal.
- 8.9. USAASA reserves the right to sign and conclude a formal contract with the successful bidder
- 8.10. USAASA reserves the right to invite the selected service providers for a presentation at its offices.
- 8.11. General conditions of contract issued by National Treasury will be applicable to this bid at all times and must be interpreted as such.
- 8.12. A contract will be signed with the appointed bidder to render the services upon a as if and when required basis.
- 8.13. The firm of advisers may not cede or assign any part of its agreement with USAASA nor subcontract any part of the work assigned to them without the prior written authorization of Senior Manager: Legal Services of USAASA. The firm of advisers may only appoint Senior Counsel and/or Junior Counsel to assist in any matter with the explicit written approval of the Senior Manager: Legal Services of USAASA.
- 8.14. The USAASA shall be the owner of all the information, documents, programs, advice and reports collected and compiled by the successful bidder in the execution of this tender.
- 8.15. All information, documents, programs and reports must be regarded as confidential and may not be made available to any unauthorized person or institution without the written consent of the USAASA.
- 8.16. A purchase order will be issued prior to the appointed bidder being engaged to provide services.
- 8.17. The firms of advisers will be required to sign confidentiality and indemnity agreements with the USAASA.
- 8.18. The basis of engaging firm will be on an assignment basis and in writing from the Supply Chain Management Unit.
- 8.19. The firm of advisers must declare any interest it has in an assignment as well as declare any possible conflict of interest with USAAS in the pursuance of the proposed assignment.
- 8.20. In the event that any conflict of interest is discovered during the assignment, USAASA reserves the right to summarily cancel the agreement and demand that all information, documents and property of USAASA be returned forthwith.

9. SPECIAL CONDITIONS

- 9.1. Service delivery levels and quality of the work will be a measure of appointment and retention in the panel;
- 9.2. A firm of advisers assigned any work may not cede, assign or sub-contract any part thereof to any person unless with the written consent of USAASA or as may be required by the applicable laws, for instance, in cases where correspondent advisers may be necessary;
- 9.3. Fees shall be charged in accordance with USAASA's Service Level Agreement. The Service Level Agreement will be signed with the successful bidders;
- 9.4. There will be no guarantee that advisers will receive instructions if they are appointed onto USAASA's panel;
- 9.5. All instruction(s) to the panel of firm of advisers shall be given, in writing, by duly authorized representative of USAASA from the legal services office.

- 9.6. USAASA shall be entitled in its discretion to remove a firm of advisers from the panel before the expiry of the said 3 years' period by written notice and recall all the files in the possession of the said law firm.
- 9.7. The firm shall have at least 5 years' experience. In the case of a new firm, the advisers who will be dealing with USAASA matters shall have at least 7 years' post admission experience.
- 9.8. Intellectual property rights:
 - 9.8.1. All copyright and intellectual property rights that may result as consequences of the work to be performed will become the property of USAASA;
 - 9.8.2. Firms of advisers must hand over all documents and information in any format, including copies thereof, that it received from USAASA or that it had access to during the assignment immediately after completion of the assignments to USAASA;
 - 9.8.3. Firms of advisers shall deliver to USAASA, on completion of an assignment, any security devices, passwords or protective mechanisms to the soft versions of documents that were written and USAASA will have the right to amend and change these without obligation whatsoever to the firms of advisers upon completion of the assignment.
- 9.9. The USAASA reserves the right, under exceptional circumstances, to appoint advisers outside the panel advisers.

10. CONTRACT PERIOD

Individual contracts will be signed with each panel member for a period of three (3) years, this is no way a guarantee of work.

11. COMPANY PROFILE / PROPOSAL

Your company profile must be a maximum of 5 pages and address the following areas / headings in the following order:

11.1. HISTORY

Provide a brief history of the firm and an outline of the firm's organogram, indicating names of resources and geographic structure (provincial/regional offices within the Republic of South Africa) (excluding alliances or affiliation or association you may have with other law firms)

11.2. CLIENT BASE

Provide a list of clients for whom legal services were rendered on a regular basis in the past 3 years. The most recently served clients must be mentioned first and specify the nature of all work done.

11.3. FIELD OF EXPERTISE

Each proposal must include the specialist fields of law of the firm, with specific reference to the fields as set out in Section 3. If a firm of advisers has expertise in more than one field of law, all relevant fields must be indicated in the proposal together with demonstrated experience in the specified areas of law. Clearly indicate for which of the 12 specialist fields (as set out in Section 3 above) your firm tenders to provide legal services to USAASA.

11.4. YOUR TEAM

CV's of your core service team that will be attending to USAASA work with specific reference to their educational/ professional background and their relevant experience.

12. CONTACTABLE PERSONS

12.1. Bidding enquiries, Phumi Mtimkulu on phumi@usaasa.org.za and/or 011- 564 1600

12.2. Technical Enquiries, Willem Olivier on willem@usaasa.org.za and/or 011- 5641600

13. PROCEDURE AND DOCUMENT SUBMISSION

Proposal including the information that is requested in this document must be hand delivered at the USAASA Office, Supply Chain Management, Thornhill Office Park, Building 1, Vorna Valley, Midrand on or before 11 January 2019 at 11h00 (Telkom time). No late submissions will be considered.

14. EVALUATION PROCESS

14.1. STAGE 1: is the evaluation of mandatory compliance - no points allocated (compliant or non-compliant)

14.2. STAGE 2: is the desktop evaluation of the bidder's response to the terms of reference and functional evaluation criteria. Functionality has a total possible score of 100 points.

14.3. STAGE 3: is price and B-BBEE evaluation of bidders who met the 70 points functional threshold.

14.4. STAGE 3: The 80/20 preference point system will be used to evaluate price and B-BBEE points. Price with 80 points and BBBEE 20 points

14.5. All Bidders who do not meet all Mandatory Requirements will be disqualified and will not be considered for further evaluation on Technical / Functional Requirements.

14.6. Only the criteria set out on Technical / Functional Criteria will be used to evaluate all bids proposals which have passed the Mandatory requirements

14.7. Functional threshold is set at 70%. Only bidders who meet the functional threshold will be evaluated on price and B-BBEE.

14.8. Prospective bidders will be evaluated in accordance with the 80/20 preference point system, as prescribed in the Preferential Policy Framework Act 5 of 2000, Preferential Procurement Regulation 2017 and approved USAASA Supply Chain Management Policy 2015. Bidders who do not meet all the Mandatory Requirements will be disqualified and will not be considered for further evaluation on Technical / Functional Requirements. Only the criteria set out in Technical / Functional Criteria will be used to evaluate bids which have passed all other criteria.

15. STAGE 1: MANDATORY REQUIREMENTS

Bidders that do not submit proof for all of the below mandatory requirements will be disqualified, therefore they will not be evaluated on functionality. **Bidders are requested to indicate their compliance to the Mandatory Requirements.**

Mandatory	Yes	No
Proof that the bidder has been in existence and practice for a period of at least seven (7) years prior to the closing date of this request for the proposals; (submit as Annexure 1)		
Fidelity certificate issued in terms of the Attorneys Act, 1979; (submit as Annexure 2)		
Letter of good standing with the relevant Law Society; (submit as Annexure 3)		
Certified ID copies of owners of Partnership or CC or company; (submit as Annexure 4)		
List of past contracts and clients; (submit as Annexure 5)		
CV's and qualification of team that will be assigned to USAASA in line with the terms of reference. (submit as Annexure 6)		
Record of attendance, i.e. record of attendance and summary of matters attended to by the Senior Partner as per the scope of work, section 3 of these terms of reference in the last two (2) years prior to the closing date of this request for proposals. (submit as Annexure 7)		
Proof that the Senior Partner has at least five (5) years' post admission experience in the identified area (s) as per the scope of work, section 3 of these terms of reference. (submit as Annexure 8)		
Proof that the Partner has at least five (5) years' post admission experience in the identified area (s) as per the scope of work, section 3 of these terms of reference. (submit as Annexure 9)		
Senior Partner's proof of qualifications and admission as an attorney. (submit as Annexure 10)		
Partners proof of qualifications and admission as an attorney. (submit as Annexure 11)		
Completed scope of work checklist table in section 3 of the terms of reference ((submit as Annexure 12)		

16. STAGE 2: FUNCTIONAL EVALUATION CRITERION

- The Bidders will be evaluated according to the below functional evaluation criteria.
- Bidders must indicate their ability to do the following and to substantiate as required with supporting documentation.

#	FUNCTIONAL EVALUATION CRITERION	SCORE	FORMAT OF SUBMISSION
DESKTOP EVALUATION		100	
16.1	TECHNICAL EVALUATION CRITERION		
16.1.1.	<p>Signed reference letter on company letterhead of the client which indicate that the bidder was appointed to provide legal services to the client. The letter must have the contact person's name, designation and contact details, it must also include the period of the contract and the clients level of satisfaction with the service rendered by the bidder. The signatory of the letter must be authorized to sign on behalf of their organization. reference letter must be in line with work as outlined in section 3 (Scope of Work) of these terms of reference (there must be public sector experience).</p> <p>0 reference letter = 0 points 1 – 2 reference letters = 5 points 3 – 5 reference letters = 10 points 6 – 10 reference letters = 15 points More than 10 reference letters = 20 points</p>	20	ANNEXURE A
16.1.2.	Ability to attend to urgent matter within 24 hours	15	ANNEXURE B
16.1.3.	Demonstrate capacity and resources to deliver on all the selected scope of work in sections 3.	15	ANNEXURE C
16.1.4.	<p>Demonstrate experience and provide proof in the following</p> <ul style="list-style-type: none"> • Recovery of damages = 5 points • Issuing of summons = 5 points • Submission of opinions lodging of application procedures = 10 points • Lodging of urgent interdict (notice of motion) = 5 points • Lodging of appeals procedures (notice of motion) = 10 points • Issuing of letters of demand = 5 points 	40	ANNEXURE D
16.1.5.	Demonstrate ability to provide detailed reports on the outcome of the services required as well as value proposition.	10	ANNEXURE E

16.2.1. Only bidders which score 70 points and above from this phase will be evaluated for pricing and BBBEE.

1.1 STAGE 3: PRICE AND BBEE STATUS LEVEL OF CONTRIBUTION

Evaluation in terms of the 80/20 preference point system.

Only bids that achieve the minimum threshold of 80 points for functionality will be evaluated further in accordance with 80/20 preference point system prescribed in Preferential Procurement Regulations 5 and 6.

Step 1: Calculation of points for price

The formula to be utilized when calculating points scored for price, is as follows: -

The 80/20 preference point system for acquisition of goods or services for Rand value equal to or above R30 000 and up to R50 million will be used.

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

Where -

- P_s = Points scored for price of tender under consideration;
- P_t = Price of tender under consideration; and
- P_{\min} = Prices of lowest acceptable bid.

The maximum possible score that can be achieved for price is 80 points.

Step 2: Calculation of points for B-BBEE status level of contributor

B-BBEE score shall be calculated out of 20 points in accordance with the table below:

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

NB: Bidders are required to, together with their bids submit original and valid B-BBEE status level verification certificates or certified copies to substantiate their B-BBEE rating claims. A bid will not be disqualified from the bidding process if the

bidder does not submit a certificate substantiating the B-BBEE status level of contribution nor is a non-compliant contributor. Such a bidder will score 0 out of maximum of 20 points for B-BBEE.

Note: No preference will be awarded without submitting of a valid B-BBEE certificate or a consolidated B-BEE Certificate in case of a Joint Venture, Trust or Consortium and total points scored will be calculated by adding points scored for price and B-BBEE Contributor Level.

2 CLARIFICATION

- 8.1. The USAASA may request clarity of further information regarding any aspect of the bid in writing. The bidder should supply the requested information within forty-eight (48) hours after the request has been made.
- 8.2. The USAASA reserves the right to conduct a security background check or screening of the Service Provider and its security personnel.
- 8.3. The USAASA reserves the right to conduct mandatory site inspection to the offices of the Service Provider.
- The successful bidder shall provide the services required based on the set timelines and as per the schedule to be provided by USAASA.
 - The price proposal must be valid for 120 days.
 - A pricing schedule with one of the specified elements omitted from the costing may be considered non-responsive.

9. BRIEFING SESSION

- 9.1. A Non-compulsory briefing session will be on held 23 January 2019 as indicated on the cover page, and no bidder will be allowed to bid if they have not attended the briefing session. It is the responsibility of the bidder to ensure that they sign the attendance register at the briefing session.

10. AWARDING OF BID

- 10.1. The bid will be awarded to the bidder who scored the highest total number of points as prescribed in the PPPFA, Preferential Procurement Regulations of 2017 and approved USAASA Supply Chain Management Policy 2015.
- 10.2. In exceptional cases the bid may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points. Reasons for such decision must be approved and recorded for audit purposes and must be justifiable in the court of law (as prescribed on the Preferential Procurement Regulations 2017).

Note: USAASA reserves the right not to award this bid or award this bid to more than one bidders.

11. ENQUIRIES

All enquiries relating to this document should be directed to:

Technical Enquiries on Terms of reference and Procurement Procedures:

Contact Persons: Mrs. Phumi Mtimkulu

Ms. Daisy Maraba

Email: phumi@usaasa.org.za

or

Email: daisy@usaasa.org.za

Part 4 – Annexure A

Government Procurement

General Conditions of Contract and Special Conditions of Contracts

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) Ensure that clients are familiar with the rights and obligations of all parties involved in doing business with government.

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

- The General Conditions of Contract (GCC) 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
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions.

1. The following terms shall be interpreted as indicated:

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

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

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

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

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

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

1.7 "Day" means calendar day.

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

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

1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified

site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

- 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application.

- 2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General.

- 3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za.

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 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 contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

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

- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

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

23. Termination for default

- 23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
 - (b) If the Supplier fails to perform any other obligation(s) under the contract; or
 - (c) If the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

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

25. Force Majeure

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

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

26. Termination for insolvency

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

27. Settlement of Disputes

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

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

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

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

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

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

and

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

28. Limitation of liability

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

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

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

29. Governing language

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

30. Applicable law

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

31. Notices.

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

32. Taxes and duties

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

33. National Industrial Participation (NIP) Programme

- 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

34 Prohibition of Restrictive practices

- 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.

Part 4 – Annexure B
Government Procurement
Special Conditions of Contracts

a) Selection of company/ resources when required

USAASA reserves the right to appoint one or more bidders for a single task mission. Bidders should adhere to this condition.

b) Intellectual property rights and ownership of material

All intellectual property rights relating to any work produced by the service provider in relation to the performance of this Contract shall belong to **USAASA**. The service provider shall give **USAASA** every assistance in protecting such intellectual property rights. All material, in paper, electronic or any recorded format produced by the service provider in the performance of this Contract shall remain the property of **USAASA** and must be handed over to **USAASA** within one month of the completion of the contract.

All service providers undertake not to infringe the intellectual property of third parties. Should any action or claim be instituted against the **USAASA** emanating from an infringement of intellectual property or an alleged infringement of intellectual property, the service provider hereby indemnify **USAASA** against such claims or actions as well as all costs (including legal costs on an attorney and client scale).

c) Amendments and variation

The terms of reference together with the offer made by the Service Provider and the acceptance thereof by **USAASA**, as well as the General Conditions of Contract shall constitute the formal agreement between **USAASA** and the Service Provider. No amendment of this agreement, variation, waiver, relaxation or suspension of any of the provisions thereof shall have any force or effect, unless reduced to in writing and signed by both parties.

d) Settlement of Disputes

All disputes will be settled within a period of 14 days through mediation proceedings.

e) Indemnity

“The Service Provider shall indemnify **USAASA** against any claims for injury, loss or damage suffered during the assessment of a disaster.”

f) Ad hoc assessments

Assessments of the performance of the service provider will be conducted on an adhoc basis. If there is dissatisfaction with the performance, written notice outlining the deficiencies will be provided to the service provider who will have two weeks to rectify the deficiency, failing which the contract will be terminated.

g) Termination of the contract

- i. Service Provider must start to work on the Project 24 hrs after an approval of a project has been granted.
- ii. If the service provider does not start to work on the project and after 14 days' written notice addressed to his domicilium address to start still fails to start on the project, this contract may be cancelled forthwith.
- iii. This contract may be cancelled for reasons **other** than poor performance or breach of contract, by giving the service provider 14 days' written notice to rectify or address the cause of concern where-after **USAASA** shall have the right to summarily cancel the contract upon written notice to the service provider.

iv. Depending on the assessments done the Project Manager and Manager SCM under paragraph g(iii) above, the service provider may in writing be required to rectify his/her poor performance, failing which the contract with the service provider will be terminated.

h) Communication

All communication must be done via Project Manager and Manager SCM who is the designated contract officer of **USAASA** responsible for the management of the contract together with the Project Manager.

Part 4 - Annexure C
PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO: USAASA-LEGAL/04/2018
CLOSING TIME 11:00	CLOSING DATE: 07 FEBRAURY 2019

OFFER TO BE VALID FOR **120 DAYS** FROM THE CLOSING DATE OF BID.

NB: USE ONLY BLACK INK, TO FILL IN THIS FORM

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)	
1.	The accompanying information must be used for the formulation of proposals.		
2.	Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project. R.....		
3.	PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)		
4.	PERSON AND POSITION	HOURLY RATE	DAILY RATE
-	-----	R-----	-----
-	-----	R-----	-----
-	-----	R-----	-----
-	-----	R-----	-----
-	-----	R-----	-----
-	-----	R-----	-----
5.	PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT		
	-----	R-----	-----days
	-----	R-----	-----days
	-----	R-----	-----days
	-----	R-----	-----days

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.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	R.....
.....	R.....
.....	R.....
.....	R.....
TOTAL: R.....			

** "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance fund 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.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	R.....
.....	R.....
.....	R.....
.....	R.....
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.

*[DELETE IF NOT APPLICABLE]

SIGNATURE

DATE

CAPACITY

Part 4 – Annexure D
Declaration of Interest

SBD 4

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 attach 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.
.....
.....
.....

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? **YES/NO**

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? **YES/NO**

2.11.1 If so, furnish particulars:
.....
.....
.....

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

Full Name	Identity Number	Personal Tax Reference Number	State Number	Employee / Persal Number

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

Part 4 – Annexure E

SBD 6.1

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

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

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

1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- 1.2
- a) The value of this bid is estimated **not to exceed** R50 000 000 (all applicable taxes included) and therefore the 80/20 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:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

- 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 PREFERENCE POINT SYSTEMS

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

80/20

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = Price of lowest acceptable bid

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

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

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

5. BID DECLARATION

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

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

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

7. SUB-CONTRACTING

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

(Tick applicable box)

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

7.1.1 If yes, indicate:

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

(Tick applicable box)

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

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 last 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
 - Supplier
 - Professional service provider
 - Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

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

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

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

WITNESSES

1.

2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:

ADDRESS

.....

.....

Part 4 – Annexure F

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	o
4.1	Is the bidder or any of its directors listed on the National Treasury's database 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 National Treasury after the audi alteram partem rule was applied).	Yes <input type="checkbox"/>	o <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	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)? To access this Register enter the National Treasury's website, www.treasury.gov.za, click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.	Yes <input type="checkbox"/>	o <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	o <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	o <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

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

Part 4 – Annexure G
Certificate of Independent Bid Determination

SBD 9

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a pe se prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution’s supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) Has been requested to submit a bid in response to this bid invitation;
 - (b) Could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) Provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) Methods, factors or formulas used to calculate prices;
 - (d) The intention or decision to submit or not to submit, a bid;
 - (e) The submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) Bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

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

DECLARATION THAT INFORMATION PROVIDED IN THIS BID IS TRUE, CORRECT AND UP TO DATE

(To be completed by bidder)

THIS IS TO CERTIFY THAT I (name of bidder/authorized representative)

.....
WHO REPRESENTS (state name of bidder)

.....
AM AWARE OF THE CONTENTS CONTAINED IN THIS DOCUMENT, AND THAT THE SAID INFORMATION IS CORRECT AND UP TO DATE AS ON THE DATE OF SUBMITTING THIS BID.

AND I AM AWARE THAT INCORRECT OR OUTDATED INFORMATION MAY BE A CAUSE FOR DISQUALIFICATION OF THIS BID FROM THE BIDDING PROCESS, AND/OR POSSIBLE CANCELLATION OF THE CONTRACT THAT MAY BE AWARDED ON THE BASIS OF THIS BID.

.....
SIGNATURE AUTHORISED REPRESENTATIVE

.....
NAME

.....
CAPACITY

DATE:.....

TENDER AWARDS

1. DISPUTES, OBJECTIONS, COMPLAINTS AND QUERIES

- (a) Persons aggrieved by decisions or actions taken by USAASA in the implementation of its supply chain management system, may lodge within 21 days of the decision or action, a written objection, complaint, query or dispute against such decision or action.
- (b) Objections, complaints, queries or dispute must be submitted in writing to the Senior Manager: Supply Chain Management System, USAASA, PO Box 12601, Vorna Valley, 1686 or be handed in personally to the Senior Manager: Supply Chain Management, USAASA, Building 1, Thomhill Office Park, Midrand, Vorna Valley, 1686.

2. APPEALS

- (a) In terms of section 3 of the Promotion of Administrative Justice Act, 3 of 2000 a person whose rights or legitimate expectation are adversely affected by the decision taken by the Department in the implementation of its supply chain management system, has the right to be given adequate notice of the right to request reasons for such decision or maybe given an adequate notice of any right of internal appeal and a reasonable opportunity to make representations, within 21 days of the date of the notification of the decision.
- (b) Appeals must be submitted in writing to the Senior Manager: Supply Chain Management, USAASA, Building 1, Thomhill Office Park, Midrand, Vorna Valley, 1686..

Such appeal must contain the following:

- (i) Reasons and /or grounds for the appeal.
- (ii) The way in which the appellant's rights have been adversely affected.
- (iii) The remedy sought by the appellant.

Where the person whose rights have been adversely affected cannot read or right, such person must solicit the assistance of any person to lodge the appeal or may solicit the assistance of any official of the Department to help him/her lodge such appeal.

3. RIGHTS TO APPROACH THE COURTS IN TERMS OF THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT, 3 OF 2000 (PAJA) AND PROMOTION OF ACCESS TO INFORMATION ACT, 2 OF 2000 (PAIA)

A person who is aggrieved by the decision of the appeal tribunal of the Department, may institute proceedings in a court or tribunal for the judicial review of such administrative decision of the supply chain management systems in terms of section 6 of PAJA.

He/she may also request access to information in order to advance his/her proceedings in court.

- (a) All legal process and pleadings must be served on the Senior Manager Legal Services, USAASA, Building 1, Thomhill Office Park, Midrand, Vorna Valley, 1686.
- (b) (b) All request in terms of the Promotion of Access to Information must be submitted in writing to the Senior Manager Legal Services, USAASA, Building 1, Thomhill Office Park, Midrand, Vorna Valley, 1686.