



transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA

Ref: CSS 5/11/1
Enq: Mr. J Mashinini/Mr. T Mkhari
Tel Number: (012) 309-3045/3011

Dear Sir / Madam

BID NUMBER: DOT/17/2022/ITP

1. The Department of Transport requires the service as described per attached bid invitation and you are requested to complete the bidding documents and to submit it in accordance with the under mentioned stipulations:
 - The bid must be submitted in a sealed envelope with the name and address of the bidder with the number and closing date indicated on the envelope. The envelope must not contain documents relating to any bid other than that shown on the cover of the envelope;
 - Bids submitted per post must be sent per registered mail. The bid must still reach this office before the closing time. Couriered bid documents must be received before the closing date and time failure to do so may invalidate the bid;
 - The attached forms, if completed in detail and returned, will form part of your bid; and
 - Prices must be VAT inclusive and all other expenses/disbursements, and be valid for a period of at least **120 days** from closing date.
 - **Bidders must submit one (1) original hard copy of the Technical proposal inside an envelope marked "Technical proposal" and four PDF format CD's of the technical proposal, and one (1) Original hard copy of the financial proposal inside market "Financial proposal" on the closing date. If Bidders are not sure of the two envelope separation submission requirements kindly contact the administrative contacts on SBD 3.3 to avoid being disqualified.**

- 2 You are advised to acquaint yourself with the contents of the attached general conditions of contract and the checklist.

- 3 It will be expected of the successful bidder to sign a formal contract at this office within seven (7) days after receiving a letter of acceptance.

- 4 Kindly take note that this is a two-envelope system (Technical and Financial) proposals must be marked and put in separate envelopes). Annexure A which will be for Technical proposal and Annexure B for Financial proposal. Bids that do not comply with a two-envelope system will be disqualified.

Kind Regards

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

DIRECTOR GENERAL: TRANSPORT

DATE: 16/01/2023

CHECKLIST: DOT/17/2022/ITP: APPOINTMENT OF A SERVICE PROVIDER/CONSULTANT TO DEVELOP THE FREIGHT ROAD TO RAIL MIGRATION PLAN FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF TWELVE (12) MONTHS.

NB	SERVICE PROVIDERS MUST INDICATE WITH A TICK	YES	NO
1	Did you take note that bids submitted per mail must be sent per registered mail and reach the Department in time to be deposited in the Tender Box before the closing date and time?		
2	Are you familiar with the contents of the SBD 1 Form? Did your authorised official complete and sign the SBD 1 Form?		
3	Did you submit an original and valid Tax Clearance Certificate? In bids where consortia/joint venture/sub-contractors are involved; each party must submit a separate Tax Clearance Certificate (paragraph 4 of the SBD 2 form)		
4	Please note that SBD 1 and 3.3 must form part of the financial proposal. (The envelope must be marked Financial proposal)		
5	Is the SBD 6.1 Form completed and signed? In bids where consortia /joint ventures sub-contractors are involved, both parties must submit one B-BBEE Status Level Verification Certificate.		
6	Have you taken note of the General Conditions of Contract and signed the bottom of each page thereof?		
7	Is your bid/proposal complete and responsive in all respects to the specifications/terms of reference?		
8	Please note that late bids will not be considered.		
9	CSD registration report is attached, and all companies forming a JV/Consortium/Subcontract submitted their CSD report?		

Declaration: I, the undersigned (Full Name)
 certify that I have noted the contents of the above-mentioned checklist and have
 complied with the stipulations contained therein.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

ANNEXURE A

TECHNICAL

PROPOSALS

TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

- 1 In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 2 SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
- 3 The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 4 In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.
- 5 Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za.
- 6 Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

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

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

2.3 Position occupied in the Company (director, trustee, shareholder²):

2.4 Company Registration Number:

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 / persal numbers must be indicated in paragraph 3 below.

¹"State" means –

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

²"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.

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

2.7.1 If so, 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:

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 attached proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

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**

4 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 IN TERMS OF PARAGRAPH
23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE
FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

May 2011

**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 bids:

- 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

- a) The value of this bid is estimated to **exceed/not exceed** R50 000 000 (all applicable taxes included) and therefore the **.....** preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

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

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

	POINTS
PRICE	.....
B-BBEE STATUS LEVEL OF CONTRIBUTOR	.....
Total points for Price and B-BBEE must not exceed	100

1.5 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.

1.6 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 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20 **or** **90/10**

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = 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 10 or 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 least 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		
OR		
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 certificate, 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>.....</p> <p>.....</p>
--

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



transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA



TERMS OF REFERENCES FOR THE APPOINTMENT OF A SERVICE PROVIDER/CONSULTANT TO DEVELOP THE FREIGHT ROAD TO RAIL MIGRATION PLAN FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF TWELVE (12) MONTHS.

DOT/17/2022/ITP

CONTACT DETAILS

Administrative Contact	Technical Contact
Bidding Office	Project Managers
Name: Tyron Mkhari Directorate: Supply Chain Management	Name: Ms. Mihlali Gqada Directorate: Integrated Transport Planning (Logistics Infrastructure)
Tell:012 309 3011 E-mail: mkharit@dot.gov.za	Tell:012 309 3641 E-mail: GqadaM@dot.gov.za

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TERMS OF REFERENCES FOR THE APPOINTMENT OF A SERVICE PROVIDER /CONSULTANT TO DEVELOP THE FREIGHT ROAD TO RAIL MIGRATION PLAN TO/FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF 12 MONTHS

1 BACKGROUND

The current road rail split and/or land surface transport market share in South Africa is at 88% cargo on road and 12% on rail. This situation depicts the dominance of road freight transport over rail, despite the government policy intentions to move freight from road to rail. The reality is that road transport services for bulk and semi bulk commodities are often a more expensive second best option, which is used by industry and logistics providers as the default option in the absence of available railway services. For a large number of industrial supply-chain and distribution operations, attempts at using railways have been abandoned due to unreliability, arbitrary commercial policies and the competing attraction of highly responsive flexible road transport, even if offered at a cost disadvantage. Commodities such as steel, chemicals, fuel, sugar, timber, fertiliser and many others, gravitated to road transport due to the impracticability of trying to manage a supply chain logistics system with erratic railway services. For many other commodities, there are currently no railway services, often for very good commercial reasons, from the railway perspective. The failure to provide rail services has had the negative effect of increasing road haulage of bulk commodities.

The Department of Transport initiated the development of a National Freight Logistic Strategy (NFLS) as adopted and approved by Cabinet in 2005. The NFLS, 2005 recommended the development of the modal strategies; hence, the Road Freight Strategy (RFS) was developed. The RFS intended to explore and make recommendations on all aspects of the current road freight activities in the country as well as best practices in terms of regulation and coordination of the road freight sector. One of the major strategic intervention areas that came out of the strategy was the Road to Rail migration.

Road as a mode has a myriad of challenges and as such The Road Freight Strategy (RFS) sought to have an extensive and detailed implementation plan in collaboration with the governments implementing agents in the form of provincial departments, agencies/entities and the private sector

amongst others. The development of the Road Freight Strategy was to have a strategy that responds to the challenges facing road freight industry and to ensure that the long-term sustainability of the sub-sector is secured and is adaptable to shifts in industry and Government policy. To this effect an analysis of the current national freight monitoring framework in providing intelligence on movement of freight was an essential tool in determining the need for equitable modal split, and thus the road to rail migration.

The Department of Transport is mandated to ensure the strategic interventions in the RFS are implemented and monitored. The implementation of the strategic interventions will provide fair regulation of the industry and enforcement capacity. There is a need to uniformly recognise the standards for the road freight industry and ensure the road to rail migration with the help of the Department of Public Enterprises as the custodian and shareholder on the rail network and operations. This will help ensure capacity and investment into rail to allow an equitable modal shift and equitable share based on rail friendly cargo migrating back to rail, while also looking into the potential of other commodities such as the Fast-Moving Consumer Goods (FMCG), although not limited to.

2 SCOPE OF WORK

2.1 GOAL

The purpose of these Terms of Reference (TOR) is to outline the scope of work for a successful service provider to assist the Department of Transport (DoT) in developing a Freight Road to Rail Migration Plan. This Plan will be developed in accordance to the strategic interventions as enumerated in the, 2017 Cabinet approved Road Freight Strategy (RFS) and subsequent Road Freight Strategy Integrated Implementation Plan (RFS IIP). The migration plan will be developed in accordance with the shift of 10% of the current road freight to rail, in terms of cargo and tonnages by 2024, which is in line with the Ministerial Delivery Plan.

The RFS, of 2017 and RFS IIP, have been successfully completed and will guide and inform the (DoT) and other relevant departments, the provinces, government agencies and the private sector in identifying and implementing targeted interventions for the effective modal shift. These will further assist in the promotion of seamless movement of freight in the entire transport sector, as well as attempt to where possible decrease the cost of doing business through equitable share in land surface transport (road and rail).



2.2 OBJECTIVES (SCOPE OF WORK)

- 2.2.1. Develop an extensive Road to Rail Migration Plan in consultation with all relevant implementing agencies such as Department of Public Enterprise (DPE), TRANSNET (Transnet Freight Rail), private sector and Treasury.
- 2.2.2. Create extensive guidelines for the cargo types, tonnages that are rail friendly that should ideally migrate to rail.
- 2.2.3. Create a database/spread sheet of all industry players (commodities) willing to migrate to rail as of 2022-2023 and further all those willing to consider the movement.
- 2.2.4. Analyse all current commodities that have migrated to rail in the last 5 years, based on the Road Freight Strategy (RFS) and the Transnet Freight Rail (TFR) migration plan.
- 2.2.5. Look into the current challenges caused by the overburdened road infrastructure.
- 2.2.6. Develop a best practice analysis of developing countries road-rail freight split, and the equitable share on the land surface transportation of freight.
- 2.2.7. Give an in-depth analysis on the probabilities of the split based on the current economic down turn as well as the envisaged growth in some industries, exports and imports as well as cross border movements.
- 2.2.8. Provide an in-depth analysis of the current challenges and inhibitions of the rail sector in taking on commodities currently on road. This should look into the infrastructure, investments, slots, capacity and the will from the rail sector to take on more commodities. Consideration must be given to the prioritisation of such movements as per Transnet's current appetite and capacity.
- 2.2.9. A thoroughly defined Plan on the migration, the timeframes, industries, commodities, tonnages, origin and destination pairs, corridors, routes and cross border movements.
- 2.2.10. Guidelines on the prioritization strategy with practical timelines.
- 2.2.11. Stakeholder consultative plan (internal and external).
- 2.2.12. Provide reports on all steps on the project (internal and external).



- 2.2.13. Develop an extensive and detailed implementation plan.
- 2.2.14. Identification of challenges, shortfalls that might be faced in the implementation of the plan.
- 2.2.15. Draft a Project Plan for the development of the Road to Rail Migration Plan
- 2.2.16. Cost the project with tangible timeframes and guidelines on the work to be undertaken throughout the duration of the project.
- 2.2.17. Identify and provide CV's of all project team members who will be working of the project at all material times, with their respective roles and responsibilities.
- 2.2.18. Work closely with DoT officials through the project manager.
- 2.2.19. Provide reports after each milestone has been reached.
- 2.2.20. Provide monthly reports (written reports) to the DoT project manager and the project steering committee (constituting relevant DoT line functions), throughout the duration of the project,
- 2.2.21. Take minutes and circulate them within seven (7) working days after every project meeting,
- 2.2.22. Address concerns, comments, inputs emanating from project workshops, so as to timeously finalize the project report, and
- 2.2.23. Prepare and submit electronic and hard- copies of the final report in MS word, PDF format, and PowerPoint presentation to the Department of Transport.
- 2.2.24. The consultant must also provide or identify potential sources of investment targeted towards the implementation of The Freight Road to Rail Migration Plan.
- 2.2.25. Hold project workshops to discuss each project deliverable.
- 2.2.26. Minutes of all meetings conducted towards this project.

2.3 DELIVERABLES

- 2.3.1. **Inception Report:** This report is to be produced within two weeks of signing of the contract. The report shall describe the approach, preliminary information gathering, constraints encountered, preliminary findings and a detailed project work plan. The service provider should proceed with his/her work once the inception report is approved by the department.
- 2.3.2. **Status Quo Report:** This report shall describe the finding of the technical work undertaken, including the state of affairs in South Africa, among others. This report should also explain the methodologies used to compute the social, economic, health and environmental impacts, and justification of its use against other existing methodologies.
- 2.3.3. **Stakeholder Consultation Plan:** The service provider will provide a substantial, well detailed Stakeholders Consultation Plan as well as documenting stakeholder inputs into a report

(Stakeholders Consultation Report). This is a very critical part of the process because all the cargo to move to rail will come out of these interaction with all the relevant stakeholders.

- 2.3.4. **Draft Road to Rail Migration Plan:** This shall present the activities undertaken, findings based on the technical report and interventions thereof. This report shall be submitted no later than two months before the end project plan.
- 2.3.5. **Draft Implementation Plan Report:** With all the specifications as outlined in these TOR's, incorporating all inputs received during the stakeholder consultation process and the steering committee on the draft report. The report should be submitted within 2 weeks after the deadline of receiving comments on the draft plan. The report shall contain a sufficiently detailed description of the different options to support an informed decision on the proposed implementation plan. The detailed analysis underpinning the recommendations should be presented in annexures to the main report, as these should be industry proposals towards the migration of their respective commodities.
- 2.3.6. **Final Draft Implementation Plan:** That clearly plans the execution/implementation of the strategy, with clearly defined roles and responsibilities, timeframes, tonnages, commodities, also taking into cognizance projected industry growth patterns as well as the Covid-19 effects on both the industry, infrastructure and economic status of the country. This plan must be developed in direct collaboration with DPE, TFR and industry.
- 2.3.7. **Three Progress Reports** spread between Inception report, Status quo report, draft plan report and final plan.

3 EVALUATION

3.1 STAGE 1: MANDATORY REQUIREMENTS

- 3.1.1 **Bidders must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria will be disqualified.**
- 3.1.2 Bidders are required to be registered on the Central Supplier Database and the Department of Transport shall verify the bidder's tax compliance status through the Central Supplier Database.

- 3.1.3** Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.
- 3.1.4** It is therefore a condition of this bid that the tax matters of the bidder be in order at any point in time from the closing date of the bid. This bid will only be awarded to a bidder(s) whose tax status on Central Supplier Database is compliant.
- 3.1.5** Compliance should remain valid for the duration of the contract.

3.2 **STAGE 2: FUNCTIONAL EVALUATION CRITERIA**

- 3.2.1** Only bidders who have complied with mandatory requirements will be evaluated for functionality. Bidders must, as part of their bid documents, submit supportive documentation for all functional requirements as indicated hereunder. The Bid Evaluation Committee (BEC) responsible for scoring the respective bids will evaluate and score all bids based on their submissions and the information provided.
- 3.2.2** The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- 3.2.3** Functionality will be evaluated on the basis of the supporting documentation supplied by the bidders in accordance with the below functionality criteria and values.
- 3.2.4** The evaluation of the functionality will be evaluated individually by Members of Bid Evaluation Committee in accordance with the below functionality criteria and values.
- 3.2.5** The applicable values that will be utilized when scoring each criteria ranges from:
1 being Poor, 2 = Average 3 = Good, 4 = Very Good & 5 = Excellent
- 3.2.6** The Bids that fail to achieve a minimum of **70** points out of **100** points for functionality will be disqualified. This means that such bids will not be evaluated on the Preference Points System stage.



EVALUATION CRITERIA

EVALUATION CRITERIA	GUIDELINES FOR CRITERIA APPLICATION	WEIGHT
ABILITY AND CAPABILITY	Company experience: Experience of the firm in logistics and freight services (Reference letter under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was completed successfully.	35
	Project Team to be utilized in the execution of the contract—please attach personnel CVs with skill(s)/ experience/ qualification(s) relating to Transport Logistics, Transport Economics and Management, Road Freight, Rail Freight Project Management and development of implementation plans. Each Project Team members' role must be clearly defined	20
	Flexibility in customer service in terms of turnaround times with regard to solving problems which may arise during the execution of the contract i.e. contingency plan.	10
	Training, skills development plan and transfer of skills	15
METHODOLOGY	Bidders should provide comprehensive project execution plan covering the entire scope of work including maintenance and support plan as well as proposed work schedule/ training, duty sheet/ work plan with clear deliverables and timeframes for each task to be completed	20
TOTAL POINTS ON FUNCTIONALITY MUST ADD TO 100		100



Scoring Criterion	1 Poor	2 Average	3 Good	4 Very Good	5 Excellent
<p>Company experience: Experience of the firm in logistics and freight services (Reference letter under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was completed successfully.</p>	0 to 2 year of similar knowledge and experience	3 to 4 years of similar knowledge and experience	5 to 6 years of similar knowledge and experience	Over 7 to 9 years of similar knowledge and experience	Over 10 years of similar knowledge and experience .
<p>Project Team to be utilized in the execution of the contract—please attach personnel CVs with skill(s)/ experience/ qualification(s relating to Transport Logistics, Transport Economics and Management, Road Freight, Rail Freight Project Management and development of implementation plans</p>	0 to 2 year of similar knowledge and experience	3 to 4 years of similar knowledge and experience	5 to 6 years of similar knowledge and experience	Over 7 to 9 years of similar knowledge and experience	Over 10 years of similar knowledge and experience .
<p>Flexibility in customer service in terms of turnaround times with regard to solving problems which</p>	No Plan or irrelevant	Plan that only addresses turnaround	Plan indicating turnaround time in line	Plan indicating turnaround scope	1. Plan indicating turnaround time

to solving problems which may arise during the execution of the contract i.e. contingency plan.		time that is impractical	time in line with scope of work		d time beyond expectation
Detailed proposed methodology of how the project will be executed that covers the proposed scope of work, proposed work schedule, proposed systems to be used, proposed resources and proposed time frames.	No plan or irrelevant plan	Plan not addressing requirements	Plan indicating time frames	Plan indicating resources allocations	Plan indicating timeframes and resources allocations
Training, skills development plan and transfer of skills	No plan at all or irrelevant	Training and skills development plan covering only one aspect	Realistic Training and skills development plan covering	Training and skills plan covering all areas under rate-3 and beyond	Training and skills programme covering all items on rating 4 and beyond,

3.3 **STAGE 3: EVALUATION IN TERMS OF 80/20 PREFERENCE POINTS SYSTEM**

3.3.1 Only bids that achieve the minimum qualifying score for functionality will be evaluated further in accordance with the 80/20 preference points system.

3.3.2 **Price:** The following schedule must be utilised for submission of pricing proposals.

3.3.3 **Calculating of points for B-BBEE status level of contribution**

Points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<u>B-BBEE Status Level of Contributor</u>	<u>Number of Points</u>
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

3.3.4 Bidders are required to complete the preference claim form (SBD 6.1), and submit their original and valid B-BBEE status level verification certificate or a certified copy thereof or a sworn affidavit at the closing date and time of the bid in order to claim the B-BBEE status level point. The points scored by a bidder in respect of the level of B-BBEE contribution will be added to the points scored for price.

3.3.5 Only bidders who have completed and signed the declaration part of the preference claim form and who have submitted a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS), or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid will be considered for preference points. A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level Verification Certificate for every separate tender

- 3.3.6 Failure on the part of the bidder to comply with paragraphs 3.3.4 and 3.3.5 above will be deemed that preference points for B-BBEE status level of contribution are not claimed and will therefore be allocated a zero (0).
- 3.3.7 The Department of Transport may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to preference.
- 3.3.8 The points scored will be rounded off to the nearest 2 decimals.
- 3.3.9 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 preference points for B-BBEE.
- 3.3.10 However, when functionality is part of the evaluation process and two or more bidders have scored equal points including equal preference points for B-BBEE, the contract will be awarded to the bidder scoring the highest for functionality.
- 3.3.11 Should two or more bids be equal in all respects; the award shall be decided by the drawing of lots.
- 3.3.12 A contract may, on reasonable and justifiable grounds, be awarded to a bid that did not score the highest number of points.

4 RULES OF BIDDING

4.1 FORMAT AND SUBMISSION OF BIDS

- 4.2.1 Bidders must submit their bids on the stipulated closing date and time. Late bids will not be considered. All late bids must be collected within seven (7) days failing which the DOT will discard of such late proposals.
- 4.2.2 Bids must be submitted in two (2) envelopes, one (1) with the technical proposal and the other pricing. Supporting documents required for compliance including all the SDB documents except for SBD 1 and SBD 3.3, must be submitted together with the technical proposal.
- 4.2.3 Format of submission of proposals:
- a. Envelopes must be clearly marked with Company name, DOT Nr and whether it is the technical or financial response;



b. Proposals must be submitted as one (1) original and four protected soft copies. Soft copies must be exact copies of the original document, and should be labelled properly.

4.2.4 In order to evaluate and adjudicate bids effectively, it is imperative that bidders submit responsive bids. To ensure a bid will be regarded as responsive it is essential to comply with all conditions pertaining to mandatory requirements.

4.2.5 Each bidder must attach all applicable documents in support of its bid in accordance with the requirements set out in this bid as well as any other relevant materials, photographs and/or attachments.

4.2.6 Each bid, once submitted, constitutes a binding and irrevocable offer to provide the Services on the terms set out in the bid, which offer cannot be amended after its date of submission.

4.2.7 Department of Transport (DOT) reserves the right to accept or consider any bid in full or in part or any responses or submissions in relation thereto.

4.2.8 DOT reserves the right to appoint more than one bidder whose bid most successfully conforms to the Criteria and the Requirements in accordance with the terms and conditions described in the TOR.

4.2.9 DOT reserves the right to request any additional information that it may require or deem necessary. All such requests shall be in writing.

4.2.10 After careful consideration and thorough examination of the proposals, DOT shall select the successful Bidder whose proposal most closely satisfies the criteria and the requirements. The lowest price (management fee, where applicable) offered will not necessarily be a decisive factor in choosing between Proposals.

4.2.11 The Department published the results of the outcome of a tender process, including the details of the successful bidder in the same media that was used to advertise the bid.



4.2 SUB-CONTRACTING, PARTNERSHIP/CONSORTIUM/JOINT VENTURE AND COMPANY REQUIREMENTS

- 4.3.1 A proposal submitted by a company, close corporation or other legal person must be accompanied by a resolution or agreement of the directors or members and be signed by a duly authorized person.
- 4.3.2 A proposal submitted by a partnership must be accompanied by a written partnership agreement
- 4.3.3 A proposal submitted by a consortium or joint venture of two or more parties must be accompanied by a signed memorandum of understanding between the parties to such consortium indicating:
- a. the conditions under which the consortium will function;
 - b. its period of duration;
 - c. the persons authorized to represent it;
 - d. the participation of the several parties forming the consortium;
 - e. the benefits that will accrue to each party;
 - f. any other information necessary to permit a full appraisal of its functioning.

5 CONFIDENTIALITY OF INFORMATION & INTELLECTUAL PROPERTY RIGHTS

5.1 CONFIDENTIAL INFORMATION

- 5.1.1 **Confidentiality obligation.** Each Party ("the receiving Party") must treat and hold as confidential all information which they may receive from the other Party ("the disclosing Party ") or which becomes known to them concerning the disclosing Party during the duration of this Contract.
- 5.1.2 **Nature of the confidential information.** The confidential information of the disclosing Party shall, without limitation, include:
- a. all software and associated material and Documentation, including information contained therein;



- b. all information relating to:
 - i. the disclosing Party's past, present and future research and development;
 - ii. the disclosing Party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;
 - iii. the terms and conditions of this Contract; and
 - iv. the Department's data.

5.1.3 The Parties shall, except as permitted by the Contract, not disclose or publish any confidential information in any manner, for any reason or purpose whatsoever without the prior written consent of the disclosing Party and in the event of the confidential information relating to a third party, it shall also be incumbent on the receiving Party to obtain the consent of such third party.

5.1.4 **Receiving Party's obligations with regard to confidential information.** The receiving Party agrees that in order to protect the proprietary interests of the disclosing Party in its confidential information:

- a. it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Contract;
- b. it will initiate internal security procedures reasonably acceptable to the disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof;
- c. subject to the right to make the confidential information available to their Personnel under clause 15.4.1 above, they will not at any time, whether during this Contract or thereafter, either use any confidential information of the disclosing Party or directly or indirectly disclose any confidential information of the disclosing Party to third parties;
- d. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the disclosing Party which have or will come into the possession of the receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of such Party and shall be promptly handed over to such Party when no longer required for the purposes of this Contract.

5.1.5 **Obligations in respect of confidential information upon termination.** Upon termination or expiry of this Contract, the receiving Party will deliver to the disclosing Party or at the disclosing Party's option, destroy all originals and copies of the disclosing Party's confidential information in its possession.



5.1.6 The aforementioned obligations shall not apply to any information which:

- a. is lawfully in the public domain at the time of disclosure;
- b. subsequently and lawfully becomes part of the public domain by publication or otherwise;
- c. subsequently becomes available to the receiving Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or
- d. is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

5.1.7 **Disclosure to professional advisors.** Nothing in this clause shall preclude the Parties from disclosing the confidential information to their professional advisors in the *bona fide* course of seeking business and professional advice.


5.1.8 **Severability.** The provisions of this clause 15 are severable from the rest of the provisions of this Contract and shall survive its termination and continue to be of full force and effect for a period of ten (10) years after the date of termination.

5.2 INTELLECTUAL PROPERTY RIGHTS

5.2.1 **Ownership in Services vests in Department.** All rights of ownership and copyright in the Services to be provided by the Contractor to the Department shall vest solely with the Department, and the Contractor will not make such information available to any other party without the written consent of the Department on such terms and conditions as may be stipulated by the Department at that time.

5.2.2 **No aspect of the Services to infringe 3rd Party intellectual property rights.** The Contractor warrants that no aspect of the Services provided in terms hereof will infringe any patent, design, copyright, trade secret or other proprietary right of any third party ("third party proprietary rights"), and the Contractor shall, at its own cost, defend the Department against any claim that the Services infringe any such third party proprietary rights, provided that the Department gives prompt notice to the Contractor of such claim and the Contractor controls the defence thereof.



- 5.2.3 The Contractor further indemnifies the Department against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the Department in any action which is attributable to such claim and will reimburse the Department with all costs reasonably incurred by the Department in connection with any such action.
- 5.2.4 **Process in the event of a claim.** Should any person make any claim against the Department in terms of clause 16.2, the Department shall give the Contractor notice thereof within ten (10) days of becoming aware of such claim to enable the Contractor to take steps to contest it.
- 5.2.5 **Infringement of 3rd Party rights.** Should any third party succeed in its claim for the infringement of any third party proprietary rights, the Contractor shall, at its discretion and within thirty (30) days of the Services having been found to infringe:
- a. obtain for the Department the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or
 - b. replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe and which is materially similar to the subject of infringement; or
 - c. alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
 - d. withdraw the subject of infringement.
- 5.2.6 **Ownership.** Ownership of all Departmental data, whether under its control or not, shall continue to vest in the Department and the Contractor shall not obtain any proprietary rights of such data.
- 5.2.7 **Data may only be used in performance of the Services.** The Department's data in the possession of the Contractor, or to which the Contractor may have access during the currency of this Contract, may not be used by the Contractor for any purposes whatsoever other than as may be specifically required to enable the Contractor to comply with its obligations in terms of this Contract.
- 5.2.8 **Preservation of integrity of data.** Both Parties shall take reasonable precautions (having regard to the nature of their obligations in terms of this Contract), to preserve the integrity
- 

of the Department's data and to prevent any unauthorised access, corruption, or loss of such data.

6 TERMS AND CONDITIONS

6.1 GENERAL

- 6.1.1 The Department reserves the right to amend, modify or withdraw this Terms of Reference (TOR) document or amend, modify or terminate any of the procedures or requirements set out herein at any time and from time to time, without prior notice except where required by law, and without liability to compensate or reimburse any Service Provider.
- 6.1.2 Neither the Department, nor any of its respective, officers, or employees may make any representation or warranty, expressed or implied in this TOR document, and nothing contained herein is, or shall be relied upon as, a promise or representation, whether as to the past or the future.
- 6.1.3 The costs of preparing proposals and of negotiating the Contract will not be reimbursed.
- 6.1.4 The Department also reserves the right to call interviews with short-listed Service Providers before final selection, and to negotiate price with the Preferred Service Providers.
- 6.1.5 Firms may not contact the Department on any matter pertaining to their bid from the time when bids are submitted to the time the Contract is awarded. Any effort by a Service Provider to influence bid evaluation, bid comparisons or award decisions in any manner, may result in rejection of the bid concerned.
- 6.1.6 Bid submission requirements must be completed in sections and appendices provided in the bid document.
- 6.1.7 **ALL BIDDERS MUST BE REGISTERED ON THE CENTRAL SUPPLIER DATABASE AT NATIONAL TREASURY.** More information in this regards is available on www.ocpo.treasury.gov.za. Proof of registration must be submitted together with the technical proposal.
- 6.1.8 Bidders may provide any additional information deemed important for the DOT to consider.

6.1.9 Prospective Bidders must at all times comply with the Department's Supply Chain rules and processes with regard to all projects and payments.

6.2 ORDER OF PRECEDENCE.

6.2.1 In the event of any conflict between any provisions of the SCC, GCC, Proposal and any other document accompanying the Bid, the following order of precedence shall prevail—

- a. Standard Bidding Documents;
- b. SCC;
- c. GCC;
- d. TOR;
- e. SLA; and
- f. Proposal.

6.3 DURATION

6.3.1 The project is expected to be for a period of 12 months.

6.3.2 The Contract shall commence on the Effective Date and, subject to the rights of termination stipulated herein, terminate on the Completion Date as specified in the Contract.

6.4 CONTRACT AMENDMENTS

6.4.1 No addition to, or variation, consensual cancellation, or novation of the Contract, and no waiver of any rights arising from the Contract, including this clause, shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of each of the Parties.

6.5 SUBCONTRACTS

6.5.1 The Contractor shall notify the Department in writing of all sub-contracts awarded under the Contract, before the commencement of the Contract, as well as at any time during the Contract.



6.5.2 **The right to sub-contract.** The Contractor may, with the prior written consent of the Department, sub-contract any of its obligations in terms of this Contract, or any part thereof, to a third party, provided that:

- a. such sub-contracting shall not absolve the Contractor from any responsibility for complying with its obligations in terms of this Contract and the Contractor hereby indemnifies and holds the Department harmless against any loss, harm or damage which the Department may suffer as a result of such sub-contracting;
- b. the Contractor shall at all times remain the sole point of contact for the Department in respect of the Services by the Contractor.

6.5.3 **Department may withdraw consent.** The Department shall have the right at any time, and upon such good cause shown to withdraw such consent for a sub-contractor on thirty (30) days' notice to the Contractor and in that event no claim against the Department by the Contractor or any other person on the grounds of the granting of such consent or the withdrawal thereof shall be entertained, and the Contractor indemnifies the Department against any such claims and costs so incurred."

6.6 CONTRACTOR'S PERSONNEL

6.6.1 **Project Team.** The Contractor shall make available the skills and expertise of the Project Team referred to in the Bid who shall be involved in the Contract or the Services, unless otherwise agreed to by the Department, which agreement shall not be unreasonably withheld. In addition, the Project Team cannot change the composition of the Project Team members prior to written approval by the Project Manager.

6.6.2 **Exceptions.** Notwithstanding the provisions of clause 6.6.1, where, due to circumstances beyond the control of the Contractor, a member of the Project Team cannot act in accordance with the provisions of this clause due to their dismissal, resignation or incapacity, the Contractor shall, to the extent possible, implement an appropriate succession plan to minimise the effect of the unavailability of such member.

6.6.3 **Suitably qualified Personnel.** The Contractor shall employ suitably qualified, experienced and trained Personnel to provide the Services, provided that the Contractor shall be entitled in its discretion, to allocate Personnel resources in accordance with the technical or other



skills and knowledge required, which discretion shall not have a negative impact on the provision of the Services.

- 6.6.4 The Contractor's Personnel providing the Services may be absent for short periods of time for reasons including annual leave and training. The Contractor undertakes to avoid any disruption of the Services due to such circumstances.
- 6.6.5 **Contractor to adhere to security procedures of the Department.** The Contractor's Personnel including the Project Team shall at all times when on the Department's premises, adhere to the standard health, safety and security procedures and guidelines applicable to the Department's Personnel, as varied and conveyed by the Department to the Contractor from time to time.
- 6.6.6 Should the Department at any time have reason to believe that any of the Contractor's Personnel is failing to comply with such standard health, safety and security procedures and guidelines, the Department may deny such person access to any or all of the Department's premises or systems and require the Contractor to replace such person without delay.

6.7 PAYMENT

6.7.1 Invoice.

The Contractor's Project Manager shall at the end of each deliverable submit a consolidated invoice, certified as correct by the Contractor's Project Manager, showing the actual work performed, hours worked, and manpower inputs for the task and associated costs accompanied by all supporting documents.

6.7.2 Detailed Pricing.

Service Providers must complete the required SBD Pricing documents and ensure that Prices are:

- a. Firm and inclusive of all costs, including disbursements. Firm prices mandate that any escalations/estimated escalations be included in the final ceiling amount.
- b. Inclusive of VAT, if applicable;
- c. Correctly calculated and identical to the financial proposal.



- d. A detailed pricing schedule should be attached to the SBD documents providing a proper cost breakdown, in line with deliverables, and indicating the proposed time frames.
- e. The Department uses a two envelope system. **NO PRICES MUST REFLECT IN THE TECHNICAL PROPOSAL.**

6.7.3 Fees

Domestic hotel accommodation may not exceed R1440, inclusive of VAT per night per person. (incl dinner, breakfast and parking), air travel must be restricted to economy class, and travel claims per kilometre may not exceed the rates approved by the Automobile Association of South Africa.

6.7.4 Rates

According to the 23 October 2013 Cabinet Resolution as defined in the National Treasury Instruction 01 of 2013/14: Cost Containment Measures sub-paragraph 4.2; the Consultants (or Service Provider) will only be remunerated on the following rates regime:

- a. The "Guidelines for fees" issued by the South African Institute of Chartered Accountants (SAICA);
- b. The "Guide on Hourly Fee Rates for Consultants", by the Department of Public Service and Administration (DPSA); or
- c. Based on the body regulating the profession of the Consultant.

6.7.5 Payment information

- a. An invoice only becomes due and payable:
 - i. When the Project Manager signs-off on the specific deliverable and submits the invoice for payment;
 - ii. When the invoice is correct with regards to calculations, information contained, banking details and supporting documents.
- b. It is important to ensure that invoices are correctly submitted and reference the project name, DOT number and Order Number.
- c. Non-compliance will delay the payment process.



6.7.6 Total Contract Price.

The Contract Price payable to the Contractor for the Services **shall not** exceed the ceiling price as set out in the Contract.

6.7.7 Price all-inclusive.

All prices are inclusive of any Value Added Tax, import, and all other duties.

6.8 DELIVERY AND DOCUMENTS

6.8.1 **Reports.** The Contractor shall provide the Department with detailed Documentation and Reports as set out in the Contract and Project Plan or when required in writing by the Department in both electronic format and hard copy.

6.8.2 Reports shall contain accurate information as to enable the Department to monitor and manage the Contractor's performance in terms of this Contract.

6.8.3 All Documentation and Reports shall be in English.

6.9 PENALTY REGIME

6.9.1 Poor performance will result in penalties that include withholding of a minimum 30% of the total invoice of each affected phase / milestone until it is fixed before the final product is submitted. In the case where the performance has not been improved to the satisfaction of the Department and the final product is handed over, the original amount held back will not be paid over to the Service Provider under any circumstances. On the other hand, an improved quality and/or performance, at the satisfaction of the Department, will require the outstanding part of the held back invoice to be paid to the Service Provider in full but with no additional interest.


6.9.2 The project milestones / phases are expected to be adhered to. Any deviation must be approved by the Department prior to any commencement of the changes. Failure to do so will result in a 5% non-payment of that particular and/or affected phase(s).

6.9.3 Notwithstanding item 6.9.2 above, failure to meet the deadline as stipulated in item 8 will result in 30% of the total outstanding payments for the project as whole not being paid over to the Service Provider if the poor performance is attributed to the Service Provider unless there is undisputed evidence that the fault lies with the Department.”

6.10 TERMINATION

6.10.1 Should either Party fail to comply with any provision of this Contract the aggrieved Party may send a letter of demand to the defaulting Party, demanding compliance with such provision and should the defaulting Party, after a period of fourteen (14) days (or such longer periods as may under the circumstances be reasonably necessary) of the date of receipt of such written notice, remain in default, the aggrieved Party shall be entitled, without prejudice to any other rights it may have:

- a. to claim specific performance from the defaulting Party and to claim such damages as it may have suffered; or
- b. to discharge and execute the defaulting Party's obligations on its behalf and to recover the costs and disbursements incurred in respect thereof from that Party; or
- c. to terminate this Contract and claim such damages as the aggrieved Party may have suffered from the defaulting Party.”

- 6.10.2 The Department may, without prejudice to any other rights it may have, terminate this Contract by written notice to the Contractor, upon the occurrence of the following events, namely if:
- a. the Contractor fails to adhere to set timeframes, service levels or service standards as determined in the TOR, SLA and/or Project Plan;
 - b. the Contractor, in the opinion of the Department, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract;
 - c. judicial execution is levied on the Contractor's goods and which remains unpaid for 14 days after attachment;
 - d. there has been a material defect, error or failure by the Contractor to comply with applicable laws or rules in the Bid or in the awarding of this Contract which is incapable of rectification and that requires this Contract to be terminated;
 - e. the Contractor, when advised that its Proposal has been accepted, has given notice of inability to sign or execute the Contract;
 - f. the Contractor has abandoned its obligations in terms of this Contract;
 - g. the Contractor has deliberately furnished inaccurate information in its Bid with regard to its previous experience relating to the Services, or with regard to any other material information; or
 - h. the Contractor ceases to carry on business as the Contractor of the Service.
- 6.10.3 In the event that negotiations between the Department and the Preferred Service Provider/s fail with regard to the conclusion of a Contract, the Department reserves its right not to appoint the Preferred Service Provider/s without incurring any liability to compensate or reimburse the Preferred Service Provider/s.
- 6.10.4 In the event that the Contractor does not complete Services in terms of this Contract by the Completion Date, the Department may view this as a material breach of this Contract and claim specific performance, and/or damages.
- 6.10.5 The Preferred Service Provider may be required to enter into a Service Level Agreement (SLA) prior to appointment.
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- 6.10.6 The individuals proposed for professional work on the project shall remain on the project unless the Department grants prior permission to change the team composition. Such permission will not be withheld unreasonably.
- 6.10.7 The Department reserves the right to terminate the Agreement in the event that no consensus can be reached on the terms and conditions of a subsequent Service Level Agreement.”

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THE NATIONAL TREASURY

Republic of South Africa



**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.

TABLE OF CLAUSES

1. Definitions
2. Application
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6. Patent rights
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32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

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

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 (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.

ANNEXURE B

FINANCIAL

PROPOSALS

ANNEXURE B

**FINANCIAL
PROPOSALS**

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)					
BID NUMBER:	DOT/17/2022/ITP	CLOSING DATE:	10 February 2023	CLOSING TIME:	11:00
DESCRIPTION	APPOINTMENT OF A SERVICE PROVIDER/CONSULTANT TO DEVELOP THE FREIGHT ROAD TO RAIL MIGRATION PLAN FOR THE DEPARTMENT OF TRANSPORT FOR A PERIOD OF TWELVE (12) MONTHS.				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
NATIONAL DEPARTMENT OF TRANSPORT 159 FORUM BUILDING CORNER BOSMAN AND STRUBEN STREET					
PRIVATE BAG X 193					
PRETORIA 0001					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	MR J Mashinini/ MR T MKHARI		CONTACT PERSON	MS M Gqada	
TELEPHONE NUMBER	012 309-3045/3011		TELEPHONE NUMBER	012 309-3641	
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS	Mashinini@dot.gov.za/Mkharit@dot.gov.za		E-MAIL ADDRESS	GqadaM@dot.gov.za	
SUPPLIER INFORMATION					
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
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	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
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		
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**

1. BID SUBMISSION:
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED–(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</p> <p>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.</p> <p>1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</p>
2. TAX COMPLIANCE REQUIREMENTS
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>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.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p> <p>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.”</p>

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:

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO.: DOT/17/2022/ITP.
CLOSING TIME 11:00	CLOSING DATE 10 February 2023

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)	
1.	The accompanying information must be used for the formulation of proposals.		
2.	Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.	R.....	
3.	PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)		
4.	PERSON AND POSITION	HOURLY RATE	DAILY RATE
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
	-----	R-----	-----
5.	PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT		
	-----	R-----	----- days
	-----	R-----	----- days
	-----	R-----	----- days
	-----	R-----	----- days
5.1	Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.		
	DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY AMOUNT
	-----	.....	..... R.....
	-----	.....	..... R.....
	-----	.....	..... R.....
	-----	.....	..... R.....
		TOTAL: R.....	

** "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance contributions and skills development levies.

Name of Bidder:

5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	R.....
.....	R.....
.....	R.....
.....	R.....
TOTAL: R.....			

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

7. Estimated man-days for completion of project

8. Are the rates quoted firm for the full period of contract? *YES/NO

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

*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

DEPARTMENT OF TRANSPORT
Mr. Tyron Mkhari/ John Mashinini
Supply Chain Management
Tel: 012 309-3011/3045

Or for technical information –

DEPARTMRNT OF TRANSPORT
Ms. M Gqada
Tel: 012 309-3641
E-mail: GqadaM@dot.gov.za