



APPOINTMENT OF A SUITABLE SERVICE PROVIDER FOR THE LEASING OF OFFICE ACCOMODATION TO NHBRC FOR THE PERIOD OF THIRTY SIX (36) MONTHS AT RICHARDS BAY SATELLITE OFFICE.

BID NO.: NHBRC 22/2015

NB: COMPULSORY BRIEFING SESSION

VENUE: NHBRC Durban Office, Suite 502 5 floor, Marine Building, Dorothy Nyembe, ST Durban

Time: **11:00**

DATE: 16 SEPTEMBER 2015

CLOSING DATE: 02 OCTOBER 2015

INVITATION TO BID

**YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE NATIONAL HOME BUILDERS
 REGISTRATION COUNCIL**

BID: NHBRC 22/2015

CLOSING DATES: 02-10-2015

CLOSING TIME: 11:00

DESCRIPTION: APPOINTMENT OF A SUITABLE SERVICE PROVIDER FOR THE LEASING OF OFFICE ACCOMODATION TO NHBRC FOR THE PERIOD OF THIRTY SIX (36) MONTHS AT RICHARDS BAY SATELLITE OFFICE.

BID DOCUMENTS MAY BE POSTED TO:

Tender box at NHBRC Durban Office, Suite 502 5 floor, Marine Building, Dorothy Nyembe, ST Durban

OR

DEPOSITED IN THE BID BOX SITUATED AT: NHBRC Durban Office, Suite 502 5 floor, Marine Building, Dorothy Nyembe, ST Durban

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

NB: FIVE (1+5) BID PROPOSALS MUST BE SUBMITTED, CLEARLY MARKED: 1 ORIGINAL AND 5 COPIES

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THE FOLLOWING PARTICULARS MUST BE FURNISHED

NAME OF BIDDER
 POSTAL ADDRESS
 STREET ADDRESS
 TELEPHONE NUMBER CODE.....NUMBER.....
 CELLPHONE NUMBER
 FACSIMILE NUMBER CODENUMBER.....
 E-MAIL ADDRESS
 VAT REGISTRATION NUMBER

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2) YES or NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (SBD 6.1) YES or NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA).....
 A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS); OR.....
 A REGISTERED AUDITOR

[TICK APPLICABLE BOX]

(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE 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?

YES or NO

[IF YES ENCLOSE PROOF]

SIGNATURE OF BIDDER

DATE

CAPACITY UNDER WHICH THIS BID IS SIGNED

TOTAL BID PRICE..... TOTAL NUMBER OF ITEMS OFFERED

ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:

Department: Supply Chain Management

Contact Person: Mphasha Kgare, Tshepo Matheane or Bernard Kekana

Tel: 011 317 0316, 011 317 0317 or 011 317 0114

E-mail: mphasak@nhbrc.org.za, tshepoma@nhbrc.org.za or bernardk@nhbrc.org.za

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Contact Person: Derrick Shellard

Tel: 011 317 0079

E-mail: DerrickS@nhbrc.org.za

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.



SBD 3.2

**PRICING SCHEDULE – NON-FIRM PRICES
(PURCHASES)**

NOTE: PRICE ADJUSTMENTS WILL BE ALLOWED AT THE PERIODS AND TIMES SPECIFIED IN THE BIDDING DOCUMENTS.

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of Bidder.....	Bid number.....
Closing Time 11:00	Closing date.....

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

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
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- Required by:
- At:
- Brand and model
- Country of origin
- Does the offer comply with the specification(s)? *YES/NO
- If not to specification, indicate deviation(s)
- Period required for delivery
- Delivery: *Firm/not firm

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

*Delete if not applicable

SBD 3.2**B PRICES SUBJECT TO RATE OF EXCHANGE VARIATIONS**

1. Please furnish full particulars of your financial institution, state the currencies used in the conversion of the prices of the items to South African currency, which portion of the price is subject to rate of exchange variations and the amounts remitted abroad.

PARTICULARS OF FINANCIAL INSTITUTION	ITEM NO	PRICE	CURRENCY	RATE	PORTION OF PRICE SUBJECT TO ROE	AMOUNT IN FOREIGN CURRENCY REMITTED ABROAD
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		
				ZAR=		

2. Adjustments for rate of exchange variations during the contract period will be calculated by using the average monthly exchange rates as issued by your commercial bank for the periods indicated hereunder: (Proof from bank required)

AVERAGE MONTHLY EXCHANGE RATES FOR THE PERIOD:	DATE DOCUMENTATION MUST BE SUBMITTED TO THIS OFFICE	DATE FROM WHICH NEW CALCULATED PRICES WILL BECOME EFFECTIVE	DATE UNTIL WHICH NEW CALCULATED PRICE WILL BE EFFECTIVE

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



SBD 6.1

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

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, 2011.

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 R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed R1 000 000 (all applicable taxes included) and therefore the 90/10 system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

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

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

	POINTS
1.3.1.1 PRICE	90.....
1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION	10.....
Total points for Price and B-BBEE must not exceed	100

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit 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 an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- 2.1.1 “**all applicable taxes**” includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 2.2 “**B-BBEE**” means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 “**B-BBEE status level of contributor**” means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 “**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 services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 “**Broad-Based Black Economic Empowerment Act**” means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 “**comparative price**” means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 “**consortium or joint venture**” means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;
- 2.8 “**contract**” Error! Bookmark not defined. means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 “**EME**” means any enterprise with an annual total revenue of R5 million or less .
- 2.10 “**Firm price**” means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 “**functionality**” means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 “**non-firm prices**” means all prices other than “firm” prices;
- 2.13 “**person**” includes a juristic person;
- 2.14 “**rand value**” means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 “**sub-contract**” means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 “**total revenue**” bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 “**trust**” means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and

- 2.18 “trustee” means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

4.1 THE 90/10

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

90/10

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

Where

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

P_{\min} = Comparative price of lowest acceptable bid

5. Points awarded for B-BBEE Status Level of Contribution

- 5.1 In terms of Regulation 5 (2) and 6 (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)
1	10

4

2	9
3	8
4	5
5	4
6	3
7	2
8	1
Non-compliant contributor	0

- 5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA’s approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.
- 5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.
- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

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

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1

7.1 B-BBEE Status Level of Contribution: =(maximum of 10 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a

5

Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).

8 SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

8.1.1 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? YES / NO (delete which is not applicable)

9 DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm :

9.2 VAT registration number :.....

9.3 Company registration number
:

9.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

9.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

9.7 Total number of years the company/firm has been in business?

9.8 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 contribution indicated in paragraph 7 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 paragraph 7, 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 contribution 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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

WITNESSES:

1.

.....
SIGNATURE(S) OF BIDDER(S)

2.

DATE:.....
 ADDRESS:.....

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

4.4.1	If so, furnish particulars:
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SBD 8

CERTIFICATION

**I, THE UNDERSIGNED (FULL NAME).....
 CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION
 FORM IS TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,
 ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION
 PROVE TO BE FALSE.**

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

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

SBD 9

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

1. ABOUT THE NHBRC

1.2 The National Home Builders Registration Council (NHBRC) has a mandate through the Housing Consumer Protection Measures Act (Act No. 95 of 1998) providing warranty protection against defects in new homes. The Act state that the objects of the Council are, inter alia:

3(b) "to regulate the home building industry";

3(d) "to establish and promote ethical and technical standards in the home building industry"; and

3(e) "to improve structural quality in the interests of housing consumers and the home building industry";

1.3 The Council is furthermore empowered by the Act:

5(5) (a) "to engage in undertakings to promote improved structural quality of homes constructed in the Republic;

5(5) (b) "to engage in undertakings to improve ethical and technical standards in the home building industry;

5(5) (c) "to keep a record of competent persons"; and

5(h) "to generally do all things necessary or expedient to achieve its objects and the objectives of this Act."

2. RISK MANAGEMENT BY THE NHBRC

2.1 The NHBRC's primary mandate is to manage the risk of structural defects in the home building industry and in so doing, protect the consumer. A prime activity of the NHBRC is to manage its risk exposure in terms of the warranty scheme, in order to ensure that it is not unduly exposed to claims. The current risk management tools being used by the Council include the Registration of Home Builders, enrolment and inspection of homes, the Home Building Manual available on sale at any of the NHBRC provincial offices which incorporates design and construction rules and the appointment of competent persons by the Home Builder to perform certain tasks.

3. BUSINESS OVERVIEW

3.1 The National Home Builders Registration Council is a statutory body with the responsibility to provide warranty cover (protection) and regulatory services to the home-building industry. This is done in terms of the Housing Consumers Protection Measures Act (No 95 of 1998). It is the NHBRC's mandate to provide protection to housing consumers against defined defects and to regulate the home building industry. Our mandate determines our scope of business as well as the principles and area of business in which we operate. As a consequence our business is focused on specific business models in defined geographical areas with specific business objectives for all South African Housing Consumers.

INSTRUCTIONS TO BIDDERS

3.2 The NHBRC is a medium sized organization with a staff complement of approximately 580 employees. The NHBRC's Head Office is located in Sunninghill, Gauteng with 9 Provincial offices of varying sizes, and 12 satellite offices.

Table 1: NHBRC Office locations

#	OFFICE
1	Head Office (Sunninghill)
2	DR site (at Pretoria Regional Office)
3	KwaZulu Natal (Durban) – Regional
4	Western Cape (Bellville) – Regional
5	Eastern Cape (Port Elizabeth) – Regional
6	North West (Rustenburg) – Regional
7	Limpopo (Pietersburg) – Regional
8	Mpumalanga (Nelspruit) – Regional
9	Gauteng (Sunninghill) – Regional
10	Pretoria (Pretoria) – Regional
11	Free State (Bloemfontein) – Regional
12	Shelly Beach (Satelite)
13	New Castle
14	East London
15	George
16	Northern Cape (Kimberly)
17	Klerksdorp
18	Tzaneen
19	Bela Bela
20	Witbank
21	Bethlehem
22	Mafikeng
23	Eric Molobi Innovation Hub (Soshanguve)
24	Thulamela

4. SUBMISSION INSTRUCTIONS

4.1 All RFP documents must be sealed in a clearly marked envelope and deposited into the tender box at the NHBRC Durban Office, Suite 502 5 floor, Marine Building, Dorothy Nyembe,ST Durban

5. AVAILABILITY OF RFP DOCUMENTS

5.1 Bid documents can be downloaded on the NHBRC Website (www.nhbrc.org.za/current-tenders) from 11 September 2015.

Province	Physical Address & Contact Number
NHBRC Durban Regional Offices	NHBRC Durban Office, Suite 502 5 floor, Marine Building,Dorothy Nyembe,ST Durban

INSTRUCTIONS TO BIDDERS

5. RFP CLOSING DATE

5.1 Bid documents should be marked for Attention: Supply Chain Manager, and deposited into the Bid box at the NHBRC Durban Office, Suite 502 5 floor, Marine Building, Dorothy Nyembe, ST Durban on or before **02 October 2015** at 11h00.

6.2 No emailed or faxed Bids will be accepted. The Bid document should be supplied in a sealed envelope and clearly marked with the Bid number and the full name of the service provider(s).

No late submissions will be accepted.

6. VALIDITY PERIODS OF BIDS

7.1. All bids submitted by the bidders must be valid for a period of 90 (ninety) days from the closing date specified above.

8. ADMINISTRATIVE ENQUIRIES AND QUERIES SHOULD BE DIRECTED TO

Mphasha Kgare Tel: 011-317-0316 or e-mail mphasak@nhbrc.org.za

Tshepo Matheane Tel: 011-317-0317 or e-mail tshepoma@nhbrc.org.za

Bernard Kekana Tel: 011-317-0114 or e-mail bernardk@nhbrc.org.za

9. SUBMISSION OF PROPOSALS

9.1. Submission of bid **MUST** include **one** (1) original, **one** (1) soft copy and **five** (5) hard copies of the proposals in a clearly marked envelope and deposited into the Bid box.

9.2. All costs and expenses incurred by the Bidder relating to the participation in, and preparation of this proposal process shall be borne by the Bidder exclusively. All documentation and manuals submitted in respect of this RFP shall be retained by NHBRC, whether or not the proposal is accepted.

1. EVALUATION PROCESS

1.1 In accordance with the NHBRC Supply Chain Management Policy, the bid evaluation process shall be carried out in two (2) stages namely:

- Pre Evaluation of Compliance to Mandatory Requirements
- Stage 1 (a) Paper Based Evaluation (Functionality)
- Stage 1 (b) Site Visit Evaluation
- Stage 2: Price and Preference Points Evaluation

1.2 Pre Evaluation of Compliance to Mandatory Requirements

1.2.1 Bids must fully comply with all the Mandatory Requirements for the **Stage 1 (a) Compliance check of Mandatory Requirements** in order to qualify for **Stage 1 (b) Paper Based Evaluation (Functionality)** and those bids which fail to comply with all the requirements will be invalidated or disqualified from the process.

Mandatory Requirements (Original or Certified Copy)	Action	Comply/ Not comply
Fire safety compliance certificate	Submit	
Electrical Certificate of Compliance	Submit	
Certificate of building compliance	Submit	
Title deeds (proof of ownership)	Submit	
Original Tax Clearance Certificate (no certified or copies will be accepted)	Submit	
SBD 1 Invitation to bid	Complete in full, sign and submit	
SBD 4 Declaration of Interest	Complete in full, sign and submit	
SBD 6.1 Preference Claim form	Complete in full, sign and submit	
SBD 8 Declaration of Bidders past SCM practices	Complete in full, sign and submit	
SBD 9 Certificate of Independent bid determination	Complete in full, sign and submit	
General Conditions of Contract	Confirm you have read and understood Section 3.1 of this RFP.	

EVALUATION PROCESS

Mandatory Requirements - Document Checklist of Compliance

1.2.2 Bids should be accompanied by the following documents where applicable for use during the evaluation of functionality. These documents are intended for the sole purpose of assisting the Bid Evaluation Committee in the evaluation of bids.

Other Requirements (Original or and Certified Copy or copy)	Action	Comply/ Not comply
Proposal and Pricing Schedules	Submit	
Current Property Condition report	Submit	
As Built Plans	Submit	
Ventilation Certificate	Submit	
Compliance certificate to the National Home Building Regulation and Occupation Health & Safety Act	Submit	
Lift Service Certificate	Submit	

Other Requirements – Checklist of Supporting Documents

1.3 Stage 1 (a): Paper Based Evaluation (Functionality)

1.3.1 Bidders must achieve at least 60 out of 100 points for the **Stage 1 (a) Paper Based Evaluation (Functionality)** in order to qualify for the **Stage 1 (b) Site Visit Evaluation** and those bids which fail to meet the minimum qualifying score will not be considered further in the process.

Evaluation Criteria for paper based evaluation

No.	Evaluation Criteria	Weight	
1	Building Requirements (40)	Amenities	10
		Parking	10
		Information Technology	10
		Building Grading and Size	10
2	Security, Health and Safety (30)	Security Plan	15
		Health and Safety Plan	15
3	Pre-Occupation Requirements (30)	Tenant Installation Plan	15
		Space Plan	15
Total		100	
Minimum Qualifying Score (Threshold) to site Visit Evaluation		60	

1.4 Stage 1(b) Site Visit Evaluation

1.4.1 Bidders must achieve 70 out of 100 points for **Stage 1 (b) Site Visit Evaluation** in order to qualify for **Stage 2 Price and Preference Points Evaluation** and those bidders who fail to meet the minimum qualifying score will not be considered further in the process.

No.	Evaluation Criteria	Weight	
1	Building Location (20)	Accessibility	10
		Visibility	5
		Aesthetics	5
2	Environment (10)	Rentable area verification	5
		Green Building	5
3	Amenities (General Condition) (30)	Ventilation	5
		Kitchen	5
		Disability Friendliness	5
		Lifts, Flooring, Power and Water	5
		Server Room	10
4	Security, Health and Safety (40)	Health and Safety	20
		Security	20
Total		100	
Minimum Qualifying Score (Threshold) to Preference and Pricing		70	

Stage 1 (c) Site Visit Evaluation

1.5 Bidders will be rated according to the above site inspection criteria:

Value	Description
5 – Excellent	Meets and exceeds NHBRC functionality requirements
4 – Very Good	Above average compliance to requirements
3 – Good	Satisfactory and should be adequate for stated element
2 – Average	Below average compliance to requirements
1 – Poor	Unacceptable, does not meet criteria
0 – None	Not Supplied

The points for the panel members will be added and expressed as a fraction of the best possible score for each particular criterion as set out above.

1.6. Stage 2: Price and Preference Points Evaluation

1.6.1. Only bids that achieve minimum qualifying score for ‘**Stage (c) Site Visit Evaluation**’ will be evaluated further.

1.6.2. The contract will be awarded in terms of Regulations 4 of the Preferential Procurement Regulations pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), bids will be adjudicated in terms of a (90/10) preference point system in terms of which points are awarded to bidders on the basis of:

1.6.3. The formula that will be utilized in calculating points scores for prices is as follows:

90/10 Preference point system (for acquisition of services, works or goods with a Rand value above R1million) (all applicable taxes included)

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

Where:

Ps = Points scored for comparative price of bid or offer under consideration

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid or offer.

The points scored will be rounded off to the nearest two decimal places.

1.6.4 The points will be awarded to a Bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

BBEE Level	90/10
Level 1	10
Level 2	9
Level 3	8
Level 4	5
Level 5	4
Level 6	3
Level 7	2
Level 8	1
Non-Compliant Contributor	0

1.6.5 The points scored for price will be added to the points scored for B-BBEE status level to obtain the Bidders total points scored out of 100 points.

1.6.6. NB: Prices must be fixed for duration of the contract, if fees are not fixed please indicate the percentage as per industry norms and escalation period.

SECTION 4 - CONDITIONS OF CONTRACT

1. The Conditions of Contract that will govern the contractual relationship between the NHBRC and the Successful bidder consists of the following documents:
 - 1.1 Sub-Section 4.1 - General Conditions of Contract;
 - 1.2 Sub-Section 4.2 - Special Conditions of Contract for the Leasing of Property;
 - 1.3 Sub-Section 4.3 - Contract Form; and
 - 1.3 Section 5 - Specification.
2. The terms of the Conditions of Contract are firm. No additions, deletions or variations thereto shall be entertained.

Special Conditions of Contract (“SCC”)

Section 4.2 – Details required by the Government Procurement General Conditions of Contract (“GCC”)

GCC Clause	Topic	Details
7.1	Amount of the performance Security	N/A
9.2	Additional Packing Requirements	N/A
10.1	Details of shipping and other documents	N/A
13.1	Additional services	N/A
14.1	Spare Parts	N/A
15.2	Warranty	N/A
15.4	Warranty	N/A

1. This Request for Proposal (RFP) has been compiled by the NHBRC and it is made available to the Bidders on the following basis. The NHBRC reserves the right to amend, modify or withdraw this RFP 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 and without liability to compensate or reimburse any person.
- 1.2. The NHBRC reserves the right to carry out site inspections or call for supporting documentation in order to confirm any information provided by a Bidder in the RFP or Bid.
- 1.3. This RFP is not intended to form the basis of a decision to enter into any transaction involving the NHBRC, and does not constitute an offer or recommendation to enter into such transaction, or an intention to enter into any legal relationship with any person.
- 1.4. A Bid submitted in response to this RFP will constitute a binding offer which will remain binding and irrevocable for a period of sixty (90) days from the closing date. The offer constituted by the Bid will be deemed not to have been accepted and no agreement will be deemed to be reached with any Bidder, unless and until a definitive Agreement and other related transaction documents are concluded between the NHBRC and the Preferred Bidder.
- 1.5. The distribution of this RFP outside the Republic of South Africa may be restricted or prohibited by the laws of other countries. Recipients of this RFP are advised to familiarize themselves with and comply with all such restrictions or prohibitions applicable in those jurisdictions, and neither the NHBRC, nor any of their respective directors, officers, employees, agents, representatives or advisors, accepts liability to any person for any damages arising out of or in connection with the breach of any restriction or provision outside the Republic of South Africa. Persons contemplating submitting a Bid are advised to obtain legal advice as to the possible consequences thereof in terms of the law of the jurisdictions in which they are located.
 - 1.1. Recipients of this RFP document may only distribute it to other parties whom they wish to involve as part of the Bidder consortium in submitting a Bid.

SPECIAL CONDITIONS OF CONTRACT

- 1.2. Neither the NHBRC nor any of their respective directors, officers, employees, agents, representatives or advisors will assume any obligation for any costs or expenses incurred by any party in or associated with preparing or submitting a Bid in response to the RFP.
- 1.3. No entity may be involved, whether directly or indirectly, in more than one Bid in response to this RFP. A failure to comply with this requirement may, within the sole discretion of the NHBRC, result in disqualification of the relevant entity.
- 1.4. Any material change in the control and/or composition of any Bidder or any core member of a Bidder after submission of a Bid, shall require the prior written approval of the NHBRC, and any failure to seek such approval from the NHBRC shall result in the NHBRC being entitled, in its sole discretion, to exclude the relevant Bidder from any further participation in the bid process. The NHBRC shall be the sole arbiter as to what constitutes a "material change in the control and/or composition of any Bidder", and as to what constitutes a "core member of a Bidder" for purposes of such approval. Any request for such approval shall be made to the NHBRC's Supply Chain Management in writing and shall provide sufficient reasons and information to allow the NHBRC to make a decision. The NHBRC reserves the right to accept or reject any such request for approval at its sole discretion.
- 1.5. Briefing Session: Should the briefing session be held, the sharing of information and clarifications of issues related to this RFP, as given by the NHBRC during such session will form part of this RFP.
- 1.6. Any requirement set out in this RFP that stipulates the form and/or content of any aspect of a Bid, is stipulated for the sole benefit of the NHBRC, and save as expressly stated to the contrary, may be waived by the NHBRC in its sole discretion at any stage in the RFP process.
- 1.6. The NHBRC and its advisors may rely on the RFP and a Bid as being accurate and complete in relation to the information and proposals provided therein by the Bidders.
- 1.7. All Bids submitted to NHBRC will become the property of the NHBRC and will as such not be returned to the Bidder. The NHBRC will make all reasonable efforts to maintain proposals in confidence. Proprietary information should be identified as such in each proposal.
- 1.8. If the NHBRC amends this RFP, the amendment will be sent to each Bidder in writing or publicized as the case maybe. No oral amendments by any person will be considered or acknowledged.
- 1.9. RFP shall be considered irregular if they show any omissions, alteration of form, additions, or conditions not called for, or irregularities of any kind. However, the NHBRC reserves the right to waive any irregularities and to make award in the best interest of the company.
- 1.10. The NHBRC reserves the right to accept or reject in part or whole any bid submitted, and to waive any technicalities for the best interest of the company.
- 1.11. RFP's shall be rejected, among other reasons, for any of the following specific reasons:
 - 1.11.1. RFP's received after the closing date and time as specified.
 - 1.11.2. Unbalanced value of any items.
 - 1.11.3. If the original Tax Clearance Certificate is not submitted
 - 1.11.4. RFP containing irregularities.

SPECIAL CONDITIONS OF CONTRACT

- 1.12. Potential service provider(s) shall be disqualified and their Bid's not considered, among other reasons, for any of the following specific reasons:
- 1.12.1. Suspected evidence of collusion among bidders.
 - 1.12.2. The service provider(s) being in arrears on any existing contract or having defaulted on previous contracts.
 - 1.18.3. Any uncompleted work that in the judgment of the company shall prevent or hinder the prompt completion of additional work, if awarded.
 - 1.18.4. The Bidder having proven conviction/s on any Competition Commission enquiry or having been subjected to such investigation.
- 1.13. This document is released for the sole purpose of responding to this RFP and must be considered confidential. In addition, the use, reproduction or disclosure of the requirements, specifications or other material in this RFP is strictly prohibited.
- 1.14. Exclusion of Bids
- 1.14.1. Bidders that may be viewed by the NHBRC to have priced their bids unreasonably above or below the NHBRC estimates and budget, may be requested to demonstrate how they envisage delivering at such cost and/or price.
 - 1.14.2. If the NHBRC is not satisfied with the motivation so provided, such bidders/ bids will be excluded from further evaluation and thereby not considered for appointment to provide the service.
- 1.15. The NHBRC reserves the right to require that any bidder provide a formal presentation of its Bid at a date and time to be determined by the NHBRC. The NHBRC shall provide all instructions and clarification regarding the purpose and scope of the demonstration. All expenses must be borne by the bidder.
- 1.16. All costs associated with the preparation and submission of the Bid is the responsibility of the Bidders. The costs shall not be chargeable to the NHBRC by successful or unsuccessful Bidder.
- 1.17. All Bids must be formulated and submitted in accordance with the requirements of this RFP.
- 2.
- 3.1. 3.2. The details and requirements of the Goods to be provided to the NHBRC are contained in the Specification attached hereto and any additions or amendments thereto furnished to the Supplier during the procurement process. It is recorded that the Supplier has accepted these provisions.
- 3. Service Providers Responsibilities and obligations**
- 4.1 The service provider must:
 - 4.1.1 make provision for suitable route for network reticulation to the server room. In the absence of the fibre network link, allow work access to the premises seventy-five (75) calendar days prior to commencement of occupation for installation thereof by Telkom;

SPECIAL CONDITIONS OF CONTRACT

- 4.1.1.1 Ensure that the building has adequate ventilation and provides NHBRC with the appropriate certification. In the absence of air conditioners, prior to occupation make provision for supplying, installation and maintenance thereof;
- 4.1.2 **prior to occupation ensure the following:**
- 4.1.2.1 that the building has approved facilities for person with disabilities;
- 4.1.3 ensure that NHBRC Brand Signage:
- 4.1.3.1 is visible to the public;
- 4.1.3.2 Is mounted, fitted and/or moved upon request by the NHBRC in agreed upon location.
- 4.1.3.3 municipal rates and taxes are up to date
- 4.1.3.4 the building is adequately maintained in terms of, but not limited to electrical, mechanical and structural
- 4.1.3.5 the building is adequately insured
- 4.1.3.6 The operational costs are proportionally borne by NHBRC and other clients.
- 4.1.4 make provision of a single point of contact to manage queries, issues and requests that might arise
- 4.1.5 provide a turn-key service which will be a one-stop when there are repairs and maintenance requirements.
- 4.1.6 in so far as tenant installation is concerned, ensure preparation of the building for occupation.
- 4.1.7 Confirm the use of appropriately qualified, competent, skilled and experienced employees for undertaking the maintenance and repairs of the property.
- 4.1.3 There will be a **compulsory briefing session** to be held as follows:
- Venue: NHBRC Durban Office, Suite 502 5 floor, Marine Building, Dorothy Nyembe, ST Durban
- Time: 11h00
- Date: 16 September 2015

OFFICE

1. Purpose

- 1.2.1. To invite and find suitably qualified service providers to submit proposals for the provision of leased office space and parking facilities for the National Home Builders Registration Council (NHBRC), for a period of three (3) years.
- 1.2.2. The office space must be suitable for five (5) office bound employees and fifteen (15) visiting customers. The leased building must be located in the Richards Bay Central Business District (CBD) and accessible by public transport.

2. Background of the Project

- 2.1. The current NHBRC Shelly Beach satellite office lease agreement expires at the end of November 2015.
- 2.2. It is envisaged that the proposed leased offices will be in the area specified in **Paragraph 1.2**, above and should cater for all NHBRC requirements as stipulated in the RFP document.

3. Requirements for NHBRC Richards Bay Satellite Office

- 3.1. The National Home Builders Registration Council is looking for an office space and secure parking facilities in a secure environment and located in the area specified in paragraph 1.2, above and should meet the following requirements:
 - a) The building must be in a secure environment that promotes the safety of the NHBRC's employees, stakeholders and visitors and must have provision for access by people with disabilities.
 - b) Onsite parking for staff and customers.
 - c) Provision or accessibility to the Telkom fibre optic network must be made available. (As per 10.1.i)
 - d) The building should be situated in an accessible area where public transport such as taxis and busses are available and next to major routes.
 - e) NHBRC require the office premises to be customized to fit its image and suit its functions.
 - f) All building related issues such as Zoning rights, Servitudes, The Richards Bay Municipality regulations, environmental requirements, Occupational Health and Safety requirements and compliance certificates, and other applicable statutory requirements should be complied with.

4. Required Grading of the Building (ADD – PARASTATEL BUILDINGS ACCEPTABLE)

- 4.1. The requirement of the building should be Grade A and should meet following requirements:
 - a) Generally not older than fifteen (15) years or which has had a major renovation,
 - b) High quality modern finishes,
 - c) Air conditioning,
 - d) Adequate onsite parking,
 - e) A good quality lobby finish,

OFFICE

- f) Quality access to/from an attractive street environment, and
- g) Adequate safety and security.

5. Lease Option and Occupation Date

5.1. The lease must be flexible in order to enable the following:

- a) Expansion
- b) Extension

5.2. The building should be completed and ready for occupation by the 31 January 2016.

6. Security Requirements

1.1 The building should be secured with the following security measures;

- a) Burglar proofing and alarm system in good working condition
- b) Security Fencing/ Normal Electrical Fencing.
- c) Modern Access Control
- d) Adequate lighting in Parking area for officials working late

2. Amenities

2.1 The proposed office space should have the following:

- a) Well-functioning air-conditioning systems in individual offices, meeting rooms and rest rooms. Asset registers of all air conditioners to be supplied.
- b) A comprehensive list of all fixtures installed, and maintenance history where applicable.
- c) A minimum of two (2) cubicles per ablution facility for both males and females and make provision for people with disabilities.
- d) A fitted kitchen.
- e) A back up water supply plan, for continuous water supply to the premises.
- f) Lift in multi-story building where applicable.

3. Parking Requirements

8.1. Parking must be provided within the same building or premises as indicated in **Table 2**.

8.2. Designated and Secured parking is required for staff and additional parking for clients as indicated in **Table 3**.

9. Fire, Protection and Risk Management

1.1 The building should have the following fire, protection and risk management requirements:

- a) Smoke Detectors

OFFICE

- b) Smoking area
- c) Emergency assembly point
- d) Approved emergency escape doors
- e) Ablution facilities (male and female separate)
- f) Automatic sprinkler
- g) Waste disposal Area
- h) Separate kitchen
- i) Fire proofed store rooms and filing rooms
- j) Running water for the premises
- k) Approved emergency alarm systems.
- l) Portable fire extinguishers and hoses

9.2 The building should meet the following Code of practice – interior lighting SABS 0114:1996. Part 1 (including the required lumens) requirements;

- a) Offices Entrance halls and reception areas: 160 lux
- b) Offices Conference facilities, general offices, typing & filing: 500 lux
- c) Offices Computer and business machine operation: 630 lux
- d) Offices Drawing offices: 800 lux

2. IT Requirements

2.1 Suitable location for a server room with the following requirements should be provided for by the landlord:

- a) Brick walls or fire rated dry walling.
- b) Space for two server cabinets (at least 12m² minimum).
- c) Anti-static flooring in the server room.
- d) Fire rated door.
- e) Fire extinguisher (inside and outside).
- f) The NHBRC must be able to add an access control system to the server room door.
- g) Dedicated single phase generator feed from the main generator DB board to the UPS (Uninterrupted Power Supply).
- h) Dual air-conditioner in the server room.
- i) Suitable route for network reticulation to the server room. The bidder must provide upfront approval should core drilling be needed to be done to allow installation of a new fibre network link.
- j) Available trunking in the building for network reticulation (dedicated power (UPS) plug and Normal power plug per workstation).

3. Tenant installation items

SPECIFICATIONS FOR THE LEASING OF RICHARDS BAY OFFICE

3.1 The bidder must submit a list of items that will form part of a standard tenant installation that will be covered by the landlord.

11.2 Office Space Schedule

The office space needs for NHBRC are specified in **Table 2**:

Table 2: Office Space Requirements

NHBRC SHELLY BEACH OFFICE REQUIREMENTS					
NEW OFFICE SPACE REQUIREMENTS					
No.	POSITION	NUMBER OF PEOPLE SHARING	NUMBER OF OFFICE REQUIRED	OFFICE DIMENSIONS	TOTAL SPACE REQUIRED (M ²)
1.	Administration Officer	1	1	20	20
2.	Reception Area	1	1	40	40
3.	Home Inspectors	2	1	20	20
4.	Senior Inspector/ Manager	1	1	15	15
5.	Mini Boardroom		1	30	30
6.	Kitchen		1	15	15
7.	Toilet facilities (Cubicles)		4		
8.	Server Room		1	6	6
9.	Store Room		1	15	15
	TOTAL				161

Table 3: Parking Requirements

1.	Staff Secure Parking	5
2.	Clients Secure Parking	7
	TOTAL	12

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
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
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 Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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