



# drdar

Department:  
Rural Development & Agrarian Reform  
**PROVINCE OF THE EASTERN CAPE**

## **FRAMEWORK AGREEMENT FOR A PANEL OF SERVICE PROVIDERS TO SUPPLY AND DELIVER FERTILIZERS AND AGRICULTURAL LIME**

**CONTRACT NO: FAI8-21/22-0002 B**

<b>TENDERER:</b>	
<b>CSD NUMBER:</b>	
<b>LOGIS NUMBER:</b>	
<b>CLOSING DATE:</b>	<b>23 APRIL 2021</b>
<b>CLOSING TIME:</b>	<b>11:00 am</b>

**ISSUED BY:**

DEPARTMENT OF RURAL DEVELOPMENT  
AND AGRARIAN REFORM  
PRIVATE BAG X0040  
BHISHO  
5605

Technical: Dr. M.M. Mbangcolo  
Contact: (043) 683 5457 / 079 528 4347  
[Mongezi.mbangcolo@drdar.gov.za](mailto:Mongezi.mbangcolo@drdar.gov.za)

Administrative: Ms. N. Mfunda  
Contact: (040) 602 5205/6/7/8/9/10  
[nomapha.mfunda@drdar.gov.za](mailto:nomapha.mfunda@drdar.gov.za)

## CONTENTS

<b><u>Section</u></b>	<b><u>Page</u></b>
1. Check list	3 - 4
2. Bid Notice	5 - 7
3. Bid Rules	8 - 15
4. Terms of Reference	16 – 29
5. Forms to be completed by the bidder	30 - 51
6. General conditions of contract	52 - 62
7. Framework Agreement to be signed after award	63 - 74

## CHECK LIST

## CHECK LIST

Please ensure that all the following documents have been submitted with your Bid / tender document. Failure to submit these documents could result in your quotation/bid being seen as unresponsive.

Description	Done
<b><u>Tax Status Verification for Price Quotations and Competitive Bids</u></b>	
Tax Compliance status and company directors of bidders will be verified on the CSD for all price quotations and competitive bids. Hard copies of Tax Certificate and CK documents are therefore no longer needed to be attached in the bid.	
Original or Certified copy of SANAS accredited B-BBEE certificate or Sworn Affidavit	
Joint Venture: In the case of a joint venture a Joint Venture Agreement or an Intention to form a Joint Venture Agreement must be attached Please note: To qualify for B-BBEE the Joint Venture's Certificate must be submitted.	
Certified copies of Identity Documents of all owners of the company	

Please ensure that all the following sections of the Quotation / Bid Document have been completed in full. Failure to comply will result in the Quotation / Bid being seen as unresponsive.

Description	
Section 3:	
1. Certificate of authority for signatory must be completed and signed in full.	
2. Schedule of work carried out by the bidder must be completed.	
3. Equity Ownership Declaration must be completed and signed in full.	
4. <b>All ECBD documents</b> must be completed signed in full and witnessed, failure to do so will result in the quotation/bid being eliminated.	
5. <b>All documentation / proof as stipulated in the scope of works/ functionality criteria in order to qualify for functionality points</b>	

**ALL FORMS TO BE COMPLETED IN BLACK INK**

**NO CORRECTION FLUID TO BE USED IN THE DOCUMENT**

**CHANGES SHOULD BE MADE BY DRAWING A LINE THROUGH THE INCORRECT INFORMATION, AND INITIAL THE CHANGE**

**NO LATE QUOTATIONS / BIDS WILL BE ACCEPTED**

## **BID NOTICE**

<b>PROJECT NO.</b>	<b>FAI8-21/22-0002 B</b>
<b>PROJECT DESCRIPTION</b>	<b>FRAMEWORK AGREEMENT FOR A PANEL OF SERVICE PROVIDERS TO SUPPLY AND DELIVER FERTILIZERS AND AGRICULTURAL LIME</b>

**AVAILABILITY OF DOCUMENTS : 1 APRIL 2021**

**CLOSING DATE : 23 APRIL 2021 AT 11:00**

**BID NOTICE**

DRDAR invited bids from suitable and qualified SERVICE PROVIDERS for the **FRAMEWORK AGREEMENT FOR A PANEL OF SERVICE PROVIDERS TO SUPPLY AND DELIVER FERTILIZERS, AGRICULTURAL LIME over a 3-year financial-year period.**

***Bidders should take note that projects are for all the districts within the Eastern Cape and the bidders proximity to a specific district (as verified on CSD), will determine for which district an agreement is signed.***

The completed document and all supporting documentation must be placed in a sealed envelope clearly marked with the project number and the district for which the service provider is showing interest and must be **HAND** delivered to the respective district as listed below;

<b>Alfred Nzo District</b> Mr. V. Dumezweni - 067 419 2243  ERF 206, Magistrate Street Maluti EX College Maluti 4700	<b>Amathole District</b> Mr. B. Giyama - 081 030 8841  2 <sup>nd</sup> Floor SARS BUILDING Phillip Frame Road East London, 5200	<b>Chris Hani District</b> Ms. N. Mquqwana - 073 434 6177  Bid Box, DRDAR Office, Block H, Komani Office Park, Queenstown, 5320
<b>Joe Gqabi District</b> Ms. N. Mbebe - 082 816 9959  Bid Box in Block D 2 Aliwal Street Aliwal North 9750	<b>OR Tambo District</b> Ms. P. Mkohlwa - 083 573 2224  Bid Box in Botha Sigcau Building Mthatha Corner Leeds and Owen street Mthatha 5099	<b>Sarah Baartman District</b> Mr. Z. Mooi - 066 476 4195  Bid Box, Ground Floor Mutual Building 64 Govan Mbeki Avenue Port Elizabeth, 6001

**By 11.00am on 23 APRIL 2021 AT 11:00 and DUE to the Pandemic no BIDS will be opened in public.**

Prospective service providers / partners must take particular note of the following: -

1. Bids received must first pass administrative compliance, where after those who passed will be scored for functionality (70/100) and all bidders who passed functionality will be evaluated according to 80/20 point system, were 80 points will be scored toward price and the remainder 20 points according to the suppliers B-BBEE rating. Therefore a valid B-BBEE certificate or a certified copy thereof must be submitted with the Bid. In the event of a supplier not in possession of a certificate, no points will be allocated toward B-BBEE.
2. **Kindly note that Contractors will be on the Framework Agreement and categorized according to district within which they are operating as per CSD Reports**

3. DRDAR is servicing 6 districts of the province and the framework agreements will be as per follows:

- a. FAI8-21/22-0002 B (ALF) ALFRED NZO
- b. FAI8-21/22-0002 B (AMT) AMATOLE
- c. FAI8-21/22-0002 B (CH) CHRIS HANI
- d. FAI8-21/22-0002 B (JG) JOE GQABI
- e. FAI8-21/22-0002 B (ORT) OR TAMBO
- f. FAI8-21/22-0002 B (SAR) SARAH BAARTMAN

4. Bidders are to note the functionality criteria scoring for each commodity and ensure submission of the required in order to qualify for points.
5. All prospective bidders not registered on the **CSD AND LOGIS** must do so before the closing date of the bid, as bids cannot be awarded to bidders not registered on the system.
6. Tax compliance status and company directors of bidders will be verified on CSD for all price quotations and bids. Hard copies of Tax Clearance Certificate and CK documents are therefore no longer needed to be attached in the bid.

The Department of Rural Development and Agrarian Reform will not entertain any late submissions. **Closing time is 11:00 the 23 APRIL 2021.**

All proposals shall hold good for 60 (sixty days) after bid closing date. The lowest or any bid will not necessarily be accepted. Electronic, telegraphic or facsimile bids will not be considered.

Enquiries should be directed to:	Dr. M.M. Mbangcolo	@	(043) 683 4022 / 079 528 4347	(Technical)
	Ms. N. Mfunda	@	(040) 602 5206/7/8/9/10	(Administrative)

## **BID RULES**



## Annexure: Standard Conditions of Tender

### F.1 General

#### F.1.1 Actions

The employer and each tenderer submitting a tender offer shall comply with these conditions of tender. In their dealings with each other, they shall discharge their duties and obligations as set out in F.2 and F.3, timeously and with integrity, and behave equitably, honestly and transparently.

#### F.1.2 Tender Documents

The documents issued by the employer for the purpose of a tender offer are listed in the tender data.

#### F.1.3 Interpretation

**F.1.3.1** The tender data and additional requirements contained in the tender schedules that are included in the returnable documents are deemed to be part of these conditions of tender.

**F.1.3.2** These conditions of tender, the tender data and tender schedules which are only required for tender evaluation purposes, shall not form part of any contract arising from the invitation to tender.

**F.1.3.3** For the purposes of these conditions for the calling for expressions of interest, the following definitions apply:

- a) **comparative offer** means the tenderer's financial offer after the factors of non-firm prices, all unconditional discounts and any other tendered parameters that will affect the value of the financial offer have been taken into consideration
- b) **corrupt practice** means the offering, giving, receiving or soliciting of anything of value to influence the action of the employer or his staff or agents in the tender process; and
- c) **fraudulent practice** means the misrepresentation of the facts in order to influence the tender process or the award of a contract arising from a tender offer to the detriment of the employer, including collusive practices intended to establish prices at artificial levels
- d) **quality (functionality)** means the totality of features and characteristics of a product or service that bear on its ability to satisfy stated or implied needs

#### F.1.4 Communication and employer's agent

Each communication between the employer and a tenderer shall be to or from the employer's agent only, and in a form that can be read, copied and recorded. Writing shall be in the English language. The employer shall not take any responsibility for non-receipt of communications from or by a tenderer. The name and contact details of the employer's agent are stated in the tender data.

#### F.1.5 The employer's right to accept or reject any tender offer

**F.1.5.1** The employer may accept or reject any variation, deviation, tender offer, or alternative tender offer, and may cancel the tender process and reject all tender offers at any time before the formation of a contract. The employer shall not accept or incur any liability to a tenderer for such cancellation and rejection, but will give written reasons for such action upon written request to do so.

**F.1.5.2** The employer may not subsequent to the cancellation or abandonment of a tender process or the rejection of all responsive tender offers re-issue a tender covering substantially the same scope of work within a period of six months unless only one tender was received and such tender was returned unopened to the tenderer.

### F.2 Tenderer's obligations

#### F.2.1 Eligibility

Submit a tender offer only if the tenderer satisfies the criteria stated in the tender data and the tenderer, or any of his principals, is not under any restriction to do business with employer.

#### F.2.2 Cost of tendering

Accept that the employer will not compensate the tenderer for any costs incurred in the preparation and submission of a tender offer, including the costs of any testing necessary to demonstrate that aspects of the offer satisfy requirements.

### **F.2.3 Check documents**

Check the tender documents on receipt for completeness and notify the employer of any discrepancy or omission.

### **F.2.4 Confidentiality and copyright of documents**

Treat as confidential all matters arising in connection with the tender. Use and copy the documents issued by the employer only for the purpose of preparing and submitting a tender offer in response to the invitation.

### **F.2.5 Reference documents**

Obtain, as necessary for submitting a tender offer, copies of the latest versions of standards, specifications, conditions of contract and other publications, which are not attached but which are incorporated into the tender documents by reference.

### **F.2.6 Acknowledge addenda**

Acknowledge receipt of addenda to the tender documents, which the employer may issue, and if necessary apply for an extension to the closing time stated in the tender data, in order to take the addenda into account.

### **F.2.7 Clarification meeting**

Attend, where required, a clarification meeting at which tenderers may familiarize themselves with aspects of the proposed work, services or supply and raise questions. Details of the meeting(s) are stated in the tender data.

### **F.2.8 Seek clarification**

Request clarification of the tender documents, if necessary, by notifying the employer at least five working days before the closing time stated in the tender data.

### **F.2.9 Insurance**

Be aware that the extent of insurance to be provided by the employer (if any) might not be for the full cover required in terms of the conditions of contract identified in the contract data. The tenderer is advised to seek qualified advice regarding insurance.

### **F.2.10 Pricing the tender offer**

**F.2.10.1** Include in the rates, prices, and the tendered total of the prices (if any) all duties, taxes (except Value Added Tax (VAT), and other levies payable by the successful tenderer, such duties, taxes and levies being those applicable 14 days before the closing time stated in the tender data.

**F.2.10.2** Show VAT payable by the employer separately as an addition to the tendered total of the prices.

**F.2.10.3** Provide rates and prices that are fixed for the duration of the contract and not subject to adjustment except as provided for in the conditions of contract identified in the contract data.

**F.2.10.4** State the rates and prices in Rand unless instructed otherwise in the tender data. The conditions of contract identified in the contract data may provide for part payment in other currencies.

### **F.2.11 Alterations to documents**

Not make any alterations or additions to the tender documents, except to comply with instructions issued by the employer, or necessary to correct errors made by the tenderer. All signatories to the tender offer shall initial all such alterations. Erasures and the use of masking fluid are prohibited.

### **F.2.12 Alternative tender offers**

**F.2.12.1** Submit alternative tender offers only if a main tender offer, strictly in accordance with all the requirements of the tender documents, is also submitted. The alternative tender offer is to be submitted with the main tender offer together with a schedule that compares the requirements of the tender documents with the alternative requirements the tenderer proposes.

**F.2.12.2** Accept that an alternative tender offer may be based only on the criteria stated in the tender data or criteria otherwise acceptable to the employer.

### **F.2.13 Submitting a tender offer**

**F.2.13.1** Submit a tender offer to provide the whole of the works, services or supply identified in the contract data and described in the scope of works, unless stated otherwise in the tender data.

**F.2.13.2** Return all returnable documents to the employer after completing them in their entirety, either electronically (if they were issued in electronic format) or by writing in black ink.

**F.2.13.3** Submit the parts of the tender offer communicated on paper as an original plus the number of copies stated in the tender data, with an English translation of any documentation in a language other than English, and the parts communicated electronically in the same format as they were issued by the employer.

**F.2.13.4** Sign the original and all copies of the tender offer where required in terms of the tender data. The employer will hold all authorized signatories liable on behalf of the tenderer. Signatories for tenderers proposing to contract as joint ventures shall state which of the signatories is the lead partner whom the employer shall hold liable for the purpose of the tender offer.

**F.2.13.5** Seal the original and each copy of the tender offer as separate packages marking the packages as "ORIGINAL" and "COPY". Each package shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

**F.2.13.6** Where a two-envelope system is required in terms of the tender data, place and seal the returnable documents listed in the tender data in an envelope marked "financial proposal" and place the remaining returnable documents in an envelope marked "technical proposal". Each envelope shall state on the outside the employer's address and identification details stated in the tender data, as well as the tenderer's name and contact address.

**F.2.13.7** Seal the original tender offer and copy packages together in an outer package that states on the outside only the employer's address and identification details as stated in the tender data.

**F.2.13.8** Accept that the employer will not assume any responsibility for the misplacement or premature opening of the tender offer if the outer package is not sealed and marked as stated.

### **F.2.14 Information and data to be completed in all respects**

Accept that tender offers, which do not provide all the data or information requested completely and in the form required, may be regarded by the employer as non-responsive.

### **F.2.15 Closing time**

**F.2.15.1** Ensure that the employer receives the tender offer at the address specified in the tender data not later than the closing time stated in the tender data. Proof of posting shall not be accepted as proof of delivery. The employer shall **not** accept tender offers submitted by telegraph, telex, facsimile or e-mail, unless stated otherwise in the tender data.

**F.2.15.2** Accept that, if the employer extends the closing time stated in the tender data for any reason, the requirements of these conditions of tender apply equally to the extended deadline.

### **F.2.16 Tender offer validity**

**F.2.16.1** Hold the tender offer(s) valid for acceptance by the employer at any time during the validity period stated in the tender data after the closing time stated in the tender data.

**F.2.16.2** If requested by the employer, consider extending the validity period stated in the tender data for an agreed additional period.

### **F.2.17 Clarification of tender offer after submission**

Provide clarification of a tender offer in response to a request to do so from the employer during the evaluation of tender offers. This may include providing a breakdown of rates or prices and correction of arithmetical errors by the adjustment of certain rates or item prices (or both). No change in the total of the prices or substance of the tender offer is sought, offered, or permitted. The total of the prices stated by the tenderer shall be binding upon the tenderer.

**Note:** Sub-clause F.2.17 does not preclude the negotiation of the final terms of the contract with a preferred tenderer following a competitive selection process, should the Employer elect to do so.

## **F.2.18 Provide other material**

**F.2.18.1 Provide**, on request by the employer, any other material that has a bearing on the tender offer, the tenderer's commercial position (including notarized joint venture agreements), referencing arrangements, or samples of materials, considered necessary by the employer for the purpose of a full and fair risk assessment. Should the tenderer not provide the material, or a satisfactory reason as to why it cannot be provided, by the time for submission stated in the employer's request, the employer may regard the tender offer as non-responsive.

**F.2.18.2 Dispose** of samples of materials provided for evaluation by the employer, where required.

## **F.2.19 Inspections, tests and analysis**

Provide access during working hours to premises for inspections, tests and analysis as provided for in the tender data.

## **F.2.20 Submit securities, bonds, policies, etc.**

If requested, submit for the employer's acceptance before formation of the contract, all securities, bonds, guarantees, policies and certificates of insurance required in terms of the conditions of contract identified in the contract data.

## **F.2.21 Check final draft**

Check the final draft of the contract provided by the employer within the time available for the employer to issue the contract.

## **F.2.22 Return of other tender documents**

If so instructed by the employer, return all retained tender documents within 28 days after the expiry of the validity period stated in the tender data.

## **F.2.23 Certificates**

Include in the tender submission or provide the employer with any certificates as stated in the tender data.

## **F.3 The employer's undertakings**

### **F.3.1 Respond to clarification**

Respond to a request for clarification received up to five working days before the tender closing time stated in the Tender Data and notify all tenderers who drew procurement documents.

### **F.3.2 Issue Addenda**

If necessary, issue addenda that may amend or amplify the tender documents to each tenderer during the period from the date that tender documents are available until seven days before the tender closing time stated in the Tender Data. If, as a result a tenderer applies for an extension to the closing time stated in the Tender Data, the Employer may grant such extension and, shall then notify all tenderers who drew documents.

### **F.3.3 Return late tender offers**

Return tender offers received after the closing time stated in the Tender Data, unopened, (unless it is necessary to open a tender submission to obtain a forwarding address), to the tenderer concerned.

### **F.3.4 Opening of tender submissions**

**F.3.4.1** Unless the two-envelope system is to be followed, open valid tender submissions in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data. Tender submissions for which acceptable reasons for withdrawal have been submitted will not be opened.

**F.3.4.2** Announce at the meeting held immediately after the opening of tender submissions, at a venue indicated in the tender data, the name of each tenderer whose tender offer is opened, the total of his prices, preferences claimed and time for completion, if any, for the main tender offer only.

**F.3.4.3** Make available the record outlined in F.3.4.2 to all interested persons upon request.

### **F.3.5 Two-envelope system**

**F.3.5.1** Where stated in the tender data that a two-envelope system is to be followed, open only the technical proposal of valid tenders in the presence of tenderers' agents who choose to attend at the time and place stated in the tender data and announce the name of each tenderer whose technical proposal is opened.

**F.3.5.2** Evaluate the quality of the technical proposals offered by tenderers, then advise tenderers who remain in contention for the award of the contract of the time and place when the financial proposals will be opened. Open only the financial proposals of tenderers, who score in the quality evaluation more than the minimum number of points for quality stated in the tender data, and announce the score obtained for the technical proposals and the total price and any preferences claimed. Return unopened financial proposals to tenderers whose technical proposals failed to achieve the minimum number of points for quality.

### **F.3.6 Non-disclosure**

Not disclose to tenderers, or to any other person not officially concerned with such processes, information relating to the evaluation and comparison of tender offers, the final evaluation price and recommendations for the award of a contract, until after the award of the contract to the successful tenderer.

### **F.3.7 Grounds for rejection and disqualification**

Determine whether there has been any effort by a tenderer to influence the processing of tender offers and instantly disqualify a tenderer (and his tender offer) if it is established that he engaged in corrupt or fraudulent practices.

### **F.3.8 Test for responsiveness**

**F.3.8.1** Determine, on opening and before detailed evaluation, whether each tender offer properly received:

- a) complies with the requirements of these Conditions of Tender,
- b) has been properly and fully completed and signed, and
- c) is responsive to the other requirements of the tender documents.

**F.3.8.2** A responsive tender is one that conforms to all the terms, conditions, and specifications of the tender documents without material deviation or qualification. A material deviation or qualification is one which, in the Employer's opinion, would:

- a) detrimentally affect the scope, quality, or performance of the works, services or supply identified in the Scope of Work,
- b) change the Employer's or the tenderer's risks and responsibilities under the contract, or
- c) affect the competitive position of other tenderers presenting responsive tenders, if it were to be rectified.

Reject a non-responsive tender offer, and not allow it to be subsequently made responsive by correction or withdrawal of the non-conforming deviation or reservation.

### **F.3.9 Arithmetical errors**

**F.3.9.1** Check responsive tender offers for arithmetical errors, correcting them in the following manner:

- a) Where there is a discrepancy between the amounts in figures and in words, the amount in words shall govern.
- b) If bills of quantities (or schedule of quantities or schedule of rates) apply and there is an error in the line item total resulting from the product of the unit rate and the quantity, the line item total shall govern and the rate shall be corrected. Where there is an obviously gross misplacement of the decimal point in the unit rate, the line item total as quoted shall govern, and the unit rate shall be corrected.
- c) Where there is an error in the total of the prices either as a result of other corrections required by this checking process or in the tenderer's addition of prices, the total of the prices shall govern and the tenderer will be asked to revise selected item prices (and their rates if bills of quantities apply) to achieve the tendered total of the prices.

**F.3.9.2** Consider the rejection of a tender offer if the tenderer does not correct or accept the correction of his arithmetical errors in the manner described in F.3.9.1.

### F.3.10 Clarification of a tender offer

Obtain clarification from a tenderer on any matter that could give rise to ambiguity in a contract arising from the tender offer.

### F.3.11 Evaluation of tender offers

#### F.3.11.1 General

Appoint an evaluation panel of not less than three persons. Reduce each responsive tender offer to a comparative offer and evaluate it using the tender evaluation method that is indicated in the Tender Data and described below:

Method 1: Financial offer	1) Rank tender offers from the most favourable to the least favourable comparative offer. 2) Recommend highest ranked tenderer for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 2: Financial offer and preferences	1) Score tender evaluation points for financial offer. 2) Confirm that tenderers are eligible for the preferences claimed and if so, score tender evaluation points for preferencing. 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 3: Financial offer and quality	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data. 2) Score tender evaluation points for financial offer. 3) Calculate total tender evaluation points. 4) Rank tender offers from the highest number of tender evaluation points to the lowest. 5) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.
Method 4: Financial offer, quality and preferences	1) Score quality, rejecting all tender offers that fail to score the minimum number of points for quality stated in the Tender data. 2) Score tender evaluation points for financial offer. 3) Confirm that tenderers are eligible for the preferences claimed, and if so, score tender evaluation points for preferencing. 4) Calculate total tender evaluation points. 5) Rank tender offers from the highest number of tender evaluation points to the lowest. 6) Recommend tenderer with the highest number of tender evaluation points for the award of the contract, unless there are compelling and justifiable reasons not to do so.

Score financial offers, preferences and quality, as relevant, to two decimal places.

#### F.3.11.2 Scoring Financial Offers

The points scored for the financial component will be calculated using the formula as set out in form ECBD 6.1 – PURCHASES, paragraph 5.

#### F.3.11.3 Scoring quality (functionality)

Score quality in each of the categories in accordance with the Tender Data and calculate total score for quality.

### **F.3.12 Insurance provided by the employer**

If requested by the proposed successful tenderer, submit for the tenderer's information the policies and / or certificates of insurance which the conditions of contract identified in the contract data, require the employer to provide.

### **F.3.13 Acceptance of tender offer**

**F.3.13.1** Accept tender offer only if the tenderer complies with the legal requirements stated in the Tender Data.

**F.3.13.2** Notify the successful tenderer of the employer's acceptance of his tender offer by completing and returning one copy of the form of offer and acceptance before the expiry of the validity period stated in the tender data, or agreed additional period. Providing the form of offer and acceptance does not contain any qualifying statements, it will constitute the formation of a contract between the employer and the successful tenderer as described in the form of offer and acceptance.

### **F.3.14 Notice to unsuccessful tenderers**

After the successful tenderer has acknowledged the employer's notice of acceptance, notify other tenderers that their tender offers have not been accepted.

### **F.3.15. Prepare contract documents**

If necessary, revise documents that shall form part of the contract and that were issued by the employer as part of the tender documents to take account of:

- a) addenda issued during the tender period,
- b) inclusion of some of the returnable documents,
- c) other revisions agreed between the employer and the successful tenderer, and
- d) the schedule of deviations attached to the form of offer and acceptance, if any.

### **F.3.16 Issue final contract**

Prepare and issue the final draft of contract documents to the successful tenderer for acceptance as soon as possible after the date of the employer's signing of the form of offer and acceptance (including the schedule of deviations, if any). Only those documents that the conditions of tender require the tenderer to submit, after acceptance by the employer, shall be included.

### **F.3.17 Complete adjudicator's contract**

Unless alternative arrangements have been agreed or otherwise provided for in the contract, arrange for both parties to complete formalities for appointing the selected adjudicator at the same time as the main contract is signed.

### **F.3.18 Provide copies of the contracts**

Provide to the successful tenderer the number of copies stated in the Tender Data of the signed copy of the contract as soon as possible after completion and signing of the form of offer and acceptance.

## **TERMS OF REFERENCE**





**drdar**

Department:  
Rural Development & Agrarian Reform  
**PROVINCE OF THE EASTERN CAPE**

## **TERMS OF REFERENCE**

### **APPOINTMENT OF A PANEL OF QUALIFIED SERVICE PROVIDERS TO SUPPLY AGRICULTURAL INPUTS: AGRICULTURAL LIME, FERTILIZERS**

#### **BACKGROUND**

- 1.1. As part of revitalisation and commercialisation of agriculture in the province, the Department of Rural Development and Agrarian Reform seeks to support the subsistence and smallholder producer towards productive and competitive provincial agriculture sector;
- 1.2. The Department is mandated to drive rural development, thus grow the rural economies through agriculture by ensuring that all producers and input suppliers continue to lead in local economic development of rural communities.
- 1.3. The Department is implementing Agriculture Economic Transformation Strategy to unlock agriculture potential of the province. The Department is supporting in all six (6) districts inclusive to two (2) metropolitan municipalities according to their natural resource potential.
- 1.4. The strategy of the Department is focussing at increasing household incomes, promoting commercialization of the smallholder farmers, increasing opportunities for skilled and relatively unskilled employment, and to increase food security.
- 1.5. The Department has therefore prioritized the need to assist resource-poor farmers with agricultural inputs in the form of Agricultural lime, fertilizer (Mixtures and Straight Fertilizers) and Micro nutrients;

#### **2. OBJECTIVES**

- 2.1. To establish a Panel of suitably qualified Agriculture Input Suppliers to engage in a three-year period (36 months) contract for the supply and delivery of agricultural inputs in the form of Agricultural lime, fertilizer (Mixtures and Straight Fertilizers) and Micro nutrients;
- 2.2. To ensure cost effective, timely and correct supply of agricultural inputs to resource-poor and emerging farmers.
- 2.3. To create sustainable food (crop and livestock) production in poverty-stricken rural communities.
- 2.4. To enable farmers/producers to improving their relationship with local suppliers and potential markets of their produce;

#### **3. SCOPE OF SERVICES**

- 3.1. The Department requires a panel of qualified service providers that will supply Agricultural lime, fertilizer (Mixtures and Straight Fertilizers) to directly to beneficiaries in all districts of;
- 3.2. Ensure adherence of all inputs required in terms of quality and quantities
- 3.3. Prompt delivery/availability of inputs required in order to avoid missing the timelines related to soil preparation and treatment

- 3.4. All plant material supplied to Department for beneficiaries must be compliant with Fertilizers, Farm Feeds, Seeds and Remedies Act 36 of 1947.
- 3.5. Only certified commodities (Agricultural lime, fertilizer (Mixtures and Straight Fertilizers) shall be accepted. Proof of certification must be provided where applicable when quotations are invited and/or upon delivery.
- 3.6. The specifications of all required Agricultural lime, fertilizer (Mixtures and Straight Fertilizers) that will be purchased from suppliers on this panel are indicated in the Table 1-4 below:

**Table 1: Specifications for Granular Fertilizers (Mixtures and Straight Fertilizers)**

ITEM	ITEM SPECIFICATION
<b>Fertilizers</b>	2:3:2 (30) +0,5% Zn
	2:3:4 (30) +0,5% Zn
	4:3:4 (40) +0,5% Zn
	LAN (28%)
	Slow release, Bio-Organic Coated Urea, Percentage N 46 (Black Urea)
	3:2:1 (30) + 0,5% Zn
	Mono Ammonium Phosphate (MAP) (33)
	Ammonium sulphate nitrate - ASN(27)
	Ammonium sulphate ((NH <sub>4</sub> ) <sub>2</sub> SO <sub>4</sub> )
	Urea(46) granular
	Potassium nitrate (KNO <sub>3</sub> )
	Potassium chloride (KCl)
	Potassium sulphate (K <sub>2</sub> SO <sub>4</sub> )
	Diammonium phosphate (DAP) + 0.5% Zn
	Single superphosphate (10.5%)

**Table 2: Specifications for Hydroponic/Tunnel Production Fertilizers**

ITEM	ITEM SPECIFICATION
<b>Hydroponic/Tunnel Production Fertilizers</b>	Magnesium Sulphate
	Potassium nitrate
	Potassium sulphate
	Mono Ammonium Phosphate (MAP)
	Calcium nitrate
	Microplex

**Table 3: Specifications for Agricultural lime**

ITEM	ITEM SPECIFICATION
<b>Agricultural lime</b>	Dolomitic agricultural limestone
	Calcitic agricultural limestone
	Gypsum

**Table 4: Specifications for Organic Fertilizers**

ITEM	ITEM SPECIFICATION
<b>Organic Fertilizers or soil ameliorants</b>	Organic compost
	Humic Acid
	UAN 30%
	3-0-9+Ca+Mg
	5-0-7+Ca+Mg
	Bounce Back
	Amino Boost
	Liquid Compost
	Garden logic
	Su Amino Boost
	Growing Medium similar or equivalent to Large African Dream
	Folic acid
	Premium fulvic flake
	Amino K
	Nanocal
	Sea Brix

Please select the commodity and district **(not more than two Districts)** of your interest in the table below:

**Table 5: Breakdown of districts and commodities for the items listed above**

#	DISTRICT	COMODITY	Select (Mark with an X)
<b>1</b>	<b>Alfred Nzo District</b>	Fertilizer	
		Hydroponic/Tunnel Production Fertilizers	
		Agricultural lime	
		Organic Fertilizers or soil ameliorants	
<b>2</b>	<b>Amathole District including Buffalo City Metro</b>	Fertilizer	
		Hydroponic/Tunnel Production Fertilizers	
		Agricultural lime	
		Organic Fertilizers or soil ameliorants	
<b>3</b>	<b>Chris Hani District</b>	Fertilizer	
		Hydroponic/Tunnel Production Fertilizers	
		Agricultural lime	
		Organic Fertilizers or soil ameliorants	
<b>4</b>	<b>Joe Gqabi District</b>	Fertilizer	
		Hydroponic/Tunnel Production Fertilizers	
		Agricultural lime	
		Organic Fertilizers or soil ameliorants	
<b>5</b>	<b>OR Tambo District</b>	Fertilizer	
		Hydroponic/Tunnel Production Fertilizers	
		Agricultural lime	

#	DISTRICT	COMODITY	Select (Mark with an X)
		Organic Fertilizers or soil ameliorants	
6	Sarah Baartman District including Nelson Mandela Metro	Fertilizer	
		Hydroponic/Tunnel Production Fertilizers	
		Agricultural lime	
		Organic Fertilizers or soil ameliorants	

#### 4. COMPETENCY OF THE SERVICE PROVIDER

- 4.1. For evaluation processes the department will apply the evaluation criteria as outlined in the Bid Evaluation Criteria of this bid.
- 4.2. The service provider must have an understanding of the agricultural sector with specific reference to the agricultural production inputs and production seasons within the Province.
- 4.3. The potential service provider will have to demonstrate a financial ability, which will not compromise timeous delivery of the required inputs and quantities.
- 4.4. A service provider will be required to submit a company profile that highlights capabilities/ability/experience for the required service and company financial capacity.

#### 5. PROJECT MANAGEMENT

- a. It will be expected from the service provider to commence with the work within two weeks (fourteen (14) days) of appointment. If there is a delay, reasons should be provided and agreed upon by both parties.
- b. The service provider will submit comprehensive delivery schedule for each expected delivery within seven (7) days after receiving a Government Purchase Order
- c. The relevant Departmental Official will confirm quantities per delivery point to the Service provider three (3) days after receipt of a Government Purchase Order.
- d. Relevant official in the department within seven (7) days must approve this comprehensive delivery schedule.

#### 6. TERMS AND CONDITIONS

- a. No late or incomplete responses will be accepted.
- b. Suppliers must ensure that no services are rendered or goods delivered without written confirmation from DRDAR.
- c. Only bidders who are registered on CSD as service providers or capable of being registered prior to the evaluation of submissions are eligible to submit bids. Bidders who are not registered on the CSD are not precluded from submitting bids, however bidders must complete the CSD application online, prior the closing date ([www.csd.gov.za](http://www.csd.gov.za) is the website). It is the responsibility of bidders to ensure that this requirement is complied with. Kindly note that you need to have a working email address and working cell phone.
- d. Tax compliance status and company directors of bidders will be verified on CSD for all price quotations and bids. Hard copies of Tax Clearance Certificate and CK documents are therefore no longer needed to be attached in the bid.

- e. Bidders must be registered and active on LOGIS
- f. SANAS accredited BBB EE Certificate for generic companies or certified copy of sworn affidavit must be attached for Exempted Micro Enterprise and Qualifying Small Enterprises.

## **7. PRE-QUALIFYING CRITERIA**

The revision of the Preferential Procurement Regulations of 2011 has largely been influenced by the need to provide for a mechanism to empower certain categories (Small Medium and Micro Enterprises (SMME) also classified as EMEs or QSEs, Co-operatives, Township and Rural enterprises) through procurement. To this end, commitment made by Government has been to leverage public procurement.

**It should therefore be noted that pre-qualification in terms of 2017 PPPFA regulation 4 will be applied in the evaluation of this bid.**

Only tenderers who meet any of the following prequalification criteria may respond:-

An EME or QSE

Bidders who do not meet the pre-qualification criteria shall not be considered for Administrative evaluation.

## **8. EVALUATION METHODOLOGY**

The evaluation of the bids will be done in a two-stage process. Bidders who do not meet the Stage 1 {(Administrative Compliance Requirements (completion or attachment of Compulsory documents))}, of the evaluation shall not be considered for Stage 2 evaluation (Price and B-BBEE).

### **Stage 1 (Administrative compliance and Functionality)**

#### **Part A: Administrative Compliance Documents**

1. Declaration of Interest form (ECBD 4)
2. Signing of Declaration of Bidder's Past Supply Chain Management Practices (ECBD 8);
3. Certificate of Independent Bid Determination (ECBD 9);
4. Bidders not restricted and no director employed by the state.

Bids that do not comply with the above administrative compliance criteria, and or fail to adhere to the requirements may be disqualified and will not be considered for evaluation on functionality criteria.

#### **Part B: Technical/ Functionality Evaluation (75%) threshold**

Technical evaluation, the first stage will be the evaluation of bids on functionality **and during this stage bids that do not meet the minimum threshold of 75 % on the functionality score will be**

disqualified, and will not be considered for the second stage of evaluation i.e. price and preference points

Functionality will be by members of the Bid Evaluation Committee in accordance with the below functionality criteria and values in line the 2017 PPPFA Regulations.

### Technical Evaluation 100 Points

NO	EVALUATION MATRIX	DESCRIPTION	SCORE	MEANS OF VERIFICATION
1.	<b>Relevant Experience</b>	<i>Bidders to provide previous experience in supply and delivery of Agricultural Input Supplies</i>  <i>(5 points per relevant project up to a maximum of 7 projects)</i>	35	<ul style="list-style-type: none"> <li>Support your track record with tangible evidence e.g. Appointment letters, Purchase Orders with contract values.</li> <li>Traceable Reference letters from authorized / delegated officials where similar work was undertaken.</li> </ul>
2.	<b>Financial Capacity</b>	<p><i>Total Credit Facility (with financial institution and/or supplier or manufacture of fertilizer) to tune of <b>R5 million annually</b></i> OR  <i>Proof of purchase orders / Proof from the supplier/manufacture/ department to value of <b>R5 million</b> annually will enable a bidder to score maximum points of 5 points per contract</i></p> <p><i>Between R1 Million - R2 Million = 5 points</i>  <i>R2 million – R3 Million = 15 points</i>  <i>R3 Million – R4 Million = 20 points</i>  <i>R4 Million – R5 Million = 25 points</i>  <i>Above R5 million = 30 points</i></p>	30	<p><b>In case of Credit Facility</b></p> <ul style="list-style-type: none"> <li>Evidence of credit facility with Registered Financial Institution (E.g. Letter for Intent) Or</li> <li>Evidence of access to any legal funding instrument.</li> </ul> <p><b>In case of Orders:</b>  <i>For each project provide the following:</i></p> <ul style="list-style-type: none"> <li>Description of service provided.</li> <li>Project cost and duration</li> <li>Proof of orders issued for each project</li> <li>Reference letter for each project</li> </ul>
3.	<b>Logistics</b> <b>Refer to type of commodity being transported</b>	<p><i>Documentary proof of access to a supplier/manufacture agreement and bulk transportation facility</i></p> <ul style="list-style-type: none"> <li>Supplier agreement Manufacture and Own transport = 20 points</li> <li>Supplier agreement and Leased transport = 15 points</li> <li>Supplier agreement and no proof of transport = 5 points</li> </ul>	20	<ul style="list-style-type: none"> <li>Signed Supplier/Manufacturer Agreement</li> <li>Letter of commitment from fleet company or Confirmation from transport company or distribution agent.</li> <li>For own transport bidder must supply proof thereof.</li> </ul>
4.	<b>Locality</b>	<ul style="list-style-type: none"> <li>Operating business within District bidding to supply = 15</li> </ul>	15	<p><i>Proof of Physical address as stated in the Centralised Supplier Database (CSD)</i></p> <ul style="list-style-type: none"> <li>Municipality Bills,</li> <li>Business Letters,</li> <li>Lease Agreement,</li> </ul>

		<ul style="list-style-type: none"> <li>• Operating business within the EC =10</li> <li>• Operating business within South Africa = 2</li> </ul>		<ul style="list-style-type: none"> <li>• Letter from the Municipal Authority, (Not Older than 3 Months)</li> </ul>
<b>TOTAL</b>		<b>100</b>		

#### Minimum threshold

*Note: Bidders scoring less than 75% of the paper based technical evaluation would not be considered for the next level of the technical evaluation*

### Stage 2

#### Price and Preference Points Evaluation

The second stage evaluation will be on price points (80) and preference points (20) only. It should be noted that only firms scoring an overall score of 75% out of 100 will be considered for price and preference point evaluation.

- Bids will be evaluated according to 80/20 preference point system, as prescribed in terms of the Preferential Procurement Policy Regulations, 2017 issued in terms of section 5 of the Preferential Procurement Policy Framework Act, Act Number 5 of 2000 (PPPFA)

<b>Price evaluation</b>	<b>80</b>
Price or quotation offer under consideration	
Total for price	80
<b>Preference point system</b>	<b>20</b>
Preference points (B-BBEE status level contribution)	
Level 1	20
Level 2	18
Level 3	14
Level 4	12
Level 5	8
Level 6	6
Level 7	4
Level 8	2
Non-compliant contributor	0
<b>Total points</b>	<b>20</b>

## 9. PROCUREMENT FROM THE PANEL

10.1 The approach that will be adopted by the department when procuring from the panels will be as follows:

10.1.1 Requirement will be determined per District

10.1.2 Specifications and request for quotation documents will be prepared.

10.1.3 Quotations will then be invited, evaluated (Price and B-BBEE), and awarded accordingly, however,

10.1.3.1 The Department may, for each quotation invited from the panel, identify and define an objective criterion to be applied.

10.1.3.2 The objective criteria mentioned above will allow the department to only consider and award quotations to service providers who comply with these criteria.

10.1.3.3 The department reserves the right not to appoint the highest point scorer, but to pro-rata the awards, based on consideration of quantities.

10.1.3.4 Service Level Agreements/ Contracts will be signed after approval of award.

10.1.4 Purchase Orders will thereafter be issued.

## 10. APPLICATION PROCESS

Applications must be delivered to the following office:

OFFICE	PHYSICAL ADDRESS	PLACE
Refer to page 6 (bid notice) with addresses and contact details of the districts.		

## DELIVERY DETAILS

Delivery Address: **As per table 3 above**

Contact Person: **Dr.M.M. Mbangcolo**

Contact numbers: **043 683 5457 / 079 528 4347**



## BID DISQUALIFYING FACTORS

All bids received shall be evaluated on the following:

1. Only bids that meet all of the stipulated **Prequalification Criteria** shall be considered:
2. Bids must meet the **Special Terms and Conditions** in all aspects as stipulated in the bid document.
  - 2.1 A signed letter from a Manufacturer confirming firm supply arrangements as per Clause 13 of the Special Terms and Conditions must be attached to the bid.
3. **Correctness of information:**
  - 3.1 All information required in the bid document must be accurate and duly completed including all the appropriate signatures.
  - 3.2 Use of correction fluid is prohibited.
  - 3.3 Any alterations must be initialled.
  - 3.4 Under no circumstances may bid forms be retyped or redrafted.
4. **Compulsory administrative compliance requirements that must be submitted with the bid:**
  - 4.1 Central Suppliers Database registration number;
  - 4.2 A certified copy of a valid BBBEE certificate or valid sworn affidavit;
  - 4.3 Documentary proof of bidder being an EME or QSE;

**NB. The Department reserves the right to verify all information submitted.**

**Non-compliance with the above shall result in elimination from further processes.**

**5. To enable scoring on functionality, the following must be submitted:**

- 5.1 *Support your track record with tangible evidence e.g. Appointment letters, Purchase Orders with contract values and / or Traceable Reference letters from authorized / delegated officials where similar work was undertaken.;*
- 5.2 Documentary proof of credit facility with manufacturer and/or Registered Financial Institution or evidence of access to any legal funding instrument; **In case of Orders:** *For each project provide the following: Description of service provided, Project cost and duration, Proof of orders issued for each project and Reference letter for each project*
- 5.3 *Letter of commitment from fleet company or Confirmation from transport company or distribution agent. For own transport bidder must supply proof thereof **AND** Signed Supplier/Manufacturer Agreement);*
- 5.4 *Proof of Physical address as stated in the Centralised Supplier Database (CSD) in a form of the Municipality Bills or Business Letters or Lease Agreement or Letter from the Municipal Authority, (Not Older than 3 Months)*

**NB. Non-submission of any of the above documents shall result in inability to score functionality points which will result in elimination.**

**Where copies of original documentation are submitted, those copies must be certified and must not be copies of certified copies.**

Original certification should not be older than three (3) months. Failure to comply with this requirement shall invalidate the bid submitted.

## SPECIAL TERMS AND CONDITIONS

### INTRODUCTION

- a) Tenderers must ensure that they are fully aware of all the Terms and Conditions contained in this bid document.
- b) Only tenderers that fully meet the prequalification criteria shall be considered.

### 1. ACCEPTANCE OF BID

- a. The Department of Rural Development and Agrarian Reform Bid Adjudication Committee is under no obligation to accept any bid.

### 2. AMENDMENT OF CONTRACT

- 2.1. Any amendment to or renunciation of the provisions of the contract shall at all times be done in writing and shall be signed by both parties, subject to the Department of Agriculture and Rural Development Bid Adjudication Committee approval.

### 3. AWARD

- 3.1. The awarding of this bid is not dependent on the factors of prices and preference points as the bid is for an appointment of a panel. Bidders who meet the prequalification and administrative compliance will be scored on functionality and only bidders with a minimum score of 75 will be accepted.
- 3.2. To ensure equitable distribution of potential opportunities arising from the panels, qualifying service providers will be restricted to participate in **not more than two (2) of the six (6) districts**. Therefore, service providers must indicate their preferred two districts out of the six districts as outlined in Table 5. Where a service provider does not indicate their preference, they will be disqualified.
- 3.3. In the event that the department is unable to establish a panel for a particular district (for whatever reason), the department reserves the right to utilize panels from other districts prior approval from the Accounting Officer.

### 4. BASIS AND QUANTITIES

- 4.1. Quantities are not reflected on the bid as they will only be determined and reflected during the quotation stage.

### 5. BBBEE CERTIFICATE / SWORN AFFIDAVIT

- 5.1. A bidder must submit a valid BBBEE certificate or a sworn affidavit together with the bid for pre-qualification purposes and for claiming BBBEE points.
- 5.2. All BBBEE certificates issued by IRBA, Accountants and Accounting Officers are no longer valid certification and will no longer be considered.

### 6. CHANGE OF ADDRESS

- 6.1. Bidders must advise the Department of Agriculture and Rural Development Supply Chain Management, Contract Administration should their ownership or address (*domicilium citandi et executandi*) details change from the time of bidding to the expiry of the contract.

## **7. COUNTER OFFERS**

- 7.1. Counter offers will not be considered.

## **8. DELIVERY AND PACKAGING**

- 8.1. Basis of delivery: Delivery of goods shall be made as directed by the Department.
- 8.2. All deliveries must take place from Monday to Friday between 08h00 and 15h00.
- 8.3. In emergency cases, the Department of Rural Development and Agrarian Reform reserves the right to request the successful bidder/s to effect deliveries at any given time including Saturdays, Sundays and public holidays.
- 8.4. The delivery performance of a contractor will be closely monitored and any subsequent orders will only be issued to the contractor that has proved to be competent with their delivery performance.
- 8.5. Inspection and sampling of items will be conducted upon delivery to verify quantity and compare the item against the contract sample and any other quality accreditation that is prescribed.
- 8.6. All packaging and labelling must comply with Act 36 of 1947.

## **9. DELIVERY CONDITIONS**

- 9.1. Delivery of products must be made in accordance with the instructions appearing on the official purchase order.
- 9.2. All deliveries must be accompanied by a delivery note stating the official purchase order number against the delivery that has been affected.
- 9.3. All delivery notes that will be accompanying the Invoice must be signed by the beneficiary representative and government official.
- 9.4. In respect of items awarded to them, bidder must adhere strictly to the delivery schedule submitted with the quotation.
- 9.5. The instructions appearing on the official purchase order form regarding the supply, dispatch and submission of invoices must be strictly adhered to.
- 9.6. All invoices submitted must be original.
- 9.7. Deliveries not complying with the specifications and order form will be returned to the contractor at the contractor's expense.
- 9.8. No locally manufactured product may be substituted during the contract period with an imported product.

## **10. DETAILS OF RELATED CONTRACTS AWARDED TO THE BIDDER (PAST/CURRENT)**

- 20.1 The bidder must furnish the following details of all past and current contracts within the last ten (10) years.
- (i) Date of commencement of contract/s;
  - (ii) Value per contract; and
  - (iii) Contract details. That is, with whom held, phone number and address/s of the companies.

## **11.CONFIRMATION OF SUPPLY**

- 11.1.** In the event of the panellist/input supplier not being the actual manufacturer of the Agricultural inputs and will be sourcing from a manufacturer, the panellist / supplier must submit complete supplier agreement in the Bid Document or a letter from that manufacturer confirming firm supply arrangement(s) including lead times and all certificates as stipulated in these Special Terms and Conditions.
- 11.2.** Failure to comply with the stated requirements will result in disqualification during the quotation process.
- 11.3.** When calling for quotations from the panels, the department reserves the right to also prescribe a prequalification criterion for manufacturers from whom the panellists/suppliers will be sourcing the agricultural inputs.

## **12.IRREGULARITIES**

- 12.1.** Companies are encouraged to advise the Department timeously of any possible irregularities which might come to their notice in connection with this or other contracts.

## **13.PAYMENT FOR SUPPLIES AND SERVICES**

- 13.1.** A service provider shall be paid by the Department in accordance with supplies delivered and services rendered.
- 13.2.** Should a service provider indicate a special discount on his/her account provided payment is made within a certain time, the Department shall make every effort to take advantage of such discount.
- 13.3.** Any query concerning the non-payment of accounts must be directed to the Department. The following protocol will apply if accounts are queried:
  - 13.3.1.** Contact must be made with the District Director;
  - 13.3.2.** If there is no response from the District Director, the Chief Director: Financial Management must be contacted.
- 13.4.** Information as contained on the Central Suppliers Database must be valid/ correct. Non-compliance with Tax Requirements will affect payment.

## **14.PERIOD OF CONTRACT**

- 14.1.** The contract will run for a period of **36 months**.
- 14.2.** All qualifying suppliers will enter into a Service Level Agreement (SLA) with the Department prior to receiving an order to do specific work.
- 14.3.** The Department will have the discretion to add service providers to the database through open advertising in at least a print media.
- 14.4.** The Department has the discretion to remove service providers who have provided Sub-standard supplies or who have not kept to reasonable deadlines for service delivery.

## FORMS TO BE COMPLETED BY THE BIDDER

THESE FORMS MUST BE COMPLETED USING **BLACK INK**

Where the space provided in the bound document is insufficient, separate schedules may be drawn up in accordance with the given formats. These schedules shall then be bound together with a suitable contents page and submitted with the bid documents. All such schedules must be signed, and clearly marked as appendices to these relevant forms.

All ECBD documents must be completed, signed in full and witnessed, failure to do so will result in the quotation/bid being eliminated.

**A: CERTIFICATE OF AUTHORITY FOR SIGNATORY**

Signatory for companies shall confirm their authority thereto by attaching a duly signed and dated copy of the relevant resolution of the board of directors to this form.

An example is given below:

By resolution of the board of directors passed at a meeting held on .....

Mr. /Ms ....., whose signature appears below, has been duly authorized

to sign all documents in connection with the Bid for FAI8-21/22-0002 B and any Contract that

may arise there from on behalf of (name of Service Provider in block capitals) .....

**SIGNED ON BEHALF OF THE COMPANY:** .....

**IN HIS/HER CAPACITY AS:** .....

**DATE:** .....

**SIGNATURE OF SIGNATORY:** .....

**WITNESSES:** 1. ....

2. ....

## B: CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This Returnable Schedule is to be completed by joint ventures.

We, the undersigned, are submitting this Bid in Joint Venture and hereby authorise Mr/Ms . . . . . , authorised signatory of the company . . . . . , acting in the capacity of lead partner, to sign all documents in connection with the tender offer and any contract resulting from it on our behalf.

NAME OF FIRM	ADDRESS	DULY AUTHORISED SIGNATORY
Lead partner		Signature. . . . . Name ..... Designation
		Signature. . . . . Name ..... Designation
		Signature. . . . . Name ..... Designation
		Signature. . . . . Name ..... Designation

**ATTACH SERVICE LEVEL AGREEMENT BETWEEN JOINT VENTURE PARTIES TO NEXT PAGE. "FAILURE TO SUBMIT THIS INFORMATION AS PART OF THE COMPLETION OF THE BID WILL RESULT IN YOUR BID TO BE REJECTED."**

## PART A INVITATION TO BID

**YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (DEPARTMENT OF RURAL DEVELOPMENT AND AGRARIAN REFORM)**

BID NUMBER:	FAI8-21/22-0002 B	CLOSING DATE:	23 APRIL 2021	CLOSING TIME:	11:00am
-------------	-------------------	---------------	---------------	---------------	---------

DESCRIPTION	FRAMEWORK AGREEMENT FOR A PANEL OF SERVICE PROVIDERS TO SUPPLY AND DELIVER FERTILIZERS, AGRICULTURAL LIME AND MICRO-NUTRIENTS
-------------	---

**BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)**

The various district for which the bidder is interested, refer to page 6 (bid notice) of this document

### BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO

CONTACT PERSON	Ms. N. Mfunda
TELEPHONE NUMBER	(040) 602 5206
FACSIMILE NUMBER	
E-MAIL ADDRESS	<a href="mailto:Nomapha.mfunda@drdar.gov.za">Nomapha.mfunda@drdar.gov.za</a>

### TECHNICAL ENQUIRIES MAY BE DIRECTED TO:

CONTACT PERSON	Dr. M.M. Mbangcolo
TELEPHONE NUMBER	(043) 683 5457 / 079 528 4347
FACSIMILE NUMBER	
E-MAIL ADDRESS	<a href="mailto:Mongezi.mbangcolo@drdar.gov.za">Mongezi.mbangcolo@drdar.gov.za</a>

### SUPPLIER INFORMATION

NAME OF BIDDER			
POSTAL ADDRESS			
STREET ADDRESS			
TELEPHONE NUMBER	CODE		NUMBER
CELLPHONE NUMBER			
FACSIMILE NUMBER	CODE		NUMBER
E-MAIL ADDRESS			
VAT REGISTRATION NUMBER			
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:	OR	CENTRAL SUPPLIER DATABASE No: MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]		B-BBEE STATUS LEVEL SWORN AFFIDAVIT [TICK APPLICABLE BOX]
	<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No

**[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]**

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3 ]
---	--	--	--

### QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?	<input type="checkbox"/> YES <input type="checkbox"/> NO
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?	<input type="checkbox"/> YES <input type="checkbox"/> NO

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



## PART B TERMS AND CONDITIONS FOR BIDDING

### 1. BID SUBMISSION:

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

### 2. TAX COMPLIANCE REQUIREMENTS

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

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

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....  
(Proof of authority must be submitted e.g. company resolution)

DATE: .....

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

**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.**

Tax compliance status and company directors of bidders will be verified on CSD for all price quotations and bids. Hard copies of Tax Clearance Certificate is therefore no longer needed to be attached in the bid.

## DECLARATION OF INTEREST

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

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

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

2.1 Full Name of bidder or his or her representative: .....

2.2 Identity Number:.....

2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>, member):  
.....

2.4 Registration number of company, enterprise, close corporation, partnership agreement or trust:  
.....

2.5 Tax Reference Number: .....

2.6 VAT Registration Number: .....

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / PERSAL numbers must be indicated in paragraph 3 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 **YES / NO**  
presently employed by the state?

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member: .....

Name of state institution at which you or the person  
connected to the bidder is employed : .....

Position occupied in the state institution: .....

Any other particulars:

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

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you 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.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

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

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**

2.8.1 If so, furnish particulars:

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

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

2.9.1 If so, furnish particulars.

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

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

2.10.1 If so, furnish particulars.

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

2.11 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**

2.11.1 If so, furnish particulars:

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

### 3. Full details of directors / trustees / members / shareholders.

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

## DECLARATION

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.  
 I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
 Signature

.....  
 Date

.....  
 Position

.....  
 Name of bidder

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

### 1.1.1.1

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

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

## 1. GENERAL CONDITIONS

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

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

1.2

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

1.3 Points for this bid shall be awarded for:

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

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

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

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

## 2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code

of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

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

### 3. POINTS AWARDED FOR PRICE

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

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

**90/10**

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

Where

Ps = Points scored for price of bid under consideration

Pt = Price of bid under consideration

$P_{min}$  = Price of lowest acceptable bid

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

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

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

#### 5. BID DECLARATION

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

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

- 6.1 B-BBEE Status Level of Contributor: . = .....(maximum of 10 or 20 points)  
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.)

#### 7. SUB-CONTRACTING

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

(*Tick applicable box*)

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

- 7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE

(*Tick applicable box*)

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

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



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

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

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

**8.4 TYPE OF COMPANY/ FIRM**

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

[TICK APPLICABLE BOX]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

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

**8.6 COMPANY CLASSIFICATION**

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

[TICK APPLICABLE BOX]

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4

and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
  - (e) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

.....  
SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

.....

## SWORN AFFIDAVIT – B-BBEE EXEMPTED MICRO ENTERPRISE - GENERAL

I, the undersigned,

<b>Full name &amp; Surname</b>	
<b>Identity number</b>	

Hereby declare under oath as follows:

1. The contents of this statement are to the best of my knowledge a true reflection of the facts.
2. I am a Member / Director / Owner of the following enterprise and am duly authorised to act on its behalf:

<b>Enterprise Name:</b>	
<b>Trading Name (If Applicable):</b>	
<b>Registration Number:</b>	
<b>Enterprise Physical Address:</b>	
<b>Type of Entity (CC, (Pty) Ltd, Sole Prop etc.):</b>	
<b>Nature of Business:</b>	
<b>Definition of “Black People”</b>	<p>As per the Broad-Based Black Economic Empowerment Act 53 of 2003 as Amended by Act No 46 of 2013 “Black People” is a generic term which means Africans, Coloureds and Indians –</p> <ul style="list-style-type: none"><li>(a) who are citizens of the Republic of South Africa by birth or descent; or</li><li>(b) who became citizens of the Republic of South Africa by naturalisation-<ul style="list-style-type: none"><li>i. before 27 April 1994; or</li><li>ii. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalization prior to that date;”</li></ul></li></ul>

**Definition of “Black Designated Groups”**

“Black Designated Groups means:

- (a) unemployed black people not attending and not required by law to attend an educational institution and not awaiting admission to an educational institution;
- (b) Black people who are youth as defined in the National Youth Commission Act of 1996;
- (c) Black people who are persons with disabilities as defined in the Code of Good Practice on employment of people with disabilities issued under the Employment Equity Act;
- (d) Black people living in rural and under developed areas;
- (e) Black military veterans who qualifies to be called a military veteran in terms of the Military Veterans Act 18 of 2011;”

3. I hereby declare under Oath that:

- The Enterprise is \_\_\_\_\_% Black Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is \_\_\_\_\_% Black Female Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- The Enterprise is \_\_\_\_\_% Black Designated Group Owned as per Amended Code Series 100 of the Amended Codes of Good Practice issued under section 9 (1) of B-BBEE Act No 53 of 2003 as Amended by Act No 46 of 2013,
- Black Designated Group Owned % Breakdown as per the definition stated above:
  - Black Youth % = \_\_\_\_\_%
  - Black Disabled % = \_\_\_\_\_%
  - Black Unemployed % = \_\_\_\_\_%
  - Black People living in Rural areas % = \_\_\_\_\_%
  - Black Military Veterans % = \_\_\_\_\_%
- Based on the Financial Statements/Management Accounts and other information available on the latest financial year-end of \_\_\_\_\_, the annual Total Revenue was R10,000,000.00 (Ten Million Rands) or less
- Please Confirm on the below table the B-BBEE Level Contributor, **by ticking the applicable box.**

100% Black Owned	<b>Level One</b> (135% B-BBEE procurement recognition level)	
At least 51% Black Owned	<b>Level Two</b> (125% B-BBEE procurement recognition level)	
Less than 51% Black Owned	<b>Level Four</b> (100% B-BBEE procurement recognition level)	

4. I know and understand the contents of this affidavit and I have no objection to take the prescribed oath and consider the oath binding on my conscience and on the Owners of the Enterprise which I represent in this matter.
5. The sworn affidavit will be valid for a period of 12 months from the date signed by commissioner.

Deponent Signature: \_\_\_\_\_

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Commissioner of Oaths Signature & stamp

## 2 DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? <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>  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.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <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>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

**CERTIFICATION**

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

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

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Standard Bidding Document (SBD) must form part of all 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.



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

<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.

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

**THE NATIONAL TREASURY**  
**Republic of South Africa**



---

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

# **GOVERNMENT PROCUREMENT**

## **GENERAL CONDITIONS OF CONTRACT**

### **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.

## **TABLE OF CLAUSES**

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

## General Conditions of Contract.

### 1. Definitions:

1. The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2. "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
- 1.3. "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
- 1.4. "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5. "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6. "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 1.7. "Day" means calendar day.
- 1.8. "Delivery" means delivery in compliance of the conditions of the contract or order.
- 1.9. "Delivery ex stock" means immediate delivery directly from stock actually on hand.
- 1.10. "Delivery into consignees store or to its site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the condition, 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 markets its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.
- 1.12. "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13. "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14. "GCC" means the General Conditions of Contract.
- 1.15. "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17. "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18. "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

- 1.19. "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20. "Project site," where applicable, means the place indicated in bidding documents.
- 1.21. "Purchaser" means the organization purchasing the goods.
- 1.22. "Republic" means the Republic of South Africa.
- 1.23. "SCC" means the Special Conditions of Contract.
- 1.24. "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligation, of the supplier covered under the contract.
- 1.25. "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

## **2. Application.**

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

## **3. General.**

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

## **4. Standards.**

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

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

- 5.1. The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2. The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.
- 5.3. Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.
- 5.4. The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

## **6. Patent rights.**

- 6.1. The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.



## **7. Performance.**

- 7.1. Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2. The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3. The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
  - (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank, located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque.
- 7.4. The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

## **8. Inspections, tests and analyses.**

- 8.1. All pre-bidding testing will be for the account of the bidder.
- 8.2. If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4. If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5. Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6. Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7. Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8. The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

## **9. Packing.**

- 9.1. The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights

shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

- 9.2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in see, and in any subsequent instructions ordered by the purchaser.

#### **10. Delivery and documents.**

- 10.1. Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.
- 10.2. Documents to be submitted by the supplier are specified in SCC.

#### **11. Insurance.**

- 11.1. The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

#### **12. Transportation.**

- 12.1. Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

#### **13. Incidental services.**

- 13.1. The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
  - (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
  - (e) training of the purchaser's personnel at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.
- 13.2. Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

#### **14. Spare parts.**

- 14.1. As specified in see, the supplier may be required to provide any or all of the following materials, notifications and information pertaining to spare parts manufactured or distributed by the supplier:
- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
  - (b) in the event of termination of production of the spare parts:
    - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
    - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### **15. Warranty.**

- 15.1. The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.
- 15.2. This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 15.3. The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.
- 15.4. Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof without costs to the purchaser.
- 15.5. If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

## **16. Payment.**

- 16.1. The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2. The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3. Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4. Payment will be made in Rand unless otherwise stipulated in SCC.

## **17. Prices.**

- 17.1. Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.

## **18. Contract amendments.**

- 18.1. No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

## **19. Assignment.**

- 19.1. The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.

## **20. Subcontracts.**

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

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

- 21.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as

practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

- 21.3. No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 21.5. Except as provided under GCC Clause 25 a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 21.6. Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties.**

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

## **23. Termination for default.**

- 23.1. The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part
  - (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
  - (b) if the Supplier fails to perform any other obligation(s) under the contract; or
  - (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 23.2. In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

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

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

## **25. Force Majeure.**

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

## **26. Termination for insolvency.**

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

## **27. Settlement of Disputes.**

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

## **28. Limitation of liability**

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

## **29. Governing language.**

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

**30. Applicable law.**

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

**31. Notices.**

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

31.2. The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

**32. Taxes and duties.**

32.1. A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.

32.2. A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3. No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

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

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

**34 Prohibition of Restrictive practices**

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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

*Js General Conditions of Contract (revised July 2010)*

**Framework Agreement  
for the  
Supply and delivery of Agricultural  
Production Inputs (Seeds and  
seedlings for Grains, Vegetables and  
Fruit Trees)**

Document Reference: FAI8-21/22-0002 B  
March 2021

## Agreement

**THIS FRAMEWORK AGREEMENT** is made on the .....day of .....2021

### BETWEEN

The Employer: **The Department of Rural Development and Agrarian Reform – represented by the Head of Department or his delegated official.**

District office of the  
Employer:

### AND

The Supplier:

Registered office of the  
Supplier

### RECITALS:

- A. The Employer and the Supplier wish to enter into a framework agreement which will enable the Employer, from time to time, to enter into a Call-Off Contract or a series of Call-Off Contracts with the Supplier for some or all of the Services required by the Employer under this framework agreement from time to time.
- B. The terms and conditions of this Agreement shall apply to the Services to be provided by the Supplier under any Call-Off Contract.



**THE EMPLOYER AND THE CONTRACTOR AGREE** as follows:

unless the context indicates

<b>“Agreement”</b>	this framework agreement, including all other documents referred to in this Agreement;
<b>“Agreement Commencement Date”</b>	the date for commencement of this Agreement;
<b>“Call-Off Contract”</b>	a call-off contract that has been executed by the Supplier and the Employer, which incorporates this Agreement and includes any attachments and any documents expressly referred to in that Call-Off Contract;
<b>“Call-Off Contract Number”</b>	the reference number for a Call-Off Contract, as specified in the relevant Call-Off Contract;
<b>“Call-Off Term”</b>	the duration of a Call-Off Contract, as set out in the relevant Call-Off Contract;
<b>“Contract Information”</b>	(i) the Agreement and any Call-Off Contract in their entirety (including from time to time agreed changes to the Agreement or to any Call-Off Contract); and
<b>“Parties”</b>	the Employer and the Supplier (including their successors and permitted assignees) and “Party” shall mean either of them as the case may be;
<b>“Services”</b>	(a) all or any part of the services to be provided to, or activities to be undertaken and completed for, the Employer by the Supplier under a Call-Off Contract as detailed in such Call-Off Contract, including any variations to such services; and
<b>“Specification”</b>	(b) any services, functions or responsibilities which may be reasonably regarded as incidental to the foregoing services or activities and which may be reasonably inferred from the Call-Off Contract;

any reference to one gender shall include the other genders;

words in the singular shall include the plural and vice versa;

any reference to natural persons shall include legal persons and vice versa;

## **1. Framework Agreement**

1.1 The purpose of this Agreement is to provide a mechanism whereby the Parties may enter into Call-Off Contracts;

1.2 The Supplier and other Participants named in the attached Framework Rules are part of a framework for the Supplier to supply and deliver agricultural production inputs (seeds and seedlings for grains, vegetables and fruit trees). The Services that may be requested by the Employer and provided by the Supplier as per the specifications in the Call-Off Contracts. The Employer's requirements may vary and this Agreement shall not place the Employer under any obligation to procure the goods/services from the Supplier at a particular time or at all. This Agreement is not an exclusive arrangement and nothing in this Agreement shall operate to prevent the Employer from exploring alternative methods/processes to obtain similar/same goods/services.

1.3 Upon appointment of a Supplier in a specific Call-Off Contract, such Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this agreement.

1.4 The Supplier shall commence provision of the relevant services in accordance with the Call-Off Contract. The Supplier shall not commence any services without a signed Call-Off Contract in place and an official order.

1.5 All payments in respect of a Call-Off Contract shall be set out in the relevant Call-Off Contract and shall not exceed the quoted rates as proposed by the Supplier at that given time.

1.6 If, during the **Framework Period** defined in the attached Framework Rules, the Employer needs production inputs as described in the Framework Rules, the Employer may procure the agricultural production inputs according to the attached Framework Rules. The Employer may also procure the agricultural inputs in other ways, and does not guarantee that any agricultural inputs will be procured under this agreement.

## **2. Call-Off Procedure**

- 2.1 At any time during the duration of this agreement, the Employer may identify services which at its sole discretion it wishes to advertise under the terms of this Framework Agreement.
- 2.2 Where the Employer requires services, it will issue a Bid Advert specifying the Services to be provided for Suppliers on the framework to submit their Proposals which the Employer shall assess in accordance with SCM processes.
- 2.3 A Bid Advert issued by the Employer shall constitute an invitation for the Supplier to submit their Proposals and shall not constitute an offer capable of acceptance by the Supplier. The Employer shall not be obliged to consider or accept any proposal submitted by the Supplier.
- 2.4 Each Call-Off Contract shall be a binding agreement on the Parties and shall incorporate the terms and conditions of this Agreement, as may have been amended in such Call-Off Contract and such documentation shall together form a separate agreement between the Parties.

## **3. Duration of the Agreement and Call-Off Contracts**

- 3.1 This agreement (but not a Call-Off Contract) commences on the \_\_\_\_\_ and continues until \_\_\_\_\_ unless terminated earlier, either in whole or in part, in accordance with this clause 18.
- 3.2 Each Call-Off terms and conditions shall be set out in the relevant Call-Off Contract. Unless stated otherwise in a Call-Off Contract, the Call-Off Term and the Services provided pursuant to a Call-Off Contract may extend beyond the termination or expiry of this Agreement, in which case the provisions of this Agreement shall survive such expiry or termination to the extent that such provisions are relevant to any such Call-Off Contract.
- 3.3 A Call-Off Contract may expire or be terminated in accordance with its terms but such expiry or termination shall not, in and of itself, give rise to an expiry or termination of any other Call-Off Contract or this agreement.

## **4. The Services**

### **4.1 The Supplier:**

- 4.1.1 shall provide the Services to the Employer in accordance with this Agreement and the terms of the relevant Call-Off Contract; and
- 4.1.2 acknowledges that it has sufficient information about the Employer and the Specification and that it has made all appropriate and necessary enquiries to enable it to perform the services in accordance with the relevant Call-Off Contract.

## **5. Payments**

- 5.1 The Supplier shall invoice the Employer in accordance with the procedures set out in Call-Off Contract and in consideration of, and subject to the due performance of the Services by the Supplier in accordance with the relevant Call-Off Contract. The Employer shall pay the Supplier in accordance with those procedures and any other terms and conditions of the relevant Call-Off Contract.

5.2 The Supplier is not entitled to reimbursement for expenses unless such expenses are specified in a Call-Off Contract or have been incurred with the prior written consent of the Employer.

## 6 Agricultural Production Inputs

6.1 If the Supplier is selected for any agricultural production inputs according to the attached Framework Rules, the Employer and Supplier agree to enter into a Contract in the terms established under this agreement.

6.2 Contracts will be on the terms of the Employer and the Supplier according to the attached Framework Rules.

6.3 Contracts awarded within the Framework Period may be for agricultural production inputs that continues after that period.

## 7 Communications

7.1 The Supplier's contact person for communications with the Employer in relation to this agreement and Agricultural Production Inputs Contracts is:

Name of Contractor's contact person			
Address			
Telephone		Mobile phone	
Fax		email	

7.2 If that person (or any subsequent replacement) is no longer able to fulfil the role, the Supplier must promptly appoint a replacement, who must be a director or senior manager of the Supplier, and notify the Employer of the new contact person.

7.3 The Employer's contact person for communications with the Contractor in relation to this agreement is:

Name of Employer's contact person			
Address			
Telephone		Mobile phone	
Fax		email	

7.1 The Employer may change these details by notice to the Supplier.

## **8 Tax Clearance**

8.1 At all times during the Framework Period, the Contractor must hold a valid tax clearance with SARS.

## **9 Performance Measurement**

- a. On intervals, during the duration and/or extended periods of each Call-Off Contract, a review of the Contract will take place between the End-User, the Supplier and Contracts Management whereupon the performance of the Supplier will be evaluated against the performance indicators/ Service Level Standards as stated in each Call-off Contract.
- b. The evaluation as per clause 9.1 will determine whether the Supplier should still be part of the Framework Agreement.
- c. Annually the supplier shall submit documents as requested in the tender document (evaluation criteria) to ensure continued compliance and financial capacity during the term of the Framework Agreement.

## **10 Confidentiality**

- a. The Contractor must not disclose to anyone:
  - ❖ official information related to this contract or
  - ❖ other information that the Employer notifies the Supplier is confidential, except as necessary to perform the Supplier's obligations under this agreement or an Agricultural Production Inputs Contract or to comply with the law.
- b. The Supplier obligations under this clause are perpetual, and this clause survives the termination of this agreement.

~~11.~~

~~12.~~

~~13.~~

~~14.~~

## **15.11. Warranties and Obligations**

- a. Without prejudice to any other warranties expressed elsewhere in this Agreement or implied by law, the Supplier warrants, represents and undertakes that:
  - i. the Supplier:
    1. has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its Company) to enter into and to perform the Agreement and any relevant Call-Off Contract; and

2. is aware of the purposes for which the Services are required and acknowledges that the Employer is reliant upon the Supplier's expertise and knowledge in the provision of the Services; and
  3. is entering into this Agreement, any relevant Call-Off Contract and all its contracts as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Agreement and any relevant Call-Off Contract;
- b. the Agreement and Call-Off Contract is executed by a duly authorised representative of the Supplier;
  - c. all materials, equipment and goods under the relevant Call-Off Contract or supplied by the Supplier shall be of satisfactory quality, sound in design and in conformance in all respects with the Specification set out in the relevant Call-Off Contract; and
  - d. Each warranty and obligation in this Clause 11 shall be construed as a separate warranty or obligation (as the case may be) and shall not be limited or restricted by reference to, or reference from, the terms of any other such warranty or obligation or any other term of this Agreement.

#### **16.12. Conflict of Interest**

- a. The Supplier warrants that it does not and will not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with the Services or any Official of the Employer, save to the extent fully disclosed to and approved by the Employer.
- b. The Supplier shall check for any conflict of interest at regular intervals throughout the Term of this agreement and in any event not less than once in every six months and shall notify the Employer in writing immediately upon becoming aware of any actual or potential conflict of interest with the Services or any Official of the Employer and shall work with the Employer to do whatever is necessary to manage such conflict to the Employer's satisfaction, provided that, where the Employer is not so satisfied, it may terminate this Agreement and all Call-Off Contracts, in existence, in accordance with Clause 18.4.4.

#### **17.13. Indemnity**

- a. Subject to Clause 12.2, the Supplier is responsible for and shall indemnify, keep indemnified and hold harmless the Employer and Officials of the Employer against all losses which the Employer/its Officials incurs or suffers as a consequence of any direct or indirect breach or any negligent performance of this Agreement or any relevant Call-Off Contract by the Supplier (or any of its employees, agents or sub-contractors) (including in each case any non-performance or delay in performance of this Agreement) or of any breach of statutory duty, misrepresentation or misstatement by the Supplier (or any of its employees or sub-contractors).
- b. The Supplier is not responsible for and shall not indemnify the Employer for any losses to the extent that such Losses are caused by any breach or negligent performance of any of its obligations under this Agreement or Call-Off Contract by the Employer and/or any other member of the Employer including by any of their respective employees or agents.

#### **18.14. Contract Variation**

- a. This Agreement or any relevant Call-Off Contract may only be varied or amended with the written agreement of both Parties. The details of any variations or amendments shall be set out in such

form as the Employer may dictate and shall not be binding upon the Parties unless reduced to writing and completed in accordance with such form of variation.

#### **19.15. Non-waiver of Rights**

- a. No waiver of any of the provisions of this Agreement or any relevant Call-Off Contract is effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with the provisions of Clause 21. The single or partial exercise of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other such right, power or remedy.

#### **20.16. Illegality and Severability**

- a. If any provision of this Agreement (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal, or unenforceable provision. In the event that in the Employer's reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Employer and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

#### **21.17. Dispute Resolution**

- a. The Employer and the Supplier shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to this Agreement or any relevant Call-Off Contract ("*the Dispute*") before resorting to litigation.
- b. If the Dispute is not resolved within 14 working days of referral to the Contract Management unit (SCM), the Parties shall attempt in good faith to resolve the Dispute through entry into a structured mediation or negotiation with the assistance of a Mediator. Either Party may give notice to the other Party ("**Notice**") to commence such process and the Notice shall identify one or more proposed Mediators.
- c. If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.
- d. For the avoidance of doubt, the Supplier shall continue to provide the Services in accordance with the Call-Off Contract and without delay or disruption while the Dispute is being resolved pursuant to this Clause 17.

#### **22.18. Breach and Termination of agreement**

- a. Without prejudice to the Employer's right to terminate at common law, the Employer may terminate any this Agreement or any Call-Off Contract immediately upon giving notice to the Supplier if:

- i. in addition, and without prejudice to Clauses 18.4.2 to 18.4.6, the Supplier has committed any material or persistent breach of this Agreement or Call-Off Contract and in the case of such a breach that is capable of remedy fails to remedy that breach within 7 Days from the date of written notice to the Supplier giving details of the breach and requiring it to be remedied; or
  - ii. the Supplier is subject to an Insolvency Event; or
  - iii. in the event that there is a change of Ownership; or
  - iv. the Employer is not satisfied on the issue of any conflict of interest in accordance with Clause 12; or
  - v. the Supplier or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010; or
  - vi. the Supplier commits any of the money laundering related offences listed in the Public Contracts Regulations 2015.
- b. Without prejudice to any of the Employer's other rights, powers or remedies (whether under this Agreement or otherwise) if the Supplier is in breach of any of its warranties and/or obligations under Clause 11 and/or any of its other obligations in respect of the Services under this Agreement or Call-Off Contract, the Supplier shall, if required to do so by the Employer, promptly remedy and/or re-perform the Services or part of them at its own expense to ensure compliance with such warranties and/or obligations. Nothing in this Clause 18 shall prevent the Employer from procuring the provision of any Services or any remedial action in respect of any Services from an alternative Supplier and, where the Employer so procures any Services or any remedial action, the Employer shall be entitled to recover from the Supplier all additional cost, loss and expense incurred by the Employer and attributable to the Employer procuring such Services or remedial action from such alternative Supplier.
- c. Neither Party shall be deemed to be in breach of the relevant Call-Off Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the relevant Call-Off Contract to the extent that such failure or delay is due to a Force Majeure Event. If a Force Majeure Event has continued for more than 8 weeks from the date on which that Force Majeure Event first arose and is having a material adverse effect on either Party's performance of its obligations under the relevant Call-Off Contract ("**the Affected Party**") then for as long as such Force Majeure Event continues and has that effect, the Party not affected by such Force Majeure Event ("**Innocent Party**") may terminate the Call-Off Contract immediately upon giving notice to the Affected Party. If the Call-Off Contract is terminated in accordance with this Clause 18.6 then without prejudice to any rights and liabilities which accrued prior to termination the Affected Party shall not be liable to the Innocent Party by reason of such termination.

### 23.19. Limitation of liability

- a. Neither the Supplier nor the Employer have any liability to the other or in connection with this agreement for breach of contract, negligence, breach of duty or anything else. This does not affect their liability under this Agricultural Production Inputs Contract.

### 24.20. This Agreement

- a. Neither party may assign rights under this agreement.
- b. This, and any Agricultural Production Inputs Contracts (Call-Off Contract), are the entire agreement between the Employer and the Supplier about its subject matter. Neither the Employer nor the Supplier has relied on any agreement, understanding, or statement that is not written or referred to in this agreement.



- c. This agreement can only be changed in writing, signed by authorised representatives of the Employer and the Supplier.
- d. This agreement is governed and to be construed according to the South African law.

## 25.21. Notices

- a. Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, post or facsimile addressed to the recipient at its registered office, the address stated below or any other address (including facsimile number) notified to the other party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:
- if delivered by hand, at the time of delivery; or
  - if delivered by post, two (2) Business Days after being posted; or
  - if delivered by facsimile, at the time of transmission, provided that a confirming copy is sent by first class post to the other party within 24 hours after transmission.

### For the Employer

#### The Department:

**Physical**  
8<sup>th</sup> Floor  
Dukumbana Building  
Independence Avenue  
**Bhisho**  
5606

**Postal**  
Rural Development and Agrarian Reform  
Private Bag x 0040  
**Bhisho**  
5606

### The Supplier:

#### Physical

---

---

---

#### Postal

---

---

---

**SIGNED by the Employer and the Supplier on the date at the top of this agreement.**

**Signed on behalf of the Employer:**

Signature of person authorised to sign contracts on behalf of the Employer:	
---	--

**Signed on behalf of the Supplier:**

Signature of person authorised to sign contracts on behalf of the Supplier:	
---	--