

## PART A INVITATION TO BID

**YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE DPSA**

BID NUMBER:	DPSA002/2024	CLOSING DATE: 23 AUGUST 2024	CLOSING TIME: 11:00
DESCRIPTION	APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE OFFICE 365 BACKUP SOLUTION FOR THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION FOR A PERIOD OF THIRTY-SIX (36) MONTHS.		
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>			
Batho Pele House,			
546 Edmond Street,			
(C/O Hamilton Street),			
Arcadia			
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>		<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>	
CONTACT PERSON	Lorraine Masenya / Mmapula Kotsokoane	CONTACT PERSON	Zethu Khoza /Phillemon Maila
TELEPHONE NUMBER	012 336 1126/336 1389	TELEPHONE NUMBER	012 336 1128/336 1228
FACSIMILE NUMBER	N/A	FACSIMILE NUMBER	N/A
E-MAIL ADDRESS		E-MAIL ADDRESS	<a href="mailto:zethu.khoza@dpsa.gov.za">zethu.khoza@dpsa.gov.za</a> or <a href="mailto:maila@dpsa.gov.za">maila@dpsa.gov.za</a>
<b>SUPPLIER INFORMATION</b>			
NAME OF BIDDER			
POSTAL ADDRESS			
STREET ADDRESS			
TELEPHONE NUMBER	CODE	NUMBER	
CELLPHONE NUMBER			
FACSIMILE NUMBER	CODE	NUMBER	
E-MAIL ADDRESS			
VAT REGISTRATION NUMBER			
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:	OR	CENTRAL SUPPLIER DATABASE No: MAAA
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?			<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?			<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?			<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.</b>			

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

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

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

SIGNATURE OF BIDDER: .....

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

DATE: .....

**KINDLY REGISTER YOUR PROPOSALS /BIDS IN THE SUBMISSION REGISTER AT DPSA RECEPTION.**

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

NAME OF BIDDER: .....	BID NO.: <b><u>DPSA002/2024</u></b>
CLOSING TIME AND DATE: <b>11:00 ON 23 AUGUST 2024</b>	

OFFER TO BE VALID FOR **90** DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY INCLUSIVE OF <u>VALUE ADDED TAX</u>
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**APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE OFFICE 365 BACKUP SOLUTION FOR THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION FOR A PERIOD OF THIRTY-SIX (36) MONTHS.**

Services must be quoted in accordance with the attached terms of reference.

Total cost of the assignment (R inclusive VAT) R.....

**NB; Bidders are also advised to indicate a total cost breakdown for this assignment.**

The financial proposal for this assignment should cover all assignment activities and outputs enumerated above.

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

3. Are the rates quoted firm for the full period? YES/NO

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

.....

.....

.....  
Signature

.....  
Date

.....  
Position

Any enquiries regarding bidding procedures may be directed to the

**DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION**

For SCM related enquiries – Lorraine Masenya/ Mmapula Kotsokoane

[Tel:012 336 1126/336 1389](tel:0123361126)

Or for technical information – Zethu Khoza / Phillemon Maila

[Tel:012 336 1128/336 1228](tel:0123361128)

**PLEASE REFER TO THE ATTACHED TERMS OF REFERENCE FOR MORE INFORMATION.**

## 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

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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.

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.
- 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

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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.

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

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL  
PROCUREMENT REGULATIONS 2022**

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

**1. GENERAL CONDITIONS**

1.1 The following preference point systems are applicable to invitations to tender:

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

**1.2 To be completed by the organ of state**

a) The applicable preference point system for this tender is the **80/20** preference point system.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals.

**1.4 To be completed by the organ of state:**

The maximum points for this tender are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	<b>80</b>
<b>SPECIFIC GOALS</b>	<b>20</b>
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is

adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).
- (f) **“Consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract
- (g) **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- (h) **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.
- (i) **“Youth”** means persons between the ages of 14 and 35 in terms of the National Youth Development Agency Act, 2008. For the purpose of this bid the date to be used for determination of age will be the closing date of the bid and in a case where the closing date of a bid has been extended, the original (first) closing date shall be used for the purpose of determining age.
- (j) **“disability”** means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.
- (k) **“Local Content and Production”** means locally produced and manufactured products within the borders of South Africa in support of the Reconstruction Development Programme.

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE

#### 3.1.1 THE 80/20 PREFERENCE POINT SYSTEM

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

**80/20**

$$Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)$$

Where

- Ps = Points scored for price of tender under consideration  
Pt = Price of tender under consideration  
Pmin = Price of lowest acceptable tender

### 3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

#### 3.2.1. POINTS AWARDED FOR PRICE

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

**80/20**

$$Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

Where

- Ps = Points scored for price of tender under consideration  
Pt = Price of tender under consideration  
Pmax = Price of highest acceptable tender

## 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. 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:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point

system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

***(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.***

***Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)***

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Black Equity Ownership	8	
Women Equity Ownership	6	
Persons living with disability Equity Ownership	3	
Youth Equity Ownership	3	

Refer to the Preference Point Matrix attached for ease of claiming points for the specific goals for this tender.

**DECLARATION WITH REGARD TO COMPANY/FIRM**

4.3. Name of company/firm.....

4.4. Company registration number: .....

4.5. TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
  - One-person business/sole propriety
  - Close corporation
  - Public Company
  - Personal Liability Company
  - (Pty) Limited
  - Non-Profit Company
  - State Owned Company
- [TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender,

qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution, if deemed necessary.

.....	
<b>SIGNATURE(S) OF TENDERER(S)</b>	
<b>SURNAME AND NAME:</b>	.....
<b>DATE:</b>	.....
<b>ADDRESS:</b>	.....
	.....
	.....
	.....

**PREFERENCE POINT MATRIX (80/20)**

<b>SPECIFIC GOALS</b>	<b>POINTS OUT OF 20</b>	<b>REQUIRED PROOF</b>
<b>Black Equity Ownership</b>	<b>Maximum = 8</b>	<p><i>One or more of the following is to be provided for the verification of points claimed by the tenderer:</i></p> <ul style="list-style-type: none"> <li>• Company Registration Certificate (CIPC).</li> <li>• Company Shareholders Certificate.</li> <li>• Certified Identification Documentation of company director/s.</li> <li>• Detailed Central Supplier Database Report (CSD).</li> <li>• B-BBEE Certificate / B-BBEE Sworn Affidavit of the tendering company.</li> <li>• Consolidated B-BBEE Certificate if the tendering company is a Consortium, Joint Venture or Trust issued by a verification agency accredited by the South African Accreditation Body.</li> <li>• Agreement for a Consortium, Joint Venture or Trust.</li> <li>• Declaration from a registered medical practitioner in support of Persons Living with Disabilities.</li> </ul>
100% Black ownership	8 Points	
>51% Black ownership	6 Points	
>0<51% Black ownership	2 Points	
0% Black Ownership	0 Points	
<b>Women Equity Ownership</b>	<b>Maximum = 6</b>	
100% ownership	6 Points	
>51% ownership	4 Points	
>0<51% ownership	2 Points	
0% ownership	0 Points	
<b>Persons Living with Disabilities Equity Ownership</b>	<b>Maximum = 3</b>	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	
<b>Youth Equity Ownership</b>	<b>Maximum = 3</b>	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	



**the dpsa**

Department:  
Public Service and Administration  
REPUBLIC OF SOUTH AFRICA

**THE DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION**

**BID CHECK LIST**

<b>Have you submitted a proof of registration on the Central Supplier Database (CSD) with National Treasury?</b>	<b>YES</b>	<b>NO</b>
<b>In case of consortium, have all parties to the consortium/joint venture submitted a valid Tax Clearance Certificate?</b> (Failure to submit a valid Tax Clearance Certificate for each party of the consortium/joint venture WILL result in the invalidation of your bid)	<b>YES</b>	<b>NO</b>
<b>Is the SBD 6.1 form fully completed and signed by the duly authorized person?</b> (Failure to fully sign the SBD 6.1 will result in the invalidation of your bid)	<b>YES</b>	<b>NO</b>
<b>Are the following forms fully completed and signed?</b>  <b>1. SBD 1</b> <b>2. SBD 3.3</b> <b>3. Declaration of Interest (SBD 4)</b> <b>4. SBD 6.1</b>	<b>YES</b>	<b>NO</b>

.....  
**Signature**

.....  
**Date:**



**the dpsa**

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Department:  
Public Service and Administration  
**REPUBLIC OF SOUTH AFRICA**

## **TERMS OF REFERENCE**

**REQUEST FOR PROPOSALS FOR AN OFFICE 365 EXTERNAL DATA BACKUP SOLUTION FOR THE  
DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION FOR A PERIOD OF THIRTY-SIX (36)  
MONTHS**

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## Introduction and Background

The Department of Public Service and Administration (DPSA) advises the Minister for Public Service and Administration (MPSA) on government policies in respect of the public service. It draws its legislative mandate from section 197, read with section 195(1) of the Constitution, the Public Service Act, 1994 and the Public Administration Management Act, 2014.

The MPSA is responsible for establishing norms and standards relating to:

1. The functions of the public service;
2. Organisational structures and establishments of departments and other organisational and governance arrangements in the public service;
3. Labour relations, conditions of service and other employment practices for employees;
4. The health and wellness of employees.
5. Information management;
6. Electronic government in the public service;
7. Integrity, ethics, conduct and anti-corruption; and
8. Transformation, reform, innovation, and any other matter can be used to improve the effectiveness and efficiency of public service and its service delivery to the public.

The DPSA relies on technology to provide efficient and effective services to officials and departments in the Public Service.

The ICT Management and Support Directorate provides IT services to the DPSA, including a backup solution. To avoid data loss and implement prevention mechanisms, DPSA intends to provide a safety net against data loss due to software glitches, accidental deletion, or malicious attacks such as ransomware.

The DPSA has adopted Microsoft 365 to support a remote workforce. Microsoft provides recovery for loss of service due to hardware or infrastructure failure, data center outage and natural disasters, as well as short-term recovery of SharePoint and OneDrive (maximum 93 days) and Exchange mailboxes (30 days).

However, this does not include a granular backup and recovery solution for common scenarios, including:

1. Planner, Teams chats & discussions, Project, Power Apps and other services which do not contain recycle bins, the protection of SharePoint beyond 93 days and Exchange beyond 30 days;
2. Loss of data due to corrupted files or lack of versioning;
3. Protection against ransomware and other malicious outsiders;
4. Storage of files and email after licenses are reassigned.

The DPSA goal:

The primary goal of this project is to provide a creative and comprehensive solution that will supply the DPSA with a reliable backup and recovery solution for our Microsoft 365 E3 Plan Exchange Online, SharePoint Online, OneDrive and Microsoft Teams platforms. The Office 365 external backup solution should include unlimited retention space and an unrestricted retention policy. Office 365 data must remain fully backed up and recoverable at all times.

## 1. Scope of Work

The Department of Public Service and Administration is looking for an enterprise backup solution that will holistically protect its data for Office 365 (O365).

The service provider should have a minimum of two years of experience in the field of Microsoft 365 Backups to provide the following services and ensure transfer of skills (on-site) to three (3) DPSA staff.

### 1.1. Design and Planning

Design and planning services for backup should include networking and infrastructure validation.

Plans and designs are required for Microsoft 365 E3 Plan applications.

Features and Capabilities: The backup solution should perform "**but not limited**" to the following.

- a. Automated cloud backup and restore processes.
- b. Granular recovery options of Microsoft Office 365 E3 components (SharePoint, OneDrive, Teams documents and Planner)
- c. Individual and mass restore and recovery of Exchange mailboxes.
- d. The solution must provide flexible restore options, such as point-in-time, granular restores, and out-of-place restores. Restore tests will be conducted monthly or as and when required.
- e. Scalable as the Department grows.
- f. Unlimited retention included.
- g. All restore operations must be non-destructive and not overwrite existing data.
- h. Ability to restore users' accounts.
- i. Ability to perform backups on Exchange Online, OneDrive, SharePoint, and Teams.
- j. Data encryption and security measures.
- k. Activity Monitoring.
- l. Air-gapped cloud protection.
- m. Provide the ability to recover from ransomware or malicious actions.
- n. In the event of a compromised Office 365 tenant (due to hackers, ransomware, or other malicious actions), a copy of the data must be maintained to recover from off-site storage.
- o. Delegated administration controls empower DPSA administrators to manage backup and recovery processes without requiring support.
- p. The service provider will be required to transfer the skills to three (3) DPSA staff before the contract ends.

- q. The service provider will be required to conduct maintenance, such as software updates of the proposed solution, without impacting DPSA business operations.
- r. Conduct risk assessment and develop a Business Case; refer to section 2.2.2.
- s. Data belongs to DPSA.
- t. Documentation and Training. Backup Testing and Restore Procedures

## 1.2. Compliance

The suitable service provider will be required to:

- 1.2.1. Comply with all South African and Public Service laws and regulations. The service provider must comply with the conditions for legally processing personal information (Protection of Personal Information Act, 2013).
- 1.2.2. Conduct a comprehensive risk assessment before and after implementing the backup solution. The risk assessment must respond to the following:
  - a. Conduct Data Classification according to the classification prescribed in Minimum Information Security Standards. Data Security and Privacy are paramount concerns for the department, especially in a world where data breaches and cyberattacks are prevalent. The risk assessment must identify and mitigate security risks, ensuring that sensitive data remains protected. Roles and responsibilities are identified for data security.
  - b. Data Ownership and Control - clarify the terms and conditions of the service agreement, including data access, retention, and data portability.
  - c. Compliance and Legal Requirements - Determine how the data will be managed in compliance with legal requirements, especially section 72 of the POPI Act.
  - d. Data portability - evaluate the flexibility and portability of the data after the contract has expired. Allowing for a smooth transition and data portability when needed.
  - e. Business Continuity and Disaster Recovery - identifying potential risks and their impact on operations.
  - f. Data sovereignty - be clear about which laws protect the data.
  - g. Data Residency - geographical location.
- 1.2.3. Provide a proposal detailing the following:
  - a. **Ease of Use:**  
Describe the user interface and ease of use for managing backups, initiating restores, and monitoring the backup status.
  - b. **Data Retention:**  
Specify the data retention policies and options available, such as short-term and long-term retention.
  - c. **Backup Frequency:**  
Detail how frequently backups are performed, ensuring that DPSA critical data is backed up as follows:
    - Daily incremental backups must be performed from Monday to Friday.
    - A full backup must be performed weekly on Fridays.

- Restoration performance must be according to the recovery time objectives.

**d. Data Residency**

Data must reside in South Africa.

**e. Security & Privacy:**

Provide security features to protect data from security threats and attackers and to ensure that only DPSA has access to the data and that the provider or any third party can't read the data.

**f. Data Restore**

- Backup restores must be tested monthly to ensure the integrity of the backups made.
- Backup restores must be tested when any change is made that may affect the backup process.
- The backup restore will be performed upon official request to DPSA ICT. Information regarding the request for restoration should include the file name, creation date, the last time it was changed, and the date and time it was deleted.
- A full backup restore will only be performed to recover from a disaster or major incident.

**2. Support and Customer Assistance:**

The proposal should include implementation, 24-hour / 7 days a week phone support, troubleshooting, and ongoing maintenance for thirty-six (36) months. The service provider should describe the availability and responsiveness of their technical support staff. DPSA greatly prefers a site support response time as follows:

Priority	Description	Recovery Time Objectives	Uptime Percentage
Critical/Urgent	Exchange mailboxes, OneDrive, and SharePoint	within one hour	< 99.99%
High	Microsoft Teams	Within 3-6 hours.	< 99.99%
Medium	Power Apps	Within 24 hours	< 99.99%
Low	Planner and Project	Within 1 working day	< 99.99%

**3. Pricing and Cost Structure:**

Pricing should include software for the Microsoft 365 E3 Plan, which consists of 450 licences, implementation, and support for thirty-six (36) months.

The proposal shall contain the following information:

1. Description of pricing model.
2. A software cost summary.
3. The annual cost for three years for technical support and maintenance services.
4. Support services.

## 5. Proposed services level agreement

### **4. Skills, Knowledge and Experience Required**

The Service Provider responding to this Request for Proposal must have at least two (2) years of experience in Microsoft 365 Backup and Recovery in order to be considered.

The service provider submitting a proposal must have, at minimum, a certified backup engineer, cloud architect, and a project manager allocated to the project. The project manager must have a minimum of three (3) years of experience and a certified backup engineer and cloud architect must have a minimum of five (5) years experience in their respective fields.

### **5. Current Backup and Disaster Recovery Software used by DPSA.**

- 5.1. DPSA currently uses a Commvault backup and recovery solution and Veeam as a DR solution for physical servers. This solution offers comprehensive features and functionalities to safeguard data and ensure its availability during data loss or system failures.

### **6. Reporting and Meetings**

The service provider will be expected to provide monthly project status and progress reports to the DPSA, including all relevant details about the progress, including risks, mitigation and any other relevant information. These reports should be made available within two working days after the end of every calendar month.

The Project Manager must schedule monthly project review meetings to present and discuss the project status and progress reports. Minutes of the review meetings should be made available to the DPSA within five working days after the meeting.

### **7. Code of Conduct**

It is a requirement that all consultants assigned to the DPSA by the service provider must sign and adhere to the Code of Conduct for Public Servants before the commencement of any work.

### **8. Data Ownership**

Data belongs to DPSA and there will be no cost for transferring data to another environment. Should DPSA change to a new service provider after the contract expires, DPSA must be guaranteed full access to all of its data to be able for it to be moved to a new service provider.

### **9. Data Location**

The Microsoft 365 data that the appointed service provider processes on DPSA's behalf will be transferred to, stored and processed in South Africa. Any subcontractor that may interact with DPSA's data must maintain facilities in South Africa and must ensure all respective data is provisioned within the borders of South Africa.

## **10. Data Management**

On an ongoing basis, the appointed service provider shall preserve copies of the DPSA's Microsoft Office 365 data from which data can be recovered in the event of accidental deletion or data loss. The service provider shall store copies of DPSA Microsoft Office 365 data and data recovery procedures in different locations from the primary of DPSA Microsoft Office 365.

## **11. Data Access**

The DPSA data will be used only to provide DPSA with the defined services and for purposes compatible with providing those services. The service provider will not use DPSA data or derived information for any commercial purposes. DPSA retains all rights, titles, and interests in and to their data, and the appointed service provider acquires no rights to DPSA data other than the rights granted to provide the service. The service provider shall not disclose DPSA data except as directed by the DPSA or as required by law. The service provider shall provide DPSA on request with an audit report detailing all access to DPSA data.

## **12. Data Privacy/Confidentiality**

Access controls to be applied to the services offered by the appointed service provider must include authentication via passwords and/or two-factor authentication, encryption of data in transit and at rest, and logging of access on several levels. Data is accessible and manageable only by properly authorized staff, direct database query access is restricted, and application access rights are established and enforced by the appointed service provider.

## **13. Data Rights Retention**

The DPSA will have the ability to access and extract data stored at all times during the term of service. The service provider must retain DPSA data stored in the service in a limited function account for 180 days after expiration or termination of service agreement for the extraction thereof by the DPSA. At the end of the 180-day retention period, the service provider must disable the DPSA account and associated data.

## **14. Security Screening**

The service provider is expected to conduct security screening, including criminal background checks, on all consultants assigned to the DPSA regarding this Bid and provide clearance certificates to DPSA. DPSA reserves the right to conduct security screening of the service provider.

## **15. Non-Disclosure Agreements**

Non-Disclosure Agreements (NDAs) are required for this project to ensure the confidentiality of sensitive and personal information. The service provider shall sign an NDA with the DPSA before commencing work on the project. The NDA shall cover all project-related information, including but not limited to software, documentation, data, reports, and any other materials produced during the project.

## **16. Priority Levels and Time Frames**

The appointed Services provider shall prioritise all tasks and requests from the DPSA according to their level of importance and urgency. The Service provider shall agree with the DPSA on the time frames for completion of tasks and requests and shall ensure that these are met.

## **17. Penalties**

The DSPA reserves the right to claim penalties and remedies for non-performance or delays and missed deadlines. The compensation amount shall be calculated at 2.5% of the monthly cost of the affected service.

## **18. Submission Requirements**

- 18.1.** The proposal must be submitted in six (6) hard copies, comprising one (1) original and five (5) copies.
- 18.2.** Fully completed and signed Standard Bidding Documentation (SBD) forms and associated support documentation.

## **19. Mandatory Documents to be submitted**

The following mandatory documents must be submitted. Failure to comply with the provision of any of the mandatory requirements will result in the disqualification of the bidder's proposal.

- 19.1.** Profile of the company outlining the company's background, history, areas of business, etc. Identify existing client base, including the number of clients similar services have been provided to.
- 19.2.** Abridged Curriculum Vitae (CVs) of the Project Manager and all consultants to be allocated in the different roles required, indicating qualifications and relevant experience.
- 19.3.** Provide references that DPSA can contact. DPSA reserves the right to contact these references directly and without prior consent. Reference letters must be on company letterhead, signed and dated. It must contain the following information:
  1. Name of the project;
  2. Nature of work conducted;
  3. Date when project was undertaken;
  4. Duration of the project.
- 19.4.** Data Centre Certification and detailed description of the Backup as a Service (BaaS) offering in South Africa.
- 19.5.** Proof of accreditation from Original Equipment Manufacture (OEM) for Microsoft Office 365 recovery and backup solutions.
- 19.6.** The service provider must provide a detailed explanation of the hosted infrastructure and explain the data protection and security model and configuration.
- 19.7.** A detailed plan reflecting approach, methodology, activities, project time frames, skills transfer, and outputs.
- 19.8.** A detailed cost breakdown that includes all costs associated with the project. The cost structure should be all-inclusive.
- 19.9.** Security clearance certificates for the resources that will be assigned to the project
- 19.10.** Proof of registration on the Central Supplier Database (CSD) with the National Treasury.

**Note:** Prospective bidders responding to this bid/Request For Quotation (RFQ) must be registered as service providers on the Central Supplier Database (CSD). If your company is not registered on the CSD, complete your company registration before submitting your proposal. Refer to <https://secure.csd.gov.za/> to register your company. Ensure that all documentation on the database is updated and valid.

No Bid will be awarded to a Supplier/Service Provider who has not registered on the CSD.

**Note:** *all personal information provided will be used in accordance with the provisions of the Protection of Personal Information Act no 4 of 2013.*

## **20. Terms and Conditions**

- 20.1.** Once the appointment letter has been issued to the successful service provider, the service provider shall be expected to enter into a contract (Service Level Agreement) with the DPSA within 30 days of the appointment.
- 20.2.** The contract shall specify the project's duration, including the expected start and end dates. The service provider shall ensure the project is completed within the specified timeline.
- 20.3.** The DPSA reserves the right not to appoint any service provider should it deem fit.
- 20.4.** The DPSA will furnish the service provider with all the relevant information and available data within their possession that may be necessary for the service provider to perform duties.

## **21. Intellectual Property**

- 21.1.** All information, documents and reports not currently in the public domain and used during or generated from the project must be regarded as confidential and may not be made available to any unauthorised person or institution without written permission from the DPSA.

The DPSA shall become the owner of developed work, including documents, advisory, plans, models, and reports produced, which must be handed over to the DPSA after completion of the project.

## **22. Evaluation Criteria**

- 22.1.** The evaluation criteria for assessing the proposals will be based on the proposal's qualitative and financial aspects.
- 22.2.** Service providers shall be evaluated on functionality.
- 22.3.** The Bid documents will be evaluated individually on score sheets by a representative evaluation panel according to the evaluation criteria and scores indicated in the table below:

Detailed Functionality Criteria				
Criteria	Scoring Indicators	Score	Total Score	
<b>Proven experience and capability of the service provider and resources in providing and implementing O365 Backup Solution.</b>				
1.	Company proficiency, experience, and capability	<p>More than eight (8) years of experience in the field of Backups and the minimum of two years in O365 Backup</p> <p>7-8 years years of experience in the field of Backups and the minimum of two years in O365 Backup</p> <p>6-7 years of experience in the field of Backups and the minimum of two years in O365 Backup</p> <p>4-5 years of experience in the field of Backups and the minimum of two years in O365 Backup</p> <p>2-3 years of experience in the field of Backups and the minimum of two years in O365 Backup</p>	<p>5</p> <p>4</p> <p>3</p> <p>2</p> <p>1</p>	10
2.	Evidence of track record for provision of similar services  <b>NB! Reference letters must be on company letter head, signed and dated</b>	<p>Five (5) or more reference letters of successful implementation of similar projects.</p> <p>Four (4) reference letters of successful implementation of similar projects.</p> <p>Three (3) reference letters of successful implementation of similar projects.</p> <p>Two (2) reference letters of successful implementation of similar projects.</p> <p>One (1) reference letter of successful implementation of similar projects.</p>	<p>5</p> <p>4</p> <p>3</p> <p>2</p> <p>1</p>	10

<b>Detailed Functionality Criteria</b>			
<b>Criteria</b>	<b>Scoring Indicators</b>	<b>Score</b>	<b>Total Score</b>
<p><b>The service provider must prove that it has the experience, expertise, qualifications required/expected to ensure proper/quality execution of the assignment. The CVs of the employees to be deployed for the project will be used for Evaluation.</b></p>			
<p>3. Skills, Knowledge, and Experience of the Certified Backup Engineer</p> <p>Allocated roles and resources matching the skills, knowledge and experience required.</p>	<p>Backup engineer has a Backup certification such as Veeam, Rubric, Cohesity, Commvault, Veritas or Avepoint and have more than nine (9) years' experience in implementing similar projects.</p>	5	10
	<p>Backup engineer has a Backup certification such as Veeam, Rubric, Cohesity, Commvault, Veritas or Avepoint and has eight (8) years' experience in implementing similar projects.</p>	4	
	<p>Backup engineer has a Backup certification such as Veeam, Rubric, Cohesity, Commvault, Veritas or Avepoint and has seven (7) years' experience in implementing similar projects.</p>	3	
	<p>Backup engineer has a Backup certification such as Veeam, Rubric, Cohesity, Commvault, Veritas or Avepoint and has six (6) years' experience in implementing similar projects.</p>	2	
	<p>Backup engineer has a Backup certification such as Veeam, Rubric, Cohesity, Commvault, Veritas or Avepoint and has five (5) years' experience in implementing similar projects.</p>	1	

Detailed Functionality Criteria			
Criteria	Scoring Indicators	Score	Total Score
4. Skills, Knowledge and Experience of Cloud Architect  Allocated roles and resources matching the skills, knowledge and experience required.	Cloud Architect has any Cloud certification such as Azure, Oracle, AWS, Google etc and has more than nine (9) years' experience in implementing similar projects.	5	10
	Cloud Architect has any Cloud certification such as Azure, Oracle, AWS, Google etc and has eight (8) years' experience in implementing similar projects.	4	
	Cloud Architect has any Cloud certification such as Azure, Oracle, AWS, Google etc and has seven (7) years' experience in implementing similar projects.	3	
	Cloud Architect has any Cloud certification such as Azure, Oracle, AWS, Google etc and has six (6) years' experience in implementing similar projects.	2	
	Cloud Architect has any Cloud certification such as Azure, Oracle, AWS, Google etc and has five (5) years' experience in implementing similar projects.	1	
5. Skills, Knowledge, and Experience of Project Manager	The project manager possesses any Project Management certification and more than seven (7) years' experience in leading a specific aspect of a project or similar project.	5	10

<b>Detailed Functionality Criteria</b>				
<b>Criteria</b>	<b>Scoring Indicators</b>	<b>Score</b>	<b>Total Score</b>	
Allocated roles and resources matching the skills, knowledge and experience required	The project manager possesses any Project Management certification and six (6) years' experience in leading a specific aspect of a project or similar project.	4		
	The project manager possesses any Project Management certification and five (5) years' experience in leading a specific aspect of a project or similar project.	3		
	The project manager possesses any Project Management certification and four (4) years experience in leading a specific aspect of a project or similar project.	2		
	The project manager possesses any Project Management certification and three (3) years of experience in leading a specific aspect of a project or similar project.	1		
<b>Understanding and conceptualisation (approach, methodology, work plans, governance, etc.)</b>				
6.	Proposal clearly provides:  A detailed plan reflecting project scope, project team, technical requirements, risk assessment, project time frames, documentation & skills transfer,	The approach includes a comprehensive exposition and motivation in support of the proposal, and the service provider has demonstrated this by responding to 8 and more of the criteria as stipulated.  The approach includes a comprehensive exposition and motivation in support of the proposal, and the service provider has demonstrated this by responding to 6 or more but less than 8 of the criteria as stipulated.	5  4	30

Detailed Functionality Criteria			
Criteria	Scoring Indicators	Score	Total Score
costing, scalability, ease of use, data portability, granular recovery, monitoring & reporting.	The approach includes a comprehensive exposition and motivation in support of the proposal, and the service provider has demonstrated this by responding to 4 or more but less than 6 of the criteria as stipulated.	3	
	The approach includes a comprehensive exposition and motivation in support of the proposal, and the service provider has demonstrated this by responding to 2 or more but less than 4 of the criteria as stipulated.	2	
	The approach includes a comprehensive exposition and motivation in support of the proposal, and the service provider has demonstrated this by responding to less than 2 of the criteria as stipulated.	1	
7. Proposed methodology to achieve required deliverables, in line with the following criteria:  1. Risk assessment 2. Data Encryption 3. Backup Testing and Restore Procedures	The proposed methodology includes a comprehensive description and motivation in support of the proposal and service provider has demonstrated this by responding to all five (5) or more of the criteria as stipulated.	5	20
	The proposed methodology includes a comprehensive description and motivation in support of the proposal and service provider has demonstrated this by responding to four (4) of the criteria as stipulated.	4	
	The proposed methodology includes a comprehensive description and	3	

Detailed Functionality Criteria			
Criteria	Scoring Indicators	Score	Total Score
Data integrity and security 4. Backup frequency and retention 5. Granular recovery options 6. Monitoring and alerts	motivation in support of the proposal and service provider has demonstrated this by responding to three (3) of the criteria as stipulated.  The proposed methodology includes a comprehensive description and motivation in support of the proposal and service provider has demonstrated this by responding to two (2) of the criteria as stipulated.  The proposed methodology includes a comprehensive description and motivation in support of the proposal and service provider has demonstrated this by responding to one (1) of the criteria as stipulated.	  2  1	
<b>Total functionality score</b>		<b>100%</b>	
<b>Minimum threshold for functionality</b>		<b>70%</b>	

- 22.4. All bidders who score less than 70 out of 100 points for functionality will not be considered further.
- 22.5. Shortlisted Bidders may be invited to do a presentation on their proposals at their own cost.
- 22.6. Bidders doing the presentation will be evaluated by a representative panel according to the evaluation criteria indicated in the ToR.
- 22.7. Only service providers that score points which exceed the minimum threshold provided on functionality will be evaluated further. The Department will in terms of specific goals focus on persons historically disadvantaged based on race (Black people), gender (women) and persons living with disabilities as well as categories of persons being youth referenced in Preferential Procurement Policy Framework Act and its associated regulations. The Preference point system will therefore be based on Price and the consolidated points scored for the four respective goals. Responsive bids will be

adjudicated by the Department on the 80/20- preference point system in terms of which points are awarded to bidders based on the formulae below:

**22.8. The following formula will be used to calculate the points for price in respect of bidders**

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

Where

$P_s$  = Points scored for comparative price of Bid under consideration

$P_t$  = Comparative price of Bid under consideration

$P_{\min}$  = Comparative price of lowest acceptable Bid

**22.9.** Points awarded to a bidder for attaining specific goals for the procurement initiative. A maximum of 20 points may be awarded to a bidder who meets the criteria for the four specific goals from a preference point perspective. For this Bid, the maximum number of points that could be allocated are indicated in the table below:

Specific Goals	Number of points (80/20 system)
1. Black Equity Ownership	8
2. Women Equity Ownership	6
3. Persons living with disabilities Equity Ownership	3
4. Youth Ownership	3
5. Goals not met	0

### PREFERENCE POINT MATRIX (80/20)

SPECIFIC GOALS	POINTS OUT OF 20	REQUIRED PROOF
<b>Black Equity Ownership</b>	<b>Maximum = 8</b>	<i>One or more of the following is to be provided for the verification of points claimed by the tenderer:</i> <ul style="list-style-type: none"> <li>• Company Registration Certificate (CIPC).</li> <li>• Company Shareholders Certificate.</li> </ul>
100% Black ownership	8 Points	
>51% Black ownership	6 Points	
>0<51% Black ownership	2 Points	

0% Black Ownership	0 Points	<ul style="list-style-type: none"> <li>• Certified Identification Documentation of company director/s.</li> <li>• Detailed Central Supplier Database Report (CSD).</li> <li>• B-BBEE Certificate / B-BBEE Sworn Affidavit of the tendering company.</li> <li>• Consolidated B-BBEE Certificate if the tendering company is a Consortium, Joint Venture or Trust issued by a verification agency accredited by the South African Accreditation Body.</li> <li>• Agreement for a Consortium, Joint Venture or Trust.</li> <li>• Declaration from a registered medical practitioner in support of Persons Living with Disabilities.</li> </ul>
<b>Women Equity Ownership</b>	<b>Maximum = 6</b>	
100% ownership	6 Points	
>51% ownership	4 Points	
>0<51% ownership	2 Points	
0% ownership	0 Points	
<b>Persons Living with Disabilities Equity Ownership</b>	<b>Maximum = 3</b>	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	
<b>Youth Equity Ownership</b>	<b>Maximum = 3</b>	
100% ownership	3 Points	
>51% ownership	2 Points	
>0<51% ownership	1 Point	
0% ownership	0 Points	

**22.10.** Failure to capture the required points claimed and to submit the required support documentation will lead to a zero (0) for non-compliant service providers.

**22.11.** The points scored by a bidder in respect of the points indicated above will be added to the points scored for price.

**22.12.** Bidders are requested to complete the various preference claim forms in order to claim preference points.

**22.13.** Only a bidder who has fully completed and signed the declaration part of the preference claim form will be considered for points scored with the provision of support documentation thereto.

**22.14.** Supply Chain Management may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made regarding points claimed for specific goals.

**22.15.** Points scored will be rounded off to the nearest two decimals.

**22.16.** In the event that two or more bids have scored equal total points, the contract will be awarded to the bidder scoring the highest number of points for the specific goals. In the event that two or more bidders are equal in all respects, the award shall be decided by drawing of lots.

**22.17.** A contract may, on reasonable and justifiable grounds, be awarded to a bidder that did not score the highest number of points.

### **23. Confidentiality**

**23.1.** Service providers shall hold the ToR and all information related to the Bid in strict confidence and usage of such information shall be limited to the preparation of the Bid. Service Providers shall undertake to limit the number of copies of this document.

**23.2.** The service provider is bound by this confidentiality provision preventing the unauthorised disclosure of any data or information to other organisations or individuals.

### **24. Late Bids**

**24.1.** Bids received late will not be considered. Service providers are therefore strongly advised to ensure that bids are dispatched allowing enough time for any unforeseen events that may delay the delivery of the Bid.

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

**24.3.** Bids sent via any other means other than hand delivery shall be deemed to be received on the date and time of arrival at the DPSA premises.

**24.4.** Bids received at the physical address after the closing date and time of the Bid, shall therefore be deemed to have been received late.

### **25. Withdrawal or Modification of Bids**

A service provider who submits a proposal in response to the terms of reference will have the right to withdraw, modify or correct a proposal after delivery thereof provided that the request for such withdrawal, modification or correction, together with the full details of such modification or correction are received by the DPSA at the address provided before the closing date stipulated for the receipt of proposals. Failure to do so before the closing date and time as stipulated will result in the original (pre-modified) Bid being considered.

### **26. Enquiry and Delivery Details**

#### **26.1. Delivery Address**

Supply Chain Management  
Department of Public Service and Administration  
Batho Pele House

546 Edmond Street (Corner Edmond and Hamilton Street)  
 Acadia  
 Pretoria  
 0001

**26.2. Supply Chain Management (SCM) Enquiries**

All SCM related enquiries should be directed to: Ms. Lorraine Masenya, 012 336 1126,  
[Lorraine@dpsa.gov.za](mailto:Lorraine@dpsa.gov.za)

**26.3. Technical Enquiries**

Any technical enquiries can be directed to:

1. Zethu Khoza 012 336 1128, [zethu.khoza@dpsa.gov.za](mailto:zethu.khoza@dpsa.gov.za)
2. Phillemon Maila 012 336 1228, [maila@dpsa.gov.za](mailto:maila@dpsa.gov.za)

**27. Annexure A**

7/9/24, 11:19 AM

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Microsoft 365 Sizing

Exchange Online						
Number of User	Total Size	Per User Size	Average Growth Forecast (Yearly)	One Year Storage Forecast	Three Year Storage Forecast	
436	3653.33 GB	6.41 GB	1%	3689.8633 GB	3762.9299 GB	

OneDrive						
Number of Users	Total Size	Per User Size	Average Growth Forecast (Yearly)	One Year Storage Forecast	Three Year Storage Forecast	Number of Files
463	3452.09 GB	7.46 GB	2%	3521.1318 GB	3659.2154 GB	763951

file:///C:/Users/zethu/AppData/Local/Temp/7868D658C1-3C7C-4B0C-9228-DCF3A3A0FFED/7D177B00928984-3C38-44D9-B967-3638945A8434/7DF30A3852.html

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## Microsoft 365 Sizing

 Exchange Online

Number of User	Total Size	Per User Size	Average Growth Forecast (Yearly)	One Year Storage Forecast	Three Year Storage Forecast
436	3653.33 GB	8.41 GB	1%	3689.8633 GB	3762.9299 GB

 OneDrive

Number of Users	Total Size	Per User Size	Average Growth Forecast (Yearly)	One Year Storage Forecast	Three Year Storage Forecast	Number of Files
463	3452.09 GB	7.46 GB	2%	3521.1318 GB	3659.2154 GB	763951

**AGREEMENT**

**ENTERED INTO BY AND BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA through its**  
**DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION**  
[HEREIN REFERRED TO AS "the DPSA"]

DULY REPRESENTED BY ..... IN HIS/HER CAPACITY AS  
.....  
duly authorised thereto

**and**

..... (Pty) Ltd /CC  
Company/CC Registration Number: .....

**OR**

Name: .....  
Id No: .....

[HEREIN REFERRED TO AS "the **SERVICE PROVIDER**"]

DULY REPRESENTED BY ..... IN HIS/HER CAPACITY AS  
.....  
duly authorised thereto by a Resolution of Directors/Members dated .....,  
attached hereto marked .....

**ANNEXURES**

- A. Terms of Reference
- B. [State other Annexures, if any – EG: Proposal /Quotation, Resolution of Directors etc]

**WHEREBY THE PARTIES AGREE AS FOLLOWS:****1. INTERPRETATION**

1.1 In this Agreement, unless the context otherwise indicates—

**"Agreement"** means the Agreement set out in this document and the Annexure/s attached hereto;

**"Letter of Award"** means the letter of award issued to the Service Provider by DPSA, dated.... [insert date]

**"POPIA"** means Protection of Personal Information Act, 2013 (Act No. 4 of 2013);

**"Terms of Reference"** means the Terms of Reference in Annexure A

**"Term"** means the term of this Agreement defined in **Clause 3** below;

**"Services"** means the functions and responsibilities to be provided by the Service Provider to DPSA in respect of the provision of goods and or services as detailed in the Terms of Reference as they may evolve or be supplemented;

**"staff"** means any employee, agent, consultant, sub-contractor or other representative of the Parties;

**"working days"** means any day, except Saturdays, Sundays and public holidays, in terms of the Public Holidays Act, 1994 (Act 36 of 1994), and shall be calculated exclusive of the first and inclusive of the last day.

1.2 In the Agreement, unless the context otherwise indicates—

(a) the masculine includes the feminine;

(b) the singular includes the plural; and

(c) any reference to a natural person includes a juristic person.

1.3 The headnotes to the clauses of the Agreement are included for reference purposes only and shall not affect the interpretation of the provisions to which they relate.

## 2. APPOINTMENT

- 2.1. The Service Provider is hereby appointed in accordance with the Letter of Award, to provide Services to DPSA under the Terms of Reference as attached in **annexure A**.
- 2.2. Subject to the provisions of the Terms of Reference, the Agreement generally, DPSA hereby appoints the Service Provider, on a non-exclusive basis, to provide the Services on the terms and conditions of this Agreement, and the Service Provider hereby accepts such appointment.
- 2.3. DPSA shall not be precluded from obtaining services that may be similar or identical to the Services from any other service provider and nothing contained herein shall in any way be construed or constitute a guarantee in favour of the Service Provider that the Service Provider will receive any work or contract for services in the future, whether under this Agreement or otherwise from.
- 2.4. The Service Provider shall report directly to.....[**state position, e.g. Director: Finance, rather than the name of an individual**], who shall be the Project Manager for purposes of the Agreement and provide all instructions to the Service Provider.
- 2.5. The Service Provider shall, within 10 working days, after the last signature of the Agreement, submit a draft workplan to the Project Manager for a written approval. The Service Provider and the Project Manager may from time to time agree in writing to amend the workplan.

## 3. COMMENCEMENT AND DURATION

- 3.1. The Agreement shall commence on the last date of signature to this agreement and shall terminate after a period of \_\_\_\_\_ [**State the duration of the contract**]
- 3.2. The Parties may, subject to their respective prescripts for extension, in writing agree to extend the term of the Agreement.

#### 4. FEES INVOICING AND PAYMENT

- 4.1. Fees under **Annexure "B"** (price schedule) are the only amounts payable by DPSA to the Service Provider for the Services or otherwise in connection with this Agreement, and no other charges, expenses, costs or other amounts incurred by the Service Provider will be chargeable to or payable by DPSA to the Service Provider.
- 4.2. The Service Provider will not be entitled to: (i) impose or seek payment of any amounts or charges under the Agreement other than the fees; (ii) establish any new types of charges under the Agreement; or (iii) modify any of the fees under the Agreement; unless DPSA has subject to the procurement policies and procedures agreed thereto in writing.
- 4.3. Payment shall be made once all deliverables as set out in the Terms of Reference are successfully delivered within 30 days after receipt by the DPSA of-
- (a) Satisfactory proof that the deliverables complies with the Agreement and the Terms of Reference; and
  - (b) An original specified invoice certified as correct by the Project Manager.
- 4.4. Each invoice will consist of or have attached statement of the total amount due which will be itemised per Goods delivered / Service rendered.
- 4.5. The Service Provider will verify that each invoice is complete and accurate and that it conforms to the requirements of the Agreement (including by carrying out detailed checks of each invoice) before issuing the invoice to DPSA.
- 4.6. All payments in terms of this clause shall be made into the banking account of the Service Provider as provided in writing to the DPSA.
- 4.7. Payment may only be withheld in terms of this clause if the Service Provider has failed to remedy a default or breach within the required time after written notice was given in terms of clause 14.

## **5. TAX, DUTIES AND CURRENCY ISSUES**

- 5.1. Unless otherwise specified, all Fees and expenses are recorded inclusive of Value Added Tax. The Service Provider will be financially responsible for all taxes associated with the Services and will comply with all applicable laws relating to tax and tax invoices.
- 5.2. All Fees set out in this Agreement are inclusive of any export and import tax, if applicable.
- 5.3. The Fees are stated in South African Rand and will be quoted, invoiced and paid in South African Rand. The Fees are not subject to adjustment due to any currency fluctuations for the duration of the Agreement.

## **6. HEALTH, SAFETY AND SECURITY PROCEDURES AND GUIDELINES**

- 6.1. The Service Provider will ensure that its personnel will at all times, whilst on the DPSA's premises, adhere to the standard health, safety and security procedures and guidelines applicable to DPSA's personnel, as such procedures and guidelines may be changed by DPSA from time to time and are available to the Service Provider on request. Should DPSA at any time have reason to believe that any member of the Service Provider's personnel is failing to comply with such standard health, safety and security procedures and guidelines, DPSA will be entitled to deny such member of Service Provider's personnel to any or all of location/s and require the Service Provider to replace such member of staff without delay.
- 6.2. The Service Provider hereby agrees and undertakes, in terms of section 37(2) of the Occupational Health and Safety Act, 1993, to ensure that the Service Provider and the Service Provider's staff comply with the aforesaid Act and accept sole responsibility for all health and safety matters relating to the provision of the Services, or in connection with or arising out of such Services, for the duration of this Agreement, including with regard to the Service Provider personnel and ensuring that neither DPSA's staff's health and safety is endangered in any way by the Service Provider's activities or conduct in providing the Services.

## 7. OBLIGATIONS OF DPSA

The obligations of the DPSA are as set out in the Terms of Reference.

*[OR state them hereunder]*

## 8. OBLIGATIONS OF SERVICE PROVIDER

The obligations of the Service Provider are as set out in the Terms of Reference.

*[OR state them hereunder]*

## 9. CONFIDENTIALITY, OWNERSHIP AND COPYRIGHT

9.1 A Party shall treat information furnished by the other Party or another person for purposes of the execution of the Agreement, as confidential. Subject to this clause, the Party so furnished with information shall not disclose such information to another person without the prior written consent of the other Party and shall take reasonable steps to ensure that such information is not disclosed to another person.

9.2 The DPSA shall become the owner of information and materials derived from the provision of services under the Agreement. The Service Provider shall submit all such information and material to the DPSA before or on the termination of the Agreement, on written request by the DPSA, without the right of retention.

9.3 The Service Provider shall not use any information or material derived from the provision of the services under the Agreement for any purposes other than those of the DPSA, except with the written approval of the DPSA.

9.4 The copyright in every work or any part thereof, in which copyright may subsist, created by the Service Provider, or any person performing work on the Service Provider's behalf, in the execution of the Agreement shall vest in the State and such works or part thereof, may only be reproduced, or disclosed to another person, with the written consent of the DPSA. The term "works or any part thereof", shall not be interpreted to include a work or part thereof in which

copyright already vests in the Consultant or another person and not created in the execution of the Agreement.

- 9.5 The Service Provider may use any experience or learning acquired in the execution of the Agreement, provided that such use may not be to the detriment of the DPSA.
- 9.6 This clause is severable from the Agreement and shall remain in effect when the Agreement terminates for whatever reason.

## **10. PROTECTION OF PERSONAL INFORMATION**

- 10.1. Each Party shall comply with its obligations under POPIA in respect of Personal Information collected and/or Processed in connection with the Agreement and the Services.
- 10.2. Each Party shall only provide, collect and/or Process the Personal Information:
- 10.2.1. in compliance with POPIA and where binding on a Party;
- 10.2.2. as is necessary for the purposes of this Agreement and the Services;
- 10.2.3. for maintaining its internal administrative processes, including quality, risk, client or vendor management processes;
- 10.2.4. for internal business-related purposes; and
- 10.2.5. in accordance with the lawful Purpose and reasonable instructions of DPSA as the Responsible Party.

## **11 AUDITS**

### **11.1 Audit Rights:**

- 11.1.1 The Service Provider will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. The Service Provider will provide to DPSA, its internal or external auditors, inspectors and regulators access at all reasonable times to such facility or part of a facility at which either the Service Provider is providing the Deliverables and/or Services, to Service Provider Personnel, and to equipment, software, personnel, data, records and

documentation relating to the Deliverables and/or Services for the purpose of performing audits and inspections of the Service Provider to: (i) verify the accuracy of the Service Provider's Fees and invoices; (ii) verify the accuracy of payments by or credits from the Service Provider; (iii) verify the accuracy of price changes to the extent such changes are determined by reference to Service Provider's costs or changes thereto; (v) examine the Service Provider's performance of the Services or Deliverables, including verifying compliance with the industry standards; (vi) verify compliance with the terms of the Agreement; (vii) satisfy the requirements of any Applicable Law;

11.1.2 DPSA reserves the right to appoint a third party to perform an audit under this Clause.

11.1.3 The Service Provider will provide to the auditors, inspectors and regulators such assistance as they may require. In the case of audits, DPSA's audits will not unreasonably interfere with the Service Provider's normal course of business and will comply with the Service Provider's reasonable confidentiality requirements.

11.1.4 Unless DPSA has a good faith suspicion of fraud, DPSA will provide the Service Provider with reasonable notice for audits.

11.1.5 All costs incurred by DPSA in performing audits of the Service Provider will be borne by DPSA unless any such audit reveals a material inadequacy or material deficiency in respect of the Services including compliance with the relevant Applicable Laws, in which event the cost of such audit will be borne by Service Provider.

11.1.6 If an audit reveals an overcharge, the Service Provider will promptly refund the overcharge plus interest at Repo Rate, from the date of payment of the overcharge through the date the overcharge is refunded by Service Provider.

## **12. WARRANTIES**

12.1. The Service Provider hereby represents and warrants to DPSA that-

12.1.1. this Agreement has been duly authorised and executed by it and constitutes a legal, valid and binding set of obligations on it;

12.1.2. it is acting as a principal and not as an agent of an undisclosed principal;

12.1.3. the execution and performance of the terms and conditions of this Agreement does not constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, competent authority or arbitrator or competent jurisdiction applicable or relating to the Service Provider, its assets or its

business, or its memorandum of incorporation or any other documents or any binding obligation, contract or agreement to which it is a party or by which it or its assets are bound;

- 12.1.4. it will provide the Services in a cost-effective manner, thereby ensuring that no unnecessary or extraordinary costs are incurred and passed on to DPSA;
  - 12.1.5. it will have the requisite insurance to cover for professional liability claims (to the extent that it may be applicable), that may be instituted against it;
  - 12.1.6. it has the necessary resources, skills and experience to render the Service and/or deliver the Deliverables to DPSA; and
  - 12.1.7. it is expressly agreed between the Parties that each warranty and representation given by the Service Provider in this Agreement is material to this Agreement and induced DPSA to conclude this Agreement.
- 12.2. The provisions of this Clause shall survive the termination of this Agreement.

### **13 INDEMNITY**

- 13.1 Without in any way detracting from DPSA's rights in terms of this Agreement, the Service Provider hereby indemnifies DPSA from any and all losses which may be suffered as a result of any breach of the warranties including the provisions of this Agreement by the Service Provider or Service Provider personnel.
- 13.2 In addition to any remedy available to DPSA, the Service Provider agrees to indemnify in full on demand and to keep DPSA so indemnified from and against all claims, demands, actions, proceedings and losses, which are made or brought against or incurred or suffered by DPSA resulting from any action arising from the Service Provider's breach of any obligation with respect to confidential information and/or personal information.
- 13.3. The Service Provider indemnifies the DPSA against any claims or court actions, including all legal costs in respect thereof, that may be instituted by any person against the DPSA arising out of any act, omission or default on the part of the Service Provider or, any person performing work on behalf of the Service Provider, in the provision of services under the Agreement.

**14. BREACH**

If a Party is in default or breach of any obligation which arises in terms of the Agreement and that defaulting Party fails to remedy such default or breach within 7 working days after receipt of a written notice given by the aggrieved Party calling upon the defaulting Party to remedy such default or breach, then the aggrieved Party may, without prejudice to any other rights which it may have in terms hereof or at law—

- (a) claim specific performance;
- (b) cancel the Agreement, such cancellation to be effective immediately on receipt by the defaulting Party of a written notice to that effect; or
- (c) claim any money due and payable in terms of the Agreement and claim damages from the defaulting Party.

**15. INDEPENDENT CONTRACTOR**

The Service Provider is employed as an independent contractor and not as an agent of the DPSA and has no authority to bind or represent the DPSA in any matter.

**16. GOOD FAITH AND REASONABLENESS**

In their dealings with each other for purposes of the Agreement, the Parties—

- (a) undertake to act in good faith and reasonably; and
- (b) warrant that they shall not do anything or shall refrain from doing anything that might prejudice or detract from the rights or obligations of each other.

**17. CONFLICT OF INTEREST**

17.1 Neither the Service Provider nor their staff shall engage in any activity which conflict with or could potentially conflict with the services to be provided in terms of the Agreement.

17.2 The Service Provider shall notify the DPSA immediately of any activities or circumstances which give rise to or could potentially give rise to such conflict of interest and shall inform the DPSA how the Service Provider intends dealing with such conflict.

## 18. **FORCE MAJEURE**

- 18.1 *Force majeure* shall be considered to be circumstances where the performance of any obligation in terms of the Agreement are suspended or postponed by-
- (a) strikes or lock-outs or any combination thereof by employees of either of the Parties;
  - (b) war or civil commotion;
  - (c) any cause, except as may otherwise be provided for in the Agreement, beyond the reasonable control of either of the Parties; and
  - (d) any natural disaster.
- 18.2 If the completion of any obligation be delayed as a result of *force majeure*, the Party who is unable to perform its obligation shall, within 7 working days of the occurrence of such *force majeure*, give notice thereof in writing to the other Party and request an extension of time in which to comply with its obligation. On receipt of such notice and supporting particulars of the claim, the other Party may in writing grant an extension of time as may be justified.
- 18.3 The Party who is incapable of performing its obligation shall not be liable for any such claim which the other Party may have as a result of such obligation not being performed provided that the reason why it cannot perform its obligation is due to *force majeure* and provided further that the notice referred to in 18.2 has been duly delivered.
- 18.4 In the event of *force majeure* continuing for a period of 7 working days, either Party shall be entitled to terminate the Agreement by written notice to the other Party and without any Party incurring any liability to the other Party.

## 19. **TERMINATION**

### 19.1. **Termination for cause by DPSA**

- 19.1.1. DPSA may, by giving notice to the Service Provider, terminate this Agreement or rendering of the Services in whole or part, as of a date set out in the notice of termination, in the event that the Service Provider-

- 19.1.1.1. breaches the confidentiality provisions of this Agreement;
- 19.1.1.2. breaches applicable laws;
- 19.1.1.3. is found guilty of an offence in terms of applicable laws;
- 19.1.1.4. commits an act of insolvency as defined in the Insolvency Act, 1936 (Act No. 24 of 1936) or is placed under provisional liquidation or under business rescue proceedings or is finally liquidated;
- 19.1.1.5. commits an act of professional misconduct or professional or technical incompetence, which is substantial and serious; or
- 19.1.1.6. commits or participates in any unlawful, dishonest or unethical act in executing this Agreement.

19.1.2. DPSA shall have no liability to the Service Provider with respect to a termination under this clause.

## **19.2. Termination Upon Sale, Acquisition, Merger or Change of Control**

19.2.1. In the event of a sale, acquisition, merger, or other change of control of the Service Provider (a "Change Event") where such Change Event is achieved, directly or indirectly, in a single transaction or series of related transactions, or in the event of a sale of all or substantially of all the assets of the Service Provider in a single or series of related transaction, then the Service Provider shall notify DPSA of such Change Event within ten (10) working days after the Change Event is achieved.

19.2.2. No sale, acquisition, merger or other change of control shall be effective against and legally binding on DPSA if the Service Provider failed to notify DPSA, as required by clause 19.2.1 above.

19.2.3. DPSA may terminate this Agreement, at any time after being notified by the Service Provider of the Change Event, by giving the Service Provider thirty (30)

days written notice designating a date upon which such termination shall become effective.

19.2.4. In the event that the Service Provider fails to notify DPSA, as required by clause 19.2.1 above, then DPSA may upon discovery of the Change Event terminate the Agreement by giving the Service Provider (30) days written notice and designating a date upon which such termination shall be effective.

19.2.5. DPSA shall have no liability to the Service Provider with respect to termination of the Agreement on terms of this clause.

19.2.6. "Control" in terms of this clause means, with regard to any entity, the right or power to dictate the management of and otherwise control such by entity by any of the following:

19.2.6.1. holding directly or indirectly the majority of the issued share capital stock (or other ownership interest if not a company) of such entity ordinarily having voting rights;

19.2.6.2. controlling the majority of the voting rights in such entity; or

19.2.6.3. having the right to appoint or remove directors holding a majority of the voting rights at meetings of the board of directors of such entity.

19.2.7. Any termination of this Agreement pursuant to the provisions of this clause shall be without prejudice to any prior claim, which either Party may have.

19.2.8. The DPSA may terminate the Agreement without prejudice to any of its rights upon the occurrence of any of the following:

(a) on commencement of any action for the dissolution and/or liquidation of the Service Provider, except for purposes of an amalgamation or restructuring approved in advance by the DPSA;

(b) the Service Provider receives a court order to be placed under judicial management, business rescue or to commence liquidation procedures that is not withdrawn or struck out within five working days;

(c) the Service Provider informs the DPSA that it intends to cease performing its obligations in terms of the Agreement;

(d) the Service Provider informs the DPSA that it is incapable of completing the Services.

19.2.9. The Service Provider shall receive remuneration for the services provided to the satisfaction of the DPSA up to the date of termination of the project.

19.2.10. Termination of the Agreement shall relieve the DPSA and the Service Provider of their respective obligations in terms of the Agreement.

19.2.11. The Service Provider shall not be entitled to advance a right of retention or any similar right if the Agreement is terminated in terms of this clause.

## **20. GENERAL TERMS AND CONDITIONS**

### **20.1 WHOLE AGREEMENT AND AMENDMENT**

This Agreement constitutes the whole of the Agreement between the Parties relating to the subject matter hereof and no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties hereto or their duly Authorised Representatives. Any document executed by the Parties purporting to amend, substitute or revoke this Agreement or any part hereof, shall be titled an "Addendum" to the applicable Service Agreement and assigned a sequential letter to be included in the title.

### **20.2 INTERPRETATION OF AGREEMENT**

The law of the Republic of South Africa shall govern the interpretation of the Agreement.

### **20.3 NO ASSIGNMENT WITHOUT CONSENT**

The Service Provider shall not be entitled to assign, cede, sub-contract, delegate or in any other manner transfer any benefit, rights and/or obligations in terms of this Agreement, without the prior written consent of DPSA which consent shall if approved by DPSA in its sole discretion, be in compliance with the provisions of the PFMA and DPSA's procurement policies and procedures.

#### 20.4 ADVERTISING AND MARKETING

The Service Provider shall not make or issue any formal or informal announcement (with the exception of Authority announcements), advertisement or statement to the press in connection with this Agreement or otherwise disclose the existence of this Agreement or the subject matter thereof to any other person without the prior written consent of DPSA.

#### 20.5 JURISDICTION OF COURTS

If any legal proceedings arise from the provisions of the Agreement, both Parties submit to the jurisdiction of the courts of the Republic of South Africa.

#### 20.6 ENTIRE CONTRACT

The Agreement and the Annexures attached hereto constitute the entire contract between the Parties.

#### 20.7 VARIATION

No amendment, alteration, addition or suspension of any provision of the Agreement shall be of any force, unless reduced to writing and signed by both Parties.

#### 20.8 WAIVER

No waiver of any right in terms of the Agreement shall be binding for any purpose unless expressed in writing and signed by the Party concerned and such waiver shall be effective only in the specific instance and for the purpose given. No failure or delay on the part of either Party in exercising any right precludes any other or further exercise thereof or the exercise of any other right.

## 20.9 CESSION

A Party may not cede any right or obligation in terms of the Agreement to another person without the other Party's written consent.

## 20.10 INVALID PROVISIONS

If any provision of the Agreement contravenes any provision of the law, that provision shall be deemed to be void or the scope of the provision shall be deemed to have been limited to exclude such contravention, provided that if any Party—

- (a) can establish in a court of law that it is adversely affected or prejudiced thereby; or
  - (b) unsuccessfully relies on that provision in any legal proceedings,
- that Party may terminate the Agreement immediately.

## 20.11 INTERVENING CHANGES IN LAW

If any change in the law renders any material provision of the Agreement illegal or void, either Party may terminate the Agreement immediately.

## 20.12 SEVERABILITY

If any provision of the Agreement is or becomes invalid or unenforceable, such provision shall be divisible and be regarded as *pro non scripto* and the remainder of the Agreement shall be regarded as valid and binding unless materially affected.

## 21. COSTS

Each party shall bear and pay its own costs of or incidental to the drafting, preparation and execution of this Agreement.

## 22. AUTHORISED SIGNATORIES

- 22.1 The Parties agree that this Agreement and any contract document concluded in terms hereof shall not be valid unless signed by all authorised signatories of DPSA.
- 22.2 This Agreement is signed by the Parties on the dates and at the places indicated below.
- 22.3 This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- 22.4 The persons signing this Agreement in a representative capacity warrant their authority to do so.

## 23. DOMICILIUM CITANDI ET EXECUTANDI

- 23.1 DPSA chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

**(Insert details)**

- 23.2 The Service Provider chooses as its *domicilium citandi et executandi* for the service of legal process and notices:

**(Insert details)**

- 23.3 Each of the Parties shall be entitled at any time by way of written notice to the other Party, to change its *domicilium citandi et executandi* to another physical address.
- 23.4 Any notice in terms of the Agreement shall either be—
- (a) delivered by hand during normal business hours of the recipient; or
  - (b) sent by prepaid registered post to the address chosen by the addressee.

23.5 A notice in terms of the Agreement shall be considered to be duly received if—  
(a) hand-delivered on the date of delivery;  
(b) sent by registered post as indicated in clause 23.4(b), 10 days after the date it was posted,  
unless the contrary is proved.

23.6 Notwithstanding anything to the contrary contained or implied in the Agreement, the written notice or communication actually received by one of the Parties from the other, including by way of facsimile transmission, shall be adequate written notice or communication to such Party.

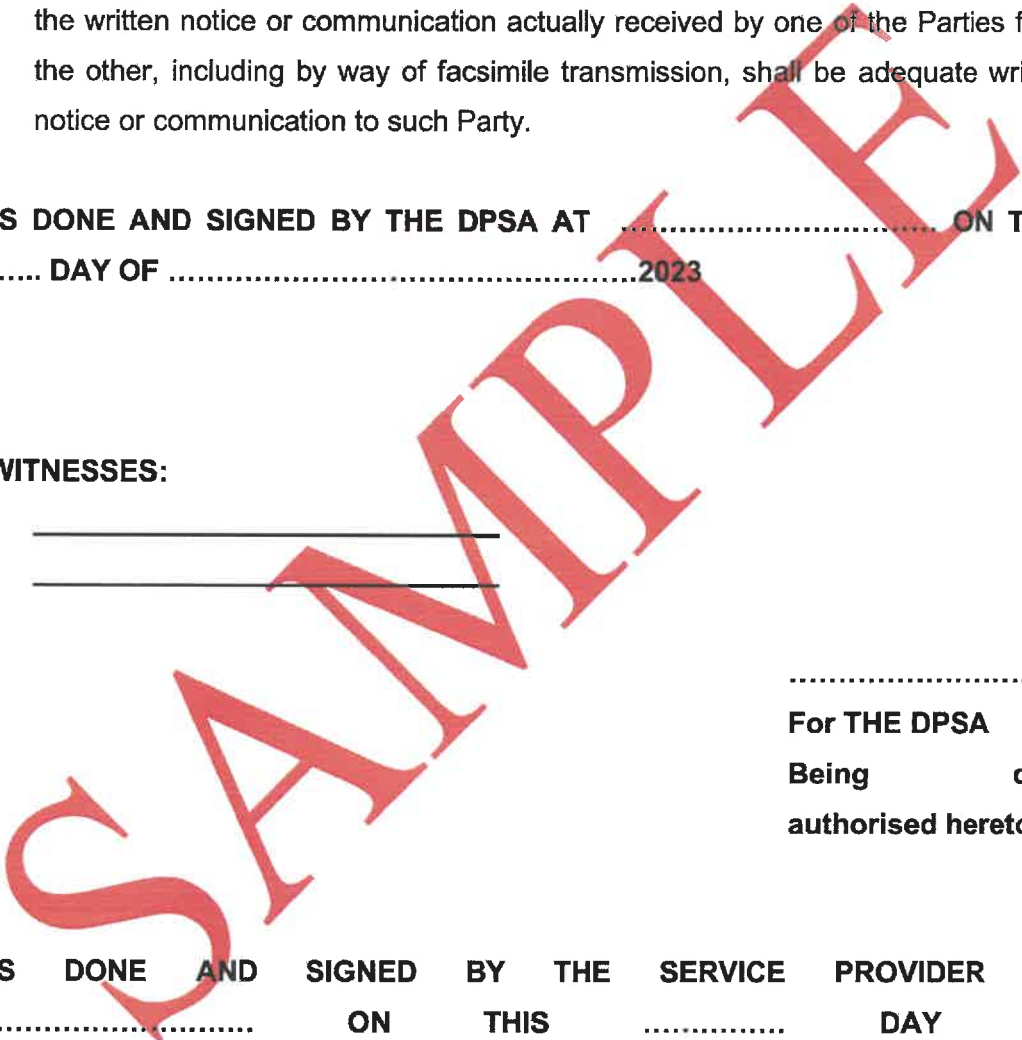
**THUS DONE AND SIGNED BY THE DPSA AT ..... ON THIS  
..... DAY OF ..... 2023**

**AS WITNESSES:**

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_

.....  
**For THE DPSA  
Being           duly  
authorised hereto**

**THUS DONE AND SIGNED BY THE SERVICE PROVIDER AT  
..... ON THIS ..... DAY OF  
..... 2023**



**AS WITNESSES:**

1. \_\_\_\_\_
2. \_\_\_\_\_

.....  
**For SERVICE  
PROVIDER being  
duly authorised  
hereto**

**SAMPLE**

# **THE NATIONAL TREASURY**

**Republic of South Africa**



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## **GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT**

**July 2010**

**GOVERNMENT PROCUREMENT**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**NOTES**

The purpose of this document is to:

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

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

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.

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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 “Day” means calendar day.
  - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
  - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
  - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

## **2. Application**

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

## **3. General**

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

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

## **4. Standards**

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

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

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

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

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

## **6. Patent rights**

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

**7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
  - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

**9. Packing**

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

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

**10. Delivery and documents**

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

**11. Insurance**

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

**12. Transportation**

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

**13. Incidental services**

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

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (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, start-up, operation, maintenance, and/or repair of the supplied goods.

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

#### **14. Spare parts**

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

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### **15. Warranty**

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

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

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

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

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the

supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

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

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

## **23. Termination for default**

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

#### **24. Anti-dumping and countervailing duties and rights**

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

may be due to him

**25. Force Majeure**

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

**26. Termination for insolvency**

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

**27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 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.