**AGRICULTURAL RESEARCH COUNCIL**

**REQUEST TO TENDER FOR:**

**TENDER NO: ARC/01/06/2023**

# Forensic and Probity Auditing Services for a period of five (5) years.

Closing Date: **21 July 2023**

TIME: **11:00**

**Bidder's Name:**……..

**CSD number**: ……..

THE DETAILS AND CONTENTS OF THIS DOCUMENT ARE CONFIDENTIAL AND FOR CONSIDERATION AND RESPONSE BY THE RECORDED RECIPIENTS ONLY

## OVERVIEW

The Agricultural Research Council (ARC) is a Research Science and Technology institution of excellence in South Africa, which operates within the National System of Innovation. The ARC has a mandate for innovative and creative agricultural research, technology development and transfer aimed at the advancement of South African agriculture. Its operations are overseen by the ARC Council which is appointed by and accountable to the Minister for Agriculture, Forestry and Fisheries.

The Agricultural Research Council (ARC) invites suitably qualified and experienced service providers to assist with the forensic and probity auditing services for a period of five years.

## TENDER SUBMISSION

Completed and sealed tender submissions reflecting **"ARC/01/06/2023 and the name of the tenderer"** must be deposited into the Tender Box located at **1134 Park Street, Hatfield, Pretoria** for the attention of: "The Senior Supply Chain Manager", **by no later than 11:00 (eleven o'clock)** on **21 July 2023**.

Tender documents submitted after the closing time and date specified will not be considered. ***No submissions sent by email or facsimile will be accepted.***

Bidders are requested to submit one (1) complete document into the tender box (one original for functionality proposal and one original for financial proposal and prepare **three (3) copies of the Functionality Proposal and three (3) copies of the Financial Proposal**. **A USB of the Functionality Proposal and A USB of the Financial Proposal should also be submitted. The name of the bidder and the tender number should reflect on the "sealed" envelopes.**

Email: zondomp@arc.agric.za/scm@arc.agric.za

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| **Closing Date: 21 July 2023** |
| **Closing Time: 11h00** |

## 1. BACKGROUND

The objective of this bid is to appoint a **panel of service providers** to perform the forensic and probity auditing service for the ARC for a period of five (5) years.

## 2. TERMS OF REFERENCES

2.1 The objective is to appoint a panel of forensic investigators that can support the ARC in conducting forensic investigations into allegations of fraud, and corruption and probity auditing services.

2.2 The effectiveness of the ARC's Anti-Corruption Hotline and other internal fraud reporting processes are dependent on the extent to which feedback is given to the callers on a timely basis. As such, ARC has a responsibility to ensure the timely investigation of cases referred to it and to provide comprehensive feedback to the ARC council and the internal Fraud Prevention Committee (FPC).

## 3. EXTENT AND SCOPE OF WORK

3.1 The primary objective of the forensic investigation is to conduct investigations to ascertain whether there is substance into allegations of fraud and corruption reported to the ARC's Anti-Corruption Hotline and other internal reporting mechanisms, as and when required.

3.2 On request from the ARC perform probity auditing services on tenders before they are submitted to Council for approval.

3.3 Recover/preparation of images, extraction/indexing, forensic services, training on fraud awareness and testifying in internal and external disciplinary hearings, and in court proceedings.

3.4 Report the factual findings and advise the ARC of the recommended course of action relating to remediation of control weaknesses that led to potential fraud/mismanagement.

3.5 The successful service providers shall submit a project plan with a comprehensive budget containing a breakdown of the hourly tariff (VAT inclusive), per category (**Refer to Section 13 below**) as required for the investigation services for prior approval by the project manager.

3.6 The successful bidders shall work in conjunction with the Chief Audit Manager on the planning of the phases of the investigation process and probity auditing must be prepared to regularly report the progress to the Chief Audit Manager and CEO. The Chief Audit Manager will review all reports and supporting documents.

3.7 All intellectual property including the reports, working papers and other supporting documents will become the property of ARC.

3.8 All information obtained from ARC will be regarded as classified information, and as such be handled properly as required by the Minimum Information Security Standards (MISS) and the POPIA.

## 4. DURATION OF THE ASSIGNMENT

4.1 The duration of the contract will run for a period of five (5) years and will commence as agreed in the service level agreement signed by ARC and the successful bidders. Work will be carried out as and when required and in accordance with the project plan as agreed with the Chief Audit Manager.

## 5. PERFORMANCE MEASURES

5.1 The performance measures and ongoing management of the investigation into allegation of fraud and corruption as well as probity audit will be closely monitored by the Chief Audit Manager, in line with the relevant standards/methodology. The conditions as specified in the general conditions of contracts will apply.

## 6. REPORTING AND DELIVERABLES

6.1 The Service Providers will submit progress reports as and when required, to the Chief Audit Manager for the duration of the project.

6.2 The Service Provider/s must issue an electronic final report to the Chief Audit Manager and a final hard-copy report with supporting documents, based on the procedures performed and the factual findings.

## 7. CONTINUITY AND PROFILE OF SENIOR STAFF ON THE PROJECT

7.1 The Service Provider/s must guarantee the presence of the senior in charge of fieldwork throughout the duration of the assignment. If the senior has to leave the project, a period of at least a month is required, in which the senior must work parallel with the next person (senior consultant with similar expertise and the relevant years of experience) appointed to be able to hand over the work and transfer skill and knowledge.

## 8. CONTENT OF BID PROPOSAL

8.1 All relevant perceived strengths and weaknesses of the firm tendering for the forensic investigation service and probity auditing e.g. similar previous experience, in-house skills etc., providing information which will assist ARC to assess its capabilities, competitive advantages etc.;

8.2 A list of references of previous and current forensic investigation and probity auditing appointments.

8.3 An organogram or list of partners, managers, specialists, together with the curriculum vitae of the staff who will be available and assigned to ARC for the duration of the work. The team assigned to ARC may not be changed without written confirmation and approval by Chief Audit Manager.

8.4.1 Provide an overview of the methodology to be applied.

## 9. COSTING

9.1 A breakdown of the hourly tariff, VAT inclusive, per category (e.g. Director, Manager and other relevant level of expertise) as required for service rendered and an estimated percentage of disbursements (inclusive of VAT) per year for the period of five years. Expenditure incurred without the prior approval of ARC will not be reimbursed.

9.2 ARC shall not pay for any unproductive or duplicated time spent by the service provider on any assignment as result of staff changes or redrafting of reports due to incorrect findings.

## 10. COVER

10.1 Provide indemnity insurance cover of not less than R 30,000 000.00 (Thirty million).

10.2 Provide Fidelity Guarantee of not less than R25 Million (Twenty-five million)

***Proof to be submitted that the minimum covers are in place or a "letter of intent in the Insurer/Underwriter letterhead" that such minimum covers can be obtained on the date of appointment, from an Insurer / Underwriter. No letters on bidders own company letterheads will be considered as equivalent, nor will cover less than the stipulated minimum covers be considered.***

## 11. COMPULSORY REQUIREMENTS

The forensic investigating companies must provide the following documents:

11.1 A valid Tax Pin number from SARS.

11.2 Complete and sign all the relevant Standard bidding documents (SBD form).

11.3 Recent and Updated Central Supplier Database Report (Full CSD Report) showing a tax compliant status for the duration of the bidding process.

11.4 Provide indemnity insurance cover of not less than R 30,000 000.00 (Thirty million) or a letter of intent to provide an indemnity insurance cover of R30, 000, 000.00.

11.5 Provide Fidelity Guarantee of not less than R25 Million (Twenty-five million) or A letter of intent to provide the fidelity guarantee of R25, 000, 000.00

11.6 Service providers should not have been found implicated in any unprofessional conduct, which are known in the public domain, as this will present a reputational risk to the ARC. All the bidders must provide a letter, declaring whether or not implicated in any unprofessional conduct which are known in the public domain.

11.7 Service providers must declare any intentions of merging/dissolving/any other major organizational changes, within the next 24 months. All service providers must provide a letter, declaring whether or not there are intentions of merging/dissolving/any other major organizational changes, to be supplied on the company letterhead signed by the Director/s.

**N.B Failure to submit all the above requirements will lead to disqualification.**

**Administrative Requirements**

- Company profile and Comprehensive CV's of personnel to be used in execution of this tender.

- The proposals presented are to be comprehensive and should describe the methodology to be followed in doing the following:
- A comprehensive forensic investigation approach and methodology of the project including project phases and time frames.
- Three most recent years of audited financial statements (for South African operations) must be included / attached.

## 12. EVALUATION CRITERIA

All forensic investigation and probity audit companies will be evaluated according to the following:

- Functionality;
- Preferential Procurement Policy Framework Act (PPPFA) (Price and BBBEE goals)

| Criteria or Functionality | Weighting | Points | Total |
|---|---|---|---|
| **Expertise, Knowledge and Experience.**<br>• Appropriately and professionally qualified and experienced staff to assist with the forensic and probity auditing.<br>• Service providers should have the experience to conduct the forensic and probity auditing. | 30 | | |
| **Methodology and Approach**<br>• Describe and demonstrate that the service provider is capable to provide an effective forensic and probity auditing process. | 20 | | |
| **Track record in forensic and probity auditing services.**<br>• Services provided: (attach company profile, comprehensive CV's, and a minimum of five traceable trade | 30 | | |

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| references of similar or larger-sized companies than ARC. | | | |
| **Presentation and the due diligence of the system.** | 20 | | |
| • Proposed forensic investigation and probity audit Project plan for ARC (structure and methodology in execution of forensic investigation).<br>• At least three case studies on client's success, which involved forensic investigation and probity auditing costs savings, process improvements, risk reduction, etc. led by the organization. | **Total Points** | | |

**Bidders that do not obtain a minimum score of 56 points out of 80 (70%) for functionality before presentations will be disqualified.**

**Bidders that do not obtain a minimum score of 16 points out of 20 (80%) for functionality after presentations will be disqualified and will not be considered for further evaluation on price and BBBEE.**

The 80/20 principle will apply in terms of the Preferential Procurement Policy Framework Act 5 of 2000.

80 Points will be allocated to price and 20 Points will be allocated to BBBEE goals in terms of the PPPFA.

BBBEE goals in terms of the Preferential Procurement Policy Framework Act will be allocated as follows:

| **Criteria** | Score | Weight |
|---|---|---|
| **<u>Experience, Knowledge and Experience:</u>** | | |
| • Personnel assigned to this bid without Tertiary qualification with less than 5 years of experience in forensic and auditing services.<br>• Personnel assigned to this bid with Tertiary qualification with less than 5 years of experience in forensic and | 1 | 30 |

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| auditing services.<br>• Personnel assigned to this bid with Tertiary qualifications (Degree/National Diploma) with at least 5 years of experience in forensic and auditing.<br>• Personnel assigned to this bid with Post Graduate Tertiary qualifications (Post Graduate Degree/Post Graduate Diploma, Certified Internal Auditor, Certified Fraud Examiner) and between 5-8 years of experience in the forensic and auditing.<br>• Personnel assigned to this bid with Post Graduate Tertiary qualifications (Post Graduate Degree or Post Graduate Diploma, Certified Internal Auditor, Certified Fraud Examiner)) and with more than 8 years of experience in forensic and auditing. | 2<br>3<br>4<br>5 | |
| **Methodology and Approach** | | 20 |
| • Does not meet with the minimum required criteria.<br>• Meet at least the minimum required criteria but there is doubt that the experience and resources are in place.<br>• The project plan clearly demonstrating how the forensic and probity auditing will be conducted (Planning, Execution and Reporting).<br>• The project plan clearly demonstrating how the forensic and probity auditing will be conducted (Planning, Execution and Reporting). Demonstrate the value-added services.<br>• The project plan clearly demonstrating how the forensic and probity auditing will be conducted (Planning, Execution and Reporting). Demonstrate the value-added services and Leading Practices (Pro-active practices). | 1<br>2<br>3<br>4<br>5 | |
| **Track Record** | | 30 |
| • The company profile is doubtful and there are no traceable references letters.<br>• There are uncertainties with regards to what is presented in the company profile and less than five traceable references letters were presented.<br>• Services provided for 5-8 years. The company profile, comprehensive CV's and at least five traceable | 1<br>2<br>3 | |

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| references letters meet with the minimum requirements.<br>• Services provided for 8-10 years. The company profile, comprehensive CV's and at least six-seven traceable references letters exceed the minimum requirements.<br>• Services provided for more than 10 years. The company profile, comprehensive CV's and at least eight-ten traceable references letters exceed the minimum requirements. | 4<br>5 | |
| **Presentation and due diligence of the systems.**<br>• 1 point: There is no case study on the forensic and probity audit.<br>• 2 points: There is less than three case studies on the forensic and/or probity audit.<br>• 3 points: At least three case studies on the forensic and/or probity auditing (at least two forensic and one probity auditing).<br>• 4 points: Four-Six case studies on the forensic and/or probity auditing (at least three forensic and two probity auditing)<br>• 5 points: Seven and more case studies on the forensic and/or probity auditing (at least four forensic and three probity auditing) | 1<br>2<br>3<br>4<br>5 | 20 |
| **Total Points** | | |

## 13. PRICING STRUCTURE/CATEGORY

**(Prices per category include VAT, if it is applicable)**

### 13.1 Forensic Investigations Only

| Type of resource allocated to investigation | Hourly rate 2023-2024 | Hourly rate 2024-2025 | Hourly rate 2025-2026 | Hourly rate 2026-2027 | Hourly rate 2027-2028 |
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**13.2 Probity Auditing Only**

| Type of resource allocated to investigation | Hourly rate 2023-2024 | Hourly rate 2024-2025 | Hourly rate 2025-2026 | Hourly rate 2026-2027 | Hourly rate 2027-2028 |
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13.3 Testifying in internal and external disciplinary hearings, and in court proceedings

| Type of resource allocated to investigation | Hourly rate 2023-2024 | Hourly rate 2024-2025 | Hourly rate 2025-2026 | Hourly rate 2026-2027 | Hourly rate 2027-2028 |
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All companies will be evaluated according to the following:

- Functionality;
- Preferential Procurement Policy Framework Act (PPPFA) (Price and BBBEE goals)

| **Percentage Ownership by HDI'S** | **Points (8)** | **Percentage Ownership by Women** | **Points (4)** | **Percentage Ownership by Youth** | **Points (4)** |
|---|---|---|---|---|---|
| 91-100% | 8 | 81-100 | 4 | 81-100 | 4 |
| 81-90 | 7 | 51-80 | 3 | 51-80 | 3 |
| 71-80 | 6 | 31-50 | 2 | 31-50 | 2 |
| 61-70 | 5 | 1-30 | 1 | 1-30 | 1 |
| 51-60 | 4 | 0% | 0 | 0% | 0 |
| 41-50 | 3 | | | | |
| 21-40 | 2 | | | | |
| 1-20 | 1 | | | | |
| 0% | 0 | | | | |

| **Percentage Ownership by People with Disability** | **Points (2)** | **RDP Goals** | **Points (2)** |
|---|---|---|---|

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|---|---|---|---|
| 51-100 | 2 | The promotion of enterprise located in rural areas. | 2 |
| 1-50 | 1 | 0% | 0 |
| 0% | 0 | | |

## 14. LODGING OF SUBMISSIONS

Tenderers are requested to submit one (01) complete document into the tender box (one original functionality proposal and **prepare three (3) copies of the functionality** proposal. A USB of the Functionality Proposal and A USB of the Financial Proposal should also be submitted. Tenderer's name and tender number to: **The Agricultural Research Council,** ATTENTION: **The Senior Supply Chain Manager, ARC 1134 Park Street PRETORIA,** by no later than **11:00 (eleven o'clock)** on **21 July 2023.**

Submissions not received on time and date specified will not be considered. Any entities/companies that are submitting their proposals as joint ventures are not allowed to submit their own proposals separately from the joint venture. Submitting a second separate proposal from the joint venture will lead to disqualification.

## 15. COMPLIANCE WITH GENERAL CONDITIONS OF CONTRACT

No alteration, variation or amendment of the Contract (of which this Tender represents the offer) shall be permitted unless otherwise agreed to in writing. Should the prospective provider, in the case of non-compliance, wish to make any amendments to the conditions stipulated by the ARC in this Tender, which shall form the offer element of a Contract and if it is accepted by the ARC, then such proposed amendments shall be clearly stipulated by the prospective provider and where possible stating the increase or decrease in the cost involved by such proposals. The ARC reserves the right to reject such submissions.

**Misrepresentation of facts will result in disqualification and cancellation of the Contract.**

## 16. ARC LIABILITY

The ARC does not bind itself to accept the lowest or any tender proposal, nor to assign any reason for the rejection of a tender proposal, nor shall it be

responsible for or pay any expenses or losses that may be incurred by the prospective provider in the preparation and delivery of its submission.

## 17. SUBMISSION ACCEPTANCE

No submission shall be deemed to have been accepted, unless and until a formal appointment letter is issued to the successful tenderer. Submissions shall remain open for acceptance by the ARC for a period of 180 (one hundred and eighty) days from the date on which they are returnable in terms of this Tender.

## 18. PRICES

Tenderers shall indicate the basis on which the services will be charged. In this regard the following information shall be provided:

- Where a Tenderer lacks in-house expertise and may have to outsource certain services, the detail and basis of charges of any such service that may be required must be outlined.
- The tenderer shall reflect service discounts that they will offer throughout the contract duration.
- Tenderers submissions must reflect the detailed breakdown of the tender price as per the costing structure or bill of quantities
- Prices must include VAT, if it is applicable and all other costs related to the execution of the required services.
- The tenderer agrees not to change the price with VAT or any other Tax subsequent to submitting the tender. This includes subsequent VAT registration.
- All prices quoted are to be in SA Rand and inclusive of Value Added Tax (VAT).
- No change in the prices submitted shall be considered after receipt of response to the Tender submission within the validity period of the tender.
- Bidders shall ensure that the bid price is for the duration of the project, **including escalations.**

## 19. TERMS OF ENGAGEMENT

- The successful bidder shall not take more than three (3) months from date of Bid award unless otherwise indicated and agreed between the successful Bidder and the ARC.
- The Service Provider shall be available for consultation with the ARC representative.
- The Service Provider shall manage as confidential all data, information and insights gained in execution of work for the ARC.

- ARC retains the right to negotiate with the successful Bidder for partial execution of the proposal.

- ARC retains the right to enter into non-exclusive agreements with Service Providers that do not restrict procurement of goods and services from other Service Providers.

- ARC retains the right to require the Service Provider to obtain permission in writing from the ARC prior to replacement of individuals proposed for execution of this Bid.

- Service Providers to accept professional liability for services rendered, including those rendered under sub-contract to the service provider

## 20. CONTENTS OF SUBMISSION

Proposals shall include all relevant information about the Bidder, which is thought appropriate to assist the ARC to assess its capabilities, capacity, outputs, value adding abilities, competitive advantage, etc.

The proposals presented are to be comprehensive and should describe the methodology to be followed in doing the following:

- The Breakdown of the complete specification with associated costs.

- All SBD (Standard Bidding Documents) must be completed and signed.

The proposals presented are to be as comprehensive as possible and ARC reserves the right to request the Bidder to provide more details.

Bidders shall adhere to the conditions stipulated in the General Conditions of Contract as prescribed by the National Treasury.

Bidders must ensure that the complete bid document is submitted with all additional required information and any other documents that the bidder wishes to supply to substantiate or clarify specific aspects in the proposal.

**Failure to submit all the signed and completed Standard Bidding documents and / or any required documentation will result in disqualification.**

## 21. APPROACH AND METHODOLOGY

Bidders should propose a comprehensive approach and methodology regarding the forensic and probity auditing services. **Bidders should also indicate proactive good will services expected to be provided to ARC.**

## 22. TRACK RECORD

Bidders shall provide a list of companies for which similar services have been rendered/ provided for (attach at least five reference letters)

## 23. BROADBASED BLACK ECONOMIC EMPOWERMENT (BBBEE)

In terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000, the 80 / 20 principle shall be applicable to this bid and points shall be allocated as indicated under functionality. Sound evidence for points claimed must be attached so that points can be allocated.

BBBEE status level points will be awarded to service providers who will submit certified copy of BBBEE certificates or original BBBEE certificates

from SANAS accredited agencies and IRBA registered auditors or BBBEE letters from an auditor or accountant.

Joint Ventures / Consortium / Partnerships must submit a BBBEE document as indicated above for that particular entity e.g JV or Consortium otherwise no BBBEE points shall be awarded.

**No BBBEE points shall be awarded to a tenderer who fails to comply with the above.**

## 24. AMPLIFICATION OF SUBMISSIONS

The ARC may, after the opening of submissions, call on the prospective Bidder to amplify in writing any matter which is not clear in the prospective Bidder's submission and such amplification shall form part of the original submission. In the event of the prospective Bidder failing to supply such information, the submission will be liable to rejection.

## 25. COST OF PROPOSAL

Bidders shall bear all costs associated with the preparation and submission of their proposals, the ARC will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the Bid.

## 26. BID DOCUMENTS

This document in its entirety serves as the complete Bid document. Proposals offering only part of the requirements will be rejected. The Bidder is expected to examine all corresponding instructions, forms, terms and specifications contained in this document. Failure to comply with these documents will be at the Bidder's risk and may affect the evaluation of their proposal.

## 27. DOCUMENTS COMPRISING THE PROPOSAL

In preparing the technical and price components of the submissions all references to descriptive material and brochures should be included in the appropriate response paragraph, although material documents themselves may be provided as annexes to the proposal / response. Bidders are requested to focus on the provision of relevant information and to limit the amount of marketing and "boilerplate" material. The successful Bidder's proposal may be incorporated in whole or in part in the final contract. Any information that the Bidder considers proprietary should be marked as such.

## 28. INFORMATION

Information that the Bidder considers proprietary, if any, should be clearly marked "proprietary" next to the relevant part of the text and it will be treated as such accordingly.

## 29. PERIOD OF VALIDITY

Proposals shall remain valid for one hundred and eighty (180) days after the date of proposal submission. A proposal valid for a shorter period may be rejected by the ARC on the grounds that it is non-responsive.

In exceptional circumstances, the ARC may solicit the Bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing.

## 30. FORMAT AND SIGNING OF PROPOSALS

The Bidder shall prepare four copies of the proposal, clearly marking one "Original Proposal" and three "Copies of Proposal" as appropriate. In the event of any discrepancies between them, the original shall govern. The four

proposals shall be signed by the Bidder or a person or persons duly authorised to bind the Bidder to the contract.

## 31. INTERLINEATIONS

A proposal shall contain no interlineations, erasures, or overwriting except, as necessary to correct errors made by the Bidder, in which case such corrections shall be initiated by the person or persons signing the proposal.

## 32. PAYMENT

The successful Bidder shall be paid upon submission of an invoice for each transaction of satisfactory work detailed in the scope.

## 33. DUE DILIGENCE EXERCISE

The ARC reserves the right to perform due diligence exercise for the purpose of appointing a credible tenderer.

## 34. PRICE AND PRICING STRUCTURE

**(To be inserted or deposited into the Financial Proposal Envelope)**

- Bidders shall indicate the basis on which the services will be charged.
- Where a Bidder lacks in-house expertise and may have to outsource certain services, the detail and basis of charges of any such service that may be required must be outlined.
- The Bidder shall reflect service discounts that they will offer throughout the contract duration.
- Bidders submissions must reflect the detailed breakdown of the bid price as follows:
- Prices must be for the entire period of the tender including price escalation.
    - Prices must include VAT, if it is applicable and all other costs related to the execution of the required services.

## 35. CANCELLATION OF THE BID

The ARC reserves the right to cancel the bid at any time of the process should the recommended service provider/s fail to meet the requirements of the bid.

## 36. SITE INSPECTION

The ARC reserves the right to conduct a site inspection to the premises of the recommended service provider and/or the recommended service provider's clients at any given time.

## 37. SUB-CONTRACTING/ JOINT VENTURE BUSINESS

Bidders must ensure that both/all service providers submit their tax compliant pin numbers, standard bidding documents and central supplier database report.

## 38. SIGNING OF THE SERVICE LEVEL AGREEMENT

The successful service provider will be expected to sign the service level agreement within ten (10) working days after receiving the appointment letter from the ARC Supply Chain Management Unit.

The Agricultural Research Council will then send the letter of award to the preferred bidder with two copies of the completed version of the said contract specimen and the preferred bidder will be firmly obliged to duly sign, initial and properly date both copies of the same and return them to the Agricultural Research Council for its signature within 10 (Ten) working days of their receipt of the said documents, failing which the Agricultural Research Council will be entitled, in its sole and total discretion and without further notice to such preferred bidder to write to such preferred bidder, summarily withdrawing the tender award, due to such contract signing process delay on the part of the given preferred bidder.

SBD 1

# PART A
# INVITATION TO BID

| | | | | | |
|---|---|---|---|---|---|
| **YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (*AGRICULTURAL RESEARCH COUNCIL*)** | | | | | |
| BID NUMBER: | **ARC/01/06/2023** | CLOSING DATE: | **21 July 2023** | CLOSING TIME: | **11:00** |
| DESCRIPTION | **FORENSIC AND PROBITY AUDITING SERVICES FOR A PERIOD OF FIVE YEARS.** | | | | |
| **BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT *(STREET ADDRESS)*** | | | | | |
| **1134 PARK STREET, HATFIELD, PRETORIA (NEXT TO GAUTRAIN STATION)** | | | | | |
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| **BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO** | | **TECHNICAL ENQUIRIES MAY BE DIRECTED TO:** | |
|---|---|---|---|
| CONTACT PERSON | **MR. MUSA ZONDO** | CONTACT PERSON | |
| TELEPHONE NUMBER | **012 427-9733** | TELEPHONE NUMBER | |
| FACSIMILE NUMBER | | FACSIMILE NUMBER | |
| E-MAIL ADDRESS | **ZONDOMP@ARC.AGRIC.ZA** | E-MAIL ADDRESS | |

| **SUPPLIER INFORMATION** | | | | | |
|---|---|---|---|---|---|
| NAME OF BIDDER | | | | | |
| POSTAL ADDRESS | | | | | |
| STREET ADDRESS | | | | | |
| TELEPHONE NUMBER | CODE | | NUMBER | | |
| CELLPHONE NUMBER | | | | | |
| FACSIMILE NUMBER | CODE | | NUMBER | | |
| E-MAIL ADDRESS | | | | | |
| VAT REGISTRATION NUMBER | | | | | |
| SUPPLIER COMPLIANCE STATUS | TAX COMPLIANCE SYSTEM PIN: | | **OR** | CENTRAL SUPPLIER DATABASE No: | MAAA |
| B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE | TICK APPLICABLE BOX] ☐ Yes ☐ No | | B-BBEE STATUS LEVEL SWORN AFFIDAVIT | | [TICK APPLICABLE BOX] ☐ Yes ☐ No |

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

| | | | |
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| ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED? | ☐Yes ☐No<br>[IF YES ENCLOSE PROOF] | ARE YOU A FOREIGN BASED SUPPLIER FOR **THE GOODS /SERVICES /WORKS OFFERED?** | ☐Yes ☐No<br>[IF YES, ANSWER THE QUESTIONNAIRE BELOW ] |

**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

| | |
|---|---|
| IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? | ☐ YES ☐ NO |
| DOES THE ENTITY HAVE A BRANCH IN THE RSA? | ☐ YES ☐ NO |
| DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? | ☐ YES ☐ NO |
| DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? | ☐ YES ☐ NO |
| IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? | ☐ YES ☐ NO |

**IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.**

# PART B
# TERMS AND CONDITIONS FOR BIDDING

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

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

SIGNATURE OF BIDDER: ……

CAPACITY UNDER WHICH THIS BID IS SIGNED:……
(Proof of authority must be submitted e.g. company resolution)

DATE: ……...

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

**ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE AND TECHNICAL QUIRIES MAY BE DIRECTED TO:**

**Department**: Supply Chain Management

**Contact Person:** Mr Musa Zondo

**Tel:** (012) 427 9733

**E-mail address:** zondomp@arc.agric.za/scmrequests@arc.agric.za

All technical enquiries must be forwarded in writing to Supply Chain Management who will act as communicator between the Bidder and ARC to ensure that all Bidders receive the same information.

## TAX CLEARANCE CERTIFICATE REQUIREMENTS

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

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

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

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

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

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

6. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

**SBD 3.3**

**PRICING SCHEDULE**
**(Professional Services)**

NAME OF BIDDER: …… BID NO.: **ARC/01/06/2023**

CLOSING TIME **11:00** CLOSING DATE: **21 JULY 2023**

**OFFER TO BE VALID FOR 180 DAYS FROM THE CLOSING DATE OF BID.**

Item Description Bid Price in RSA Currency ** (All Applicable Taxes Included)
No

1. The accompanying information must be used for the formulation of proposals.

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

R……..……

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

4. PERSON AND POSITION, HOURLY RATE AND DAILY RATE

---------- R----------

---------- R----------

----------R----------

---------- R----------

---------- R----------

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

----------R---------- days

---------- R---------- days

----------R---------- days

---------- R---------- days

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

DESCRIPTION OF EXPENSE TO BE INCURRED RATE QUANTITY AMOUNT

---------- R……..

---------- R……..

---------- R……..

---------- R……..

TOTAL: R…….

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

5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost,etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED RATE QUANTITY AMOUNT

---------- R……..

---------- R……..

---------- R……..

---------- R……..

TOTAL: R…….

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

…….

7. Estimated man-days for completion of project

…….

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

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

…….

…….

…….

*[DELETE IF NOT APPLICABLE]

---

Any enquiries regarding bidding procedures may be directed to the –

**AGRICULTURAL RESEARCH COUNCIL – CENTRAL OFFICE**

**Department**: Supply Chain Management

**Contact Person:** Mr Musa Zondo

**Tel:** (012) 427 9733

**E-mail address:** zondomp@arc.agric.za/scmrequests@arc.agric.za

SBD 4

# BIDDER'S DISCLOSURE

## 1. PURPOSE OF THE FORM

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

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

## 2. Bidder's declaration

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

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

| **Full Name** | **Identity Number** | **Name of State institution** |
|---|---|---|
| | | |
| | | |
| | | |
| | | |

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

| | | |
|---|---|---|
| | | |
| | | |
| | | |

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

2.2.1 If so, furnish particulars:
……
……

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

2.3.1 If so, furnish particulars:
…….
…….

## 3 DECLARATION

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

3.1 I have read and I understand the contents of this disclosure;

3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium2 will not be construed as collusive bidding.

3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

3.5 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.

3.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in

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

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

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

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

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

…… ..……
Signature Date

…… ……
Position Name of bidder

SBD 6.1

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

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

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

---

## 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

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

1.2

a) The value of this bid is estimated to exceed/not exceed R50 000 000 (all applicable taxes included) and therefore the …….. preference point system shall be applicable; or

b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

(a) Price; and

(b) B-BBEE Status Level of Contributor.

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

| | POINTS |
|---|---|
| **PRICE** | |
| **B-BBEE STATUS LEVEL OF CONTRIBUTOR** | |
| **Total points for Price and B-BBEE must not** | **100** |

| | |
|---|---|
| **exceed** | |

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

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

**2. DEFINITIONS**

(a) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

(b) "**B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

(c) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;

(d) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

**(e)** **"EME"** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;

(f) **"functionality"** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.

(g) **"prices"** includes all applicable taxes less all unconditional discounts;

(h) **"proof of B-BBEE status level of contributor"** means:

B-BBEE Status level certificate issued by an authorized body or person;

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

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

(i) **"QSE"** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;

*(j)* **"rand value"** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

## 3. POINTS AWARDED FOR PRICE

### 3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

**80/20** **or** **90/10**

$$Ps = 80\left(1 - \frac{Pt - P\min}{P\min}\right) \quad \text{or} \quad Ps = 90\left(1 - \frac{Pt - P\min}{P\min}\right)$$

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

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

| Percentage Ownership by HDI'S | Points (8) | Percentage Ownership by Women | Points (4) | Percentage Ownership by Youth | Points (4) |
|---|---|---|---|---|---|
| 91-100% | 8 | 81-100 | 4 | 81-100 | 4 |
| 81-90 | 7 | 51-80 | 3 | 51-80 | 3 |
| 71-80 | 6 | 31-50 | 2 | 31-50 | 2 |
| 61-70 | 5 | 1-30 | 1 | 1-30 | 1 |
| 51-60 | 4 | 0% | 0 | 0% | 0 |
| 41-50 | 3 | | | | |
| 21-40 | 2 | | | | |
| 1-20 | 1 | | | | |
| 0% | 0 | | | | |

| Percentage Ownership by People with Disability | Points (2) | RDP Goals | Points (2) |
|---|---|---|---|
| 51-100 | 2 | The promotion of enterprise located in rural | 2 |

| | | | |
|---|---|---|---|
| | | areas. | |
| 1-50 | 1 | 0% | 0 |
| 0% | 0 | | |

**5. BID DECLARATION**

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

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

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

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

**7. SUB-CONTRACTING**

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

(***Tick applicable box***)

| YES | | NO | |
|---|---|---|---|

7.1.1 If yes, indicate:

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

| YES | | NO | |
|---|---|---|---|

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

| **Designated Group: An EME or QSE which is at last 51% owned by:** | **EME** √ | **QSE** √ |
|---|---|---|
| Black people | | |
| Black people who are youth | | |

| | | |
|---|---|---|
| Black people who are women | | |
| Black people with disabilities | | |
| Black people living in rural or underdeveloped areas or townships | | |
| Cooperative owned by black people | | |
| Black people who are military veterans | | |
| **OR** | | |
| Any EME | | |
| Any QSE | | |

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

8.1 Name of company/firm:……
.

8.2 VAT registration number:……

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

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

……
……
……
……
……..

8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider

☐ Other service providers, e.g. transporter, etc.
[*TICK APPLICABLE BOX*]

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

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

i) The information furnished is true and correct;

ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;

iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;

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

(a) disqualify the person from the bidding process;

(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

(e) forward the matter for criminal prosecution

WITNESSES

1. ……..

2. ……..

……
SIGNATURE(S) OF BIDDERS(S)

DATE: ……..

ADDRESS ……..

……..

……..

## ADHERENCE TO THE ARC'S CODE OF ETHICS

### 1. INTRODUCTION

This statement forms part of the Agricultural Research Council's "Ethics and Fraud Prevention strategy". It sets out the tone, culture and expectations of the ARC in promoting a policy of fair dealing and integrity in the conduct of business and the countering of fraudulent activities.

### 2. POLICY

2.1 The ARC's vision is to provide Excellence in Agricultural Research and Development.

2.2 The ARC will do everything possible to promote honesty, integrity and to adhere to all applicable laws in everything it does and is committed to the prevention, deterrence, detection and investigation of all forms of non-adherence to policies, laws and the Code of Ethics.

2.3 ARC Council members, Audit Committee members and employees at all levels are expected to adopt the highest standards of propriety and accountability. These standards are also expected from organisations that the ARC deals with such as suppliers, contractors, customers, partners, etc.

2.4 If it is established that suppliers, contractors, customers and partners have engaged in corrupt, dishonest, fraudulent activities or have contravened the supply chain policy of the Code of Ethics in competing or executing the contract awarded, the ARC will immediately terminate the contract. Any supplier, contractor, partner or officer representing any of the entities if found guilty of any of the above they will be declared ineligible to supply goods, works and services to the ARC under any

programmes or projects managed and administered by the ARC on behalf of its clients.

2.5 The ARC can in its sole judgement proceed to pursue any legal remedies available.

## 3. CULTURE

3.1 Adherence to laws, policies and procedures, the prevention and detection of fraud and corruption and the protection of ARC's assets is every stakeholder's responsibility.

3.2 Council members, Audit Committee members, all employees are expected to carry out their duties to the best of their ability for the benefit of the ARC and not to take advantage of any situation for personal gain, for themselves, members of their family or friends.

## 4. CODE OF ETHICS AND FRAUD PREVENTION STATEMENT

4.1 Members of the public, suppliers, contractors and partners are expected to act with integrity in their business dealings with the ARC and not to behave dishonestly to the detriment of the ARC.

4.2 The ARC has set up a secure and confidential framework, within which any employee, member of the public, suppliers, contractors, partners are encouraged to raise concerns if they know of or suspect that the following is about to occur or has occurred:

- Fraud;
- Corruption;
- Abuse of assets;
- Irregular transaction are taking place;
- Fruitless expenditure has been incurred;

- Endangering of an individual's health and safety;

- A violation of applicable laws, rules, policies or regulations of the Code of Ethics.

4.3 The ARC will ensure that any allegations received are taken seriously and investigated in an appropriate manner.

4.4 The ARC will deal firmly with those who act dishonestly. Following proper investigation, appropriate disciplinary action and / or criminal proceedings will be instigated.

4.5 Suppliers, contractors and partners acknowledge that they have read and understood relevant sections of the Code of Ethics policies, procedures and laws applicable to them.

4.6 Stakeholders who wish to remain anonymous when raising concerns are encouraged to use the following secure hotline:

| | |
|---|---|
| Free Call Telephone Number: | 0800 000 604 |
| Free Call Facsimile Number: | 0800 007 788 |
| E-mail: | arc@tip-offs.com |
| "Please call me" number: | 32840 |
| Tip-offs anonymous url: | www.tip-offs.com |

No-one will be subjected to retaliation for good faith reporting of a suspected violation.

4.7 Concerns can only be adequately investigated if all relevant facts concerning the issue being reported are disclosed. Stakeholders are encouraged to provide relevant facts including supporting documentation of available.

I, the undersigned …….. in my

capacity as an authorised representative of …… registration number ……

**HEREBY ACKNOWLEDGE:**

1. That I have been explicitly informed of and consequently an fully aware of the fact that:

   a) I must adhere to sections of the ARC Code of Ethics, supply chain policy and laws that apply to me as a supplier or contractor;

   b) I will report to the ARC any violations and contraventions of its Code of Ethics, policies, procedures that I may become aware of;

   c) Failure to adhere to (a) and (b) above will result in the cancellation of my contract with the ARC and the ARC in its sole judgement may pursue any other legal action it deems appropriate.

NAME(s): (BLOCK LETTERS) ……..

CAPACITY of authorised agents: ……..

SIGNATURE(s) of authorised agents: ……

SIGNED AT ……. on this …… day of ……..……

WITNESSES: (Full name – BLOCK LETTERS – and signature)

1. …… ……..

2. …… ……...

**THE NATIONAL TREASURY**

**Republic of South Africa**

---

# GOVERNMENT PROCUREMENT:

# GENERAL CONDITIONS OF CONTRACT

**July 2010**

## GENERAL CONDITIONS OF CONTRACT

### 1. Definitions

The following items shall be interpreted as indicated:

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

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

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

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

1.5 “Countervailing duties” are imposed in cases where an enterprise abroad is subsidised by its government and encourage 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 recognised 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 specific 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 goods are so delivered and a valid receipt is obtained.

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

1.12 “Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, by 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 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 sub-contractors) 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 goods 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 organisation 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 “Supplier” means the successful bidder who is awarded the contract to maintain and administer the required and specified service(s) to the State.

1.26 “Tort” means in breach of contract.

1.27 “Turnkey” means a procurement process where one service provider assumes total responsibility of all aspects of the project and delivers the full end product / service required by the contract

1.28 “Written” or ‘in writing” means hand-written 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 (excluding professional services related to the building and construction industry), 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 goods, 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, 0111, or accessed electronically from www.treasury.gov.za

**4. Standards**

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

**5. Use of contract documents and information inspection**

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

5.2 The supplier shall not, without the purchaser's written consent, make use of any document or information mentioned in the 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 the 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 analysis

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 organisation acting on behalf of the Department.

8.3 Is 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 analysis 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 analysed 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 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**

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

**12. Transportation**

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

**13. Incidental services**

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

a) Performance or supervision of on-site assembly and / or commissioning of the supplied goods;

b) Furnishing of tools required for assembly and / or maintenance of the supplied goods;

c) Furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

d) Performance or supervision or maintenance and / or repair to 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 relive 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 the SCC.

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

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

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

## 17. Prices

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

## 18. Variation orders

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 the contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relive 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 sub-contractor(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, it's likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchase shall evaluate the situation and may at his discretion extend by 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 service from a national department, provincial department or a local authority.

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

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

21.6 Upon any delay beyond the delivery period in the case of a supplier contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitles 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 judgement 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 purchase 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 purchase 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 purchase intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of 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 Is 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.

23.7 If a court of law convicts a person of an offense as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, 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 in 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

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 subsidised 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 reduces, 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 supplied 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 is 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 reasonable 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 to the supplier.

## 28. Limitation of Liability

28.1 Except in cases of criminal negligence or wilful 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 contact 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**

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 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, licence 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. Transfer of contracts**

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. Amendments of contracts**

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 Of a bidder(s) or contractor(s), based in reasonable grounds or evidence obtained by the purchase, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No 89 of 1998.

34.3 Is 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.