

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (UNIVERSAL SERVICE AND ACCESS AGENCY OF SOUTH AFRICA)					
BID NUMBER: USAASA/LPF/02/2025/26		CLOSING DATE: 06 FEBRUARY 2026		CLOSING TIME: 11:00	
DESCRIPTION: APPOINTMENT OF A PANEL OF LEGAL FIRMS /ATTORNEYS FOR A PERIOD OF THREE (03) YEARS.					
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
94 BEKKER ROAD					
BUILDING 1, USAASA					
VORNA VALLEY					
MIDRAND 1686					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	VIOLET MASAELE/LYDIA MALEKA		CONTACT PERSON	VHUTSHILO RAMATSWANA	
TELEPHONE NUMBER	011 564 1600		TELEPHONE NUMBER	011 564 1600	
FACSIMILE NUMBER	011 564 1629		FACSIMILE NUMBER	011 564 1629	
E-MAIL ADDRESS	SCM@USAASA.ORG.ZA		E-MAIL ADDRESS	VHUTSHILO@USAASA.ORG.ZA	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
[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?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

PART B TERMS AND CONDITIONS FOR BIDDING

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

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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

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

DATE:

.....



TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL COMPRISING LEGAL FIRMS OF ATTORNEYS FOR A PERIOD OF THREE (3) YEARS

1. PURPOSE

- 1.1 The purpose of this Request for Proposals (RFP) is to create a database of suitable, qualified, and competent legal firms with the capacity and experience to provide legal services to USAASA. These firms will form a panel of preferred service providers who may be requested to submit quotations for specific legal services on a need basis. Inclusion in the panel does not constitute a retainer, and firms will be engaged only when required.

2. BACKGROUND

- 2.1 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").
- 2.2 In accordance with Section 82(5) of the ECA, and amongst other legislative functions, the Agency is required to:
- 2.3 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.
- 2.4 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.

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

3. SCOPE OF WORK

- 3.1 The appointed panel of legal firms will provide legal services to USAASA on an as and when needs basis, without any form of retainer. Qualifying submissions will be used to create a pool of preferred legal service providers, who will be invited to submit quotations aligned with the specific legal service required at the time.

- 3.2 Prospective bidders are expected to indicate in their proposal one or more areas of specialization from the categories listed below. Each selected area must be supported by a proven track record of relevant experience and expertise. Bidders who possess the necessary skills and capacity to deliver services in any of the listed areas must clearly indicate their selected competency area(s).

It is recommended that law firms specializing/expertise on the areas of law listed below submit their bids. Mark with X on your core function (s).

No.	Area of work	Scope of work	Skills required	Mark "X"
		•	•	
1	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 specifically:</p>	<ul style="list-style-type: none"> • Experience in labour & employment law litigation • Experience in regulatory framework governing public service employment. • Applied knowledge of labour law and employment law 	

		<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; • Advice 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 Bargaining Council and other dispute resolution forums. 	
2	Civil law	<ul style="list-style-type: none"> • Conduct litigation on behalf of USAASA • Ensure effective and efficient litigation process is followed. 	<ul style="list-style-type: none"> • Experience in providing opinions. • Applied knowledge of litigation processes and 	

		<ul style="list-style-type: none"> • 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. • Defending or instituting civil actions instituted by or against USAASA in any court; • Legal opinion on legal matters 	<p>procedures in various forums including but not limited to the High Court, SCA, Constitutional Court and Magistrate Court.</p> <ul style="list-style-type: none"> • Comprehensive and coherent understanding of all laws and regulations. 	
3	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; • Drafting and Advise on matters relating to contracts and SLAs; • Provide advice on public procurement law. • Provide legal advise on Telecommunication law 	<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 specific outputs on time. 	

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

To ensure comprehensive coverage across all legal service categories and to promote equitable participation. Bidders are encouraged to submit proposals for only those categories in which they possess demonstrable expertise and a proven track record.

This is to:

- Promote diversity of legal expertise.
- Avoid over-reliance on a single service provider.
- Ensure fair distribution of work among panel members.

4. REPORTING RELATIONSHIP

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

5. PROFESSIONAL FEES

5.1 The persons available to provide the service must be identified and their CV's provided.

6. DELIVERABLES

6.1 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. Table format of detailed pricing schedule

PRICE SHECHULE		
Resources	Daily Rate all inclusive (VAT and Disbursement)	Hourly Rate all inclusive (VAT and Disbursement)
Senior Partner		
Partner		
Senior Associate		
Associate		

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 if and when required basis.
- 8.13. The firm of attorneys 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 attorneys 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 attorneys 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 attorneys must declare any interest it has in an assignment as well as declare any possible conflict of interest with USAASA 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. Only service providers that reach the minimum threshold as set out the in functional evaluation criteria, will be eligible to participate Panel on an as and when required basis. As and when services are required by the Commission panel members will be requested to submit proposals including quotation on specific cases.
- 9.2. In requesting quotations and adjudicating the proposals on specific cases and projects, due consideration may be given to some or all of the following factors: preference points , Specific Goals, price, level of relevant experience in the sector or section of the Act particular to a case, conflicts of interest, and specific expertise and skills. USAASA has a right not to appoint the bidder with the lowest price
- 9.3. Service providers on the panel are not guaranteed any specific work assignments during the tenure of this contract – work will be allocated on a competitive basis (RFQ) against the appointed Service Provider Panel Members.
- 9.4. When the appointed bidder is handling litigation for USAASA, it shall be required to make efforts, both at an early stage and on a continuing basis, to identify cases to be settled and to propose a suitable approach to settle. The appointed law firm shall also seek to handle the assigned cases more effectively and expeditiously.
- 9.5. Service delivery levels and quality of the work will be a measure of appointment and retention in the panel;
- 9.6. A firm of attorneys assigned to 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 attorneys may be necessary;

- 9.7. There will be no guarantee that attorneys will receive instructions if they are appointed into USAASA's panel;
- 9.8. All instruction(s) to the panel of firm of attorneys shall be given, in writing, by duly authorized representative of USAASA from the legal services office.
- 9.9. USAASA shall be entitled in its discretion to remove a firm of attorneys 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.
- 9.10. The attorneys who will be dealing with USAASA matters should have at least 15 years' post admission experience.
- 9.11. Intellectual property rights:
- 9.11.1. All copyright and intellectual property rights that may result as consequences of the work to be performed will become the property of USAASA;
- 9.11.2. Firms of attorneys 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;
- 9.11.3. Firms of attorneys 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 attorneys upon completion of the assignment.
- 9.12. USAASA reserves the right, under exceptional circumstances, to appoint attorneys outside the panel attorneys.

10. CONTRACT PERIOD

- 10.1 Individual contracts will be signed with each panel member for a period of three (3) years; however, this does not in any way guarantee the allocation of work."

11. COMPANY PROFILE / PROPOSAL

- Your company profile must 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. 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 attorneys 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 9 (nine) specialist fields (as set out in Section 3 above) your firm tenders to provide legal services to USAASA.

11.3. YOUR TEAM

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

11.5 EMPLOYMENT EQUITY

Provide demographic employment equity status.

12. CONTACTABLE PERSONS

12.1. Bidding enquiries, SCM@usaasa.org.za and/or 011- 564 -1600

12.2. Technical Enquiries, Vhutshilo@usaasa.org.za and/or 011- 564-1600

13. PROCEDURE AND DOCUMENT SUBMISSION

13.1 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 by January at 11h00 (Telkom time). No late submissions will be considered.

13.2 Bidders are required to submit one (1) original hard copy and one (1) USB

14. EVALUATION PROCESS

- 14.1. The first phase is the evaluation of mandatory compliance
- 14.2. The second phase involves the functionality evaluation of the bidder's response to the Terms of Reference and the functional evaluation criteria.
- 14.3. The third stage of the evaluation will assess the Team Leader/Director's experience.
- 14.4. Functionality will be scored out of a total of 100 points
- 14.5. The 80/20 preference point system will be used to evaluate price and points. Price with 80 points and preferential with 20 points
- 14.6. Functional threshold is set at 80 points.

15. MANDATORY REQUIREMENTS (STAGE 1)

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 ten years (10) years minimum 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 owner/s of Partnership or CC or company; (submit as Annexure 4)		
List of past contracts and clients relevant to the selected category/categories (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 Attorney 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 Lead Attorney has minimum of fifteen (15) 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)		
Lead Attorneys' proof of certified qualifications and certified admission as an attorney. (submit as Annexure 9)		
Signed reference letter/s on company letterhead of the client which indicate that the bidder was appointed to provide legal services to the client. (submit as Annexure 10)		
Signed SBD 1 (submit as Annexure 11)		
Signed SBD 4 (submit as Annexure 12)		
Completed SBD 3.3 (submit as Annexure 13)		
Signed SBD 6.1 (submit as Annexure 14)		
Valid BBBEE/Sworn Affidavit (submit as Annexure 15)		
Proof of registration for central supplier database (CSD) (submit as Annexure 16)		
Duly completed and signed terms of reference submit as Annexure 17)		
Initialled General Condition of Contract submit as Annexure 18)		

16. FUNCTIONAL EVALUATION CRITERION (STAGE 2)

16.1 The Bidders will be evaluated according to the below functional evaluation criteria.

16.2 Bidders must indicate their ability to do the following and to substantiate as required with supporting documentation.

#	FUNCTIONAL EVALUATION CRITERION	MEASUREMENTS OUTPUT	WEIGHT
1	TECHNICAL EVALUATION CRITERION		
1.1	Experience/ Track Record This refers to the service provider's demonstrable experience in conducting and completing civil law,	<ul style="list-style-type: none"> Five (5) or more signed reference letters for work completed within the past five (5) years. = 40 	40

#	FUNCTIONAL EVALUATION CRITERION	MEASUREMENTS OUTPUT	WEIGHT
	labour law and/or commercial and contract law matters on behalf of private or public entities within the past five (5) years. Such experience must be supported by contactable, signed reference letters from previous clients. The reference letters must clearly indicate the name of the organisation, contact details, and the field of the matter(s) handled (e.g., civil law, labour law, or commercial and contract law).	<ul style="list-style-type: none"> Four (4) or more signed reference letters for work completed within the past five (5) years = 34 Three (3) or more signed reference letters for work completed within the past five (5) years = 20 Two (2) or more signed reference letters for work completed within the past five (5) years = 12 One (1) signed reference letter for work completed within the past five (5) years = 6 No submission = 0 <p>NB: Only reference letters issued under the firm/company will be considered for evaluation.</p>	
1.2	Approach and Methodology The bidders must submit a detailed approach and methodology describing:	<ul style="list-style-type: none"> How the bidder will render the legal services = 8 The types of cases handled by the bidders in their area of practise = 7 Their ability to meet deadlines, especially on a short- time frame, and give examples of how past tight deadlines have been successfully met = 7 Details of procedure to ensure quality = 8 No detailed approach methodology = 0 	30
	Total Minimum Threshold	60	

#	FUNCTIONAL EVALUATION CRITERION	MEASUREMENTS OUTPUT	WEIGHT
	TOTAL	70	

NOTE: The minimum qualifying score for the second stage of the functional evaluation criteria is 60 out of 70 points. Bidders who meet this minimum threshold will proceed to the third stage of the evaluation, which focuses on experience.

17. STAGE 3: THE LEAD PARTNER/DIRECTOR EXPERIENCE

17.1 The minimum qualifying score for Team Leader/Director/assigned attorney experience is 10 out of 30 points.

CRITERIA REQUIREMENTS	MEASUREMENTS OUTPUT	WEIGHT
The lead attorney assigned to USAASA must have a minimum of 15 years of experience in Civil Law post-admission . A detailed CV, along with proof of membership in a recognized legal body (e.g., Legal Practice Council), must be submitted.	<ul style="list-style-type: none"> ▪ 15 and above =10 ▪ Less than 15 years=0 	10
The lead attorney assigned to USAASA must have a minimum of 15 years of experience in Commercial and contract Law post-admission . A detailed CV, along with proof of membership in a recognized legal body (e.g., Legal Practice Council), must be submitted.	<ul style="list-style-type: none"> ▪ 15 and above =10 ▪ Less than 15 years=0 	10
The lead attorney assigned to USAASA must have a minimum of 15 years of experience in labour law post-admission . A detailed CV, along with proof of membership in a recognized legal body (e.g., Legal Practice Council), must be submitted.	<ul style="list-style-type: none"> ▪ 15 and above =10 ▪ Less than 15 years=0 	10
Minimum qualifying threshold is 10 out of 30		30

NOTE: The minimum combined qualifying score for functionality (Stages 2 and 3) is 70 out of 100 points. Bidders who fail to achieve this minimum qualifying score will not be considered for further evaluation.

18. BIDDER DECLARATION

The bidder hereby declares the following:

We confirm that _____
(Bidder's Name) will: –

- a. Act honestly, fairly, and with due skill, care and diligence, in the interests of USAASA
- b. Employ effectively the resources, procedures and appropriate technological systems for the proper performance of the services;
- c. Act with circumspection and treat USAASA fairly in a situation of conflicting interests;
- d. Comply with all applicable statutory or common law requirements applicable to the conduct of business;
- e. Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with USAASA;
- f. Avoid fraudulent and misleading advertising, canvassing and marketing;
- g. Conduct business activities with transparency and consistently uphold the interests and needs of USAASA as a client before any other consideration; and
- h. Ensure that any information acquired by the bidder(s) from USAASA will not be used or disclosed unless the written consent of the client has been obtained to do so.

Signature _____ Date _____

Print Name of Signatory: _____

Designation: _____

FOR AND ON BEHALF OF: _____ (Bidding
Company's Name)

PRICING SCHEDULE – FIRM PRICES (PURCHASES)

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of bidder.....	Bid number.....
Closing Time 11:00	Closing date.....

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

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY ** (ALL APPLICABLE TAXES INCLUDED)
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-
- Required by:
 - At:
.....
 - Brand and model
 - Country of origin
 - Does the offer comply with the specification(s)? *YES/NO
 - If not to specification, indicate deviation(s)
 - Period required for delivery
*Delivery: Firm/not firm
 - Delivery basis

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

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

*Delete if not applicable

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

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

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

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

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

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship

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

with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....

3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring

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

institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

.....
Signature	Date
.....
Position	Name of bidder

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022

1. GENERAL CONDITIONS

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

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 To be completed by the organ of state

(delete whichever is not applicable for this tender).

- a) The applicable preference point system for this tender is the 90/10 preference point system.
- b) The applicable preference point system for this tender is the 80/20 preference point system.
- c) Either the 90/10 or 80/20 preference point system will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80
SPECIFIC GOALS	20
Total points for Price and SPECIFIC GOALS	100

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

2. DEFINITIONS

- (a) “**tender**” means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) “**price**” means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) “**rand value**” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) “**tender for income-generating contracts**” means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) “**the Act**” means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

3.1. POINTS AWARDED FOR PRICE

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

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

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

Where

- P_s = Points scored for price of tender under consideration
- P_t = Price of tender under consideration
- P_{min} = Price of lowest acceptable tender

3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

3.2.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc} 80/20 & \text{or} & 90/10 \\ P_s = 80 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right) & \text{or} & P_s = 90 \left(1 + \frac{P_t - P_{max}}{P_{max}} \right) \end{array}$$

Where

P_s = Points scored for price of tender under consideration
 P_t = Price of tender under consideration
 P_{max} = Price of highest acceptable tender

4. POINTS AWARDED FOR SPECIFIC GOALS

4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
- (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

Table 1: Specific goals for the tender and points claimed are indicated per the table below.

(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.)

Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Black Ownership		20		

NB: Preferential points for black ownership will be awarded as follows:

Black Ownership	% of Preferential points
Bidder with 100% black ownership	100%
Bidder with 51% to 99% black ownership	50%
Bidder with less than 51% black ownership	0%

DECLARATION WITH REGARD TO COMPANY/FIRM

4.3. Name of company/firm.....

4.4. Company registration number:

4.5. TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One-person business/sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company
- ☐ (Pty) Limited
- ☐ Non-Profit Company
- ☐ State Owned Company

[TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I 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 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
 - (a) disqualify the person from the tendering 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 tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted 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, if deemed necessary.

SIGNATURE(S) OF TENDERER(S)

SURNAME AND NAME:

DATE:

ADDRESS:

Annexure A

GOVERNMENT PROCUREMENT GENERAL CONDITIONS OF CONTRACT

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into 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 | <p>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.</p> <p>2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.</p> <p>2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.</p> |
| 3. General | <p>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.</p> <p>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</p> |
| 4. Standards | <p>4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.</p> |
| 5. Use of contract documents and information; inspection. | <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> |
| 6. Patent rights | <p>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.</p> |
| 7. Performance security | <p>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.</p> |

- 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 | <p>16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.</p> <p>16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.</p> <p>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.</p> <p>16.4 Payment will be made in Rand unless otherwise stipulated in SCC.</p> |
| 17. Prices | <p>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.</p> |
| 18. Contract amendments | <p>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.</p> |
| 19. Assignment | <p>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.</p> |
| 20. Subcontracts | <p>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.</p> |
| 21. Delays in the supplier's performance | <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> |

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

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

22. Penalties

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

23. Termination for default

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

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

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

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

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

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

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

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

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

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

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

24. Anti-dumping and countervailing duties and rights

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

25. Force Majeure

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

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

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

**26. Termination
for insolvency**

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

**27. Settlement of
Disputes**

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

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

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

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

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

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

**28. Limitation of
liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

		(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
29. Governing language	29.1	The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
30. Applicable law	30.1	The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
31. Notices	31.1	Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
	31.2	The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
32. Taxes and duties	32.1	A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
	32.2	A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
	32.3	No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
33. National Industrial Participation Programme	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.