



# NSFAS

National Student Financial Aid Scheme

## Request for Proposal

BID No: SCMN014/2020

SECTION A

### Provision of direct payments of allowances to NSFAS students bank accounts for 5 years

Full Name of Bidding/Tendering Entity:	
Contact Person:	
Contact Number:	
Contact Email Address:	
Advertisement Date:	20 November 2020
Compulsory Briefing Session Date/Time:	N/A
Closing Date/Time:	7 December 2020 at 11:00
Issued by:	National Student Financial Aid Scheme (NSFAS)



**Bidder's Authorised Signatory:**

Initials and Surname:

Signature:

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## Glossary

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Award	Conclusion of the procurement process and final notification to the successful bidder
B-BBEE	Broad-based Black Economic Empowerment (BBBEE) Act, 2003 (Act No. 53 of 2003) and BBBEE Amended Act, 2013 (Act No. 46 of 2013) and the Codes of Good Practice issued thereunder by the Department of Trade and Industry (DTI)
Bid	Written offer in a prescribed or stipulated form in response to an invitation by NSFAS for the provision of goods, works or services
Contractor	Organization with whom NSFAS will conclude a contract and potential service level agreement subsequent to the final award of the contract based on this Request for Bid
Core Team	Team members who fill the non-administrative positions against which the experience will be measured.
DTI	Department of Trade and Industry
EME	Exempted Micro Enterprise
QSE	Qualifying Small Enterprise
NSFAS	National Student Financial Aid Scheme
GCC	General Conditions of Contract
SCM	Supply Chain Management
SLA	Service Level Agreement
TOR	Terms of Reference

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## Documents in this Bid Document Pack

Bidders are to ensure that they have received all pages 1 to 65 of this document, which consist of the following sections:

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### SECTION A

**Note: Documents in this section must be completed and returned or supplied with bids as prescribed.**

- Section A1: Invitation to bid (SBD 1)

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- Section A2: Declaration of Interest (SBD 4)

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- Section A3: Preference Points Claim form in terms of the PPFA 2017 regulations (SBD 6.1)

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- Section A4: Declaration of bidder's past SCM practices (SBD 8)

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- Section A5: Certificate of Independent Bid Determination (SBD 9)

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- Section A6: General Conditions of Contract

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**SECTION A 1  
PART A  
INVITATION TO BID (SBD1)**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE NATIONAL STUDENT FINANCIAL AID SCHEME (NSFAS)</b>					
BID NUMBER:	SCMN014/2020	CLOSING DATE:	7 December 2020	CLOSING TIME:	11:00AM
DESCRIPTION	PROVISION OF DIRECT PAYMENTS OF ALLOWANCES TO NSFAS STUDENTS BANK ACCOUNTS FOR A PERIOD OF FIVE (5) YEARS				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
NSFAS Office, 10 Brodie Road					
1 <sup>st</sup> Floor, House Vincent Building					
Wynberg, Cape Town					
7801					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	SCM		CONTACT PERSON	SCM	
TELEPHONE NUMBER	021 763 3200		TELEPHONE NUMBER	021 763 3200	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	SCM@NSFAS.ORG.ZA		E-MAIL ADDRESS	SCM@NSFAS.ORG.ZA	
<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:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					

<p><b>1</b> ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</p>	<p><input type="checkbox"/>Yes <input type="checkbox"/>No [IF YES ENCLOSE PROOF]</p>	<p><b>2</b> ARE YOU A FOREIGN BASED SUPPLIER FOR <b>THE GOODS /SERVICES /WORKS OFFERED?</b></p>	<p><input type="checkbox"/>Yes <input type="checkbox"/>No [IF YES, ANSWER THE QUESTIONNAIRE BELOW ]</p>
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**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?  YES  NO

DOES THE ENTITY HAVE A BRANCH IN THE RSA?  YES  NO

DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?  YES  NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?  YES  NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?  YES  NO

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

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<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, 2017, 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: .....

## **Executive Summary**

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The National Student Financial Aid Scheme (NSFAS) is a statutory body providing financial aid to eligible students who wish to study at public universities and Technical Vocational Education and Training (TVET) colleges. NSFAS is mandated to manage and distribute funds in accordance with the provisions of the NSFAS Act (Act 56 of 1999).

## **Fraud and Corruption**

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All providers are to take note of the implications of contravening the Prevention and Combating of Corrupt Activities Act, Act No 12 of 2004 and any other Act applicable.

## **Clarifications / Additional information / Rights**

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### **Clarification**

Any clarification required by a bidder regarding the meaning or interpretation of the TOR, or any other aspect concerning the bid, are to be requested in writing by email from [scm@nsfas.org.za](mailto:scm@nsfas.org.za). The bid number should be mentioned in all correspondence. Telephonic requests for clarification will not be accepted. If appropriate, the clarifying information will be made available to all bidders by e-mail only.

### **Additional Information**

During the evaluation of the bids, additional information may be requested in writing from bidders, for clarity. Replies to such requests must be submitted, within 5 (five) working days from the date of request, or as otherwise indicated. Failure to comply, may lead to your bid being disregarded.

### **Rights**

NSFAS reserves the right to appoint more than one (1) service provider. NSFAS further reserves the right to engage with the short-listed bidders for price negotiation and a site inspection where necessary. NSFAS in addition reserves the right to invite the shortlisted for a presentation as part of the bid process. NSFAS reserves the right to not select the lowest price. In addition, NSFAS reserves the right to not award the tender to the shortlisted bidder should any risk arise from the NSFAS due diligence assessment performed. NSFAS reserves the right to award the contract in whole or in parts.



**Consent**

By responding to this tender, both the entity and its directors provide consent to NSFAS to perform background checks which would include amongst others, the relevant Transunion checks.

## **Submitting Bids**

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**One (1) physical bid proposal** must be handed in/delivered to:

The deposit box situated at:  
1st Floor, House Vincent  
Brodie Road  
Wynberg  
7801

Tenders can be delivered and deposited into the tender box between 08:30 and 16:00, Mondays to Fridays prior to the closing date, and between 08:30 and 11:00 on the closing date.

No faxed or e-mailed bid proposals will be accepted. The bidders are encouraged to index and paginate the bid proposal.

Respondents should ensure that tender documents are delivered to NSFAS in the tender box before the closing date and time of the tender. If the tender document is late, it will not be accepted and will be disregarded. Bid proposals submitted on time shall not be returned to the bidder.

Any tender submitted shall remain valid, irrevocable and open for written acceptance by NSFAS for a period of 120 (one hundred and twenty) days. A tender submitted shall further be deemed to remain valid after the expiry of the above mentioned 120-day period until formal acceptance by NSFAS, unless NSFAS is notified in writing by the tenderer of anything to the contrary (including any further conditions the tender may introduce). Any further conditions that the tenderer may introduce will be considered at the sole discretion of NSFAS.

Bidders should indicate on the cover of the bid proposal (in a sealed envelope/box), the following information:

- Bid number **SCMN014/2020**
- Closing date and time **7 December 2020 at 11:00**
- The name and address of the bidder

## **LATE BIDS**

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Bids received late will not be considered for evaluation purposes. A bid will be considered late if it arrived even one second after 11:00 am or any time thereafter. The tender (bid) box shall be locked at exactly 11:00 am and bids

arriving late will not be considered under any circumstances. Bidders are therefore strongly advised to ensure that bids be dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid.

Bids sent to NSFAS via courier shall be deemed to be received at the date and time of arrival at the NSFAS premises (tender box) Bids received in the tender box after the closing date and time of the bid, shall therefore be deemed to be received late. **Bidders should allow time to access the premises due to security arrangements that need to be observed.**

**Response Structure:**

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The contents of the **BID/TENDER** document must be as follows, and numbering below, with each schedule punched, placed in a file and separated from the next schedule with a file divider.

Please complete the checklist below to verify your submission of the relevant documents:

Schedules	Description	Submitted (tick box below):	
		Yes	No
<b>Schedule 1</b>	Entity registration documentation		
<b>Schedule 2</b>	Consent by the entity and its directors to perform the necessary background checks which includes amongst others, the TransUnion checks.		
<b>Schedule 3</b>	Original Valid Tax Clearance Certificate/tax pin		
<b>Schedule 4</b>	BBB-EE Certificate, or, BBBEE Sworn Affidavit for EME/QSE signed and stamped by Commissioner of Oaths.		
<b>Schedule 5</b>	National Treasury Central Supplier Database proof of registration -please provide the latest full report.		
<b>Schedule 6</b>	Letter from Bank confirming banking details (not older than 3 months from date of closing date of tender)		
<b>Schedule 7</b>	Completed and signed Tender Documents: including the following; SBD 1 SBD 4		

Schedules	Description	Submitted (tick box below):	
		Yes	No
	SBD 6.1 SBD 8 SBD 9 General Conditions of Contracts (with every page initiated)		
<b>Schedule 7</b>	Detailed Bid proposal in response to bid specification requirements		

## **Contract Negotiations**

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The successful bidder (s) will be required to enter into a written contract/SLA with NSFAS. The final terms and conditions will be negotiated between NSFAS and the successful bidders (s). Should the awarded bidder fail to sign the SLA within a reasonable timeframe deemed by NSFAS, NSFAS reserves the right to cancel the award/contract and award the tender to the 2<sup>nd</sup> placed bidder.

The **GENERAL CONDITIONS OF CONTRACT (GCC)** will form the basis of the contract; however, NSFAS reserves its rights to impose additional terms and conditions at its sole discretion.

## **Payments**

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NSFAS will pay the successful bidder (s) the fees set out in the final contract according to the table of deliverables. No additional amounts will be payable by NSFAS to the successful bidder (s).

The successful bidder (s) shall invoice NSFAS for the services rendered in a reasonable timeframe. The invoices billed to NSFAS must be in relation to the original scope of work/terms of reference.

The invoice must be accompanied by supporting source document(s) containing detailed information, as NSFAS may reasonably require, for the purposes of establishing the specific nature, extent and quality of the services which were undertaken by the successful bidder (s).

No payment will be made to the successful bidder (s) unless an original tax invoice complying with section 20 of the VAT Act, 1991 (Act No 89 of 1991), as amended, has been submitted to NSFAS.

Payment shall be made by bank transfer into the successful bidder (s) back account normally 30 days after receipt of an acceptable, original, valid tax invoice. Money will only be transferred into a South African bank account. (Banking details on a bank letterhead must be submitted as soon as the bid is awarded).

Payments will only be made to the bidder in accordance with the purchase order issued to the awarded bidder. Any services delivered by the bidder outside of the original bid specifications and over and above the purchase order value will not be paid for as NSFAS is not liable for these payments. Should the service provider perform any additional work outside of the tender award and its requirements, NSFAS will not be held liable for such payment to the service provider.

## 1 PURPOSE

- 1.1. The purpose of this bid specification is to obtain bid proposals from prospective service providers to disburse allowances directly to NSFAS funded students at public universities and TVET colleges across South Africa, into the students' bank accounts. The NSFAS regulations stipulates that NSFAS must disburse allowances directly to students. The regulations further emphasize that any third-party appointment to disburse allowances must be vetted and approved by the NSFAS. In many instances, institutions have appointed third-party agents to disburse student allowances and the NSFAS does not have direct line of sight on these transactions.
- 1.2. In order to remove all commercial interests from the disbursements and payments processes and mitigate internal risks associated with the processes, this Request for Proposal invites potential service providers in the financial services sector to submit their proposals to disburse allowances directly to NSFAS funded students studying at public universities and TVET colleges, into the students bank accounts.

## 2 BACKGROUND

- 2.1 NSFAS is a statutory body, funded primarily by the South African National Department of Higher Education and Training (DHET). NSFAS provides bursaries to eligible students who wish to study at the 26 public universities and 50 Technical and Vocational Education and Training (TVETs) colleges.
- 2.2 Since the inception of NSFAS in 1999, funds allocated to NSFAS have increased substantially from R441million in 1999 to R36.7 billion in 2020/21 financial year. During this period, the processes and operations at NSFAS have remained largely unchanged. Furthermore, the December 2017 Presidential pronouncement on Fee Free Education, has led to the need to redesign and restructure the organisation to enable it to deal with its existing requirements and, more importantly, to create a platform for the future as a full bursary provider.
- 2.3 The table below shows the number of students that NSFAS funded in 2019/2020 academic year.

EDUCATIONAL INSTITUTION TYPE	MAXIMUM NO OF NSFAS STUDENTS
26 Universities	430,000
50 TVET colleges	300,000
<b>Total</b>	<b>730,000</b>

NSFAS reserves the right to appoint more than one (1) service provider.

### 3 EVALUATION PROCESS

The table below summarizes the steps that NSFAS follows to evaluate service providers proposals.

No	PHASE	DESCRIPTION
3.1	<b>PHASE 1:</b> Mandatory Requirements	All bids must comply with the mandatory requirements and failure to comply with any of these requirements will immediately disqualify the bid. The bidder should clearly mark in the table below at paragraph 4, where in the proposal is the supporting evidence included.
3.2	<b>PHASE 2:</b> Company Experience, Core Team Experience, Solution requirements, and Disaster recovery services	Bidders are required to achieve a combined minimum score of 80% for functional criteria i.e. company experience; core team experience, solution requirements and disaster recovery requirements in order to progress to be evaluated for the Price and BBB-EE.  Only bidders who passed the mandatory requirements (Phase 1) and the evaluation criteria (Phase 2) will proceed to be evaluated for Price and BBB-EE.
3.3	<b>PHASE 3:</b> Price and BBBEE	The 80/20 Preference Point System will be used to calculate points for price. The final points are calculated on points for price and BBB-EE points, combined.

### 4 PHASE 1: MANDATORY REQUIREMENTS

All bids must comply with the mandatory requirements and failure to comply with any of these requirements will immediately disqualify the bid. The bidder should clearly mark the in the table below where in the proposal is the supporting evidence included.

NO	MANDATORY REQUIREMENTS	COMPLIED (Y/N)	PAGE REFERENCE
4.1	<b>MEMBERSHIP</b>		
4.1.1	The service provider must submit proof of membership or certificate issued by either Banking Association of South Africa (BASA) or Payments Association of South Africa (PASA) which must be in the name of the service provider		
4.1.2	The service provider must submit evidence of a banking license which must be in the name of the service provider.		
4.2	<b>COMPANY EXPERIENCE</b>		
4.2.1	The service provider must provide a minimum of three (3) reference letters, on the letterhead of the clients, where they have successfully distributed funds on behalf of the client on a continuous basis.  Note that NSFAS reserves the right to contact these references.		
4.3	<b>PROJECT GOVERNANCE AND KEY RESOURCES</b>		



NO	MANDATORY REQUIREMENTS	COMPLIED (Y/N)	PAGE REFERENCE
4.3.1	<p><b>METHODOLOGY:</b></p> <p>The service provider's proposal must include a project methodology demonstrating how the project will be governed, managed and delivered.</p>		
4.3.2	<p><b>PROJECT PLAN:</b></p> <p>The service provider must include a milestone schedule with timelines to complete the project work.</p>		
4.3.3	<p><b>KEY RESOURCES:</b></p> <p>The core team assigned must possess the required experience / past implementation experience and qualifications/professional certification from accredited bodies:</p> <p>Detailed CVs must be provided for each of the following project Roles: Refer to the Evaluation Criteria for minimum requirements that will be assessed.</p> <ul style="list-style-type: none"> <li>(1) Project Lead/Account Manager</li> <li>(2) Project Manager</li> <li>(3) Technical Lead/Integration</li> <li>(4) Data Management and Reporting Lead</li> <li>(5) Business Analysis Lead</li> <li>(6) Cybersecurity, Risk and Disaster recovery Lead</li> </ul> <p>The service provider must indicate where one resource will be executing more than one role. The CVs for each role must be submitted as part of the bid proposal.</p>		

NO	MANDATORY REQUIREMENTS	COMPLIED (Y/N)	PAGE REFERENCE
4.3.4	<p><b>PROJECT COSTS:</b></p> <p>The service provider must tailor existing services to suit students from poor and working-class families who were previously disadvantaged. That is, the costs must be innovative and competitive.</p> <p>The service provider must clearly indicate the following cost categories separately:</p> <ol style="list-style-type: none"> <li>1) Student On-boarding costs.</li> <li>2) Transaction costs.</li> <li>3) Verification costs.</li> <li>4) Implementation costs.</li> <li>5) Support costs</li> <li>6) Costing for Cybersecurity testing</li> <li>7) Other Costs</li> </ol> <p>Indicate what costs will be paid by the students and what costs will be paid by NSFAS.</p> <p>Differentiate recurring and from once-off costs.</p>		
4.3.5	<p><b>PROJECT RISKS:</b></p> <p>Like all projects, NSFAS anticipates there may be potential disruptions to the schedule and timelines as a result of known and unknown project risks.</p> <ol style="list-style-type: none"> <li>(1) The potential risk of a missed project milestone</li> <li>(2) The contingency action plan to such risk.</li> </ol>		
4.3.6	<p><b>PROJECT DEPENDENCIES:</b></p> <p>The service provider must indicate their dependencies for the project to ensure that, where required, NSFAS plans and supports the project adequately.</p>		
4.4	<b>SECURITY CERTIFICATIONS</b>		
4.4.1	The bidder must provide proof of their PCI DSS certification.		
4.5	<b>PENETRATION TESTING</b>		

NO	MANDATORY REQUIREMENTS	COMPLIED (Y/N)	PAGE REFERENCE
4.5.1	<p>The bidder must provide a proposal from an independent third-party that demonstrates its ability to adequately perform cyber security penetration testing of the solution.</p> <ol style="list-style-type: none"> <li>1. Penetration testing that will be conducted by the third-party provider must be incorporated in the overall project timeline.</li> <li>2. The cyber security penetration testing proposal must include the methodology that will be implemented by the third-party provider.</li> </ol>		
4.6	<b>ACCOUNT VERIFICATION</b>		
4.6.1	The proposed solution must include account holder verification (AHV) or account verification services (AVS) whereby the identity number of the student is verified against the bank account number.		
4.6.2	The proposed solution must not allow students to register bank accounts where the servicing bank is not able to perform AHV or AVS.		

## 5 PHASE 2.1: SOLUTION REQUIREMENTS

The bidder's proposal should cover the following solution requirements:

No.	SOLUTION REQUIREMENTS	COMPLIED (Y/N)	PAGE REFERENCE
5.1	The solution must disburse funds on a scheduled basis to students for books, meals, and other allowances as determined by NSFAS. However, the solution must also be able to pay allowance on an ad-hoc basis based on student needs.		

No.	SOLUTION REQUIREMENTS	COMPLIED (Y/N)	PAGE REFERENCE
5.2	The solution must provide students unrestricted ability to transact with a wide variety of service providers including supermarkets, food chains, bookstores, transport providers and provide the ability to access cash where required.		
5.3	The solution must provide ability to physically verify the identity of the student or by using biometrics at the point of issuing the facility and regularly during the period as recipients of NSFAS funding.		
5.4	<p>The solution must NOT allow NSFAS staff the ability to edit or update a transacting facility details (or the equivalent thereof) and all data must be securely stored within the service providers environment with a full audit trail of all changes.</p> <p>Note that all the data stored within the service providers environment is owned by NSFAS. Therefore, NSFAS management may require full access of such data through the organisation's Chief Governance Risk and Compliance Officer. Again, all data must be returned to NSFAS at the end of this contract.</p>		
5.5	The solution must be able to provide read only access to NSFAS staff. The solution must further be able to restrict viewing access of sensitive information to NSFAS staff, which may include bank account numbers.		
5.6	The solution must be able to produce daily, weekly and monthly reports on the distribution of allowances for students.		
5.7	The solution must ensure that students have complete visibility of all transactions and balances at all times via different approved platforms (preferably online, mobile application or other physical facilities).		
5.8	The solution must be secure and meet all Financial sector regulatory standards. The security features of the solution must have the ability to stop payments, and block/unblock and flag accounts in cases of fraud, death, etc		

No.	SOLUTION REQUIREMENTS	COMPLIED (Y/N)	PAGE REFERENCE
5.9	The solution must be able to facilitate the communication (email, SMS, and other forms) of essential messaging to students at different points which will be agreed with NSFAS and in line with NSFAS Corporate Branding		
5.10	In a situation where the student has an existing facility to transact from other providers, the solution must allow students to capture and validate, and make updates to their facility details. Validation must be performed using the South African National ID number.		
5.11	Validation and verification of facilities must meet the requirements of the South African financial regulations and standards.		
5.12	The service provider must provide access and ability to support students nationally, anywhere in the country.		
5.13	The solution provider must be able to provide 24x7 account service support as the NSFAS Contact Centre will not have access to the service provider's payment platforms.		
5.14	The service provider must store all student transactional data for a minimum period of seven (7) financial years.		
5.15	The service provider must never use student data for any other purposes except the intended use by NSFAS and its processes.		
5.16	The service provider must provide adequate evidence of its financial stability. As a minimum requirement, a set of the audited financial statements and audit reports for the most recent three financial years must be provided which must clearly demonstrate the solution provider's solvency and sustainability.		
5.17	The service provider must provide a white labelled transacting facility to students. Example, mobile application or online platforms must carry NSFAS branding.		

**6 PHASE 2.2: DISASTER RECOVERY AND SYSTEM AVAILABILITY REQUIREMENTS**

The bidder's proposal should cover the following disaster recovery and system availability requirements:

No.	DISASTER RECOVERY AND SYSTEM AVAILABILITY REQUIREMENTS	COMPLIED (Y/N)	PAGE REFERENCE
6.1	<p>The service provider must provide a Disaster Recovery Plan for the proposed solution.</p> <ol style="list-style-type: none"> <li>The system availability must include a minimum of 99.9% uptime.</li> <li>The disaster recovery plan must include a minimum of 2 hours Recovery Time Objective (RTO) and 4 hours Recovery Point Objective (RPO).</li> </ol>		

**7 EVALUATION CRITERIA- PHASE 2**

Bidders are required to achieve the minimum score of 80 points for Phase 2 for company experience, core team, solution requirements, disaster recovery and system availability requirements in order to progress to be evaluated for the Price and BBB-EE. Only bidders who passed the mandatory requirements and the evaluation criteria will proceed to be evaluated for Price and BBB-EE.

ELEMENT	WEIGHT
Company Experience	20 points
Core Team Experience	20 points
Solution Requirements	50 points
Disaster recovery and system availability requirement	10 points
<b>TOTAL</b>	<b>100 points</b>

<b>7.1 COMPANY EXPERIENCE (max of 20 points)</b>			
<b>CATEGORY</b>	<b>POINTS AVAILABLE</b>	<b>BIDDER SCORING</b>	<b>POINTS SCORED</b>
Provide a minimum of five (5) reference letters on previous client's company letterhead where similar work was completed in the last five years. (NSFAS reserves the right to contact the company to confirm the details as per the reference letters).	Less than 5 reference letters = 0		
	5 reference letters = 10		
	6 or more reference letters = 20		

<b>7.2 CORE TEAM EXPERIENCE</b>			
<b>CATEGORY</b>	<b>POINTS AVAILABLE</b>	<b>BIDDER SCORING</b>	<b>POINTS SCORED</b>
<b>7.2.1 PROJECT LEAD/ACCOUNT MANAGER (max of 6 points)</b>			
10 years+ experience in financial sector in Senior Management Role	Does not meet the requirement = 0		
	Meets the requirements = 2		
10 years+ experience in Programme Management	Does not meet the requirement = 0		
	Meets the requirements = 2		
Educated to a Postgraduate or Master level in Business Administration	Does not meet the requirement = 0		
	Meets the requirements = 2		
<b>7.2.2 PROJECT MANAGER (max of 6 points)</b>			
8 years+ experience in financial sector in management role	Does not meet the requirement = 0		
	Meets the requirements = 2		

8 years+ experience in Project Management with at least two projects of over R10 million budget.	Does not meet the requirement = 0		
	Meets the requirements = 2		
Bachelor's degree in business administration or Project Management certification	Does not meet the requirement = 0		
	Meets the requirements = 2		
<b>7.2.3 TECHNICAL LEAD/INTEGRATION (max of 2 points)</b>			
8 years+ experience in a technical role within the financial sector	Does not meet the requirement = 0		
	Meets the requirements = 1		
Bachelor's degree in Computer Science or related technical certification	Does not meet the requirement = 0		
	Meets the requirements = 1		
<b>7.2.4 DATA MANAGEMENT AND REPORTING LEAD (max of 2 points)</b>			
8 years+ experience in data management	Does not meet the requirement = 0		
	Meets the requirements = 1		
Bachelor's degree in Computer Science, Data Science or related Data Management certification	Does not meet the requirement = 0		
	Meets the requirements = 1		
<b>7.2.5 BUSINESS ANALYSIS LEAD (max of 2 points)</b>			
8 years+ experience in business analysis or process management within the financial sector	Does not meet the requirement = 0		
	Meets the requirements = 1		
Bachelor's degree in Computer Science, or industrial engineering or related Business Process or Business Analysis certification	Does not meet the requirement = 0		
	Meets the requirements = 1		



<b>7.2.6 CYBERSECURITY, RISK AND DISASTER RECOVERY LEAD (max of 2 points)</b>			
8 years+ experience in information security	Does not meet the requirement = 0		
	Meets the requirements = 1		
Bachelor's degree in Computer Science, or information security or related Information Security certification	Does not meet the requirement = 0		
	Meets the requirements = 1		

<b>7.3 SOLUTION REQUIREMENTS (max of 50 points)</b>			
<b>CATEGORY</b>	<b>POINTS AVAILABLE</b>	<b>BIDDER SCORING</b>	<b>POINTS SCORED</b>
The service provider compliance with all the solution requirements stipulated under 5.1 to 5.17 of the solution requirements section.	Complies with all solution requirements = 50		
	Does not comply with all solution requirements = 0		

<b>7.4 DISASTER RECOVERY AND SYSTEM AVAILABILITY REQUIREMENTS (max of 10 points)</b>			
<b>CATEGORY</b>	<b>POINTS AVAILABLE</b>	<b>BIDDER SCORING</b>	<b>POINTS SCORED</b>
The bidder must provide an appropriate disaster recovery plan and the system availability must include a minimum of 99.9% uptime, 2 hours Recovery Time Objective (RTO) and 4 hours Recovery Point Objective (RPO).	System availability of a minimum of 99.9% uptime, 2 hours Recovery Time Objective (RTO) and 4 hours Recovery Point Objective (RPO) included in the Disaster Plan = 10		
	System availability of less than 99.9% uptime and/or less than 2 hours Recovery Time Objective (RTO) and/or less		

	than 4 hours Recovery Point Objective (RPO), and/or no appropriate disaster recovery plan submitted = 0		
--	---	--	--

**8 TECHNICAL REQUIREMENTS INFORMATION**

8.1	The solution must be able to be integrated seamlessly with core orchestration systems within NSFAS.
8.2	In a case where there is customized development for NSFAS, the IP will be owned by NSFAS with unrestricted access thereto.
8.3	The solution must provide a multi-functional mobile communication platform that allows NSFAS to effectively manage its relationships with the students (e.g., perform live chats, and content generation for a knowledge portal, etc.).

**9 CYBER SECURITY REQUIREMENTS INFORMATION**

9.1	<p>The third-party security provider must, through penetration testing identify vulnerabilities and confirm,</p> <ul style="list-style-type: none"> <li>(1) Misconfigurations</li> <li>(2) Kernel Flaws</li> <li>(3) Buffer Overflows</li> <li>(4) Insufficient Input Validation</li> <li>(5) Symbolic Links</li> <li>(6) File Descriptor Attacks</li> <li>(7) Race Conditions</li> </ul> <p>Incorrect File and Directory Permissions.</p>
-----	--

9.2	<p>The third-party security provider must recommend technical controls for identified vulnerabilities in the following categories,</p> <ul style="list-style-type: none"> <li>(1) Insufficient patch management</li> <li>(2) Insufficient threat management</li> <li>(3) Lack of security baselines, such as inconsistent security configuration settings on similar systems.</li> <li>(4) Poor integration of security into the system development life cycle, such as missing or unsatisfied security requirements and vulnerabilities in organization-developed application code.</li> </ul> <p>Security architecture weaknesses</p>
9.3	<p>Vulnerabilities should be assessed and reported to NSFAS in terms of,</p> <ul style="list-style-type: none"> <li>(1) Discovery and reconnaissance</li> <li>(2) Weaponization</li> <li>(3) Delivery</li> </ul> <p>Exploitation.</p>
9.4	<p>The third-party security provider must manage the assessment by,</p> <ul style="list-style-type: none"> <li>(1) Coordinating and communicating any tests and assessments.</li> <li>(2) Ensuring that proper authority is granted for any testing performed on NSFAS systems.</li> <li>(3) Signing and abiding by any required NSFAS non-disclosure agreements.</li> </ul> <p>Properly protecting data in accordance with NSFAS requirements, including handling, transmission, storage, and deletion of all collected data and resulting reports.</p>
9.5	<p>Penetration testing must not include non-technical methods of attack such as,</p> <ul style="list-style-type: none"> <li>(1) physical security controls and procedures to connect to a network,</li> <li>(2) steal equipment,</li> <li>(3) capture sensitive information (possibly by installing keylogging devices),</li> <li>(4) or disrupt communications</li> </ul> <p>social engineering</p>
9.6	<p>The third-party security provider must recommend technical controls for identified vulnerabilities in the following categories,</p> <ul style="list-style-type: none"> <li>(1) Insufficient patch management</li> <li>(2) Insufficient threat management</li> <li>(3) Lack of security baselines, such as inconsistent security configuration settings on similar systems</li> <li>(4) Poor integration of security into the system development life cycle, such as missing or unsatisfied security requirements and vulnerabilities in organization-developed application code</li> </ul> <p>Security architecture weaknesses.</p>

9.7	<p>The third-party security report must provide metrics and industry insight to explain and illustrate,</p> <ol style="list-style-type: none"> <li>(1) How well the bidders' solution and systems tolerate real world-style attack patterns.</li> <li>(2) The likely level of sophistication an attacker needs to successfully compromise the system.</li> <li>(3) Additional countermeasures that could mitigate threats against the system.</li> </ol> <p>The bidders' solution and systems ability to detect attacks and respond appropriately.</p>
9.8	<p>The third-party security assessment must be included in the proposed project plan,</p> <ol style="list-style-type: none"> <li>(1) Where required for consultation with NSFAS be on-site at the NSFAS Head Office: <ul style="list-style-type: none"> <li>▪ House Vincent, Brodie Road, Wynberg, Cape Town 7800.</li> </ul> </li> </ol> <p>Where required, perform agreed assessments and testing which may impact NSFAS systems after-hours.</p>

### 10 PHASE 3: PRICE AND BBB-EE

- 10.1 Only bidders that passed the 80% functionality score in Phase 2 will be evaluated in Phase 3 (Price & BBEE) Please consider the inevitable Consumer Price Index (CPI) increases year on year on the pricing upon the duration of the contract period being in excess of a 12-month period. The pricing must be inclusive of all costs including disbursements (travel, accommodation etc) where applicable.
- 10.2 The solution should be ready by no later than 31 May 2021 and will be piloted at five (5) TVET colleges, at minimum, from the 01st July 2021. The remaining colleges will be implemented by the beginning of 2022 academic year. The implementation date for Universities is yet to be determined.
- 10.3 Bidders should indicate clearly which costs are for NSFAS and which costs are for the NSFAS student.

NO.	DESCRIPTION	UNIT PRICE (INC VAT)	SIMULATED PRICING FOR ESTIMATED FOR 400 000 STUDENTS (INC VAT)	RECURRING OR ONCE-OFF COST
10.4	Student On-Boarding Costs			
10.5	Transaction Costs			

NO.	DESCRIPTION	UNIT PRICE (INC VAT)	SIMULATED PRICING FOR ESTIMATED FOR 400 000 STUDENTS (INC VAT)	RECURRING OR ONCE-OFF COST
10.6	Verification Costs			
10.7	Communication Costs			
10.8	Implementation Costs including Project Management, Integration costs, etc.			
10.9	Costing for Cybersecurity testing			
10.10	Technical Support Cost			
10.11	Other Costs			

## 11 CONTRACT PERIOD

The contract period is for five (5) years and will be reviewed after three (3) years, at which point NSFAS reserves the right to cancel the contract based on the service providers performance or change in organisational strategy

## 12. Preference Point System

All proposals that will achieve the minimum qualifying score (acceptable tenders) will be evaluated further in terms of the preference point system as follows: A maximum of 80 points is allocated for price on the following basis:

**80/20**

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

Where

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

$P_t$  = Comparative price of bid under consideration

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

A maximum of 20 points will be allocated for BBB—EE. The points for price and BBBEE will be added together to determine the total points achieved.

**1. Declaration of Interest**

This declaration will be used by institutions to ensure that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.

The bid of any bidder may be disregarded if that bidder, or any of its directors have:

- A. abused the NSFAS’s supply chain management system;
- B. committed fraud or any other improper conduct in relation to such system; or
- C. failed to perform on any previous contract.

**In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

**The following particulars must be furnished:**

2.1	Full Name of bidder or his or her representative:
2.2	Identity Number:
2.3	Position occupied in the Company (director, trustee, shareholder <sup>2</sup> , member):
2.4	Registration number of the company, enterprise, close corporation, partnership agreement or trust:

2.5	Tax Reference Number:		
2.6	VAT Registration Number:		
2.6.1	The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / PESAL numbers must be indicated in <b>paragraph 3 below.</b>		
2.7	Are you or any person connected with the bidder presently employed by the state?		
	Yes	No	
2.7.2. 1	If yes, furnish the following particulars:		
	Name of person / director / trustee / shareholder/ member:		
	Name of state institution at which you or the person connected to the bidder is employed:		
	Position occupied in the state institution:		

**“State” means**

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

**“Shareholder” means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise**



	Any other particulars:	
2.7.2	If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector?	
	Yes	No
2.7.2.1	If yes, did you attach proof of such authority to the bid document?	
	Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.	
	Yes	No
2.7.2.2	If no, furnish reasons for non-submission of such proof:	
2.8	Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months?	
	Yes	No
2.8.1	If so, furnish particulars:	
2.9	Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid?	
	Yes	No
2.9.1	If so, furnish particulars:	
2.10	Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?	
	Yes	No
2.10.1	If so, furnish particulars:	



**Declaration**

I, the undersigned (NAME).....

Certify that the information furnished in paragraphs 2 and 3 above is correct.

I accept that the state may reject the bid or act against me should this declaration prove to be false.

**Signature**

**Date**

.....

.....

**Position**

**Name of bidder**

.....

.....

**Declaration of bidder's past Supply Chain Management practices**

**SBD 8**

This declaration will be used by institutions to ensure that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.

The bid of any bidder may be disregarded if that bidder, or any of its directors have -

- (a) abused the institution's supply chain management system.
- (b) committed fraud or any other improper conduct in relation to such system; or
- (c) failed to perform on any previous contract.

In order to give effect to the above, **the following questionnaire must be completed and submitted with the bid.**

**The following particulars must be furnished:**

1.1.	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the audi alteram partem rule was applied).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website (<a href="http://www.treasury.gov.za">http://www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</p>	
	Yes	No
1.2.	If so, furnish particulars:	
1.3.	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">http://www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</p>	
	Yes	No
1.4.	If so, furnish particulars:	

1.5.	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?		
	Yes	No	
1.6.	If so, furnish particulars:		
1.7.	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?		
	Yes	No	
1.8.	If so, furnish particulars:		

**Declaration**

I, the undersigned (NAME).....

Certify that the information furnished on the declaration form is true and correct.

I accept that, in addition to cancellation of a contract, action may be taken against me should this declaration prove to be false.

**Signature**

**Date**

.....

.....

**Position**

**Name of bidder**

.....

.....

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid in response to the invitation for the bid made by:  
NSFAS

(Name of Institution)

Do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: \_\_\_\_\_ that:  
(Name of Bidder)

1. I have read, and I understand the contents of this Certificate.

6.1. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect.

6.2. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder.

6.3. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder.

6.4. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:

6.4.1.1.1. has been requested to submit a bid in response to this bid invitation.

6.4.1.1.2. could potentially submit a bid in response to this bid invitation, based on their qualifications,

6.4.1.1.3. Abilities or experience.

6.10. Provides the same goods and services as the bidder and/or is in the same line of business as the bidder.

6.11. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.

<sup>3</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

6.12. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

- (a) prices
- (b) geographical area where product or service will be rendered (market allocation)
- (c) methods, factors or formulas used to calculate prices;
- (d) the intention or decision to submit or not to submit, a bid;
- (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
- (f) bidding with the intention not to win the bid.

6.13. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.

6.14. 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.

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



Signature

.....

Date

.....

Position

.....

Name of bidder

.....

**1. PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017**

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

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

**1. GENERAL CONDITIONS**

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

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

1.2

- a) The value of this bid is estimated not to exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 Preference point system shall be applicable.

Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

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

	<b>POINTS</b>
<b>PRICE</b>	<b>80</b>
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	<b>20</b>
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

- 1.4 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.5 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

## 2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act.
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals.
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act.
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
- 1) B-BBEE Status level certificate issued by an authorized body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act;

- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act.
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes.

### 3. POINTS AWARDED FOR PRICE

#### 3.1 THE 80/20 PREFERENCE POINT SYSTEMS

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

**80/20**

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

Where

- P<sub>s</sub> = Points scored for price of bid under consideration
- P<sub>t</sub> = Price of bid under consideration
- P<sub>min</sub> = Price of lowest acceptable bid

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

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

**5. BID DECLARATION**

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

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

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

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

**7. SUB-CONTRACTING**

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

**(Tick applicable box)**

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

**(Tick applicable box)**

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

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

Designated Group: An EME or QSE which is at last 51% owned by:	EME	QSE
	√	√
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

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

8.1 Name of company/firm.....

8.2 VAT registration number.....

8.3 Company registration number.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
 .....  
 .....  
 .....

8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

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

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

- i) The information furnished is true and correct.
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form.
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct.
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process.

- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct.
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation.
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

<p>WITNESSES</p> <p>1. ....</p> <p>2. ....</p>
--

<p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE: .....</p> <p>ADDRESS .....</p>
--



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 anything of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is 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 ancillaries 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 analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the supplier's 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 fulfilment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

## **17. Prices**

- 17.1 Prices charged by the supplier for goods delivered and 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 contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

## **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 cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to

complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **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 wilful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
  - (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

## **29. Governing language**

- 29.1 The 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
- 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 (NIP) Programme**

- 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.