



BRAND SOUTH AFRICA

Tender : BSA/021/2016

APPOINTMENT OF PANEL OF RECRUITMENT AGENCIES FOR A PERIOD OF THREE (3) YEARS

SBD 1

### INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE BRAND SOUTH AFRICA

BID NUMBER: **BSA/021/2016**

CLOSING DATE: **16 May 2016**

CLOSING TIME: **11:00**

DESCRIPTION: **APPOINTMENT OF PANEL OF RECRUITMENT AGENCIES FOR A PERIOD OF THREE (3) YEARS**

**The successful bidder will be required to fill in and sign a written Contract Form (SBD 7).**

BID DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT:

**BRAND SOUTH AFRICA**

**103 Central Street, Houghton Estate, Johannesburg**

The bid box is generally open from 08h30 to 17h00 hours a day, 5 days a week, in Reception of Brand South Africa offices.

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

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

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  
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)

NAME OF BIDDER \_\_\_\_\_

POSTAL ADDRESS \_\_\_\_\_

PHYSICAL ADDRESS \_\_\_\_\_

TELEPHONE NUMBER Area Code: \_\_\_\_\_ Number: \_\_\_\_\_

CELLPHONE NUMBER/S \_\_\_\_\_

FACSIMILE NUMBER Area Code: \_\_\_\_\_ Number: \_\_\_\_\_

E-MAIL ADDRESS \_\_\_\_\_

VAT REGISTRATION No \_\_\_\_\_

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? [TICK APPLICABLE BOX]



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AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)

A VERIFICATION BIDDER ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS); OR

A REGISTERED AUDITOR

**(AN ORIGINAL OR CERTIFIED COPY OF THE 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 Unit

Contact Person: Ms Jabulile Mndebele

Tel: 011 712 5000

E-mail address: [Jabulilem@brandsouthafrica.com](mailto:Jabulilem@brandsouthafrica.com) OR [procurement@brandsouthafrica.com](mailto:procurement@brandsouthafrica.com)

**ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:**

Department: Corporate Services- Human Resource Management

Contact Person: Ms Mirriam Moagi

Tel: 011 712 5000

E-mail: [Mirriamm@brandsouthafrica.com](mailto:Mirriamm@brandsouthafrica.com)



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SBD 2

**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](http://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](http://www.sars.gov.za).

Jeyrel:\Mdk416-SBD2 tax clearance



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TAX CLEARANCE

TCC 001

Application for a Tax Clearance Certificate

Purpose

Select the applicable option Tenders  Good standing

If "Good standing", please state the purpose of this application

Empty grid lines for text entry.

Particulars of applicant

Name/Legal name (Initials & Surname or registered name)			
Trading name (if applicable)			
ID/Passport no	Company/Close Corp. registered no	PAYE ref no	7
Income Tax ref no		SDL ref no	L
VAT registration no	4	UIF ref no	U
Customs code		Fax no	
Telephone no			
E-mail address			
Physical address			
Postal address			

Particulars of representative (Public Officer/Trustee/Partner)

Surname			
First names			
ID/Passport no	Income Tax ref no		
Telephone no	Fax no		
E-mail address			
Physical address			



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SBD 3.3

## PRICING SCHEDULE

(Professional Services)

NAME OF BIDDER: \_\_\_\_\_

BID NUMBER: **BSA/021/2016**

CLOSING DATE: **16 May 2016**

CLOSING TIME: **11:00**

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

ITEM NO	DESCRIPTION		
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.		
3.	Persons who will be involved in the project and rates applicable (certified invoices must be rendered in terms hereof)		
	PERSON AND POSITION	HOURLY RATE	DAILY RATE
		**(ALL APPLICABLE TAXES INCLUDED)	
3.1			
3.2			
3.3			
3.4			
3.5			
4.	Phases according to which the project will be completed, cost per phase and man days to be spent		
	PHASE	COST	MAN DAYS
4.1			
4.2			
4.3			
4.4			
4.5			



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5.	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 EXPENSES TO BE INCURRED	RATE	QUANTITY	AMOUNT
5.1				
5.2				
5.3				
5.4				
5.5				
	<b>TOTAL</b>			
** "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.				
6.	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 EXPENSES TO BE INCURRED	RATE	QUANTITY	AMOUNT
6.1				
6.2				
6.3				
6.4				
6.5				
	<b>TOTAL</b>			
7.	Period required for commencement with project after acceptance of bid		<b>DATE</b>	
8.	Estimated man days for completion of project		<b>DAYS</b>	
9.	Are the rates quoted firm for the full period of contract?		YES / NO	
10.	If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index			



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SBD 4

**DECLARATION OF INTEREST**

1. Any legal person, including persons employed by the state<sup>1</sup>, 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 THE REPRESENTATIVE \_\_\_\_\_
- 2.2 IDENTITY NUMBER \_\_\_\_\_
- 2.3 POSITION OCCUPIED IN THE COMPANY \_\_\_\_\_
- 2.4 COMPANY REGISTRATION NUMBER \_\_\_\_\_
- 2.5 TAX REFERENCE NUMBER \_\_\_\_\_
- 2.6 VAT REGISTRATION NUMBER \_\_\_\_\_

**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 2.8 below**

<sup>1</sup>“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

<sup>2</sup>“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 \_\_\_\_\_



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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

2.7.3 If yes, did you attach 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.)**

2.7.4 If so, furnish reasons for non-submission of such proof: \_\_\_\_\_

2.7.5 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 (12) months? YES / NO

2.7.6 If so, furnish particulars: \_\_\_\_\_

2.7.7 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? YES / NO

2.7.8 If so, furnish particulars: \_\_\_\_\_

2.7.9 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? YES / NO

2.7.10 If so, furnish particulars: \_\_\_\_\_

2.7.11 Do you or any of the directors/trustees/shareholders/members of the company have any interest in any other related companies whether or not they are bidding for this contract? YES / NO

2.7.12 If so, furnish particulars: \_\_\_\_\_





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2.8 Full details of directors / trustees / members / shareholders

Full Name	Identity Number	Personal Tax Reference Number	State Employee Number / Persal Number

**3. 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

APPOINTMENT OF PANEL OF RECRUITMENT  
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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:

	<b>POINTS</b>
1.3.1.1 PRICE	_____
1.3.1.2 B-BBEE STATUS	_____
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 **“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



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- 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”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **“EME”** means any enterprise with 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.

**APPOINTMENT OF PANEL OF RECRUITMENT  
AGENCIES FOR A PERIOD OF THREE (3) YEARS****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 PREFERENCE POINT SYSTEMS**

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 following table:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10 system)</b>
1	10
2	9
3	8
4	5
5	4
6	3
7	2
8	1



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Non-compliant contributor	0
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- 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 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



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**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 [TICK APPLICABLE BOX]

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

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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9.6 COMPANY CLASSIFICATION [TICK APPLICABLE BOX]

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

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



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(e) forward the matter for criminal prosecution.

**WITNESSES:**

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

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

<p>_____ <b>SIGNATURE(S) OF BIDDER(S)</b></p>
---

**ADDRESS:**

_____
_____
_____

\_\_\_\_\_  
**DATE**



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SBD 8

**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	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p><b>(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).</b></p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p><b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If so, furnish particulars:		
4.3	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If so, furnish particulars:		
4.4	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
	If so, furnish particulars:		





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**SBD 8**

## **CERTIFICATION**

I, THE UNDERSIGNED (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**



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SBD 9

## **CERTIFICATE OF INDEPENDENT BID DETERMINATION**

1. This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> 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).<sup>2</sup> 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:

**<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.**

**<sup>2</sup> 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.**



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SBD 9

## 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 consortium<sup>3</sup> will not be construed as collusive bidding.

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

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



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- (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.
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



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## SECTION 2

### **TERMS OF REFERENCE FOR THE APPOINTMENT OF PANEL OF RECRUITMENT AGENCIES FOR A PERIOD OF THREE (3) YEARS**

#### **1. INTRODUCTION**

World dynamics require South Africa (SA) to be globally competitive to achieve GDP growth, job creation and a better life for all its citizens. Economic decisions to invest in, trade with, or visit a country are not made solely on facts, as they are often emotional and based on perceptions. For this reason, it is imperative for SA to manage the perceptions that potential foreign investors, traders and visitors have of the country. This is achieved through active branding strategies and reputation management of the nation brand.

Country branding is the strategic self-presentation of a country with the aim of creating reputational capital through economic, political and social interest promotion at home and abroad. Countries engage in nation branding to achieve the following key objectives:

- shaping the country's image:- building of reputation/credibility;
- greater prosperity and success at home and improved standing abroad;
- remain globally competitive;
- reversal of adverse reputation;
- attract tourists:- creation of jobs;
- stimulate inward investment; and
- boost exports.

#### **2. WHO WE ARE**

Brand South Africa is a Schedule 3A Public Entity, which was established in terms of the Brand South Africa Trust Deed, which is governed by the Trust Property Control Act No.57 of 1988 and the Public Finance Management Act, No.1 OF 1999. The organisation reports to the Department of Communication, from which it receives its budget.

Brand SA has a physical presence in South Africa and has country offices in the USA, UK as well as China. The Africa & Middle East market is serviced from the head office in South Africa, while other BRICS markets are currently being serviced remotely through an agency partner.

##### **2.1. Purpose**

The purpose of Brand South Africa is to develop and implement pro-active and coordinated marketing, communication and reputation management strategies for the country.

##### **2.2. Mission**

To achieve our purpose we will embark on the following execution mission:

- Develop and articulate a South African national brand identity that will advance South Africa's long-term positive reputation and global competitiveness.
- Seek to build individual and institutional alignment to and support for the brand in South Africa and pride and patriotism amongst South African.
- Build awareness and the image of the brand in other countries.



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- Seek the involvement and cooperation of various government departments, civil society, business and the non-government sector.

Amongst other strategic initiatives, Brand South Africa addresses its mandate through a number of domestic and international programmes. Domestically, the key programmes are Play Your Part (which encourages active citizenship amongst South Africans), SA Competitiveness Forum, as well as the Nation Brand Master Class. Internationally, the Global South Africans programme is utilised to enlist the support of South Africans who are living and working abroad for the purposes of strengthening the nation brand.

### **3. SCOPE OF WORK**

Brand South Africa hereby requests experienced and reputable bidders to submit proposals for provision of recruitment services and competency assessment/psychometric for a period of three years on “as and when required basis”. This service providers need to provide a comprehensive range of recruitment, search and placement services to facilitate:

- Permanent Staff Placement;
- Executive Search;
- Head Hunting;
- Temporary staffing and
- Response Handling

Brand South Africa is a values-based employer and therefore requires recruitment agencies that have experience in both sourcing appropriately technically skilled candidates and candidates that demonstrate a values match with the corporate culture of the Brand South Africa.

#### **3.1. Permanent/ Temporary Staff referral should cover:**

- Brief taking (where applicable)
- Sourcing of suitable candidates as per job specification provided by Brand South Africa
- Pre-Screening of all potential Candidates, that is interviews, employment checks, ITC, Criminal, Qualifications checks)
- Scheduling of interviews with the shortlisted candidates
- Response handling

#### **3.2. Executive search should cover:**

- Brief taking
- Market search
- Candidate profiling
- Candidate report presentation
- Reference checking
- ITC, Criminal and qualifications checks
- Employment contracting facilitation
- Remuneration negotiations
- Response handling



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3.3. Head Hunting should cover:

- Candidate profiling
- Candidate report presentation
- Reference checking
- ITC, Criminal and qualifications checks
- Employment contracting facilitation
- Remuneration negotiations
- Response handling

3.4 Response Handling

#### **4. DISBURSEMENTS**

The service provider is expected to:

- 4.1. Assume the costs for their own travel and accommodation where applicable;
- 4.2. The Brand South Africa will cover the disbursement costs for interviews for the successful shortlisted candidates where travel maybe required to other provinces.

#### **5. TEAM COMPOSITION**

The service provider is expected to assemble a team with the following expertise:

- 5.1. Qualified Recruitment professionals
- 5.2. APSO membership or other related professional membership will be advantageous.

#### **6. DURATION**

The duration of this contract is three (3) years or thirty six (36) months based on performance which will be assessed on a quarterly basis and reviewed on an annual basis.

#### **7. PAYMENT STRUCTURE**

7.1. Brand SA undertakes to pay in full within thirty (30) days, all valid claims for work done to its satisfaction upon presentation of a substantiated claim/invoice.

7.2. Payments will only be made on the basis of the work completed (milestones/ deliverables) as per the project implementation plan to be agreed at the inception of the project.

#### **8. TENDER PROCESS**

8.1. Brand South Africa's tender process consists of the following stages:

- 1) Invitation to submit information
- 2) Submission of Tender documents
- 3) Evaluation of proposals

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- 4) Selection of Short-listed Bidders
- 5) Selection of successful bidder

**9. IMPORTANT DATES**

9.1. Deadline for questions relating to tender- 11 May 2016 at 16h00

9.2. Deadline for submission of tender documents (**Bidders must complete tender register when submitting their proposal**) – 16 May 2016 at 11h00.

**10. EVALUATION CRITERIA****10.1. Phase I- Compliance Evaluation**

All the documents listed in clause 13 must be submitted. Failure to submit the requested documents will result in disqualification at this stage.

**10.2. Phase II- Technical Evaluation**

10.2.1. The tender documents will be evaluated and ranked using a weighted average scoring system for functionality to all those bidders who were successful from Phase I.

10.2.2. The assignment of points by Brand South Africa is final and will under no circumstances be open to appeal or protest by the bidder.

10.2.3. It is the responsibility of the bidder to understand the scoring system and factor that system into the organization and content of its tender documents. The top and final shortlisted bidders will be evaluated and ranked using a weighted average scoring system for functionality to all those bidders who were successful from Phase II.

10.2.4. It should be noted that the technical evaluation will be carried out in three separate stages. Bidders will be evaluated per category to measure their capacity, capability and experience in that particular category in order to facilitate a transparent and fair selection process that will allow equal opportunities to all bidders. The technical evaluation will be conducted in the following procedure:

- Table 1: Technical Evaluation Criteria (Permanent/ Temporary Staff)
- Table 2: Technical Evaluation Criteria (Executive Search)
- Table 3: Technical Evaluation Criteria (Head Hunting)

**10.3. Phase III- Price and B-BBEE**

In terms of regulations 4 and 8 of the Preferential Procurement Regulations, pertaining to the Preferential Procurement Policy Framework Act 2000 (Act 5) responsive bids will be adjudicated on the 90/10 preference points system, with 90 points being for price and a maximum 10 points allocation for B-BBEE status.

**11. TECHNICAL EVALUATION**

11.1. The technical evaluation of bidders will be carried out in Phase II. Phase II evaluation will be as follows:

Bidders will be evaluated in terms of the prevailing supply chain policy applicable to Brand South Africa.





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- A of *minimum 60 points out of 100 points on technical capability* for Table 1; *80 points out of 100 points on technical capability* for Table 2 and *70 points out of 100 points on technical capability* will be the cut off to qualify for further evaluation Those who qualify will be assessed using the 90:10 formula for Price and B-BBEE as per the PPPFA.
- Brand South Africa will analyse and assess technical capability and therefore the bidder should demonstrate the following:

**Table 1: Technical Evaluation Criteria (Permanent/ Temporary Staff)**

A of *minimum 60 points out of 100 points on technical capability* will be the cut off to qualify for further evaluation Those who qualify will be assessed using the 90:10 formula for Price and B-BBEE as per the PPPFA.

Brand South Africa will analyse and assess technical capability and therefore the bidder should demonstrate the following:

CRITERIA	SUB CRITERIA	WEIGHTS
<b>Capacity and Experience of the Firm</b>	The bidder must demonstrate their experience in similar assignments ( <b>Temporary/Permanent Staff</b> ) and must illustrate their understanding of the services required. ( <b>30 Points</b> )  Demonstrate organisational organogram, office locations and identifying the office that will be responsible for managing and administration of the contract ( <b>10 Points</b> )	40
<b>Approach and Methodology, Work Plan and Process (Temporary/Permanent Staff)</b>	Provide a detailed approach, methodology and process to meet the organization's recruitment requirements ( <b>20 Points</b> )  Demonstrate turnaround time and strategy in terms of recruitment process ( <b>20 Points</b> )	40
<b>Experience of the proposed team</b>	Demonstrate experience and qualifications of the proposed team including of a team leader ( <b>the experience must be emphasised on Recruitment of Temporary/Permanent Staff</b> ) (Attach CV's)	20
<b>Total</b>		<b>100</b>



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**Table 2: Technical Evaluation Criteria (Executive Search)**

A of *minimum 80 points out of 100 points on technical capability* will be the cut off to qualify for further evaluation Those who qualify will be assessed using the 90:10 formula for Price and B-BBEE as per the PPPFA.

Brand South Africa will analyse and assess technical capability and therefore the bidder should demonstrate the following:

CRITERIA	SUB CRITERIA	WEIGHTS
<b>Capacity and Experience of the Firm</b>	<p>The bidder must demonstrate their experience in similar assignments (<b>Executive Search</b>) and must illustrate their understanding of the services required. (<b>15 Points</b>)</p> <p>Demonstrate organisational organogram, office locations and identifying the office that will be responsible for managing and administration of the contract (<b>10 Points</b>)</p> <p>Demonstrate financial capability to undertake the project (attach two years audited financial statements) (<b>5 Points</b>).</p>	30
<b>Approach and Methodology, Work Plan and Process (Executive Search)</b>	<p>Provide a detailed approach, methodology and process to meet the organization's recruitment requirements (<b>20 Points</b>)</p> <p>Demonstrate turnaround time and strategy in terms of recruitment process (<b>20 Points</b>)</p>	40
<b>Experience of the proposed team</b>	<p>Demonstrate experience and qualifications of the proposed team including of a team leader <b><i>the experience must be emphasised on Executive Search</i></b> (Attach CV's)</p>	30
<b>Total</b>		<b>100</b>



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**Table 3: Technical Evaluation Criteria (Head Hunting)**

A of **minimum 70** points out of 100 points on technical capability will be the cut off to qualify for further evaluation Those who qualify will be assessed using the 90:10 formula for Price and B-BBEE as per the PPPFA.

Brand South Africa will analyse and assess technical capability and therefore the bidder should demonstrate the following:

CRITERIA	SUB CRITERIA	WEIGHTS
<b>Capacity and Experience of the Firm</b>	<p>The bidder must demonstrate their experience in similar assignments (Head Hunting) and must illustrate their understanding of the services required. <b>(20 Points)</b></p> <p>Demonstrate organisational organogram, office locations and identifying the office that will be responsible for managing and administration of the contract <b>(15 Points)</b></p> <p>Demonstrate financial capability to undertake the project (attach two years audited financial statements) <b>(5 Points)</b>.</p>	40
<b>Approach and Methodology, Work Plan and Process (Head Hunting)</b>	<p>Provide a detailed approach, methodology and process to meet the organization's recruitment requirements <b>(20 Points)</b></p> <p>Demonstrate turnaround time and strategy in terms of recruitment process <b>(20 Points)</b></p>	40
<b>Experience of the proposed team</b>	Demonstrate experience and qualifications of the proposed team including of a team leader ( <b><i>the experience must be emphasised on Head Hunting</i></b> ) (Attach CV's)	20
<b>Total</b>		<b>100</b>

1.1. Phase III evaluation will be as follows:

1.2. The 90:10 formula will be used for allocation of points for price and B-BBEE as per the PPPFA:-

**Table 4: Price & B-BBEE**

CRITERIA	SUB-CRITERIA	POINTS
Price	Detailed budget breakdown	90
B-BBEE Status Level Verification Certificate from accredited verification agencies	B-BBEE Level Contributor	10
<b>TOTAL POINTS</b>		<b>100</b>



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- 1.3. The assignment of points by Brand South Africa is final and will under no circumstances be open to appeal or protest by the bidder's.

## 12. RESPONSE FORMAT

12.1. Your Tender document must consist of one original hard copy, one identical paper copy and one electronic copy. The paper copy must be clearly marked "COPY ". The electronic copy must be clearly marked with the bidder's name. In the event that there are discrepancies in information contained in the various documents and/or copies submitted by the bidders, the bidder's submission will be disqualified without further notification.

12.2. All Tender documents must be delivered by hand in a **sealed envelope**. The following information must appear on the outside of the sealed envelope:

Brand South Africa, 103 Central Street, Houghton;

Name of bidder;

**APPOINTMENT OF PANEL OF RECRUITMENT AGENCIES FOR A PERIOD OF THREE (3) YEARS;**

Tender no: **BSA/021/2016**

**16 May 2016** at 11h00 (Closing date and time);

Attention: Jabulile Mndebele (Supply Chain Manager)

12.3. The Tender document must be lodged in Brand South Africa's Tender Box located in the main reception Brand South Africa's offices at 103 Central Street, Houghton, Johannesburg, on or **before 16 May 2016 at 11h00**. **Bidders must ensure that their submissions are registered.**

12.4. The tender box will be accessible from 08h30 – 17h00, Mondays – Fridays.

## 13. INFORMATION REQUIRED

The bidder's quotation document must include the following minimum information in order to be considered valid and acceptable by Brand South Africa:

- 1) Formal written proposal
- 2) Original valid Tax Clearance Certificate (Original or Certified copy of B-BBEE Certificate)
- 3) SBD 1 – Invitation to tender
- 4) SBD 2 – Tax Clearance Certificate Requirements
- 5) SBD 3.3 – Pricing schedule
- 6) SBD 4 – Declaration of interest
- 7) SBD 6.1 - Preference points claim
- 8) SBD 8 – Declaration of bidder's past supply chain management practices
- 9) SDB 9 – Certificate of independent bid determination

## 14. TENDER DOCUMENT TERMS AND CONDITIONS

14.1. A service provider may not recruit or shall not attempt to recruit an employee of Brand South Africa for purposes of preparation of the bid or for the duration of execution of this contract or any part thereof.

14.2. This tender is subject to Brand South Africa's tender guidelines that have been included as Section 3 of this document.

14.3. All standard bidding documents are included in Section 1 of this document.



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14.4. For further information regarding technical and supply chain matters can be sent via email to:

[Mirriamm@brandsouthafrica.com](mailto:Mirriamm@brandsouthafrica.com) or at Tel: 011 712 5000

14.5. For further information regarding supply chain matters requests can be sent via email to:

[Jabulilem@brandsouthafrica.com](mailto:Jabulilem@brandsouthafrica.com) or at Tel: 011 712 5000

**15. BID SUBMISSIONS**

15.1. Proposals should be hand delivered and acknowledged in the tender register available at the reception on or before the 09 May 2016 by no later than 11h00 the following address:

**Brand South Africa  
103 Central Street  
Houghton**

15.2. The selection of the qualifying proposal will be at the Brand SA's sole discretion. The Brand SA does not bind itself to accept any particular bid, and the Brand SA reserves the right not to appoint the service provide

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### SECTION 3 TENDER GUIDELINES

#### 1. CLARIFICATION REQUIRED BY BRAND SOUTH AFRICA

Brand South Africa may request additional information, clarifications and/or validation of information contained in the Tender document. The bidders should endeavor to respond to the clarification request within two (2) working days.

To assist in the evaluation and comparison of the Tender document, Brand South Africa may also seek the attendance of the bidders at clarification meetings to be held at Brand South Africa's offices. During the evaluation process, no change in the content of Tender document submission shall be sought, offered or permitted.

Should there be a difference of interpretation between the bidders and Brand South Africa, Brand South Africa reserves the right to make a final ruling on such interpretation.

#### 2. ASSOCIATION WITH OTHER BIDDERS

Brand South Africa will not accept any proposals to form associations upon award of the Tender. The association/s must have been in place for at least one year (12 months) at the time of the Tender document submission. The bidders must deliver proof of the fact that the relationship has been in place for this period of time by providing details of the clients serviced by the association/s during the 12 month period.

In the case where a number of bidders form a consortium, principle bidders must be appointed as the Tendering authority to interface directly with Brand South Africa. The consortium may not make any further modifications to the consortium after the submission of the Tender document.

Submissions should clearly outline the nature of the relationship, the % shareholding in the association, the reason for the association and the potential benefits to Brand South Africa. Failure to comply with this requirement will result in a bidder's disqualification from the Tender process.

Brand South Africa reserves the right to verify members of the respective association and/or consortium.

#### 3. MODIFICATION OR SUBSTITUTION OF TENDER INFORMATION

Once Tender document have been submitted by the bidder, Brand South Africa will not accept or allow any substitution and/or modification of the information contained in the Tender document submission unless as agreed during negotiations.

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#### 4. NOTIFICATION

##### **Short-Listed Bidders**

Brand South Africa shall inform, in writing, the bidders that have been short-listed. It is the intention of Brand South Africa to keep the Tender document and any other further Tender submissions of these bidders open until such time as Brand South Africa has executed an agreement for the required services with one or more of the Short-Listed Bidders.

##### **Unsuccessful Bidders**

Upon selection of the Short-Listed Bidders, Brand South Africa will notify each of the other bidders and inform them that they have not been shortlisted.

Please Note: Brand South Africa's decision on the selection of Short-Listed Bidders is final and Brand South Africa will not enter into any further correspondence and/or negotiations with any unsuccessful bidders.

#### 5. QUERIES

All questions or queries on this Tender document must be communicated by e-mail [jabulilem@brandsouthafrica.com](mailto:jabulilem@brandsouthafrica.com). All questions and queries received will be responded to via email.

Please Note: The questions and responses will be sent to all bidders. Please bear this in mind when asking questions. The name of the bidder asking the question will not be mentioned. The deadline for questions relating to the Tender document is 11 May 2016 at 16h00.

#### 6. COST OF TENDERING

The bidders shall bear all costs and expenses associated with the preparation and submission of the Tender document submission and Brand South Africa shall under no circumstances be responsible or liable for any such costs, regardless of, without limitation to the conduct or outcome of the Tendering, evaluation, and/ or selection process.

#### 7. VALIDITY

The Tender document provided to Brand South Africa in terms of this Tender should be valid for a period of 120 days from the date of submission with the exception of the Tax and B-BBEE certificates which must still be valid at the time of the closing of the Tender.

#### 8. NEGOTIATIONS

Brand South Africa will enter into negotiations to agree on fees, scope of work, scope of services and other salient commercial terms with the Short-Listed Bidders.

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## 9. COMPLETENESS OF THE SOLUTION

The bidders must complete all documents in full and submit these with the Tender document submission. Failure to comply with these requirements will invalidate the bidders and disqualify the Tender document submission.

Notwithstanding any possible shortcomings and/or inconsistencies in the Tender documents, the bidders must ensure that the solution offered will form a complete, cost-effective and functional proposal.

## 10. CONTRACTUAL IMPLICATIONS

After awarding the Tender, the Tender document submission, together with an applicable contract to be compiled in line with this completed document, will constitute a binding contract agreement between Brand South Africa and the successful Short-Listed Bidder. The Short-Listed Bidder will assume total responsibility, regardless of any third party or sub-contracting agreements it may enter into.

## 11. CONDITIONS OF PAYMENT

Brand South Africa will approve all content, reviews and assessments set. No service will be provided to Brand South Africa before an official order has been issued to the supplier and service delivery will be within the specified time scale after the receipt of the official order. Invoices will be payable (30) days after receipt.

An invoice will be submitted to Brand South Africa for certification and must be supported by all relevant documentation and original invoices from additional suppliers.

## 12. QUALITY ASSURANCE

All deliverables produced by the Short-Listed Bidder, its personnel, agents, or sub-contractors will be subject to ongoing evaluation to determine its effectiveness and will be so guaranteed for the full period of this Tender.

Any lack of, or incorrect delivery which is attributable to poor or negligent work, will be rectified by the Short-Listed Bidder at own cost and time and all costs relating to the non-delivery will be expressly and separately noted on billing documentation.

## 13. CONTRACTUAL DETAILS

### a. AWARDING OF CONTRACT

Proven relevant experience and success, as well as the ability to deliver reliable and effective service will be important considerations.



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By the delivery of a Tender document submission, each bidder warrants that he/she is highly skilled, professional, competent, and experienced in the area for which he/she has bid. Any work performed by successful bidder will be evaluated against these criteria.

Tender document that are qualified by a bidder's own conditions may be rejected as being invalid, and failure of the bidders to renounce such conditions when called upon to do so may invalidate the Tender document submission.

Brand South Africa may request clarification or additional information regarding any aspect of the Tender document submission. The bidders must supply the requested information within forty-eight (48) hours after the written request has been made, otherwise the bidders may be disqualified.

**b. TERMS OF CONTRACT**

The contract will be in terms of the Brand South Africa's standard terms of services and procurement, the national treasurer general conditions of contract.

**14. EXECUTION OF CONTRACT**

Upon agreement between one of the Short-Listed Bidders and Brand South Africa, a contract will be given to the Preferred Bidder for signature. The Preferred Bidder will be allocated a time period of a maximum of (ten) 10 working days for signature and for the commencement of work on the account. Failing this, Brand South Africa reserves the right to disqualify the Preferred Bidder and enter into negotiations with any of the other Short-Listed Bidders.

**15. CONFLICT OF INTEREST**

The bidders or bidders group must submit a document (you may include it in your covering letter), stating whether any of its employees have any interest in Brand South Africa or whether any of Brand South Africa's personnel have any interest in the bidders or affiliated business.

**16. DISQUALIFICATION**

Any effort by a bidders or bidders representative to influence Brand South Africa in the process of clarification, determination of compliance, evaluation of TENDER DOCUMENT, or in decisions concerning the award of the Tender, will result in the disqualification of the respective bidders from the process.

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## 17. BRAND SOUTH AFRICA'S DISCRETION

Brand South Africa reserves the right to:

- a. Reject and/or disqualify any Tender document submission that:
  1. Fails to follow the letter and spirit of the Tender;
  2. Fails the Compliance Criteria;
  3. Substantially deviates from the terms and conditions of this Tender;
  4. Fails to commit to the key deliverables needed for this Tender;
  5. Contains any information that is found to be incorrect or misleading in any way.
- b. Accept one or more Tender document;
- c. Reject all Tender document;
- d. Consider any Tender document that may not conform to any aspect of the Tender document;
- e. Request further information from any bidders after the closing date;
- f. Cancel this Tender, Tender document or any part thereof at any time;
- g. Award this Tender or any part thereof to any one or more bidders;
- h. Increase/decrease the number of Short-Listed Bidder's invited to the pitch phase of this Tender.

## 18. DISCLAIMER

The information presented in this Tender is furnished solely for the purpose of assisting bidders in making their own evaluation of the Tender and does not purport to be all-inclusive or to contain all the information that bidders may require.



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**APPOINTMENT OF PANEL OF RECRUITMENT  
AGENCIES FOR A PERIOD OF THREE (3) YEARS**

**THE NATIONAL TREASURY**

**Republic of South Africa**



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



**APPOINTMENT OF PANEL OF RECRUITMENT  
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## **NOTES**

The purpose of this document is to:

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

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

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



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**General Conditions of Contract**

**1. Definitions**

1. The following terms shall be interpreted as indicated:

1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.

1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 "Day" means calendar day.

1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.

1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.

1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

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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

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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.

## **1. 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)

## **2. Standards**

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

## **3. 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.



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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.

#### **4. 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.

#### **5. 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.

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## 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.



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**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;

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- (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.

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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.

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## 20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

## 21. Delays in the supplier's performance

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

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

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

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

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

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without 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.

**APPOINTMENT OF PANEL OF RECRUITMENT AGENCIES FOR A PERIOD OF THREE (3) YEARS****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

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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.





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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.

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## **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,

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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.

Js General Conditions of Contract (revised July 2010\_



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