

# REQUEST FOR QUOTATION (“RFQ”)

## APPOINTMENT OF A SERVICE PROVIDER TO ASSIST WITH PERFORMANCE INFORMATION AUDIT READINESS



<b>Bid Number</b>	EWSETA/RFQ/074/2023
<b>Bid Scope</b>	APPOINTMENT OF A SERVICE PROVIDER TO ASSIST WITH PERFORMANCE INFORMATION AUDIT READINESS
<b>Issue Date</b>	FRIDAY 17 NOVEMEBR 2023
<b>Non-compulsory Briefing Session</b>	N/A
<b>Closing Date for submission of bids</b>	FRIDAY 24 NOVEMBER 2023 @13h00pm
<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 No 97 of 1998 (the Act) to enable its stakeholders to advance the national and global position of the energy and water sector by facilitating the effective development of skills required to respond to related imperatives as envisaged in the National Development Plan (NDP).

The EWSETA is strategically positioned as an authority of skills development that effectively supports Government national plans and strategies. Furthermore, EWSETA is responsible for responding to the many skills-related needs of the sector and its respective labour markets.

By carrying out its primary mandate, the EWSETA incrementally achieves skills development imperatives and related outcomes over the long term.

## **2. OBJECTIVE**

The Energy and Water Sector Education and Training Authority (EWSETA) hereby invites reputable & skilled Finance Professionals working either as service provider and/or independent consultants who have extensive experience in the audit of performance information and financial statements in public sector. This is intended to assist EWSETA to be audit ready.

## **3. SCOPE OF WORK**

### **3.1 A competent successful service provider and/or independent consultants should be experienced in delivering the following:**

- 3.1.1 Review performance information reports to ensure that supporting evidence is valid, accurate and complete (reliability);
- 3.1.2 Assess whether information reported on is done in terms of the EWSETA's strategic objectives and mandate which is useful to all EWSETA's stakeholders (relevant);
- 3.1.3 Lead and advise the ESWETA team preparing performance information;
- 3.1.4 Follow up on all audit findings raised previously and assist EWSETA in resolving the findings;
- 3.1.5 Preparation of the APR and narrative for the Annual report;

- 3.1.6 Respond to audit queries and liaise with auditors;
- 3.1.7 Present the audit status report to relevant structures of EWSETA whenever required;
- 3.1.8 Submit both manual and electronic file of the project to EWSETA upon completion of the project;
- 3.1.9 Provide monitoring services over the reporting of performance information, including assistance to alleviate constraints on performance information reporting; and
- 3.1.10 Provide other advisory services to the EWSETA team implementing programmes relating to performance information.

### **3.2 Duration of Contract**

The contract will be valid from the date of appointment until the finalization of the 2023/24 audit. The project is expected to commence from the date of appointment. Detailed timeframes for the proposed work will be discussed with the successful service provider as part of the mandate terms.

## **4. EVALUATION CRITERIA**

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

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

**Prospective bidders must comply with the requirements and submit all required documents 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.
- 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 bidders 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 Submit a valid Tax Clearance Certificate/ Tax Pin. A prospective bidder 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.

4.1.2.2 Certified copy of B-BBEE Certificate or affidavit. 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 points for specific goals will not be claimed and will therefore be allocated zero (0) points.

#### 4.2 Stage: Technical/Functionality Stage

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

The service provider is to meet the below criteria which is applicable to the bid to be submitted to the EWSETA.

Criteria	Scoring	Weighted score
Bidder must submit relevant reference letters from different clients as evidence of <u>related</u> (performance information or financial audit readiness) services successfully completed.	<b>Relevant public sector experience</b> <b>3 valid letters attached = 30 points</b> <b>2 valid letters attached = 20 points</b> <b>1 letter attached = 10 points</b>	<b>30</b>

Criteria	Scoring	Weighted score
<p><i>NB: The Reference Letter(s) must not be older than 5 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 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>	irrelevant / invalid / unsatisfactory services rendered reference letters = <b>0 points</b>	
	<p><b>Relevant SETA experience</b> 1 valid letter attached = <b>20 points</b></p> <p>irrelevant / invalid / unsatisfactory services rendered reference letters = <b>0 points</b></p>	<b>20</b>
<p><b>Qualifications</b> Qualifications of the proposed</p> <p><i>Bidders must attach relevant certified copies of the highest qualifications/professional certificate. Certification may not be older than 6 months prior to submission. Uncertified qualification/professional certificates will not be accepted as authentic. Foreign qualifications are required to be accompanied by a SAQA evaluation certificate.</i></p>	<p><b>Engagement lead</b> Relevant Postgraduate degree = <b>10 points</b></p> <p><b>Senior consultant</b> Relevant Postgraduate degree = <b>10 points</b></p> <p><b>Junior consultant</b> Bachelor's degree in accounting = <b>5 points</b></p> <p>No qualification, other qualifications lower than a bachelor's degree or not in accounting = <b>0 points</b></p>	<b>25</b>
<p><b>Relevant experience</b></p> <p>Bidders must attach the detailed CVs of the proposed core team</p>	<p><b>Experience of engagement lead</b> Minimum 7+years' relevant (post articles) experience = <b>10 points</b></p> <p><b>Experience of a senior consultant</b> Minimum 7+years' relevant (post articles) experience = <b>10 points</b></p> <p><b>Experience of a junior consultant</b> Minimum 3 years' relevant experience = <b>5 points</b></p>	<b>25</b>
<b>TOTAL AVAILABLE POINTS</b>		<b>100</b>

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

4.3.1 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.

4.3.2 The points scored in respect of specific goals will be added to the points scored for price.

4.3.3 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

$P_s$  = Points scored for price of tender under consideration

$P_t$  = Price of tender under consideration

$P_{\min}$  = Price of lowest acceptable tender

### 4.4 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	10
Bidders will be awarded 10 points for meeting any of the criteria below: <ul style="list-style-type: none"> <li>• Qualifying Small Enterprise</li> <li>• Exempted Micro-Enterprise supplier</li> <li>• 51% black owned</li> <li>• 30% Black Women Owned</li> </ul>	10
Total points for Price and Specific goals	100

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

- 4.4.1 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.
- 4.4.2 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 point out of 80 for price; and scores 0 points out of 20 for B-BBEE.
- 4.4.3 A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bidder.
- 4.4.4 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.



#### 4.5 Financial Proposal

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

Position Title Category (where applicable)	Number of consultants required	Number of hours per month: estimate for each resource	Hourly rate inclusive of all incidental costs but excluding VAT	Hourly rate inclusive of all incidental costs and VAT
Engagement lead	1		R	R
Senior Consultant	1		R	R
Junior consultant	1		R	R
<b>Total sum of rates excl. of VAT</b>			R	R
<b>Total sum of rates incl. of VAT</b>			R	R

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

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:

- 5.1 A prospective bidders 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.
- 5.2 The EWSETA will not be liable to reimburse any costs incurred by applicants in preparing their proposals.
- 5.3 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.
- 5.4 EWSETA does not bind itself into making an appointment from proposals and offers received.
- 5.5 The lowest price or any quotation will not necessarily be accepted, and the EWSETA reserves the right to accept the whole or any portion of a quotation.
- 5.6 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.
- 5.7 EWSETA will not make upfront payments.
- 5.8 Successful bidder must undertake to abide by the confidentiality undertakings contained in the agreement to be concluded.
- 5.9 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 her/his written authorised delegate.
- 5.10 A probation period of 30 days will apply to the agreement and a penalty regime system in the maintenance addressing recourse by the supplier or EWSETA will be implemented.
- 5.11 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 and may potentially have legal ramifications.
- 5.12 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.
- 5.13 Nothing, as stipulated in these Terms of Reference may be amended without the written confirmation of the Chief Executive Officer of EWSETA or his/her delegated authority.
- 5.14 Any possible staff changes during the course of the engagement must be done in consultation and approval of the EWSETA.

## 6. SUBMISSION OF BIDS

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

## 7. CLOSING DATE OF PROPOSAL

A comprehensive proposal together with pricing schedule must reach EWSETA by no later than **Friday, 24 November 2023 not later than 13H00**. Please note that no late proposals will be considered.

## 8. TENDER VALIDITY

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

## 9. 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@thehotline.co.za](mailto:ewseta@thehotline.co.za) ; or

visit their website [www.thehotline.co.za](http://www.thehotline.co.za) ; or SMS 30916; or Vuvuzela Hotline (App Stores)

## 10. 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

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<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 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 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.

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<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.

- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring 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

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

### **11.1 General**

- 11.1.1 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.
- 11.1.2 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)

### **11.2 Standard**

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

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

- 11.3.1 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.
- 11.3.2 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.
- 11.3.3 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.
- 11.3.4 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.

### **11.4 Patent rights**

- 11.4.1 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.

### **11.5 Performance security**

- 11.5.1 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.
- 11.5.2 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.
- 11.5.3 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
- 11.5.4 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.

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

- 11.6.1 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.
- 11.6.2 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.
- 11.6.3 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.
- 11.6.4 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.

### **11.7 Patent rights**



11.7.1 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.

### **11.8 Performance security**

11.8.1 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.

11.8.2 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.

11.8.3 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

11.8.4 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.

### **11.9 Inspections, tests and analyses**

11.9.1 All pre-bidding testing will be for the account of the bidder.

11.9.2 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.

11.9.3 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.

11.9.4 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.

11.9.5 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.

- 11.9.6 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.
- 11.9.7 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.
- 11.9.8 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.

#### **11.10 Packing**

- 11.10.1 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.
- 11.10.2 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.

#### **11.11 Delivery and documents**

- 11.11.1 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.
- 11.11.2 Documents to be submitted by the supplier are specified in SCC.

#### **11.12 Insurance**

- 11.12.1 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.

#### **11.13 Transportation**

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

#### **11.14 Incidental services**

11.14.1 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.

11.14.2 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.

#### **11.15 Spare parts**

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

- a. such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- b. in the event of termination of production of the spare parts: 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.

#### **11.16 Warranty**

11.16.1 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.

11.16.2 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.

11.16.3 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.

11.16.4 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.

#### **11.17 Payment**

11.17.1 The method and conditions of payment to be made to the supplier under this contract shall be specific;9d in SCC.

11.17.2 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.

11.17.3 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.

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

#### **11.18 Prices**

11.18.1 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.

#### **11.19 Contract amendments**

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

#### **11.20 Assignments**

11.20.1 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.

#### **11.21 Subcontracts**

11.21.1 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 of any liability or obligation under the contract.

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

- 11.22.1 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.
- 11.22.2 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
- 11.22.3 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.
- 11.22.4 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.
- 11.22.5 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
- 11.22.6 unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 11.22.7 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.

## **11.23 Penalties**

- 11.23.1 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.

## **11.24 Termination for default**

- 11.24.1 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.
- 11.24.2 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.
- 11.24.3 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.
- 11.24.4 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.
- 11.24.5 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.
- 11.24.6 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.
- 11.24.7 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.



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

11.25.1 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.

### **11.26 Force Majeure**

11.26.1 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.

11.26.2 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.

### **11.27 Termination for insolvency**

11.27.1 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.

### **11.28 Settlement of Disputes**

11.28.1 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.

11.28.2 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.

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

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

11.28.5 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.

### **11.29 Limitation of liability**

11.29.1 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.

### **11.30 Governing language**

11.30.1 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.

### **11.31 Applicable law**

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

### **11.32 Notices**

11.32.1 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.

11.32.2 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.

### **11.33 Taxes and Duties**

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



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

11.33.3 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.

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

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

#### **11.35 Prohibition of Restrictive practices**

11.35.1 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

11.35.2 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.

11.35.3 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.