

**TERMS OF REFERENCE**

**FOR THE  
PROVISION OF PROTECTION OF PERSONAL INFORMATION ACT READINESS  
ASSESSMENT SERVICES**



<b>Bid Number</b>	<b>EWSETA/RFQ/98/2020</b>
<b>Bid Scope</b>	<b>PROVISION OF PROTECTION OF PERSONAL INFORMATION ACT READINESS ASSESSMENT</b>
<b>Issue Date</b>	<b>WEDNESDAY 17 FEBRUARY 2021</b>
<b>Closing Date for submission of bids</b>	<b>MONDAY 22 FEBRUARY 2021 @13:00hours</b>
<b>Inquiries</b> (all inquiries should be in writing)	<b>scmadmin@ewseta.org.za</b>

## TABLE OF CONTENTS

1. Background information .....	3
2. Objective .....	3
3. Scope of work and deliverables.....	3
4. Evaluation Criteria .....	4
5. Notes to Bidders .....	10
6. Sub-contracting .....	11
7. NEGOTIATION.....	11
8. Submission of Bids.....	11
9. Closing Date of Proposal .....	11
10. Tender validity .....	11
11. Fraud Hot line .....	12

## 1. Background information

The Energy and Water Sector Education and Training Authority (hereby referred as “EWSETA”) is a statutory body established through the Skills Development Act of 1998, and serves the energy and water sector. The SETA plays a crucial function in ensuring that the National Skills and Development Plan is executed within the energy and water sectors.

In line with the requirements of the PFMA and Treasury Regulations, the EWSETA seeks to appoint a duly qualified service provider to provide a Protection of Personal Information Act (POPIA) readiness assessment services to the EWSETA.

## 2. Objective

The objective of this bid is to appoint a suitably qualified and experienced service provider to provide Protection of Personal Information Act (POPIA) readiness assessment to the EWSETA. The primary objectives of the service required are as follows:

- 2.1 To ensure that EWSETA understands the applicability of the Act by ensuring that Executives understand their accountability in terms of the Act;
- 2.2 Conduct a readiness assessment for POPIA compliance, identify gaps, data classification and develop a POPIA implementation program.
- 2.3 To ensure that the Information Officer i.e. CEO or delegated individual is taken to through the POPIA compliance process from start to finish;
- 2.4 To ensure that a risk based approach is taken when designing a POPIA compliance program for EWSETA i.e. ensure that focus remains on prioritizing the most important POPIA compliance requirements first

## 3. Scope of work and deliverables

The successful service provider will provide Protection of Personal Information Act (POPIA) readiness assessment services to the EWSETA. The service provider will be expected to deliver amongst others the following key requirements:

SCOPE OF WORK	DELIVERABLES
<ul style="list-style-type: none"><li>• To ensure that EWSETA understands the applicability of the Act</li></ul>	Ensuring that Executives understand their accountability in terms of the Act
<ul style="list-style-type: none"><li>• Conduct a readiness assessment for POPIA compliance</li></ul>	Identify gaps, data classification and develop a POPIA implementation program
<ul style="list-style-type: none"><li>• Capacitate the Information Officer</li></ul>	Ensure that the Information Officer i.e CEO or delegated individual is taken to through the POPIA compliance process from start to finish

<ul style="list-style-type: none"> <li>• 3.4 Follow a risk-based approach</li> </ul>	<ul style="list-style-type: none"> <li>a) Ensure that a risk based approach is taken when designing a POPIA compliance program for EWSETA</li> <li>b) Ensure that focus remains on prioritizing the most important POPIA compliance requirements first.</li> </ul>
<ul style="list-style-type: none"> <li>• 3.6 Review and update the overall organisational compliance and readiness for POPIA</li> </ul>	POPIA readiness report and implementation program
<ul style="list-style-type: none"> <li>• 3.7 Ensure POPIA awareness within EWSETA</li> </ul>	Develop awareness material for POPIA compliance and provide training to management

The POPIA readiness assessment will address the following phases:

### **3.1 Planning**

- 3.1.1 Analysis of the EWSETA context in relation to POPIA;
- 3.1.2 Conduct EWSETA POPIA compliance self- assessment;
- 3.1.3 Prepare awareness material for POPIA compliance training to Management;

### **3.2 Execution**

- 3.2.1 Conduct introductory POPIA awareness with management;
- 3.2.2 Conduct a POPIA compliance readiness assessment;
- 3.2.3 Develop POPIA readiness report and implementation program;

### **3.3 Reporting**

- 3.3.1 Provide POPIA readiness report and implementation program.

### **3.4 Reporting Requirements**

- 3.4.1 The service provider shall report to the Chief Executive Officer (CEO).

## **4. Evaluation Criteria**

### **4.1 Stage 1: Pre-Qualification Criteria**

#### **4.1.1 Submission of Compulsory Documents:**

**Prospective service providers must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date**

**and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria will be disqualified.**

4.1.1.1 Prospective service providers are required to provide proof of registration with the Central Supplier Database by submitting the CSD report. In case of a Joint Venture, each party must provide proof of registration with CSD.

Completed and signed Standard Bidding Documents attached to the bid.

4.1.1.2 In case of a Joint Venture, a written agreement between the parties which must clearly set out the roles and responsibilities of each member and include a resolution of each company of the Joint Venture together with a resolution by its members authorizing a member of the Joint Venture to sign the documents on behalf of the Joint Venture.

#### **4.1.2 Non-compulsory documents**

**Prospective service providers must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria may be disqualified.**

4.1.2.1 Tax Clearance Certificate or Tax Pin. A prospective service provider must ensure that that their tax matters are in order in line with the Treasury Regulations and reflect accordingly on CSD. It is therefore a condition of this bid that the tax matters of the bidder be in order at the time of award. Failure of the bidder for not complying with their tax matters at the time of award will result in the bidder being disqualified.

4.1.2.2 Certified copy of B-BBEE Certificate. A Joint Venture will qualify for the B-BBEE status level as a legal entity, provided that the legal entity submits their B-BBEE status level certificate. Failure on the part of the bidder to comply with the above will be deemed that preference points for B-BBEE status level of contribution are not claimed and will therefore be allocated a zero (0) points.

#### **4.2 Stage 2: Technical/Functionality Stage**

Only bidders that have met the pre-qualification criteria will be evaluated for functional evaluation. An assessment of Functionality will be based on the evaluation criteria noted in the table below. Each of the evaluation criteria in the table will carry a weighting as indicated, and the bidder will be required to score a minimum of 70%, for Functionality in order to qualify to proceed to Stage 3.

#### **CRITERIA**

CRITERIA	GUIDE ON THE ALLOCATION OF POINTS	MAXIMUM POINTS TO BE AWARDED
<p>Reference letters from public and related institutions as evidence of <u>related</u> services previously conducted</p> <p><i>NB: The Reference Letter(s) must not be older than 3 years must be on the letterhead of the previously serviced client and should reflect at least name of the client, title of the related work conducted, year conducted and</i></p>	<p>3 or more reference letters attached = <b>15 points</b>            2 reference letters attached = <b>10 points</b>            1 reference letter attached = <b>5 points</b></p> <p>No reference letters attached / unsatisfactory services rendered = <b>0 points</b></p> <p><b>Experience in working with SETAs on similar service.</b></p>	<p><b>15</b></p>

<p><i>completed, contactable reference name and contact details and signed by the appropriate delegate. The Reference Letter must indicate the quality of the service rendered.</i></p>	<p>Provide contactable positive references from clients where projects were executed in the SETA environment</p>	<p><b>10</b></p>
<p><b>Project plan and methodology:</b></p> <p>The Bidder must provide a detailed explanation of the methodology and project implementation plan which details how the service will be carried out as outlined in the scope. The project plan must have deliverables and timeframes.</p>	<p>The methodology is innovative, the timeframes and project plan are suited and tailored to the project needs, demonstrates the following:</p> <ul style="list-style-type: none"> <li>▪ project plan with clear project timelines and deliveries and processes to be followed and sequence of events aligned = <b>max 5 points</b></li> <li>▪ demonstrates adequate understanding and knowledge of Governance, Risk &amp; Compliance requirements = <b>max 5 points</b></li> <li>▪ demonstrates adequate understanding and knowledge of information technology governance requirements = <b>max 5 points</b></li> <li>▪ demonstrates adequate understanding and knowledge of POPIA compliance assessment methodologies and practices = <b>max 5 points</b></li> <li>▪ demonstrates adequate understanding and knowledge of development of POPIA compliance readiness program = <b>max 5 points</b></li> <li>▪ demonstrates adequate understanding and knowledge in facilitating POPIA training and awareness = <b>max 5 points</b></li> </ul> <p>No submission = <b>0 points</b></p>	<p><b>30</b></p>
<p><b>Qualifications</b></p> <p>The bidder must provide proof of qualifications and professional competencies in the Governance, Risk &amp; Compliance space.</p>	<p>Proof of post graduate qualification in the related fields of IT, Risk Management, Auditing or Law coupled with relevant professional certifications such as CIA, CA(SA), CRM = <b>10 points</b></p>	<p><b>10</b></p>



work was satisfactory or not

IV. Dates of engagement

**b. Experience in working with SETAs on similar service**

Provide contactable positive references not older than five (5) years from current and or previous clients where similar projects were executed in the SETA environment stating:

- i. Name of client,
- ii. Contact person indicating position and contact details,
- iii. Brief synopsis of work performed, indicating whether the quality of work was satisfactory or not and
- iv. Dates of engagement.

**c. Evidence of infrastructure capacity availability**

Company must demonstrate the capacity to utilise appropriate technology in regards to GRC.

**4.2.2.3 Project Plan / Methodology**

This refers to the details of the project plan and the audit methodology to be used by the Successful Bidder. Specific details should include:

- a) The Bidder must provide a project implementation plan which details how the service will be carried out. The project plan must have time frames and deliverables.
- b) The methodology should be aligned to EWSETA scope and includes all elements covered in the scope of work by demonstrating adequate knowledge and understanding of the following scope elements:
  - i. Methodology should include and demonstrates adequate understanding of POPIA readiness assessment
  - ii. Methodology should include and demonstrates adequate understanding and knowledge in conducting POPIA compliance self- assessments
  - iii. Methodology should include and demonstrates adequate understanding of organization Risk Maturity assessment methodologies and practices
  - iv. Methodology should include and demonstrates adequate a proven record of developing POPIA readiness implementation program and;
  - v. Methodology should include and demonstrates adequate understanding and knowledge in facilitating POPIA training and awareness.

**4.2.2.4 Capability of staff to be used:**

This refers to the qualifications, experience and professional competencies of the bidder's proposed project team to be used to provide in the provision of the POPIA readiness assessment services to EWSETA. Specific details required are as follows:

- a) Submission of abbreviated Curriculum Vitae (CV's) including qualifications and experience of personnel to be used on the project, not longer than one page each, shall be included in Annexure A below.



- b) Copies of certified certificates, not older than three months from date of submission, must be attached as proof. Failure to attach, bidders will result in bidders not being allocated related points.
- For purposes of the evaluation, all bid proposals must reflect the information set out below. Failure to supply all or any part of the required information may result in your bid receiving low score in the evaluation process:

### 4.3 Stage 3: Pricing and preference points Stage

#### 4.3.2 Preference Points

For purpose of evaluating preference points, the following preference point systems will be applicable to all bids whereby preference points shall be awarded for Price; and B-BBEE Status Level of Contribution.

- The points scored in respect of B-BBEE contribution will be added to the points scored for price.
- The following formula will be used to calculate the points for Price:

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

Where

$P_s$  = Points scored for comparative price of proposal or quotation

$P_t$  = Comparative price of proposal or offer

$P_{\min}$  = Comparative price of lowest acceptable proposal or offer

The following table must be used to calculate the score out of 20 for BBEE

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

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 tenderer failing to submit proof of B-BBEE status level of contributor or is a non-compliant contributor to B-BBEE may not be disqualified but may only score points out of 80 for price; and scores 0 points out of 20 for B-BBEE.

A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid;

A bidder 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.

#### **4.3.3 Financial Proposal**

**Financial proposals will be compared on the basis of average hourly rate inclusive of vat. Bidders are required to submit financial proposals as per the table below on a company letterhead.**

Pricing schedule is compulsory and failure to complete same in prescribed manner as per the Annexure B and without alterations may result in disqualification of the bid during the financial evaluation process.

#### **Annexure B: Fees schedule**

	<b>Hourly rate excl. of VAT</b>	<b>Hourly rate inclusive VAT</b>
Lead Partner	R	R
Consultant	R	R

Only firm prices will be accepted. Non-firm prices (including prices subject to rates of exchange variations) will not be considered. 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.

### **5. Notes to Bidders**

Outlined below are basic requirements that each bid must comply with. Failure of any bid to meet any or all of these requirements may disqualify such a bid from the evaluation process:

- The EWSETA will not be liable to reimburse any costs incurred by applicants in preparing their proposals.
- Bids received late shall not be considered under any circumstances. A bid will be considered late if it arrives after **13:00** o'clock on/after the closing date.
- EWSETA does not bind itself into making an appointment from proposals and offers received.
- EWSETA reserves the right, at its sole discretion, to cancel this request for proposals, presentations and price or not to make any appointment at all.
- EWSETA will not make upfront payments.
- Successful bidder must undertake to abide by the confidentiality undertakings contained in the agreement to be concluded;
- The successful bidder will be informed of the outcome. A contract will only be deemed to be concluded when reduced to writing and signed by the designated responsible person of both parties (duly authorised). The designated responsible person of the EWSETA is the Chief Executive Officer or his written authorised delegate.
- The EWSETA undertakes to pay valid invoices in full within 30 (thirty) days if all supporting documents are submitted.

- Please note that any plagiarism of any sort contained within any bid or any other documents submitted to the EWSETA by any bidder will result in the disqualification of the respective bidder.
- Fraudulent practices shall result in immediate disqualification and EWSETA is under no obligation to accept any bid and reserves its right not to proceed with the appointment of any service provider that responded to the invitation to submit proposals, for whatever reasons it may consider appropriate
- EWSETA may request clarification or further information regarding any aspect of the bidder. The bidder must provide the requested information within forty-eight (48) hours after the request has been made; otherwise the bidder may be disqualified.

## 6. Sub-contracting

A tenderer will not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer 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 tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.

## 7. NEGOTIATION

EWSETA has the right to enter into negotiation with a prospective contractor regarding any terms and conditions, including price(s), of a proposed contract. EWSETA shall not be obliged to accept the lowest of any quotation, offer or proposal.

The successful bidder will be informed. A contract will only be deemed to be concluded when reduced to writing in a contract form signed by the designated responsible person of both parties. The designated responsible person of EWSETA is the Chief Executive Officer or his/her written authorised delegate.

## 8. Submission of Bids

Bidders are required to submit their bids to the following address:

[scmadmin@ewseta.org.za](mailto:scmadmin@ewseta.org.za)

Bids should be submitted no later than **Monday 22 February 2021 at 13:00hrs**. Please note that no late proposals will be considered.

EWSETA may request clarification or further information regarding any aspect of the bidder. The bidder must provide the requested information within forty-eight (48) hours after the request has been made; otherwise the bidder may be disqualified.

## 9. Closing Date of Proposal

A comprehensive proposal together with pricing schedule must reach EWSETA by no later than **Monday 22 February 2021, before 13H00**. Please note that no late proposals will be considered.

## 10. Tender validity

This RFQ shall be valid for 30 days calculated from Bid closing date.

## 11. Fraud Hot line

EWSETA subscribes to fair and just administrative processes. EWSETA therefore urges its clients, suppliers and the general public to report any fraud or corruption to:

EWSETA TIP-OFFS ANONYMOUS

Free Call: 0800 611 205

Email: [ewseta@tip-offs.com](mailto:ewseta@tip-offs.com)

Or visit their website [www.tip-offs.com](http://www.tip-offs.com)

## **EWSETA GENERAL CONDITIONS OF PURCHASE**

### **General**

EWSETA and the Supplier enter into an order/contract on these conditions to supply the items (goods/services/works) as described in the order/contract.

### **Conditions**

These conditions form the basis of the contract between EWSETA and the Supplier. Notwithstanding anything to the contrary in any document issued or sent by the Supplier, these conditions apply except as expressly agreed in writing by EWSETA. No servant or agent of EWSETA has authority to vary these conditions orally. These general conditions of purchase are subject to such further special conditions as may be prescribed in writing by EWSETA in the order/contract.

### **Price and payment**

The price or rates for the items stated in the order/contract may include an amount for price adjustment, which is calculated in accordance with the formula stated in the order/contract. The Supplier may be paid in one currency other than South African Rand. Only one exchange rate is used to convert from this currency to South African Rand. Payment to the Supplier in this currency other than South African Rand, does not exceed the amounts stated in the order/contract. EWSETA pays for the item within 30 days of receipt of the Suppliers correct tax invoice.

### **Delivery and documents**

The Supplier's obligation is to deliver the items on or before the date stated in the order/contract. Late deliveries or late completion of the items may be subject to a penalty if this is imposed in the order/contract. No payment is made if the Supplier does not provide the item as stated in order/contract.

### **Where items are to be delivered the Supplier:**

Clearly marks the outside of each consignment or package with the Supplier's name and full details of the destination in accordance with the order and includes a packing note stating the contents thereof; On dispatch of each consignment, sends to EWSETA at the address for delivery of the items, an advice note specifying the means of transport, weight, number of volume as appropriate and the point and date of dispatch; Sends to EWSETA a detailed priced invoice as soon as is reasonably practical after dispatch of the items, and states on all communications in respect of the order the order number and code number (if any).

### **Containers / packing material**

Unless otherwise stated in the order/contract, no payment is made for containers or packing materials or return to the Supplier.

### **Title and risk**

Without prejudice to rights of rejection under these conditions, title to and risk in the items passes to EWSETA when accepted by EWSETA.

**Rejection**

If the Supplier fails to comply with his obligations under the order/contract, EWSETA may reject any part of the items by giving written notice to the Supplier specifying the reason for rejection and whether and within what period replacement of items or re-work are required.

In the case of items delivered, EWSETA may return the rejected items to the Supplier at the Supplier's risk and expense. Any money paid to the Supplier in respect of the items not replaced within the time required, together with the costs of returning rejected items to the Supplier and obtaining replacement items from a third party, are paid by the Supplier to EWSETA.

In the case of service, the Supplier corrects non-conformances as indicated by EWSETA.

**Warranty**

Without prejudice to any other rights of EWSETA under these conditions, the Supplier warrants that the items are in accordance with EWSETA's requirements, and fit for the purpose for which they are intended, and will remain free from defects for a period of one year (unless another period is stated in the Order) from acceptance of the items by EWSETA.

**Indemnity**

The Supplier indemnifies EWSETA against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith arising from the negligence, infringement of intellectual or legal rights or breach of statutory duty of the Supplier, his subcontractors, agents or servants, or from the Supplier's defective design, materials or workmanship.

The Supplier indemnifies EWSETA against claims, proceedings, compensation and costs payable arising out of infringement by the Supplier of the rights of others, except an infringement which arose out of the use by the Supplier of things provided by EWSETA.

**Assignment and sub-contracting**

The Supplier may not assign or subcontract any part of this order/contract without the written consent of EWSETA.

**Termination**

EWSETA may terminate the order/contract at any time (without prejudice to any right of action or remedy which has accrued or thereafter accrues to EWSETA):

If the Supplier defaults in due performance of the order/contract, or if the Supplier becomes bankrupt or otherwise is, in the opinion of EWSETA, in such financial circumstances as to prejudice the proper performance of the order/contract, or for any other reason in which case the Supplier will be compensated for all costs incurred.

**Governing law**

The order/contract is governed by the law of the Republic of South Africa and the parties hereby submit to the non-exclusive jurisdiction of the South African courts.

**DECLARATION OF INTEREST**

**SBD4**

1. Any legal person, including persons employed by the state\*, 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 and/or take an oath declaring his/her interest, 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, shareholder etc.):

.....

2.4 Company Registration Number:

.....

2.5 Tax Reference Number:

.....

2.6 VAT Registration Number:

.....

\* "State" means –

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

2.7 Are you or any person connected with the bidder YES / NO  
presently employed by the state?

2.7.1 If so, furnish the following particulars:

Name of person / director / shareholder/ member ..... Name of  
state institution to which the person is connected ..... Position  
occupied in the state institution:  
.....

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

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

**DECLARATION**

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2.1 TO 2.11.1 ABOVE  
IS CORRECT.

I ACCEPT THAT THE STATE MAY ACT AGAINST ME IN TERMS OF EWSETA'S GENERAL  
CONDITIONS OF TENDER AS STIPULATED IN THE RFP SHOULD THIS DECLARATION  
PROVE TO BE FALSE.

.....  
SIGNATURE DATE

..... POSITION  
NAME OF BIDDER



**SBD 8**

**10. DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES**

The order/contract is governed by the law of the Republic of South Africa and the parties hereby submit to the non-exclusive jurisdiction of the South African courts.

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

Item	Question	Yes	No
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).  <b><i>The Database of Restricted Suppliers now resides on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</i></b>	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)?  <b><i>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</i></b>	Yes	No
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
4.3.1	If so, furnish particulars:	<input type="checkbox"/>	<input type="checkbox"/>

4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes	No
4.4.1	If so, furnish particulars:		

**CERTIFICATION**

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

**CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.**

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

.....

**Signature**

.....

**Date**

.....

**Position**

.....

**Name of Bidder**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

1. This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> 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).<sup>2</sup> 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:

*<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.*

<sup>2</sup> 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<sup>3</sup> 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.

*<sup>3</sup> 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