**INVITATION TO BID**

<table>
<thead>
<tr>
<th>Bid Number</th>
<th>Description of Bid</th>
<th>Compulsory Briefing Session</th>
<th>Closing Date &amp; Time</th>
<th>Enquiry Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>NLC/2017 - 5</td>
<td>Appointment of a service provider to implement an ICT disaster recovery solution for the National Lotteries Commission (NLC) for a period of three (3) years</td>
<td>21 April 2017 at 10h00</td>
<td>16 May 2017 at 11h00</td>
<td>All enquiries should be in writing and may be directed to <a href="mailto:TOR1@nlcsa.org.za">TOR1@nlcsa.org.za</a>, attention Ms. Bojane Mosima Tel: (012) 432 1344/1309</td>
</tr>
</tbody>
</table>

Bidders are requested to download the bid documents on the NLB website at [www.nlcsa.org.za/current-tenders/](http://www.nlcsa.org.za/current-tenders/) or can be obtained by sending an e-mail to TOR1@nlcsa.org.za

**Bid Submission:** Bid documents must be deposited into the bid box at the Main Entrance (Reception) of the National Lotteries Commission, previously known as the National Lotteries Board, Block D, Hatfield Gardens, 333 Grosvenor Street, Hatfield, Pretoria, 0083
# TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO IMPLEMENT AN ICT DISASTER RECOVERY SOLUTION FOR THE NATIONAL LOTTERIES COMMISSION

<table>
<thead>
<tr>
<th></th>
<th>Assignment</th>
<th>The National Lotteries Commission (NLC) requires qualified and experienced service provider to submit proposals to implement an ICT disaster recovery (DR) solution for the NLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Assignment</td>
<td>The National Lotteries Commission (NLC) requires qualified and experienced service provider to submit proposals to implement an ICT disaster recovery (DR) solution for the NLC</td>
</tr>
<tr>
<td>2</td>
<td>Address for submitting proposals &amp; other</td>
<td>Attention: The Supply Chain Manager, National Lotteries Commission</td>
</tr>
</tbody>
</table>
| correspondences | Block D, Hatfield Gardens, 333 Grosvenor Street
Hatfield, Pretoria, 0083
Email: TOR1@nlcsa.org.za, attention Ms. Bojane Mosima |
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>3. Compulsory briefing session</td>
<td>21 April 2017 @ 10h00</td>
</tr>
<tr>
<td>4. Closing date &amp; time for submission of bid proposals</td>
<td>16 May 2017 @ 11h00</td>
</tr>
<tr>
<td>5. Bid description</td>
<td>Implementation of an ICT disaster recovery</td>
</tr>
<tr>
<td>Reference number</td>
<td>NLC/2017 – 5</td>
</tr>
</tbody>
</table>
1. GENERAL / BACKGROUND

The National Lotteries Commission (NLC), previously known as the National Lotteries Board (NLB), is a public entity established by Lotteries Amendment Act No. 32 of 2013 to regulate the South African Lotteries industry. The functions of the NLC can be divided into two categories, namely “regulation of National Lottery and other Lotteries” and “administration of the National Lottery Distribution Trust Fund (NLDTF)”.

Through the NLDTF, the NLC has distributed more than R21 billion for various projects in the country since 2001. The Board of Directors (“Board”), in conjunction with the Commissioner, are responsible for the general conduct of the operation of the NLC, and is therefore responsible for the implementation of appropriate systems of internal control and the risk management in the NLC.

NLC intends to appoint a suitably qualified service provider to implement an information communication technology (ICT) DR solution. The envisaged solution is required to consolidate and strengthen the NLC’s ICT operational capacity to render modern, scalable and highly performant ICT services founded on a solid ICT infrastructure base. The establishment of a disaster recovery site will provide the ICT division with flexibility and adaptability to render ICT services, to the NLC business, during times of operational difficulty that may be caused by any unforeseen circumstances beyond the control of the ICT division in alignment with the organisational Business Continuity Management (BCM) policy.

In line with the requirements of the Public Finance Management Act No. 1 of 1999 (“PFMA”) and Treasury Regulations, the NLC seeks to engage the services of a duly qualified bidder to provide with the ICT disaster recovery solution for the NLC.
2. PURPOSE OF THE TERMS OF REFERENCE

The purpose of the terms of reference (TOR) is to appoint a service provider to implement an ICT DR solution for the NLC for a period of thirty six (36) months.

3. OBJECTIVES

The primary objective of this TOR is to establish a disaster recovery site that will provide the ICT division with flexibility and adaptability to render ICT services to the NLC business during periods of unforeseen disasters.

4. TECHNOLOGY LANDSCAPE

4.1. Backend Software Environments

4.1.1. The primary site operates on two distinct software application stacks:

i. Oracle Fusion applications: The Oracle Fusion Stack (OFS) is currently deployed on an Oracle engineered hardware platform running Fusion Applications 11g environment. The environment comprises of the following modules: Oracle Fusion Financials, Oracle Fusion Procurement, Oracle Fusion HCM, Oracle Fusion CRM, Oracle Fusion Project Portfolio Management and Oracle Fusion GRC; and Oracle e-business Suite for payroll.

ii. Non-Oracle Fusion applications: The non-Oracle Fusion Applications (NOSA) are currently deployed on the Microsoft OS and Linux OS server based platforms. Collectively, these software environments in the main comprise of: MS Active Directory, MS Exchange, Oracle Legacy applications, Oracle DB, intranet, Symantec Security suite, VPN services and other business critical applications.
4.2. Existing Network Hardware Environment
   i. The existing server room network (core) comprises of a 48 port PoE 1GB CISCO 3556 network switch.
   ii. The core switch interconnects to multiple edge switches located in patch rooms across the building. There is one patch room per floor: ground, first, second and third.

4.3. Existing Data Storage Environment
   i. The existing data storage environment comprises of an Oracle tape storage device and two network storage based devices.
   ii. Backup tape drives are stored at a remote site for off-site backup.

5. SCOPE OF WORK

The scope of work entails the following:
Provision supply

5.1. Overview of the overall required solution:

5.1.1 Supply, install, configure, provision and maintain the envisaged solution;
5.1.2 Migrate and consolidate the current HP server environment into a virtualised hardware environment;
5.1.3 Identify, establish and host the remote DR site with the main purpose to facilitate NLC ICT operational business continuity when required;
5.1.4 Upgrade the existing server room network infrastructure at head office from a 1GB network to a 10GB network. The 1GB network in the rest of the building remains as is;
5.1.5 Consolidate the two back-up environments into a single back-up/archive environment in a manner that allows for storage of archived data offsite; and
5.1.6 Rack and stack of new computing hardware equipment into new server racks.

5.2. Envisaged software environments

5.2.1. The primary site is required to run two (2) distinct software application stacks:


ii. Non-Oracle Fusion applications: Microsoft Active Directory, Microsoft Exchange, Oracle Legacy applications, Oracle Database, intranet, Symantec Security suite, Virtual Primary Network services and other business critical applications. Both the Windows operating systems and various editions of the Linux operating systems are required the aforementioned business critical applications.

5.2.2. The secondary site is required to serve as a replica of the primary site.

5.3. Envisaged computing hardware environment:

5.3.1 The NLC will supply and avail the computing hardware and necessary licenses to operate the non-Oracle Fusion stack for both the primary and secondary sites.

5.3.2 Bidder is required to propose a computing hardware architecture for the Oracle Fusion stack of applications to be deployed at both the primary and secondary sites:

i) The proposed architecture must be certified to operate the Oracle Fusion stack environment as specified in paragraph 5.2.1 (i)
5.4. Envisaged network hardware environment

5.4.1 Upgrade the existing core environment to a 10GB topology. This includes the necessary cabling and related accessories.

5.4.2 Increase the port count from 48 ports by a minimum of 24 ports.

5.4.3 Implementation and provisioning of a suitably scoped and sized datalink between the primary site and a recommended secondary Disaster Recovery hosting site.

5.5. Envisaged data storage environment:

5.5.1 Consolidate the current backup/archive environment into a single online technology environment for both the primary and secondary sites respectively.

5.5.2 Propose a suitable archive solution that facilitates off-site storage of backup mediums to be secured in a location excluding the primary and secondary sites.

5.6. Envisaged systems monitoring environment

Establish an on-site monitoring platform that provides real-time health status of infrastructure, hardware, applications, network and backup/archive to be monitored from both the primary and secondary sites.

5.7. Project implementation approach

The proposed approach to implement the project must take the following requirements into account in relation to the primary and secondary sites:

5.7.1. Primary site deployment:

i) Installation of server room equipment racks (racking and stacking) to accommodate the Oracle Fusion hardware systems, non-Oracle hardware
systems and the network communication equipment. The non-Oracle hardware is to be housed in its own rack.

ii) Prepare a new rack for installation of new core network switch and migration of existing communication equipment (routers, network switches etc).

iii) Installation and configuration of the computing hardware as proposed;

iv) Installation and configuration of the proposed core network switch(es);

v) Provisioning of the Oracle Fusion application environment:
   
   a. Migrate existing Virtual Machine (VM’s) environments from Oracle Database Appliance (ODA) to new platforms:
      
      • Production virtual machine instances; and
      • Non-Production virtual machine instances (TEST, Development (DEV), and User Acceptance Testing (UAT)) from the existing Oracle ODAs to the new hardware.
   
   vi) Provisioning of the non-Oracle Fusion application environment:
      
      • Migrate existing environments (a mixture of physical and Virtual Machines (VMs)) from various HP server hardware to the new hardware environment and virtualised accordingly.

5.7.2. Secondary site deployment:

i) If applicable, installation of server room equipment racks (racking and stacking) to accommodate the Oracle Fusion hardware systems, non-Oracle hardware systems and the network communication equipment.

ii) Installation and configuration of the computing hardware as proposed.

iii) Installation and configuration of the proposed core network switches and related.

iv) Provisioning of the Oracle Fusion application environment:
a. Replicate existing VM environments from Oracle ODAs to new platforms:
   • Production virtual machine instances; and
   • Non-Production virtual machine instances (TEST, DEV, UAT) from the existing Oracle ODAs to the new hardware.

   v) Provisioning of the non-Oracle Fusion application environment:

      • Virtualise and replicate the primary environments (a mixture of physical and VM’s) to the DR server hardware environment.

5.7.3. Training and skills development:
   i) Training and transfer of skills to personnel.

5.7.4. Support and Maintenance:

<table>
<thead>
<tr>
<th>Scope of work</th>
<th>Primary Responsibility</th>
<th>1st Level Support</th>
<th>2nd Level Support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure Backup and Archive (Oracle and Non Oracle Environments)</td>
<td>Service provider</td>
<td>Short term: Service provider</td>
<td>Service Provider</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Long term: NLC</td>
<td></td>
</tr>
<tr>
<td>Backend Oracle Fusion Software Upkeep and Maintenance</td>
<td>Service provider</td>
<td>Short term: Service provider</td>
<td>Service Provider</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Long term: NLC</td>
<td></td>
</tr>
<tr>
<td>Systems Monitoring Environment (24/7/365)</td>
<td>Service Provider</td>
<td>Short term: Service provider</td>
<td>Service provider</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Long term: NLC</td>
<td></td>
</tr>
<tr>
<td>Training and Skills Development</td>
<td>Service provider</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

5.7.5. The envisaged solution is to be at the NLC head office as identified below:
6. DELIVERABLES

- A functional hardware, software, networking and backup solution;
- Backend Oracle Fusion and non-Oracle hardware and software upkeep and maintenance;
- Backup and archive infrastructure (Oracle and Non-Oracle Environments);
- Systems monitoring environment (24/7/365); and
- Skills Development and Training Plan.

7. REPORTING REQUIREMENTS

The service provider will report to the ICT Division.

8. DURATION OF APPOINTMENT

The duration of the project is thirty six (36) months after the signing of a Service Level Agreement (SLA). The solution must be supported with a three (3) year SLA contract for both the hardware and software maintenance requirements.

9. COMPULSORY BRIEFING SESSION
9.1. A compulsory information session will be held at the NLC Offices. Bidders must read the TOR in detail and bring a copy to the information session.

**Venue:** NLC Offices, 333 Grosvenor Street, Block D Hatfield Gardens, Hatfield, Pretoria  
**Date:** 21 April 2017  
**Time:** 10H00 – 12H00

9.2 Attendance to the briefing session is compulsory. Failure to attend the briefing session will disqualify bidders from submitting proposals.

10. **EVALUATION CRITERIA**

The NLC will evaluate all proposals in terms of the Preferential Procurement Regulation of 2001 and Preferential Procurement Policy Framework Act. No. 5 of 2000 (PPPFA). A three (3) phase evaluation criteria will be considered in evaluating the proposals, being:

10.1. **Phase 1: Pre - Qualification Criteria (Mandatory Requirements)**

Bidders must submit all the mentioned below requirements. The following mandatory requirements must be met to qualify for this bid:

10.1.1. Company registration certificates (CK):

- In the case of the bidder being in partnership, close corporation or a company, company certificates reflecting the names, identity numbers and address of the partners, members or directors must be submitted with proposal,
• In the event of the bidder being a consortium organisation, relevant shareholding certificates must be submitted, and
• Joint Venture agreements must be submitted in a case of a bidder being in a joint venture.

10.1.2 A certified copy of an Oracle channel partnership accreditations at a minimum gold level.
10.1.3 Compulsory briefing attendance certificate.
10.1.4 Letters of good standing will not be considered.

10.2. Phase 2: Functional/Technical Evaluation

Only bidders that have met the pre-qualification criteria will be evaluated for functional evaluation. In this phase the evaluation will be based on the bidders’ responses in respect of the bid proposal (evaluated on the minimum functional specifications). Prospective bidders who score a minimum of 70% points or more will be considered for the next phase 3 (Price and B-BBEE status level contributor).

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>SUB-WEIGHT</th>
<th>WEIGHT</th>
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</thead>
<tbody>
<tr>
<td>1. Equity Ownership*</td>
<td></td>
<td>20%</td>
</tr>
<tr>
<td>100% Black Owned</td>
<td></td>
<td>20%</td>
</tr>
<tr>
<td>50% + 1 Black Owned</td>
<td></td>
<td>10%</td>
</tr>
<tr>
<td><strong>NB: Exercisable voting rights</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Completely Non-Black Owned</td>
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<td>5%</td>
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<tr>
<td><strong>NB: A shareholder certificate should be attached for verification</strong></td>
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</table>

2. Company experience

The bidder must have been in existence and operational for at least the last five (5) years and have demonstrated expertise in Oracle Fusion and Oracle E-Business Suite (EBS). The bidder is required to provide a minimum three (3) contactable client references where
its services can be verified. References should be presented in the form of written letters on an official letterhead from clients for services previously performed. The letters may not be older than two (2) years. (maximum points allocation = at least three (3) reference letters).

### 3. Project plan / methodology

The bidder must provide a detailed project plan clearly outlining how the work will be managed.

Emphasis must be placed on:

1. Implementation plan;
2. Documentation in relation to the technical, maintenance, reporting and governance aspects of the entire project life-cycle; and
3. Handover report.

### 4. Experience of team members

The bidder should provide evidence of technical and professional experience and skills of the project team.

Persons making up the core project and support team must possess:

1. Oracle certification in the product ranges such as Oracle Fusion (Human Capital Management (HCM), Supply Chain Management (SCM), Finance (FIN), Governance, Risk and Compliance (GRC) and Customer Relationship Management (CRM) and Oracle EBS Payroll.
2. Relevant certification in network administration/support of relevant product portfolios.
3. Relevant certification in the administration of Microsoft Windows and Linux operating systems.
4. Possess certification in enterprise grade backup solutions and implementations.
Persons proposed for these positions must be identified and supported by CV’s of one page each to be included in an Appendix. Brief capability statements must be given for each designated team member, emphasizing recent experience relevant to the task envisaged.

5. Training and Skills Transfer Plan

The bidder must outline a detailed skills development plan that covers the entire project life-cycle.

Emphasis, must be placed on:

- Training methodology; and
- Skills transfer assessment report.

| Total: | 100% |

* Black = African, Coloured and Indian South African Citizens

Black individuals has the meaning defined in the Act qualified as including only natural persons who are citizens of the Republic of South Africa by naturalization:

- Occurring before the commencement date of the constitution of the Republic of South Africa Act of 1993; and/or
- Occurring after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, without the Apartheid policy would have qualified for naturalization before then.

Phase 3: The 80/20 Principle Point System based on Price and B-BBEE status level contributor

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

11.1. Submission Instruction

The bid should be **hand delivered to the address specified below in six (6) sets each.**

One original plus five (5) copies of the proposal (i.e. six (6) sets in total) should be clearly marked:

“ICT DISASTER RECOVERY SOLUTION, REFERENCE NUMBER: NLC/2017 - 5”

Please note that the Technical and Financial proposals should be submitted in two (2) separate sealed envelopes.

The submission of proposals should be as follows:

<table>
<thead>
<tr>
<th>Technical</th>
<th>Financial</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>B-BBEE Status Level of Contributor</th>
<th>Number of Points (80/20 system)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>18</td>
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<td>3</td>
<td>16</td>
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<td>12</td>
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<tr>
<td>7</td>
<td>4</td>
</tr>
<tr>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>Non-Compliant contributor</td>
<td>0</td>
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</tbody>
</table>
Bidders are requested to indicate on the cover of each document whether it is the original document or a copy.

**Take note of the following:**

- No costs have been prescribed for the Bidding Document;
- All proposals **must** be costed in South African Rand, inclusive of VAT;
- If the bid does not include all the information required, or is incomplete, this will mean non-compliance and therefore invalidate the bid;
- Any submission received after the deadline will not be considered; and
- The costing must remain valid and open for evaluation for a period of at least six (6) months from the time of submission.

**11.2. Late bids**

Bids received late shall not be considered. A bid will be considered late if it arrived one second after 11:00 am or any time thereafter. The tender (bid) box shall be locked at exactly 11:00 am and bids arriving late will not be considered under any circumstances. Bidders are therefore strongly advised to ensure that bids are dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid.

The official Telkom time (Dial 1026) will be used to verify the exact closing time.

**11.3. Costs to be borne by bidders**
All costs and expenses incurred by the bidders in any way associated with the development, preparation and submission of responses and providing any additional information required by the NLC, will be borne entirely and exclusively by the bidders.

11.4.  No legal relationship

No binding legal relationship will exist between any of the bidders and the NLC until the execution of a signed contractual Service Level Agreement ("SLA"). The Terms of Reference ("ToR") document will not form part of any such contract or arrangement.

11.5.  Evaluation of offers

Each bidder acknowledges and accepts that the NLC may, at its absolute discretion, apply selection criteria specified in this document for the evaluation of proposals for short listing/ selecting the eligible bidder(s).

11.6.  Format of your proposal

The proposal should be presented in two sections i.e. Technical Proposal and Financial Proposal.

11.6.1.  Technical proposal format

Bidders should submit technical proposal according to specifications provided in the ToR which must reflect the exact requirements and quantity required in paragraph

11.6.2.  Technical approach
a) The bidder should demonstrate adherence to the TOR by elaborating on the services required, and demonstrating whether the proposed proposal meets the requirements.

b) The proposal must include a project plan and timeframes.

11.6.3. Company experience

Bidders are required to provide proof that they have previously performed the required services. Letters of reference from at least three (3) contactable referees from private and public sectors must be submitted.

12. STANDARD REQUIREMENT OF THE BID

12.1. Disclosures

The bidder must disclose:

a) If they are or have been the subject of any proceedings or other arrangements relating to bankruptcy/insolvency.

b) If they have been convicted of, or are the subject of any proceedings, relating to:

- A criminal offence or other offence, involving the activities of a criminal nature in its organisation or found by any regulator or professional body to have committed professional misconduct;
- Corruption, including the offer or receipt of any inducement of any kind in relation to obtaining any contract with any contracting authority; and
- Failure to fulfil any obligation in any jurisdiction relating to the payment of taxes and other legal obligations.
c) If a bidder or related company or any individual discloses details of any previous misconduct or complaint, the NLC will seek an explanation and background details from them. At the sole discretion of the NLC, an assessment as to whether the bidder will be allowed to continue to the next phase of the evaluation phase will then be made.

d) Disclosure extends to any company in the same group of the bidder, including but not limited to parent, subsidiary and sister companies, companies with common shareholders (whether direct or indirect) and parties with whom the bidder is associated in respect of this tender.

12.2. Disclaimer

12.2.1. The NLC reserves the right not to appoint a service provider.

12.2.2. The NLC may appoint more than one service provider.

12.2.3. The NLC also reserves the right to:

   a) Award the contract or any part thereof to one or more service providers;
   b) Reject all bids;
   c) Decline to consider any bids that do not conform to any aspect of the bidding requirements;
   d) Request further information from any bidder after the closing date for clarity purposes;
   e) Cancel this tender or any part thereof at any time; and
   f) Should any of the above occur, it will be communicated in writing to the bidders.

12.3. Confidentiality

   a) Bids submitted will not be revealed to any other bidders and will be treated as contractually binding;
   b) All information pertaining to the NLC obtained by the bidder as a result of participation in this RFP is confidential and must not be disclosed without written authorisation from the NLC; and
12.4. Disqualification

c) The successful service provider will be expected to sign a SLA with the NLC.

b) Any non-disclosure of any other information pertaining to this bid will result in disqualification;

d) Non-compliance with the bid requirements will invalidate the bid; and

d) Non-compliance with all the applicable Acts, Regulations and by-laws will result in the disqualification of the bid.

12.5. Prices

a) All services' pricing should be inclusive of all taxes etc. and payment shall be made in South African Rand.

b) Bidders are requested to provide with the total fee for the period of the service required. Bidders are further requested to complete and submit the pricing schedule as per the attached ‘Annexure B’ supporting the financial proposal.

c) NLC will refer to to the approved State Information Technology Agency (SITA) rates during the financial evaluation of bids. It is therefore encouraged that bidders may utilise the pricing schedule approved by SITA.

d) Bidders are required to provide with a breakdown of prices on the items priced and the bidders are to provide same without any additional cost and also provide a “Pricing Grid” or “Transaction Fee Schedule”.

12.6. Prices adjustments

Prices submitted for this bid will be regarded as non-firm subject to the following price adjustments:
a) Annual price adjustment; and  
b) Application for price adjustments must be accompanied by documentary evidence in support of any adjustment on annual basis.

12.7. Payment terms

a) The NLC undertakes to pay valid tax invoices in full within thirty (30) days from statement date for services rendered;  
b) All supporting documents for services rendered should be submitted together with the tax invoices by the twentieth (20th) of every month;  
c) Valid Tax Invoices for all services rendered are to be submitted to the Chief Financial Officer (CFO) at the NLC’s Finance Division at the address on page 2 above or may be sent through an email to the following email address:  
   Email address: accounts@nlcsa.org.za.

12.8. Validity

a) A proposal shall remain valid for hundred and twenty (120) days after the closing date of the submission for proposals. A proposal which is valid for a shorter period may be rejected by the NLC for non-responsiveness.  
b) In exceptional circumstances, the NLC may solicit the bidder’s consent to an extension of the period of the validity of the bid. The request and responses thereto shall be made in writing. A bidder that has been granted the request will neither be required nor permitted to modify the proposal.

12.9. Signatories

All responses to this RFP should be signed off by the authorised signatories of the bidder.
13. SPECIAL TERMS AND CONDITIONS

a) The NLC reserves the right to accept or reject any submission in full or in part, and to suspend this process and reject all proposals or part thereof, at any time prior to the awarding of the contract, without thereby incurring any liability to the affected bidders;
b) This bid and the contract will be subject to the General Conditions of Contract issued in accordance with Treasury Regulation 16A published in terms of the PFMA. The special terms and conditions of contract are supplementary to that of the general conditions of the contract;
c) Where, however, the special conditions of contract are in conflict with the general conditions of contract, the general conditions of contract will prevail.
d) The NLC is the sole adjudicator of the suitability of the venue for the purpose for which it is required. Therefore, the NLC’s decision in this regard will be final.
e) No bids sent by the facsimile or email will be accepted.
f) Bids must only be submitted at the NLC Head Office Tender Box in Pretoria by the specified date and time.
g) Bidders are welcome to be present at the opening of bids.
h) The annexures are part of the bid documentation and must be signed by the bidder and attach to the bid document.
i) The bid forms must not be retyped or redrafted but copies may be used. Additional offers may be made but only photocopies of the original documents. Additional offers/submissions are regarded as separate and must be treated as such by the bidder. The inclusion of various offers as part of a single submission in one envelope is not allowed and will not be considered. Additional bid offers must be submitted separately in separate sealed envelopes.
j) The original valid Tax Clearance Certificate should be submitted together with the completed bid.
k) Failure to comply with the above-mentioned conditions will invalidate the bid.
I) Certified copies of the company registration documents or proof of ownership of the company or agency i.e. Shareholders Certificates.

m) Certified copy of B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA must be submitted.

14. OTHER CONDITIONS:

• Only bidders who obtain at least 70% under Functional/Technical Evaluation will be considered for further evaluation on phase 2.
• Bidders are further requested to provide separate financial and technical proposals.
• Bidders are requested to provide a clear agreement regarding joint venture/consortia. The percentage involvement of each company in the joint venture agreement should be indicated on the agreement. A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid.
• Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims.
• A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
• A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
• Fraudulent practices shall result in immediate disqualification.
• NLC is under no obligation to accept any bid and reserves its right not to proceed with the appointment of any bidder that responded to the invitation to submit proposals, for whatever reasons it may consider appropriate.

• Bidders are required to submit current and valid original or certified B-BBEE Certificate from SANAS or IRBA accredited verification agencies or proof of exemption from registered auditors. (Failure to submit a certificate will result in scoring 0 for B-BBEE.)

Bidders are required to submit a tax clearance certificate as a proof that bidder’s tax matters are in order. The NLC to confirm with SARS to determine if a particular bidder is tax compliant.

15. PRESENTATIONS/SITE VISITS

15.1. Shortlisted bidders may be required to do a presentation and/or question and answer session.

15.2. The NLC may also conduct site visit/inspection.

16. CLARIFICATIONS / ENQUIRIES

Telephonic request for clarification will not be considered. Any clarification required by a bidder regarding the meaning or interpretation of the Terms of Reference or any other aspects concerning the bid is to be requested in writing (letter, facsimile or e-mail) from the below contact persons. The bid reference number should be mentioned in all correspondence.

16.1. Bid Enquiries

Name and Surname: Bojane Mosima
E-mail: TOR1@nlcsa.org.za
Fax: 086 568 7857
Enquiries received will be responded to within two (2) working days of receiving the enquiry.

THE NLC IS NOT OBLIGED TO ACCEPT THE LOWEST OR ANY BID AND RESERVES THE RIGHT TO ACCEPT ANY BID
ANNEXURE B: PRICING SCHEDULE

APPOINTMENT OF A SERVICE PROVIDER TO IMPLEMENT AN ICT DISASTER RECOVERY SOLUTION FOR THE NATIONAL LOTTERIES COMMISSION (NLC) FOR A PERIOD OF THREE (3) YEARS

NLC/2017-5

Please provide prices (VAT Inclusive) for the appointment of a service provider to implement an ICT Disaster Recovery Solution for the NLC for a period of three (3) years. For comparative purposes, bidders are requested to quote as follows:

Table 1

<table>
<thead>
<tr>
<th></th>
<th>Monthly rate for Year 1 (Vat Inclusive)</th>
<th>Total value for 12 months Year 1 (A)</th>
<th>Monthly rate for Year 2 (Vat Inclusive)</th>
<th>Total value for 12 months Year 2 (B)</th>
<th>Monthly rate for Year 2 (Vat Inclusive)</th>
<th>Total value for 12 months Year 3 (C)</th>
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<td>Total price (D)</td>
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<td></td>
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<tr>
<td></td>
<td>Total price (D) for maintenance &amp; support of the solution for 3 years</td>
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<td><strong>(A + B + C)</strong>: (VAT Inclusive)</td>
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<td><strong>2.</strong></td>
<td><strong>Total price (E) for Supply, install &amp; configure the envisaged solution</strong>: once-off</td>
<td></td>
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<td><strong>3.</strong></td>
<td><strong>Total bid price (D + E)</strong>: VAT Inclusive</td>
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</tbody>
</table>

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

**Signature**   **Date**
BID SUBMISSION CHECKLIST: APPOINTMENT OF A SERVICE PROVIDER TO IMPLEMENT AN ICT DISASTER RECOVERY SOLUTION FOR THE NATIONAL LOTTERIES COMMISSION (NLC) FOR A PERIOD OF THREE (3) YEARS

Name of the bidder:

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Please indicate below if whether the SBD (Standard Bidding Document) Forms are duly completed and signed by the relevant person:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>SBD 1</td>
<td></td>
<td></td>
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<tr>
<td>1.2</td>
<td>SBD 4</td>
<td></td>
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<tr>
<td>1.3</td>
<td>SBD 6.1</td>
<td></td>
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<td>1.4</td>
<td>SBD 8</td>
<td></td>
<td></td>
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<tr>
<td>1.5</td>
<td>SBD 9</td>
<td></td>
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<tr>
<td></td>
<td>*Only the original signed SBD Forms of the above will be accepted</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2. **Compulsory Requirements:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Please indicate as to whether the following documents/certificates have been attached?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| 2.1.1| Company/Agency registration certificate (CK) and/or Proof of ownership of the company/agency i.e. Shareholders Certificates *(where applicable)*  
*Please attach a certified copy of certificate* |     |    |
| 2.1.2| Please submit a certified copy of an Oracle channel partnership accreditations at a minimum gold level. |     |    |
| 2.1.3| Have you attended the compulsory briefing session?  
*Please attach the briefing certificate.* |     |    |

3. **Other Requirements**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1</td>
<td>Please indicate as to whether the following documents have been attached?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1.1</td>
<td>Company/Agency Profile</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1.2</td>
<td>B-BBEE Certificate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1.3</td>
<td>Provide three (3) letters of reference from the <strong>public</strong> and/or <strong>private institutions</strong> for the services required.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1.4</td>
<td>Have you completed the pricing schedule (<em>Annexure B</em>)?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. **Submission of Proposals:**

4.1 **Technical Proposal:**

4.1.1 One (1) original

4.1.2 Four (4) copies

4.2 **Financial (Price) Proposal:**

4.2.1 One (1) original

4.2.2 Four (4) copies

4.2.3 One (1) electronic copy (CD) for both technical & financial proposal

5. **Bid Document Responsiveness:**

Adherence to the Bid Documents and Terms of Reference?
INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE NATIONAL LOTTERIES COMMISSION (NLC)

BID NUMBER: NLC/2017 - 5 CLOSING DATE: 16 MAY 2017 CLOSING TIME: 11:00

DESCRIPTION: APPOINTMENT OF A SERVICE PROVIDER TO IMPLEMENT AN ICT DISASTER RECOVERY SOLUTION FOR THE NATIONAL LOTTERIES COMMISSION (NLC) FOR A PERIOD OF THREE (3) YEARS

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

BID DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT:

NATIONAL LOTTERIES COMMISSION (NLC), BLOCK D, HATFIELD GARDENS, 333 GROSVENOR STREET, HATFIELD, PRETORIA

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

The bid box is generally open 8 hours a day, 5 working days a week.

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

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THE FOLLOWING PARTICULARS MUST BE FURNISHED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER …………………………………………………………………………………………………………………………………………………
POSTAL ADDRESS ………………………………………………………………………………………………………………………………………………………
STREET ADDRESS …………………………………………………………………………………………………………………………………………………
TELEPHONE NUMBER CODE…………..NUMBER………………………………………………………………………………………………
CELLPHONE NUMBER ……………………………………………………………………………………………………………………………………………
FACSIMILE NUMBER CODE ………..NUMBER………………………………………………………………………………………………
E-MAIL ADDRESS ……………………………………………………………………………………………………………………………………………....
VAT REGISTRATION NUMBER …………………………………………………………………………………………………………………………………...

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

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

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)………………………………………………………….
A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS); OR…………………………………...
A REGISTERED AUDITOR ………………………………………
[TICK APPLICABLE BOX]

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

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

[IF YES ENCLOSE PROOF]

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

DATE ……………………………………………………………………………………………………………………………………………………..

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

TOTAL BID PRICE……………………………………

_____________________________________________________________________________________________________________________

ANY ENQUIRIES REGARDING THE BID MAY BE DIRECTED TO:

Name of the Public Entity: National Lotteries Board

Contact Person: Bojane Mosima

Tel: 012 432 1344/1309
Fax: 086 568 7857

E-mail address: TOR1@nlcsa.org.za
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.

“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

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
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:

........................................................................................................
........................................................................................................
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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:

........................................................................................................
........................................................................................................
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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 YES / NO

(“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.)
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?

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?

2.10.1 If so, furnish particulars.

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

2.11.1 If so, furnish particulars:

………………………………………………………………
………………………………………………………………
………………………………………………………………

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

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

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

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

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

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

May 2011
PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

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

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.

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 R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed R1 000 000 (all applicable taxes included) and therefore the 90/10 system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

(a) Price; and
(b) B-BBEE Status Level of Contribution.

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

<table>
<thead>
<tr>
<th>POINTS</th>
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<tbody>
<tr>
<td>PRICE</td>
</tr>
<tr>
<td>B-BBEE STATUS LEVEL OF CONTRIBUTION</td>
</tr>
</tbody>
</table>

Total points for Price and B-BBEE must not exceed 100

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5 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**

2.1 “all applicable taxes” includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 “B-BBEE” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

2.3 “B-BBEE status level of contributor” means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

2.4 “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 services, works or goods, through price quotations, advertised competitive bidding processes or proposals;

2.5 “Broad-Based Black Economic Empowerment Act” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

2.6 “comparative price” means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;

2.7 “consortium or joint venture” 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;

2.8 “contract” means the agreement that results from the acceptance of a bid by an organ of state;

2.9 “EME” means any enterprise with an annual total revenue of R5 million or less.

2.10 “Firm price” means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

2.11 “functionality” means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

2.12 “non-firm prices” means all prices other than “firm” prices;

2.13 “person” includes a juristic person;

2.14 “rand value” means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;

2.15 “sub-contract” means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
2.16 “total revenue” bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the Government Gazette on 9 February 2007;

2.17 “trust” means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and

2.18 “trustee” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

3.1 The bidder obtaining the highest number of total points will be awarded the contract.

3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;

3.3 Points scored must be rounded off to the nearest 2 decimal places.

3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.

3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

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

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

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

Where

\begin{align*}
P_s & = & \text{Points scored for comparative price of bid under consideration} \\
P_t & = & \text{Comparative price of bid under consideration} \\
P_{\text{min}} & = & \text{Comparative price of lowest acceptable bid}
\end{align*}

5. Points awarded for B-BBEE Status Level of Contribution

5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<table>
<thead>
<tr>
<th>B-BBEE Status Level of Contributor</th>
<th>Number of points (90/10 system)</th>
<th>Number of points (80/20 system)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10</td>
<td>20</td>
</tr>
<tr>
<td>2</td>
<td>9</td>
<td>18</td>
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<tr>
<td>3</td>
<td>8</td>
<td>16</td>
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<tr>
<td>4</td>
<td>5</td>
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<td>4</td>
<td>8</td>
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<tr>
<td>6</td>
<td>3</td>
<td>6</td>
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<tr>
<td>7</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>8</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Non-compliant contributor</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA’s approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.

5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.

5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
6. **BID DECLARATION**

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

7. **B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1**

7.1 B-BBEE Status Level of Contribution:  

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).

8. **SUB-CONTRACTING**

8.1 Will any portion of the contract be sub-contracted?  YES / NO (delete which is not applicable)

8.1.1 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?  YES / NO (delete which is not applicable)

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

9.1 Name of company/firm  

9.2 VAT registration number  

9.3 Company registration number  

9.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

9.6 COMPANY CLASSIFICATION
9.7 Total number of years the company/firm has been in business? ............................................

9.8 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 contribution indicated in paragraph 7 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 paragraph 7, 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 contribution 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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. ..................................................

SIGNATURE(S) OF BIDDER(S)

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

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

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

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

3. The bid of any bidder may be disregarded if that bidder, or any of its directors have-
   a. abused the institution’s supply chain management system;
   b. committed fraud or any other improper conduct in relation to such system; or
   c. failed to perform on any previous contract.

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
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</table>
| 4.1  | Is the bidder or any of its directors listed on the National Treasury’s Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?  
(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the audi alteram partem rule was applied).  
The Database of Restricted Suppliers now resides on the National Treasury’s website ([www.treasury.gov.za](http://www.treasury.gov.za)) and can be accessed by clicking on its link at the bottom of the home page. | Yes | No |
| 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)?  
The Register for Tender Defaulters can be accessed on the National Treasury’s website ([www.treasury.gov.za](http://www.treasury.gov.za)) by clicking on its link at the bottom of the home page. | Yes | No |
<p>| 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 | No |</p>
<table>
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<tr>
<th>4.3.1</th>
<th>If so, furnish particulars:</th>
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<tr>
<td>4.4</td>
<td>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?</td>
</tr>
<tr>
<td>4.4.1</td>
<td>If so, furnish particulars:</td>
</tr>
</tbody>
</table>

**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.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date</th>
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<table>
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<tr>
<th>Position</th>
<th>Name of Bidder</th>
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</tbody>
</table>

Js365bW
CERTIFICATE OF INDEPENDENT BID DETERMINATION

1 This Standard Bidding Document (SBD) must form part of all bids\(^1\) 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 consortium\(^3\) will not be construed as collusive bidding.

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

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

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

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

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

.................................................. ..................................................
Position Name of Bidder
Js914w 2
GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT

July 2010

NOTES

The purpose of this document is to:

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

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

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

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

4.2 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

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;
performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and

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

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

14. Spare parts

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

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

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

15. Warranty

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

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

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

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

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

16. Payment

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

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

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

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

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

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

21. Delays in the supplier’s performance

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

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

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

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

21.5 Exceptional delay in the supplier's point of supply shall result 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 (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. Prohibition of Restrictive practices

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.
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.