



**AIR TRAFFIC AND NAVIGATION SERVICES SOC. LTD**

**REPUBLIC OF SOUTH AFRICA**

**REQUEST FOR PROPOSALS**

**ATNS/LEGAL/RFP046/23.24/PANEL OF ATTORNEYS**

**APPOINTMENT OF PANEL OF ATTORNEYS TO PROVIDE LEGAL SERVICES FOR A PERIOD OF (5) FIVE YEARS AT AIR TRAFFIC NAVIGATION SERVICE (ATNS) ON AN “AS AND WHEN” REQUIRED BASIS.**

**DECEMBER 2023**

**The information contained within this document is confidential to ATNS in all respects and it is hereby acknowledged that the information provided shall only be used for the preparation of a response to this document. The information furnished will not be used for any other purpose than stated and that the information will not directly or indirectly, by agent, employee, or representative, be disclosed either in whole or in part, to any other third party without the express written consent by the Company or its representative.**

**APPOINTMENT OF PANEL OF ATTORNEYS TO PROVIDE LEGAL SERVICES FOR A PERIOD OF (5) FIVE YEARS AT AIR TRAFFIC NAVIGATION SERVICES (ATNS) ON “AS AND WHEN” REQUIRED BASIS**

<b>RFP REFERENCE NUMBER:</b>	<b>ATNS/LEGAL/RFP046/23.24/PANEL OF ATTORNEYS</b>
<b>PUBLICATION DATE:</b>	14 December 2023
<b>CLOSING DATE:</b>	06 February 2024
<b>CLOSING TIME:</b>	12h00, CAT (not late, electronic and or facsimile responses will be accepted)
<b>NON-COMPULSORY VIRTUAL BRIEFING MEETING</b>	<p><b>VIRTUAL TENDER BRIEFING SESSION WITH BE HELD VIA MICROSOFT TEAMS PLATFORM:</b>            DATE: 22 January 2024            VENUE: Teams Meeting            TIME: 10h00-11:30h00            Bidders who are interested to attend must send an email to <a href="mailto:tenders@atns.co.za">tenders@atns.co.za</a> and <a href="mailto:BusisiweMo@atns.co.za">BusisiweMo@atns.co.za</a> to receive invite.  <b>Last date for requesting for the link is on the 19 January 2024 @ 16:00</b></p>
<b>BID VALIDITY PERIOD:</b>	120 days (Commencing from the closing date)
<b>DESCRIPTION:</b>	The appointment of panel of attorneys to provide legal services for a period of (5) five years at Air Traffic Navigation Services (ATNS) on “as and when” required
<b>DEPOSITED IN THE BID BOX SITUATED AT:</b>	<p>ATNS Company Limited,            Eastgate Office Park, Block C,            South Boulevard Road,            Bruma,2298</p> <p>OR</p> <p>Should a bidder require to submit their documents online, they must send an email to <a href="mailto:tenders@atns.co.za">tenders@atns.co.za</a> to express their interest to do so.</p> <p>On the email Bidders must specify on the subject line – the tender number and description. <b>Deadline for requesting the link is two days (02 February 2024) before closing date, email sent after this deadline will not be attended to.</b></p>
<b>PROCUREMENT SPECIALIST:</b>	Busisiwe Molapisi

**E-MAIL:**

[BusisiweMo@atns.co.za](mailto:BusisiweMo@atns.co.za)

**THE FOLLOWING PARTICULARS MUST BE FURNISHED**

**BIDDING STRUCTURE**

Indicate the type of Bidding/Biding Structure by marking with an 'X'

Individual Bidder	
Joint Venture	
Consortium	
With Sub-Contractors	
Other	

If Individual:

Name of Bidder	
Registration Number	
VAT Registration Number	
Contact Person	
Telephone Number	
Fax Number	
Cell Number(s)	
E-mail Address	
Postal Address	
Physical Address	

If Joint Venture or Consortium, indicate the name/s of the partners:

Company Name	
Registration Number	
VAT Registration Number	
Contact Person	
Telephone Number	
E-mail Address	
Fax Number	
Postal Address	
Physical Address	

## IMPORTANT NOTICE

The information contained herein, is given without any liability whatsoever to Air Traffic & Navigation Services Company Limited (ATNS) and no representation or warranty, express or implied, is made as to the accuracy, completeness, or thoroughness of the content of this Request for Bid (RFB).

This RFB is for the confidential use of only those persons/companies who are participants of this RFB. Each recipient acknowledges that the contents of this RFP are confidential and agrees that it will not without the prior written consent of ATNS, reproduce, use, or disclose such information in whole or in part, to any other party other than as required by law or other regulatory requirements.

The Bidder shall bear all costs incurred by him in connection with the preparation and submission of his Bid Response and for finalization of the contract and the attachments thereof. ATNS will in no case be responsible for payment to the Bidder for these costs.

The Company reserves the right to reject any or all Bids, to undertake discussions with one or more Bidders, and to accept that Bid or modified Bid which in its sole judgment, will be most advantageous to the Company, price and other evaluation factors having been considered.

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## 1. SECTION A: INTRODUCTION AND BACKGROUND

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### 1.1. Background and Introduction

The Air Traffic and Navigation Service Company Limited (ATNS) is a State-Owned Company (SOC), established in 1993 in terms of the ATNS Company Act (Act 45 of 1993) to provide air traffic management solutions and associated services on behalf of the State. These services accord with International Civil Aviation Organisation (ICAO) standards and recommended practices, and the South African Civil Aviation Regulations and Technical Standards. As an air navigation services provider (ANSP), ATNS is governed by the nation's legislative and administrative framework.

ATNS is also a commercialised ANSP operating on the “user pays” principle that relies on current revenues and debt funding for its operational and capital expenditure requirements. Our business offerings are divided into Regulated and non-regulated activities:

#### **Regulated Business**

At present 90% of ATNS's revenue is facilitated through its regulated business:

Air navigation services and infrastructure

The principal activities of ATNS's regulated business encompass the planning, operating and maintenance of safe and efficient air traffic management services in the airspace for which the State is responsible. Airspace infrastructure consists of the following main components:

- Communications, navigation, and surveillance (CNS) infrastructure.
- Auxiliary aviation services, such as aeronautical information publications, flight procedure design and aeronautical surveys.
- Air traffic management.

ATNS's infrastructure development is informed by user expectations and regulatory requirements at a global level; as well as the needs of the air traffic management (ATM) community and new enabling technologies.

#### **Air traffic service charges**

As a monopoly service provider, ATNS is regulated economically by the Economic Regulating Committee (RC) that is a statutory body formed and appointed by the Shareholder, the Department of Transport (DoT). The RC is empowered by the ATNS Company Act (Act 45 of 1993) to issue permission to ATNS. The permission regulates the increase in specified tariffs that ATNS can issue and lays down minimum service standards

requirements for the regulated business. ATNS is, through the permission, authorized to levy air traffic service charges on users (aircraft operators) for the use of air navigation infrastructure and/or the provision of an air traffic service. The permission has a five-year life span.

### **Training institution**

ATNS runs a successful training institution as a division within the Company, namely: the Aviation Training Academy (ATA). The ATA provides a full range of air traffic services training, technical support training and related training to delegates in South Africa and the broader African continent in the disciplines of engineering, air traffic services and management. The ATA is an ISO9001:2000 accredited institution and has international cooperation agreements in place with partners, enabling the academy to maintain mutually beneficial partnerships in the presentation and accreditation of international courses in air traffic services (ATS). The ATA is a world-renowned academy, and in both 2012 and 2013 was formally recognized as the International Air Transport Association (IATA) Worldwide Top Regional Training Partner.

### **Non-Regulated Business**

ATNS's non-regulated business currently contributes 10% of the Company's revenue. The non-regulated business encompasses a long-term strategy to facilitate regional expansion through a subsidiary vehicle presently known as "ATNS International". ATNS International will enable the Company to take a more robust and agile stance in the non-regulated business market without posing undue risks to its regulated market and Shareholder. It will also enable ATNS to enter joint ventures and partnerships with external suppliers so that the Company can harness more valuable market opportunities and extend its regional influence and reach.

Additional information is available on ATNS website – [www.atns.co.za](http://www.atns.co.za)

## **1.2. Purpose of the Bid**

ATNS invite bidders for a panel of attorneys to provide legal services for a period of (5) five years at Air Traffic Navigation Services (ATNS) on "as and when" required.

## **2. SECTION B: SCOPE OF WORK**

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### **2.1. Detailed Scope of Work**

**2.1.1.** Air Traffic Navigation Service (ATNS) is seeking a suitably qualified and experienced service providers (law firms) to provide legal services for a period of (5) five years at ATNS "as and when" required.

**2.1.2.** For this bid, the areas of specialization required shall be those specifically listed below. Law Firms are requested to choose (tick) only eight (08) areas of speciality for which they will be rated on. All bidders are required to provide a maximum of 2 written evidence of work in the area of specialization it has chosen and was provided in the past five (5) years. Bidders may remove any information that may identify clients and/or third parties.

**2.2. SCOPE OF WORK**

**2.2.1.** For this bid, the areas of specialization required shall be those specifically listed below. Law Firms are requested to choose (tick) only eight (08) areas of speciality for which they will be rated on. The format below may be used:

No.	Service Categories	Please tick ✓
2.2.1.1	Conveyancing & Property law	
2.2.1.2	Multinational agreements	
2.2.1.3	Financial agreements	
2.2.1.4	Engineering agreements	
2.2.1.5	Performance and other guarantees	
2.2.1.6	Constitutional Law	
2.2.1.7	Information Technology Law	
2.2.1.8	Legislative Drafting	
2.2.1.9	Tax Law	
2.2.1.10	Black Economic Empowerment	
2.2.1.11	Commercial leases, Service Level Agreement, general contracts, employment contracts, ISO contracts, procurement contracts, multilateral agreements, confidentiality agreements, agreements with independent contractors, building contracts etc	



No.	Service Categories	Please tick ✓
2.2.1.12	International law	
2.2.1.13	International Arbitration	
2.2.1.14	Building and construction law	
2.2.1.15	Labour and Employment law	
2.2.1.16	Environmental law	
2.2.1.17	Aviation law	
2.2.1.18	Corporate and Commercial law	
2.2.1.19	Corporate Governance	
2.2.1.20	Legal opinion on complex legal matters	
2.2.1.21	Collection matters	
2.2.1.22	Institute and defend ATNS on litigation matters	
2.2.1.23	Any other specialist field that the law firm has expertise in and that is relevant to the working environment of the ATNS	
2.2.1.24	Regulatory Compliance	
2.2.1.24	Intellectual Property	

**2.2.2.** All bidders are required to provide a maximum of two (2) written evidence of work in the area of specialization it has chosen and was provided in the past five (5) years. Bidders may remove any information that may identify clients and/or third parties.

The format below may be used:

Legal Opinion/ Legal Advice	Year	Client's name	Contact person and telephone numbers

**2.3. Skills Transfer**

2.3.1. Once appointed on the legal panel, the law firms may be required (as and when) to provide presentations, workshops or training (on legal topics in their area of expertise) to ensure transfer of skills to the in-house legal division of ATNS without charging ATNS for the skills transfer.

**2.4. Reporting Relationship**

2.4.1. The respective Law Firms will report to the Executive: Chief Governance Risk and Compliance Officer of ATNS.

**2.5. Duration of the Contract**

2.5.1. Service providers are herewith invited bidders to provide legal services for a period of (05) five years at ATNS “as and when” required.

**2.6. Conditions of tender**

2.6.1. Only Legal practices established in accordance with the provision of the Attorneys Act, 1979 (Act No.53 of 1979 as amended) and Legal Practice Act 2 of 2014 will be considered for this tender.

2.6.2. The requirements of the Preferential Procurement Policy Framework Acts, 2000 (Act No. 5 of 2000) and its amendments will be applicable to the selection process in respect of this tender proposal.

- 2.6.3.** A contract will be signed with each member appointed to the panel.
- 2.6.4.** The Law Firms will be required to sign a confidentiality and Indemnity agreement with ATNS.
- 2.6.5.** The cost of every assignment may be negotiated with the relevant tendering panel members and a letter of appointment may be issued for each assignment awarded.
- 2.6.6.** Panel members are not guaranteed any work under this tender proposal.
- 2.6.7.** The basis of engaging the Law Firms will be on an assignment basis.
- 2.6.8.** ATNS reserves the right to interview panel members that are short listed for specific assignments.
- 2.6.9.** ATNS may, at its sole discretion award an assignment or any part thereof to more than one panel member.
- 2.6.10.** ATNS may at its own discretion vary an instruction to include more work.
- 2.6.11.** The Law Firms may not cede or assign any part of its agreement with ATNS nor subcontract any part of the work assigned to them without the prior written authorization of the ATNS.
- 2.6.12.** Failure to comply with any condition of this request for a proposal will invalidate respective tender proposal.
- 2.6.13.** The appointed service provider(s) will be required to start from signature of the contract and provide the services for a period of five (5) years subject to annual review of the service providers performance.
- 2.6.14.** Assignments awarded in the last three months of the contract period will be allowed to continue after expiry of this contract period.
- 2.6.15.** The Law Firms must declare any interest it has in an assignment as well as declare any possible conflict of interest with ATNS in the pursuance of the proposed assignment.
- 2.6.16.** In the event that any conflict of interest is discovered during the assignment, ATNS reserves the right to summarily cancel the agreement and demand that all information, documents and property of ATNS be returned forthwith.
- 2.6.17.** Price quoted for assignments should include VAT.

## **2.7. Proposal Requirements**

- 2.7.1.** Each proposal must include the specialist fields of law of the firm. If a firm of attorneys has expertise in more than one field of law, all relevant fields must be

indicated in the proposal together with demonstrated experience in the specified area of Law.

## **2.8. Intellectual property rights**

- 2.8.1.** All copyright and intellectual property rights that may result as consequences of the work to be performed will become the property of ATNS.
- 2.8.2.** The Law Firms must hand over all documents and information in any format, including copies thereof, that it received from ATNS or that it had access to during the assignment immediately after completion of the assignments to the ATNS.
- 2.8.3.** The Law Firms shall deliver to ATNS, on completion of an assignment, any security devices, password or protective mechanisms to the soft versions of documents that were written and ATNS will have the right to amend changes these without obligation whatsoever to the Law Firms upon completion of the assignment.

## **2.9. Procurement policies and procedures**

- 2.9.1.** The general conditions of tender, contract and order will be applicable to this tender.

## **2.10. Professional Fees**

- 2.10.1.** The persons available to provide the service must be identified and their CV's provided. An assignment fee may be negotiated for every assignment issued.

## **2.11. Fidelity Fund Insurance**

- 2.11.1.** The firm of attorneys must provide proof of the fidelity insurance cover and in addition the individual director/ partner/ attorney/s attend to ATNS matters must provide a certified copy of a valid Fidelity fund Certificate to be provided.
- 2.11.2.** ATNS would also like to promote broad based transformation and development of small and medium firms in this industry and as such will appoint firms in the following categories. The bidder must indicate, in the table below, with a tick the relevant category.

## 2.12. General Administrative Instructions

### 2.12.1. Correspondence during Bid Period

- a) All correspondence, in the “Form of Questionnaire” with the Company during the Bidding period in connection with the Bid Documents, shall be made as follows:

### 2.12.2. All correspondence to ATNS shall be in writing and addressed to:

- a) Procurement Specialist: Busisiwe Molapisi - [BusisiweMo@atns.co.za](mailto:BusisiweMo@atns.co.za)

### 2.12.3. All correspondence shall be made as follows:

- Ref No: **ATNS/LEGAL/RFP046/23.24/PANEL OF ATTORNEYS**
- Date: Day Month Year
- To: ATNS SOC Limited
- From: Name of Bidder

Subject: The appointment of panel of attorneys to provide legal services for a period of (5) five years at Air Traffic Navigation Services (ATNS) on “as and when” required.

All correspondence must be sent by email to [BusisiweMo@atns.co.za](mailto:BusisiweMo@atns.co.za) and CC [tenders@atns.co.za](mailto:tenders@atns.co.za).

### 2.12.4. Failure to adhere to Instructions.

Failure to adhere to the bid submission instructions shall result in the bid being rendered nonresponsive and eliminated from further evaluation.

### 2.12.5. Preparation of bid

The Bid shall be delivered as one complete submission, which shall comprise of:

- a) **Parcel A - Commercial Proposal; General Condition of Contract and Pricing Structure (Response to Volume 1A, 1B and 1C).**
- b) **Parcel B Functional Proposal: Response to the Scope – labelled and tabbed as per Volume 1A, 1B and 1C.**

Reference	Requirement
<b>Volume 1 A</b>	Commercial Proposal
<b>Volume 1 B</b>	General Condition of Contract
<b>Volume 1 C</b>	Pricing Schedule (on a separate envelope)

Reference	Requirement
Parcel B	Functional Proposal /Response to the Technical Requirements

### 2.12.6. Fraud And Corruption

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

### 2.12.7. Non-Compulsory Briefing Session

DATE: 22 January 2024

**VIRTUAL TENDER BRIEFING SESSION WITH BE HELD VIA MICROSOFT TEAMS PLATFORM**  
**TEAMS PLATFORM:**  
 DATE: 22 January 2024  
 VENUE: Microsoft Teams Meeting  
 TIME: 10h00-11:30h00

**Last date for requesting for the link is on the 19 January 2024 @ 16:00**

### 2.13. Clarifications/ Queries

Any clarification required by a bidder regarding the meaning or interpretation of the Terms of Reference, or any other aspect concerning the bid, is to be requested in writing by completing Form of Questionnaire and email to [busisiwemo@atns.co.za](mailto:busisiwemo@atns.co.za) or [tenders@atns.co.za](mailto:tenders@atns.co.za) not later than 16:00 CAT on the 02 February 2024. A reply will be published on the ATNS website [www.atns.co.za](http://www.atns.co.za) under the Tenders section. The bid reference number should be mentioned in all correspondence. Telephonic requests for clarification will not be accepted. If appropriate, the clarifying information will be made available to all bidders by e-mail only.

### 2.14. Submitting Bids

Bidders are now permitted to submit their documents either online or hard copies. Should a bidder require to submit their documents online, they must send an email to [tenders@atns.co.za](mailto:tenders@atns.co.za)/[BusisiweMo@atns.co.za](mailto:BusisiweMo@atns.co.za) to express their interest to do so. On the email Bidders must specify on the subject line – the tender number and description. In case submitting hard copies, Bids shall be submitted in two separate

Parcels. Parcel A shall be Response to Volume 1A, 1B and 1C. Each parcel shall contain; 1 (one) original and Two (2) copies i.e., 3 (Three) Documents and soft copy (PDF format) on a movable storage medium (USB, each sealed and addressed in accordance with the following requirements:

- 2.14.1.** The name and address of the Bidder.
- 2.14.2.** The Bid Number.
- 2.14.3.** The closing date of the Bid is indicated on the envelope.
- 2.14.4.** A Cover Letter, signed by the authorized representative of each member of the Bidding Entity, Consortium or Joint Venture, which shall contain:
  - 2.14.5.** List of Bid Proposal Documents and an Index of the contents therein.
  - 2.14.6.** Particular points to which the Bidder wishes to draw the Company's attention in his Commercial Proposal and Technical Proposal.
  - 2.14.7.** The parcels shall not contain documents relating to any Bid other than that shown on the envelope.
  - 2.14.8.** Within each parcel, each document shall be individually packaged in a sealed envelope, assigned an identification number, and clearly marked with either the designation "Original" or "Copy", as applicable. When referencing another related document this identification number shall be indicated. Each document which is a copy shall be marked and numbered as "Copy 1/3".
- 2.14.9.** All Bid Response documents to be submitted shall be hand delivered to the Company not later than the time and date specified on this document.
- 2.14.10.** No Bids forwarded by telegram, telex, facsimile, e-mail, or similar medium will be considered.
- 2.14.11.** Bidders are now permitted to submit their documents either online or hard copies. Should a bidder require to submit their documents online, they must send an email to [tenders@atns.co.za](mailto:tenders@atns.co.za) to express their interest to do so. On the email Bidders must specify on the subject line – the tender number and description.
- 2.14.12.** Pricing must be submitted in a separate sealed envelope in Parcel A as Volume 1C.
- 2.14.13.** The original copy **MUST BE SIGNED IN BLACK INK** by an authorized employee, agent or representative of the Bidder and initialized on each page of the Bid Response.
- 2.14.14.** Bid responses sent by post or courier must reach this office at least 36 hours before the closing date as specified, to be deposited into the Bid Box. Failure to

comply with this requirement will result in the proposal/Bid response being treated as a “late proposal/response” and will not be entertained. Such proposal will be returned to the respective bidders.

**2.15. Submission of Bid:**

The Bid Documents shall be hand delivered to:

ATNS SOC Limited,  
Eastgate Office Park, Block C,  
South Boulevard Road,  
Bruma,  
2298  
South Africa.

**2.16.** No later than 12h00, CAT on **06 February 2024**, Central African Time at which time the Bid Proposals will be collected.

**2.17.** Bidders should allow time to access the premises due to security arrangements that need to be observed.

**2.18. Late Bids**

**2.18.1.** Bids received late shall not be considered. A bid will be considered late if it arrives even one second after closing time or any time thereafter. The tender (bid) box shall be locked at exactly **12:00** CAT and bids arriving late will not be considered under any circumstances.

**2.18.2.** Bids received late shall be returned unopened to the bidder. Bidders are therefore strongly advised to ensure that bids be delivered allowing enough time for any unforeseen events that may delay the delivery of the bids.

**2.19. Negotiation and Contracting**

**2.19.1.** ATNS have the right to enter into negotiation with one or more bidders regarding any terms and conditions, including price(s), of a proposed contract.

**2.19.2.** ATNS shall not be obliged to accept the lowest of any quotation, offer or proposal.

**2.19.3.** A contract will only be deemed to be concluded when reduced to writing in a formal contract and Service Level Agreement signed by the designated



responsible person of both parties. The designated responsible person of ATNS is the Chief Executive Officer (CEO) or his written authorised delegate.

**2.19.4.** Under no circumstances will negotiation with any bidders constitute an award or promise / undertaking to award the contract.

## **2.20. Reasons for rejection**

**2.20.1.** ATNS shall reject a proposal for the award of a contract if the recommended bidder has committed a proven corrupt or fraudulent act in competing for the particular contract.

**2.20.2.** ATNS may disregard the bid of any bidder if that bidder, or any of its directors:

**2.20.3.** Have abused the SCM system of ATNS.

**2.20.4.** Have committed proven fraud or any other improper conduct in relation to such system.

**2.20.5.** Have failed to perform on any previous contract and the proof exists.

**2.20.6.** Such actions shall be communicated to the National Treasury.

## **2.21. Cancellation of procurement process**

**2.21.1.** This procurement process can be postponed or cancelled at any stage provided that such cancellation or postponement takes place prior to entering a contract with a specific service provider to which the bid relates.

## **2.22. Contract Terms**

**2.22.1.** Whilst ATNS have taken every reasonable step to ensure the accuracy of this brief, the Company accepts no liability in relation to the accuracy of any representation made. Bidder should accept that their Bid response is on the basis and reliance of its own judgment and information. ATNS reserves the right to vary the scope and terms as described in this document although variation is not anticipated at this time. If any variation does take place, the Bidder will be advised as soon as possible.

**2.22.2.** The successful Bidder will be engaged subject to acceptance of a contract containing the standard Terms and Conditions as given in Volume 1B. The contract contains standard clauses including a retention clause for non-satisfactory completion, breach of contract and confidentiality clauses and a

requirement for the Bidder to have adequate professional indemnity insurance. All Bidders must bear in mind that if circumstances dictate, ATNS reserves its right to withdraw from any commitments that will be entered into within this statement of work.

**2.22.3.** All designs and documentation will be the property of ATNS.

**2.23. Disclaimer**

**2.23.1.** The Bidder shall bear all costs incurred by him in connection with the preparation and submission of his Bid Response and for finalisation of the contract and the attachments thereof. ATNS will in no case be responsible for payment to the Bidder for these costs.

**2.23.2.** The Company reserves the right to reject any or all Bids, to undertake discussions with one or more Bidders, and to accept that Bid or modified Bid which in its sole judgment, will be most advantageous to the Company, price and other evaluation factors having been considered.

### 3. BID EVALUATION PROCESS

#### 3.1. Bid Evaluation Process

The evaluation process for this tender will be conducted in four (4) distinct stages as follows:

##### 3.1.1. Stage 1: Administrative Requirements

All prospective bidders must comply with the following administrative requirements:

No	Mandatory Criteria	Comply	Not Comply
1	Must be registered on the National Treasury CSD (Central Supplier database): A full report must be submitted		
2	Fully completed and signed Standard Bidding Documents (SBD) forms: (SBD 1, SBD 3.3, SBD 4, and SBD 6.1): duly completed and signed by the duly authorised person.		
3	Tax clearance certificate and a valid SARS Pin.		
4	Joint Venture Agreement signed by both parties ( If applicable)		

If the Bidder failed to comply with any of the administrative requirements, or if ATNS is unable to verify whether the requirements are met, then ATNS reserves the right to-

- a) Reject the bid and not evaluate it, or
- b) Accept the bid for evaluation, on condition that the Bidder must submit within 7 (seven) days any supplementary information to achieve full compliance, provided that the supplementary information is administrative and not substantive in nature.

### 3.2. Stage 2: Mandatory requirements

All prospective bidders must comply with the following mandatory requirements to be considered further in the procurement process under the stage 3.

#### 3.2.1. Mandatory Requirements

No	Mandatory Criteria	Required proof
1	Fidelity Fund Certificate	Fidelity Fund Certificate
2	Registration with Legal Practice council	Proof of registration with Legal Practice council
3	Company registration Documents	Company registration Documents
4	Letter of Good Standing from Legal Practice council	Letter of Good Standing from Legal Practice council

Failure to submit the above documents will result in the bidder being disqualified and will to be evaluated further.

### 3.3. Stage 3: Third Stage functional technical requirements

The technical evaluation scores are weighted at 100% as it was indicated in the tender instructions. Bidders meeting minimum qualifying threshold of 75% to be on the panel.

Functional requirements	Points	Minimum
<p>The years of experience of the firm in the specific area of expertise. Bidders shall submit signed reference letters not older than three years, which prove their expertise in the area selected. Letters must be on a company letterhead.</p> <p>6 and above years' experience – 40%                      5 years' experience –30%                      1 - 4 years' experience – 10%</p>	40%	30%
<p>Experience, knowledge and skills of the legal team proposed by the Bidder: Number of years of post-admission experience of individual Directors and/ Senior Associates/professional assistants in the firm.</p> <p>13 and above = 40%                      9 – 12 years = 30%                      4 – 8 years = 20 %                      1– 3 years = 10%</p>	40%	30%

Functional requirements	Points	Minimum
Ability to conduct the work. The firm must submit its organogram and specify the category and team under its submitted expertise. Bidder to submit the CVs of the legal professionals.	20%	15%
13 years and above = 20%		
12 years = 15%		
4 – 8 years =10%		
1– 3 years = 5%		
<b>Total Points:</b>	<b>100%</b>	
<b>Minimum threshold</b>	<b>75%</b>	<b>75%</b>
<b>Total</b>	<b>100%</b>	

### 3.4. Stage 4: Price and Specific Goals

3.4.1. The 80/20 preference points system will be utilised for this tender. This preference points system is for the acquisition of goods or services with a Rand value up to R50 million as follows:

Criteria	Means of Verification	Points
Price	Proposed Bid Price	80,00
Preference Points	Specific Goals	20,00
<b>Total Points</b>		<b>100,00</b>

### 3.4.2. Specific Goals

**The Preferential Procurement Regulations, 2022 pertaining to the Preferential Procurement Policy Framework Act, Act No 5 of 2000.**

ATNS Preferential Procurement (PP) requirements as per the ATNS Supply Chain Management Policy, states that ATNS shall deal with suppliers in accordance with the ATNS specific goals. The application of the specific goals will be per request, per tender up to the maximum points as per the applicable pricing formula, the 80/20 system.

Suppliers not meeting the requirements of the Preferential Procurement are required to clearly identify any possible teaming arrangement which could be established with South African B-BBEE compliant enterprises Any workable plan to train and promote black businesses or individuals through meaningful participation in this project will be considered favourably by the Company during the RFQ evaluation process.

Partnership must be in the form of Joint Venture Agreement or Consortium Agreement between compliant B-BBEE and non-B-BBEE Organisation/or foreign supplier in order to meet the policy requirements.

All responsive tender offers shall be evaluated in terms of Price and ATNS specific goals. The 80/20 Preference Point System shall be applicable in accordance with the Preferential Procurement Framework Act (No.5) of 2000.

**The following allocation will determine the specific goals (20.00 points) for this tender process:**

Category	Points allocated
51% Black Owned Suppliers (Section 2(1)(d)(i) of the PPPFA)	10,00
30% Black Woman Owned Suppliers. (Section 2(1)(d)(i) of the PPPFA)	10,00
<b>Total</b>	<b>20,00</b>

**Bidders must submit the following documents as a means of verification for specific goals:**

- (a) CIPC documents (company registration documents),
- (b) Shareholder certificates, and
- (c) Copy/ies of Identity document(s) for shareholder(s).

Bidders who fail to submit the above documents will not qualify for points allocated for specific goals.

**4. SECTION D: STANDARD BIDDING DOCUMENTS**

**SBD1: INVITATION TO BID  
PART A**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE AIR TRAFFIC AND NAVIGATION SERVICES SOC LIMITED (ATNS)</b>					
BID NUMBER:		CLOSING DATE:		CLOSING TIME:	12:00
DESCRIPTION					
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT 07 WESSEL ST, RIVONIA, SANDTON, 2128</b>					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON			CONTACT PERSON		
TELEPHONE NUMBER			TELEPHONE NUMBER		
FACSIMILE NUMBER			FACSIMILE NUMBER		
E-MAIL ADDRESS			E-MAIL ADDRESS		
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		<b>OR</b>	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					

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

**QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> NO	<input type="checkbox"/> YES
DOES THE ENTITY HAVE A BRANCH IN THE RSA? <input type="checkbox"/> NO	<input type="checkbox"/> YES
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> NO	<input type="checkbox"/> YES
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> NO	<input type="checkbox"/> YES
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? <input type="checkbox"/> NO	<input type="checkbox"/> YES
<b>IF THE ANSWER IS “NO” TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.</b>	

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

**1. BID SUBMISSION:**

- 1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. **ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED– (NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.**
- 1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
- 1.4. **THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).**

**2. TAX COMPLIANCE REQUIREMENTS**

- 2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER’S PROFILE AND TAX STATUS.
- 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
- 2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE.”





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

SIGNATURE OF BIDDER:

.....

CAPACITY UNDER WHICH THIS BID IS SIGNED:

.....

(Proof of authority must be submitted e.g. company resolution)

DATE: .....

**SBD 4: BIDDER'S DISCLOSURE**

**1. PURPOSE OF THE FORM**

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

**2. Bidder's declaration**

2.1. Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**

2.1.1. If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.1.2. Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**  
If so, furnish particulars:

.....  
.....

2.2. Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

<sup>1</sup> 1 the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

**YES/NO**

2.3.1 If so, furnish particulars:

.....  
 .....

**3. DECLARATION**

I, \_\_\_\_\_ the \_\_\_\_\_ undersigned,  
 (name)..... in submitting the  
 accompanying bid, do hereby make the following statements that I certify to be true  
 and complete in every respect:

- 3.1. I have read and I understand the contents of this disclosure.
- 3.2. I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect.
- 3.3. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.5. 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.
- 3.6. There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.7. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
 Signature Date

<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

.....  
Position

.....  
Name of bidder

**DECLARATION WITH REGARD TO COMPANY/FIRM**

3.1. Name of company/firm.....

3.2. Company registration number:  
.....

3.3. TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

3.4. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

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

fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

- (e) forward the matter for criminal prosecution, if deemed necessary.

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

**SBD 3.3: PRICING SCHEDULE (Professional Services)**

NAME OF BIDDER: .....	.BID
NO.:	
CLOSING TIME 11:00	CLOSING DATE:

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

ITEM NO	DESCRIPTION	BID PRICE IN	RSA
CURRENCY			
		*** (ALL APPLICABLE TAXES INCLUDED)	

1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project. R.....
3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND



**RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)**

4. PERSON AND POSITION	HOURLY RATE	DAILY RATE
	R.....	R.....
	R.....	R.....
	R.....	R.....
	R.....	R.....
	R.....	R.....

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT		
	R.....	.....days
	R.....	.....days
	R.....	.....days
	R.....	.....days

5.1. Travel expenses (specify, for example rate/km and total km, class of air travel, etc.). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF THE EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
	R.....		R.....
	R.....		R.....
	R.....		R.....
	R.....		R.....
	<b>TOTAL</b>		.....

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

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

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

- 6. Period required for commencement with project after acceptance of bid .....  
.....
- 7. Estimated man-days for completion of project .....  
.....
- 8. Are the rates quoted firm for the full period of contract? \*YES/NO
- 9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index .....  
.....  
.....  
.....

## SBD 6.1: PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

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

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

### 1. GENERAL CONDITIONS

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

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

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

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

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

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

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

The maximum points for this tender are allocated as follows:

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

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

1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

### 2. DEFINITIONS

(a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations,



competitive tendering process or any other method envisaged in legislation.

- (b) **“price”** means an amount of money tendered for goods or services and includes all applicable taxes less all unconditional discounts.
- (c) **“Rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes.
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“The Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

### 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

#### 3.5. POINTS AWARDED FOR PRICE

##### 3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 \\
 P_s = 80 \left( 1 - \frac{P_t - P_{min}}{P_{min}} \right) & \mathbf{or} & P_s = 90 \left( 1 - \frac{P_t - P_{min}}{P_{min}} \right)
 \end{array}$$

Where

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

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

##### 3.6.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc}
 \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\
 \\
 P_s = 80 \left( 1 + \frac{P_t - P_{max}}{P_{max}} \right) & \mathbf{or} & P_s = 90 \left( 1 + \frac{P_t - P_{max}}{P_{max}} \right)
 \end{array}$$

Where

- P<sub>s</sub> = Points scored for price of tender under consideration
- P<sub>t</sub> = Price of tender under consideration

Pmax = Price of highest acceptable tender

**4. POINTS AWARDED FOR SPECIFIC GOALS**

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
  - (a)an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system: or
  - (b)any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system, then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

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

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

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
51% Black Owned Suppliers (Section 2(1)(d)(i) of the PPPFA)	<b>10,00</b>	
30% Black Woman Owned Suppliers. (Section 2(1)(d)(i) of the PPPFA)	<b>10,00</b>	

## GENERAL CONDITIONS OF CONTRACT

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2. Application
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34. Prohibition of restrictive practices

## 1. Definitions

The following terms shall be interpreted as indicated:

- 1.1. “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. “Corrupt practice” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5. “Countervailing duties” are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6. “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7. “Day” means calendar day.
- 1.8. “Delivery” means delivery in compliance of the conditions of the contract or order.
- 1.9. “Delivery ex stock” means immediate delivery directly from stock 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 to influence a procurement process or the execution of a contract to the detriment of any bidder and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14. “GCC” means the General Conditions of Contract.
- 1.15. “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

- 1.16. “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17. “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18. “Manufacture” means the production of products in a factory using labour, materials, components, and machinery and includes other related value-adding activities.
- 1.19. “Order” means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20. “Project site,” where applicable, means the place indicated in bidding documents.
- 1.21. “Purchaser” means the organization purchasing the goods.
- 1.22. “Republic” means the Republic of South Africa.
- 1.23. “SCC” means the Special Conditions of Contract.
- 1.24. “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.
- 1.25. “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

## 2. Application

- 2.1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2. Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3. Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

## 3. General

- 3.1. Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2. With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za).

## 4. Standards

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

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

- 5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause except for purposes of performing the contract.
- 5.3. Any document, other than the contract itself mentioned in GCC clause 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 a cashier's or certified cheque.
- 7.4. The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections, tests and analyses**

- 8.1. All pre-bidding testing will be for the account of the bidder.
- 8.2. If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the

premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

- 8.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4. If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5. Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6. Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7. Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal, the rejected supplies shall be returned at the 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' 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 contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

## **21. Delays in the supplier's performance**

21.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3. No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

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

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

## **22. Penalties**

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

## **23. Termination for default**

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

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2.
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2. In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 23.3. Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 23.4. If a purchaser intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.
- 23.5. Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6. If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- i) the name and address of the supplier and / or person restricted by the purchaser.
  - ii) the date of commencement of the restriction
  - iii) the period of restriction; and
  - iv) the reasons for the restriction.

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

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

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

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

## **25. Force Majeure**

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

## **26. Termination for insolvency**

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

## **27. Settlement of Disputes**

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

- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
- (b) the purchaser shall pay the supplier any monies due the supplier.

## **28. Limited liability**

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

## **29. Language**

- 29.1. The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

## **30. Applicable law**

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

## **31. Notices**

- 31.1. Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.
- 31.2. The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

## **32. Taxes and duties**

- 32.1. A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2. A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3. No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

## **33. National Industrial Participation (NIP) Programme**

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

**34. Prohibition of Restrictive practices**

- 34.1. In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2. If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 34.3. If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

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

## PROTECTION OF PERSONAL INFORMATION

- 1.1 The Service Provider shall ensure that its employees, representatives, and officers, comply with the provisions of the Protection of Personal Information Act, 2013 (“**POPIA**”) and all other applicable data protection laws and, without limitation to the foregoing, shall ensure the security and confidentiality of all Personal Information processed by that Party is in accordance with POPIA and all other applicable data protection laws.
- 1.2 The Service Provider must only process personal information of the Company and third parties on behalf of the Company, with the Company’s knowledge or authorisation, treat such information which comes to their knowledge as confidential and must not disclose it unless required by law or in the course of the proper performance of the Service Provider’s duties. The Service Provider must comply with the responsible party’s obligations in clause section 19 of POPIA.
- 1.3 Where the Service Provider, its agents, subcontractors, officers, directors, shareholders, representatives, or employees has/have access to any Personal Information held by the Company for any reason in connection with this Agreement or is/are supplied with or otherwise provided with Personal Information by the Company or on behalf of the Company for any purpose, or are supplied with or otherwise provided with Personal Information relating to the Services, the Service Provider shall:
- 1.3.1 process such Personal Information only for purposes of performing its/their obligations under this Agreement and shall not otherwise modify, amend or alter the contents of such Personal Information or disclose or permit the disclosure of such Personal Information to any third party, unless specifically authorised to do so by the Company or as required by law or any regulatory authority, and shall take all such steps as may be necessary to protect and safeguard such Personal Information.
  - 1.3.2 without prejudice to the generality of the foregoing, ensure that appropriate, reasonable technical and organisational measures shall be taken by it/them to prevent –
    - 1.3.2.1 the unauthorised or unlawful processing of such Personal Information; and
    - 1.3.2.2 the accidental loss or destruction of, or damage to, such Personal Information;
- and

- 1.3.2.3 promptly notify the Company when it becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this Agreement relating to Personal Information.
- 1.4 The Service Provider shall be liable for all claims, demands, actions, costs, expenses (including but not limited to reasonable legal costs and disbursements), fines, losses and damages arising from or incurred by reason of any wrongful processing of any Personal Information by the Service Provider (including its agents, subcontractors, officers, representatives or employees) for any breach of its obligations or warranties in terms of clause.
- 1.5 Both Parties will comply with their obligations under POPIA in relation to personal information for which they are the responsible party.
- 1.6 The Service Provider must notify the Company immediately where there are reasonable grounds to believe that personal information has been accessed or acquired by any unauthorised person (Data Breach) and must assist the Company, at its own cost: a) with any investigation or notice to the Regulator or data subjects that the Company may make in relation to a Data Breach; and b) in responding to any directions by the Regulator to publicise the Data Breach, including assisting the Company to make public announcements if required.
- 1.7 The Service Provider indemnifies the Company against any civil or criminal action or administrative fine or other penalty or loss as a result of the Service Provider's breach of this clause.



**POPIA CONSENT**

1.8 The Service Provider, by submitting its proposal/ quotation, consents to the use of his/her personal information contained therein and confirms that:

- 1.8.1. The information is voluntarily supplied, without undue influence from any party; and
- 1.8.2. The information is necessary for the purposes of the engagement with ATNS.

1.9. **The tenderer acknowledges that he /she is aware of his/her right to:**

- 1.9.1. Access the information at any reasonable time for the purposes of rectification thereof.
- 1.9.2. Object to the processing of the information.
- 1.9.3. Lodge a complaint with the Information Regulator.

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