



## REQUEST FOR QUOTATION (“RFQ”)

### PROVISION OF OUTSOURCED INTERIM FINANCIAL MANAGER FOR A PERIOD OF SIX (06) MONTHS



<b>Bid Number</b>	<b>EWSETA/RFQ/009/2023</b>
<b>Bid Scope</b>	<b>PROVISION OF OUTSOURCED INTERIM FINANCIAL MANAGER FOR A PERIOD OF SIX (06) MONTHS</b>
<b>Issue Date</b>	<b>WEDNESDAY 26 APRIL 2023</b>
<b>Closing Date for submission of bids</b>	<b>FRIDAY 05 MAY 2023 @13:00HRS</b>
<b>Inquiries</b> (all inquiries should be in writing)	<a href="mailto:scmadmin@ewseta.org.za">scmadmin@ewseta.org.za</a>

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## 1. BACKGROUND INFORMATION

The Energy and Water Sector Education and Training Authority (“EWSETA”) is a statutory body established through the Skills Development Act of 1998 to enable its stakeholders to advance the national and global position of the energy and water sectors in the large, medium, small levy paying and non- levy paying companies across the sector.

This is as a result of Government commitment to promote active labour market policies as is demonstrated in the Skills Development Act of 1998 and the Skills Development Levies Act of 1999. As guided by its mandate, the SETA is an agent of transformation by promoting the achievement of desired outcomes as stipulated in the National Skills Development Plan (NSDP) whilst observing and complying with legislative and regulatory frameworks, such as the Public Finance Management Act No. 1 of 1999.

In line with the requirements of the PFMA and Treasury Regulations, the EWSETA seeks to appoint a duly qualified and accredited service provider or independent consultant to outsource an Interim Financial Accounting Manager to alleviate temporary capacity shortages within the Finance Department.

## 2. PURPOSE

The objective of this bid is to appoint an accredited, experienced, and qualified service provider or independent consultant to outsource an Interim Financial Accounting Manager to EWSETA. These services will be undertaken as per the scope of work below.

## 3. SCOPE OF WORK

The successful service provider or independent consultant will provide all outsourced financial management and accounting services to support the CFO and Finance Department with routine and non-routine finance tasks. These services are outlined in **section 3.1 below**.

EWSETA utilises the SAGE Evolution 200 and SAGE VIP Premier for processing Financial and payroll transactions. Bidders are required to be well versed in these systems as the expectation is for the outsourced Interim Financial Accounting Manager to assist EWSETA from the onset.

The appointed Service Provider or Independent Consultant will take full responsibility for all output and deliverables produced by their placed resource and the work will be performed under the supervision of the Chief Financial Officer.

### 3.1 EXPECTED OUTCOMES AND DELIVERABLES

The Service Provider or Independent Consultant must adhere to the scope of services/ work and deliver according to the required outcome and deliverables. The placed Interim Financial Accounting Manager is expected to perform all financial and payroll related functions including but not limited to:

### **3.1.1 Financial Control**

- Manage the updating and monitoring of adherence to financial policies and procedures, in line with the PFMA, other legislative prescripts and Board directives.
- Contribute to and implement the financial strategy
- Monitor, review and evaluate internal control systems
- Prepare for and participate in the external audit by the Auditor General
- Prepare for and participate in relevant internal audits conducted by entity's Internal Auditors

### **3.1.2 Financial Reporting**

- Review month-end financial closes, reconciliations, and related analysis of all accounts.
- Verify the submission and monthly reconciliation of any statutory returns.
- Review any financial reports and statements for financial analysis, forecasting, trending, and results analysis, including supporting schedules.
- Analyze monthly and quarterly expenditure reports for all cost centers and submit information to the Reporting, Risk and Compliance Manager.
- Contribute to the preparation of the annual financial statements, including notes and supporting schedules

### **3.1.3 Expenditure Management**

- Approve supplier and creditor payments.
- Approve procurement of goods & services
- Manage the recovery of credit notes, disallowances and subsistence and transport allowances.
- Manage the allocation, reconciliation, and banking of revenue.
- Manage all expenditure related queries, identify irregular expenditure, identify fruitless and wasteful expenditure, and provide the information to the relevant managers

### **3.1.4 Financial Accounting**

- Resolve accounting discrepancies and irregularities.
- Approve all relevant journal entries when required.
- Analyze the monthly financial reports, monitor trends and drive appropriate action.
- Manage creditors and oversee the monthly reconciliation.
- Authorize adjustments and access to financial databases (e.g. for new clients, and creditors).

### **3.1.5 Payroll**

- Draft and implement payroll administration and control policies
- Drive adherence to payroll procedures.
- Coordinate and manage the entire payroll function to ensure processing deadlines and control requirements are being met.
- Manage calculation of and authorize payment of termination payments (resignation/retirement/redundancy).
- Manage the calculation, payment, and reconciliation of payroll tax.

- Manage and authorize the administration, calculation, payment and reconciliation of all superannuation contributions and third-party payments.
- Liaise with management and staff regarding all escalated pay enquiries.
- Ensure submission of all statutory payments and returns by deadline dates.
- Manage the preparation and reconciliation of payment summaries.
- Establish and manage the payroll records management system, including archiving and filing.
- Coordinate workers compensation payments.
- Establish a system for checking and auditing all payrolls to assure compliance with policy and legislation.

The placed Interim Financial Accounting Manager must conduct these activities in alignment with the EWSETA standard operating procedures and policies.

It should be noted that the EWSETA's finance Department is relatively small, and the Interim Financial Accounting Manager would be expected to be hands on. The appointed resource will have 3 direct reports.

The appointed resource will be expected to execute their duties at the EWSETA premises in Parktown, Johannesburg and will be responsible for their own travel expenses.

### **3.2 MONITORING PROGRESS OF SERVICE**

The EWSETA shall monitor and evaluate the progress of the service delivery as per the deliverables outlined in the contract and Service Level Agreement (SLA).

### **3.3 QUALITY ASSURANCE AND REVIEW OF THE SERVICE**

The quality of the services will be managed via the approved schedule.

### **3.4 INDEPENDENCE, CONFIDENTIALITY AND OBJECTIVITY OF STAFF**

In carrying out the services, the Service Provider or independent consultant must ensure that its placed candidate maintains objectivity by remaining independent of the activities they execute. Staff are also expected to adhere to the confidentiality requirements throughout the project and will be required to attest to this through agreeing to the confidentiality clause in the EWSETA SLA.

### **3.5 DURATION OF SERVICES/ WORK**

This project undertaking will run for 6 months. However, due to the uncertainty regarding the length of time for which EWSETA will require an Interim manager, the contract may be cancelled with 30 days' notice.

## 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 bidders 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. Individual consultants are also required to be registered on CSD in their individual capacity and proof of registration must be submitted.

4.1.1.2 Completed and signed Standard Bidding Documents attached to the bid.

4.1.1.3 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.**

4.1.1.4 Submit a valid Tax Clearance Certificate/ Tax Pin Certified copy of B-BBEE Certificate. A prospective service provider must ensure 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.

4.1.1.5 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 – Functionality 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 75 points (out of the 100 points), i.e. **75%**, for Functionality in order to qualify and proceed to Stage 3 of the evaluation process.

Criteria	Scoring	Weighted score
<p><b>Provide the qualifications and experience of the proposed Interim Financial Accounting Manager</b></p> <p><b>Experience</b> Bidders must attach CV of the Interim Financial Accounting Manager.</p> <p><b>Qualifications:</b> Must provide proof of relevant qualification</p> <p><i><b>NB. Bidders must attach no later than 6 months certified copies of qualifications. Uncertified qualification certificates will not be accepted and will therefore not score any points.</b></i></p>	<p><b>Experience as Finance Manager/ Accounting Manager/in a similar role:</b></p> <p>+5 years relevant experience = 30 points 2 - 3 years relevant experience = 15 points Less than 2 years of experience = 0 points</p> <p><b>Qualifications</b></p> <p>BCom honours or Equivalent qualifications = 25 points BCom degree or Equivalent qualification = 15 points Diploma or No relevant qualifications = 0 points</p> <p>Membership with any relevant finance professional body = 5 points</p>	<p><b>30</b></p> <p><b>30</b></p>
<p><b>Public sector experience</b></p> <p>Must provide detail breakdown of public sector experience (previous public sector employer or project completed, period of employment or project, role or services offered and contactable reference for each employer or project)</p>	<p>+5 years relevant experience = 30 points 2 - 3 years relevant experience = 15 points Less than 2 years of experience = 0 points</p>	<p><b>30</b></p>
<p><b>Company profile</b></p>	<p>Provide a company profile includes the following:</p> <ul style="list-style-type: none"> <li>• Full services rendered = <b>5 points</b> (services must be relevant in order to score points)</li> <li>• List of previous projects completed = <b>5 points</b> (projects must be relevant in order to score points)</li> </ul>	<p><b>10</b></p>
<p><b>TOTAL</b></p>		<p><b>100</b></p>

### 4.3 STAGE 2.2 Interview session

The top three bidders who meet the minimum technical/functionality evaluation score of 75% under stage 2.1 of evaluation above may be invited to participate in the second assessment stage, being an interview session (this stage is dependent on the quality of bids received). These will be held at the EWSETA offices in Parktown, Johannesburg where will be assessed on the following capabilities:

- Demonstrates understanding of the public sector finance function and its activities.
- Demonstrates understanding and ability to utilize the SAGE Evolution 200 and SAGE VIP Premier
- Demonstrate experience of managing staff and working with diverse group of people

Bidders are expected to satisfy the EWSETA panelist with an overall “**Satisfactory**” score to proceed to the final stage of evaluation, below.

### 4.4 Stage 3: Pricing and Specific Goals Stage

- 4.4.1 The applicable preference point system for this tender is the 80/20 preference points system; 80 points are awarded for price and 20 points are awarded for specific goals
- 4.4.2 The points scored in respect of specific goals will be added to the points scored for price.
- 4.4.3 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

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

P min = Price of lowest acceptable tender

### 5.1 Points awarded for specific goals

For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:

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

	Points
Price	80
<b>Specific goals:</b>	
B-BBEE Status level contribution	20
Total points for Price and Specific goals	100



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

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

- i. 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.
- ii. 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.
- iii. A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bidder.
- iv. 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.

## 5.2 Financial Proposal

**Financial proposals will be compared on the basis of their total amount inclusive of VAT and all other related costs. 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 table below and without alterations for comparability purposes.

Financial proposals must be aligned to the DPSA Hourly Fee Rates For Consultants - With effect from 1 July 2020, as follows:

- As the engagement is anticipated to run for more than three months, the rates short be aligned to the “short term” rates.
- Rates should be aligned to “partial overheads”, as EWSETA will provide some overheads.

If the DPSA circular is updated, EWSETA will amend the payment rates accordingly as from the updated circular’s effective date.

	Hourly Rate (Excl. VAT)	Hourly Rate (Inc. VAT)	Monthly rate (Excl. VAT)	Monthly rate (Inc. VAT)
<b>Financial accounting manager</b>	R	R	R	R
<b>Total</b>	R	R	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.

Travel costs to EWSETA offices will not be reimbursed. This will be pre-arranged during the term of the engagement.

## 6. 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:

- 6.1 A prospective service provider must ensure 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.
- 6.2 The EWSETA will not be liable to reimburse any costs incurred by applicants in preparing their proposals.
- 6.3 EWSETA does not bind itself into making an appointment from proposals and offers received.
- 6.4 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.
- 6.5 EWSETA will not make upfront payments.
- 6.6 Successful bidder must undertake to abide by the confidentiality undertakings contained in the agreement to be concluded;
- 6.7 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.
- 6.8 A probation period of 90 days will apply to the agreement.
- 6.9 The EWSETA undertakes to pay valid invoices in full within 30 (thirty) days if all supporting documents are submitted.
- 6.10 The service level agreement will be reviewed annually upon anniversary date.
- 6.11 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.

- 6.12 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.
- 6.13 In the absence of the individual a suitable replacement must be organised a week prior to the absence.
- 6.14 Scheduled outages, after hours or weekends. Must be part of total costs and NOT additional cost.

## **7. SUBMISSION OF BIDS**

Bidders are required to submit their bids to [scmadmin@ewseta.org.za](mailto:scmadmin@ewseta.org.za)

## **8. CLOSING DATE OF PROPOSAL**

A comprehensive proposal together with pricing schedule must reach EWSETA by no later than **05 May 2023 not later than 13H00**. Please note that no late proposals will be considered.

## **9. TENDER VALIDITY**

This RFQ shall be valid for 90 days calculated from bid closing date.

## **10. 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)

## 11. ANNEXURE 1 – SBD4 - 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 interest<sup>1</sup> in the enterprise, employed by the state? **YES / NO**

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

Full Name	Identity Number	Name of State institution

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

<sup>1</sup> 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.



2.2.1 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 consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

<sup>2</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.

- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

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

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

## **12. ANNEXURE 2: EWSETA GENERAL CONDITIONS OF PURCHASE**

### **12.2 General**

- 12.1.1 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.
- 12.1.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

### **12.2 Standard**

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

### **12.3 Use of contract documents and information; inspection**

- 12.3.1 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.
- 12.3.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 12.3.3 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.
- 12.3.4 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.

### **12.4 Patent rights**

- 12.4.1 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.

### **12.5 Performance security**

- 12.5.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 12.5.2 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.
- 12.5.3 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

12.5.4 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.

## 12.6 Use of contract documents and information; inspection

12.6.1 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.

12.6.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

12.6.3 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.

12.6.4 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.

## 12.7 Patent rights

12.7.1 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.

## 12.8 Performance security

12.8.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

12.8.2 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.

12.8.3 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
- b. documents or another form acceptable to the purchaser; or (b) a cashier's or certified cheque

12.8.4 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.



## **12.9 Inspections, tests and analyses**

- 12.9.1 All pre-bidding testing will be for the account of the bidder.
- 12.9.2 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 12.9.3 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 12.9.4 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 12.9.5 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.
- 12.9.6 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.
- 12.9.7 Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 12.9.8 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.

## **12.10 Packing**

- 12.10.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.
- 12.10.2 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.

## **12.11 Delivery and documents**

- 12.11.1 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.
- 12.11.2 Documents to be submitted by the supplier are specified in SCC.

## **12.12 Insurance**

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

## **12.13 Transportation**

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

## **12.14 Incidental services**

- 12.14.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- a. performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - b. furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - c. furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - d. performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
  - e. training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, startup, operation, maintenance, and/or repair of the supplied goods.
- 12.14.2 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.

## **12.15 Spare parts**

- 12.16 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:
- a. such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
  - b. in the event of termination of production of the spare parts: Page 42 of 51
    - (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.

## **12.17 Warranty**

- 12.17.1 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.

- 12.17.2 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.
- 12.17.3 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.
- 12.17.4 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.

#### **12.18 Payment**

- 12.18.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 12.18.2 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.
- 12.18.3 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.
- 12.18.4 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

#### **12.19 Prices**

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

#### **12.20 Contract amendments**

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

#### **12.21 Assignments**

- 12.21.1 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.

#### **12.22 Subcontracts**

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

#### **12.23 Delays in the supplier's performance**

- 12.23.1 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.
- 12.23.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay,

- its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation Page 44 of 51
- 12.23.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 12.23.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 12.23.5 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
- 12.23.6 unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 12.23.7 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

#### **12.24 Penalties**

- 12.24.1 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.

#### **12.25 Termination for default**

- 12.25.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 12.25.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 12.25.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 12.25.4 If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should

- the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 12.25.5 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.
- 12.25.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- I. the name and address of the supplier and / or person restricted by the purchaser;
  - II. the date of commencement of the restriction
  - III. the period of restriction; and
  - IV. the reasons for the restriction

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

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

## **12.26 Anti-dumping and countervailing duties and rights**

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

## **12.27 Force Majeure**

- 12.27.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 12.27.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

### **12.28 Termination for insolvency**

12.28.1 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.

### **12.29 Settlement of Disputes**

12.29.1 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.

12.29.2 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.

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

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

12.29.5 Notwithstanding any reference to mediation and/or court proceedings herein,  
a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and  
b) the purchaser shall pay the supplier any monies due the supplier.

### **12.30 Limitation of liability**

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

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

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

### **12.31 Governing language**

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

### **12.32 Applicable law**

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

### **12.33 Notices**

12.33.1 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

12.33.2 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.

#### **12.34 Taxes and Duties**

12.34.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

12.34.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

12.34.3 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.

#### **12.35 National Industrial Participation (NIP) Programme**

12.35.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

#### **12.36 Prohibition of Restrictive practices**

12.36.1 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 Page 49 of 51

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

**13.** If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.