

INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE OFFICE OF THE CHIEF JUSTICE					
BID NUMBER:	OCJ2020/01	CLOSING DATE:	14 AUGUST 2020	CLOSING TIME:	11:00 AM
DESCRIPTION	TERMS OF REFERENCE TO REQUEST FOR BIDS FROM SERVICE PROVIDERS FOR BID NO OCJ2020/01: ADVERTISEMENT OF THE ANTI-VIRUS AND MALWARE PROTECTION SOLUTION FOR THE OFFICE OF THE CHIEF JUSTICE WITH MAINTENANCE AND SUPPORT FOR THE PERIOD OF TWENTY-FOUR (24) MONTHS				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
OFFICE OF THE CHIEF JUSTICE					
188 14 TH ROAD NOORDWYK					
MIDRAND					
JOHANNESBURG					
1685					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	MS. N NTIMANE		CONTACT PERSON	MR. S MATSHIKA	
TELEPHONE NUMBER	010 493 2601		TELEPHONE NUMBER	010 493 2500	
FACSIMILE NUMBER	NONE		FACSIMILE NUMBER	NONE	
E-MAIL ADDRESS	BidEnquiries@judiciary.org.za		E-MAIL ADDRESS	msmatshika@judiciary.org.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?		<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
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.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

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

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:

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

DATE:

SBD 4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
 - the bidder is employed by the state; and/or
 - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.
 2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
 - 2.1 Full Name of bidder or his or her representative:
 - 2.2 Identity Number:
 - 2.3 Position occupied in the Company (director, trustee, shareholder²):
 - 2.4 Company Registration Number:
 - 2.5 Tax Reference Number:
 - 2.6 VAT Registration Number:
 - 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.
- ¹"State" means –
- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (b) any municipality or municipal entity;
 - (c) provincial legislature;
 - (d) national Assembly or the national Council of provinces; or
 - (e) Parliament.

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²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

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

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:
Name of state institution at which you or the person connected to the bidder is employed :
Position occupied in the state institution:

Any other particulars:

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

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

2.7.2.1 If yes, did you attached proof of such authority to the bid document? YES / NO

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

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

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

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

2.8.1 If so, furnish particulars:

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

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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 Tax Reference Number	State Employee Number / Persal Number

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4 DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT. I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

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

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

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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:		

SBD 8

CERTIFICATION

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js365bW

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:

(Name of Bidder)

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

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

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

SBD 9

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js914w 2

THE NATIONAL TREASURY

Republic of South Africa



GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

GOVERNMENT PROCUREMENT
GENERAL CONDITIONS OF CONTRACT
July 2010

NOTES

The purpose of this document is to:

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

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

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

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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:
 - 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.2 "Contract" means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.3 "Contract price" means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.6 "Country of origin" means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.7 "Day" means calendar day.
 - 1.8 "Delivery" means delivery in compliance of the conditions of the contract or order.
 - 1.9 "Delivery ex stock" means immediate delivery directly from stock actually on hand.
 - 1.10 "Delivery into consignees store or to his site" means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.11 "Dumping" occurs when a private enterprise abroad 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

obligations of the supplier covered under the contract.

- 1.25 "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application

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

3. General

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

4. Standards

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

5. Use of contract documents and information; inspection.

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

6. Patent rights

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

7. Performance security

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

8. Inspections, tests and analyses

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

- 9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

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

10. Delivery and documents

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

- 10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

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

12. Transportation

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

13. Incidental services

- 13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
 - (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
 - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
 - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
 - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

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

18. Contract amendments

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

19. Assignment

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

20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this 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.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

- (i) the name and address of the supplier and / or person restricted by the purchaser;
- (ii) the date of commencement of the restriction
- (iii) the period of restriction; and
- (iv) the reasons for the restriction.

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

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

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

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

may be due to him

**25. Force
Majeure**

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination
for Insolvency**

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

**27. Settlement of
Disputes**

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

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

**28. Limitation of
liability**

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

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

Js General Conditions of Contract (revised July 2010)

**TERMS OF REFERENCE TO REQUEST FOR BIDS FROM SERVICE PROVIDERS FOR BID
NO OCJ2020/01: ADVERTISEMENT OF THE ANTI-VIRUS AND MALWARE PROTECTION
SOLUTION FOR THE OFFICE OF THE CHIEF JUSTICE WITH MAINTENANCE AND
SUPPORT FOR THE PERIOD OF TWENTY-FOUR (24) MONTHS**

Bid number: OCJ2020/01

Date issued: 24 July 2020

Closing date and time: 14 August at 11:00 AM

Bid validity period: 90 days

TENDER BOX ADDRESS:

188 14th Road Noordwyk

Midrand

Johannesburg

1685



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1 INTRODUCTION AND BACKGROUND

- 1.1 The Office of the Chief Justice (OCJ) was established to render support to the Chief Justice in exercising administrative and judicial powers and duties as the Head of the Judiciary and the Head of the Constitutional Court.
- 1.2 The OCJ supports the Judiciary in its mandate which includes entrenching the Rule of Law and protecting constitutional democracy.
- 1.3 Superior Courts, Head Office and Provincial Service Centres are joined to the OCJ Domain and connected to the centralised data centre on the Multi-Protocol Labelling Switching (MPLS) network.
- 1.4 The Information Communication Technology (ICT) systems play a crucial processing and communication role in the OCJ, as such managing threats to ICT systems and information is fundamental.
- 1.5 The OCJ requires an anti-virus and malware protection solution to protect against malware and viruses.
- 1.6 The OCJ has twenty-three (23) remote sites (superior courts, head office & provincial service centres) with approximately 3000 end-points which includes physical servers, virtual servers & end-user devices that requires an antivirus and malware protection solution.
- 1.7 The OCJ's operating platform is Windows Servers running Microsoft Operating System with end users currently operating on the Windows 7, Windows 8, Windows 10 and MAC Operating Systems.
- 1.8 Any other information required to enable the bidder to respond to this bid will be provided upon request.

2 PURPOSE

- 2.1 The purpose of the Terms of Reference (ToR) is to request proposals from prospective service providers for the provision of an anti-virus and malware protection solution to the OCJ with maintenance and support for the period of twenty-four (24) months.

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3 SCOPE OF WORK

- 3.1 Supply of an anti-virus and malware protection solution;
- 3.2 Deployment of the anti-virus and malware protection solution across the OCJ;
- 3.3 Provide basic administration training to OCJ technicians and advanced training to system administrators during the project execution phase.
- 3.4 Provide Maintenance and Support for the period of twenty-four (24) months' post implementation.

4 REQUIREMENTS

4.1 Project Management

- 4.1.1 At the Bidding stage, produce a draft project plan indicating clear understanding of requirements and clearly outlining activities, timelines and deliverables;
- 4.1.2 Furthermore, at the bidding stage produce the project schedule indicating the start and the end date for all activities;
- 4.1.3 The project plan must be in line with the project delivery approach indicating all stages of the project and milestones;
- 4.1.4 After awarding, the appointed service provider will produce a project charter, project schedule and an updated project plan; and
- 4.1.5 The service provider is expected to manage the project as per PMBOK or Prince2 methodology.

4.2 Provide a Detailed Solution Architecture

- 4.2.1 At the Bidding stage, produce a detailed solution architecture design clearly outlining the following aspects of the anti-virus and malware protection solution:
 - 4.2.1.1 Functional features of the solution;
 - 4.2.1.2 Components of the solution; and
 - 4.2.1.3 Detailed proposed layout of solution component deployment in relation to the OCJ architecture.

4.3 Provide Anti-Virus and Malware Protection Solution

- 4.3.1 If appointed, provide an anti-virus and malware protection solution already existing in the market.

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4.4 Deploy the Anti-Virus and Malware Protection Solution.

- 4.4.1 Ensure successful removal of existing anti-virus software and deploy the new anti-virus and malware protection solution according to the agreed solution deployment architecture and project processes; and
- 4.4.2 Ensure effective project management process for the deployment of the solution.

4.5 Provide Skills Transfer and Advanced Training

- 4.5.1 Provide skills transfer to OCJ technicians for desktop support at no cost to the OCJ; and
- 4.5.2 Provide advanced training to capacitate two (2) administrators to support and manage the entire solution.

4.6 Provide Maintenance and Support

- 4.6.1 Provide Maintenance and Support for the period of twenty-four (24) months' post implementation as follows:
- 4.6.1.1 The supplier must have a back-to-back agreement with the Original Equipment Manufacturer (OEM) to provide remote support 24/7;
- 4.6.1.2 Provide a proactive consultative security advice to OCJ; and
- 4.6.1.3 An onsite engineer for maintenance and reporting post implementation must be provided for eight (8) hours per week. This includes but not limited to system health check, posture of viruses and malware within the OCJ and implementing necessary updates.

5 DELIVERABLES

- 5.1 Table 1 below outlines the deliverables

Table 1: Deliverables

No.	Deliverables	Project Stage
Project Management and Planning		
1)	Project Kick-off meeting	Project execution stage
	Planning workshop with ICT Management after kick-off	Project execution stage
	Produce a draft project plan and project schedule	At Bidding
	Produce a statement of work (SOW), project charter, project plan and project schedule.	Project execution stage
	Produce a signed-off project plan and project schedule	Project execution stage
	Produce a communication plan	Project execution stage



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	Produce project meeting minutes	Project execution stage
Draft Solution Architecture		
2)	Functional features of the solution	At bidding stage
	Components of the solution	
	Detailed proposed layout of solution component on premises deployment in relation to the OCJ ICT architecture	
Provide Anti-Virus and Malware Protection Solution		
3)	Draft and agree on a Service Level Agreement (SLA) with the OCJ for support and maintenance of the solution	Project execution stage
	Finalise the Solution architecture	
	Provide advanced training to capacitate the two (2) administrators to support and manage the entire solution	
Solution Deployment		
4)	Deploy the anti-virus and malware protection solution across the OCJ in line with an agreed solution deployment architecture	Project execution stage
Skills Transfer		
5)	Provide skills transfer to OCJ technicians for desktop support	Project execution stage

6 SKILLS, KNOWLEDGE AND EXPERIENCE REQUIRED

- 6.1 The prospective service provider must be accredited by the proposed solution's OEM.
- 6.2 The prospective service provider must have extensive experience in anti-virus and malware protection solution implementation, maintenance and support.

7 LEGISLATIVE FRAMEWORK OF THE BID

7.1 Tax Legislation

- 7.1.1 Bidder or bidders must be compliant when submitting a proposal to the OCJ and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).
- 7.1.2 It is a condition of this bid that the tax matters of the successful bidder be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.
- 7.1.3 It is a requirement that bidders grant a written confirmation when submitting this bid that SARS may on an ongoing basis during the

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tenure of the contract disclose the bidder's tax compliance status and by submitting this bid such confirmation is deemed to have been granted.

7.1.4 Bidders are required to be registered on the Central Supplier Database and the National Treasury shall verify the bidder's tax compliance status through the Central Supplier Database.

7.1.5 Where Joint Ventures and Consortia as well as Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

7.2 Procurement Legislation

7.2.1 The OCJ has a detailed evaluation methodology premised on Treasury Regulation 16A3 promulgated under Section 76 of the Public Finance Management Act, 1999 (Act, No. 1 of 1999), the Preferential Procurement Policy Framework Act 2000 (Act, No.5 of 2000), Preferential Procurement Regulations of 2017 and the Broad-Based Black Economic Empowerment Act, 2003 (Act, No. 53 of 2003).

7.3 Technical Legislation and/or Standards

7.3.1 Bidders should be cognisant of the legislation and/or standards specifically applicable to the services.

8 COMPULSORY BRIEFING SESSIONS

8.1 There will be no briefing session for this tender.

9 TIMELINE OF THE BID PROCESS

9.1 The period of validity of tender and the withdrawal of offers, after the closing date and time is 90 days. The project timeframes of this bid are set out below in table 2

Table 2: Timelines of Bid Process

Activity	Due Date
Bid closing date	14 August 2020 at 11:00 AM
Notice to bidders	The OCJ will endeavor to inform bidders of progress until conclusion of the tender.

9.2 All dates and times in this bid are South African standard Telkom time.

9.3 Any time or date in this bid is subject to change at the OCJ's discretion.



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- 9.4 The indication of date and time in this bid does not create an obligation on the part of the OCJ to take any action, or create any right in any way for any bidder to demand that any action be taken on the date established.
- 9.5 The bidder accepts that, if the OCJ extends the closing date for bid submission for any reason, the requirements of this bid apply equally to the extended closing date.

10 CONTACT AND COMMUNICATION

- 10.1 A duly nominated official of the bidder can make enquiries in writing, to the delegated OCJ official through email to SCM: BidEnquiries@judiciary.org.za Technical: Mr. Sipho Matshika mshmatshika@judiciary.org.za or 010 493 2500 Bidders must reduce all telephonic enquiries to writing and send it to the above email address. The last day of making enquiries to the OCJ in relation to this bid is strictly **11 August 2020 @ 16:00**.
- 10.2 The delegated official of the OCJ may communicate with bidders where clarity is sought on the bid proposal.
- 10.3 Any communication by the bidders with an official or a person acting in an advisory capacity for the OCJ in respect of the bid between the closing date and the award of the bid, is prohibited.
- 10.4 All communication between the bidders and the OCJ must be done in writing.
- 10.5 Whilst all due care has been taken in connection with the preparation of this bid, the OCJ makes no representations or warranties that the content of the bid or any information communicated to or provided to bidders during the bidding process is, or will be, accurate, current or complete.
- 10.6 If a bidder finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by the OCJ other than minor clerical matters, the bidders must promptly notify the OCJ in writing of such discrepancy, ambiguity, error or inconsistency in order to afford the OCJ an opportunity to consider what corrective action is necessary if any.
- 10.7 Any actual discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by the OCJ will, if possible, be corrected and provided to all bidders without disclosing to the bidders who provided the written notice.
- 10.8 All persons including bidders obtaining or receiving the bid and any other information in connection with the bid or the tendering process must keep the contents of the bid and other such information confidential and not disclose or use

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the information except as required for the purpose of developing a proposal in response to this bid.

11 LATE BIDS

- 11.1 Bids received after the closing date and time, at the address indicated in the bid documents, will not be accepted for consideration and where practicable, be returned unopened to the bidders.

12 COUNTER CONDITIONS

- 12.1 Bidders' attention is drawn to the fact that amendments to any of the bid conditions or setting of counter conditions by bidders or qualifying any bid conditions will result in the invalidation of such bids.

13 FRONTING

- 13.1 Government supports the spirit of broad based black economic empowerment (BBBEE) and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution of the Republic of South Africa and in an honest, fair, equitable, transparent and legally compliant manner. Against this background the Government condemn any form of fronting.
- 13.2 The Government, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry / investigation, the onus will be on the bidder / contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the bid / contract and may also result in the restriction of the bidder or contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the OCJ may have against the bidder / contractor concerned.

14 SUPPLIER DUE DILIGENCE

- 14.1 The OCJ reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include site visits and requests for additional information to determine possible risks such as the availability of adequate

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facilities, financial standing, capacity and capability to deliver, previous performance in terms of quality and service delivery, as well as attainment of goals.

15 SUBMISSION OF PROPOSALS

- 15.1 Bid documents must be endorsed with the words 'Anti-Virus and Malware Protection Solution' and must be hand-delivered and deposited into the tender box situated at ground floor of the OCJ National Office, 188 14th Road, Noordwyk, Midrand, 1685 on or before **14 August 2020 at 11:00 AM**.
- 15.2 This tender is a two (2) stage bidding process two (2) files or envelopes are required for mandatory documents, prices and B-BBEE.
- 15.3 Bid documents will only be considered if received by the OCJ on or before closing time and date.
- 15.4 This is the two (2) stage bidding process, bidders are required to submit a file consists of a proposal in one (1) envelope, pricing and B-BBEE in one (1) envelope. Bidders must submit two (2) sets of file of each file one (1) original and one (1) duplicate and one (1) CD-ROM or Flash Drive with content of each file **on or before 11:00 AM, 14 August 2020**. Each file and CD-ROM or Flash Drive must be marked correctly and sealed separately for ease of reference during the evaluation process. Furthermore, the file and information in the CD-ROM or Flash Drive must be labelled and submitted in the following format in table 3:

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Table 3: Format of Bid Submission

FILE 1 (TECHNICAL FILE)	FILE 2 (PRICE & BBBEE)
Exhibit 1: Pre-qualification documents <i>(Refer to Table 5 below)</i>	Exhibit 1: Pricing Schedule SBD 3.1 SBD 6.1 B-BBEE Certificate
Exhibit 2: <ul style="list-style-type: none"> • Technical response 	
Exhibit 3: <ul style="list-style-type: none"> • General Conditions of Contract (GCC) • Draft Service Level Agreement 	
Exhibit 4: <ul style="list-style-type: none"> • Company Profile • Any other supplementary information 	

15.5 Bidders are requested to initial each page of the tender document including all supporting documentation and pricing schedules.

16 PRESENTATION OR DEMONSTRATION

16.1 The OCJ reserves the right to request presentations from the shortlisted bidders as part of the bid evaluation process.

17 EVALUATION AND SELECTION CRITERIA

The OCJ has set minimum standards known as gates, which are minimum standards that bidders need to meet in order to be evaluated and selected as a successful bidder.

The minimum standards consist of the following table 4:

Table 4: Evaluation Stages



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Mandatory Criteria (Gate 0)	Mandatory Solution Requirements (Gate 1)	Technical Evaluation Criteria (Gate 2)	Price and B-BBEE Evaluation (Gate 3)
Bidders must submit all documents as outlined in Table 5 below. Only bidders that comply with ALL these criteria will proceed to Gate 1.	The solution minimum required features, if met the bidders will proceed to Gate 2. See Table 7	Bidder(s) are required to achieve a minimum of 60 points out of 100 points to proceed to Gate 3 (Price and B-BBEE). See table 8	Bidder(s) will be evaluated out of 100 points and Gate 2 will only apply to bidder(s) who have met and exceeded the threshold of 60 points in Gate 2.

Table 5: Pre-qualification Documents

DOCUMENTS THAT MUST BE SUBMITTED TO OCJ		
MANDATORY DOCUMENTS	HOW TO COMPLETE THE DOCUMENTS	DISQUALIFICATION FOR NON SUBMISSION
Invitation to Bid – SBD 1	Complete and sign the supplied pro forma document	Yes
Pricing Schedule Firm Prices- SBD 3.1 (Attach Separately)	Complete the supplied pro forma document	Yes
Declaration of Interest – SBD 4	Complete and sign the supplied pro forma document	Yes
Preference Point Claim Form – SBD 6.1 (Attach Separately)	Non-submission will lead to a zero (0) score on B-BBEE. The B-BBEE status level certificate will be invalid if SBD 6.1 is not submitted or attached.	No
Declaration of Bidder's Past Supply Chain Management Practices – SBD 8	Complete and sign the supplied pro forma document	Yes



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Certificate of Independent Bid Determination – SBD 9	Complete and sign the supplied pro forma document	Yes
Registration on Central Supplier Database (CSD)	The Service provider must be registered as a service provider on the Central Supplier Database (CSD). If you are not registered, proceed to complete the registration of your company prior to submitting your proposal. Visit https://secure.csd.gov.za/ to obtain your vendor number. Submit proof of registration.	No
Supplier OEM Accreditation	Valid OEM accreditation and or certification relevant to the proposed solution attached	Yes
Reference Letters	The service provider must attach letter(s) with contactable references where an anti-virus and malware protection solution was deployed in the past five (5) years and complete Table 6 below in line with the attached reference letters.	No



Table 6: Reference letters information

Company name of main contractors	Name of Sub Contractor	% Work of Sub Contractor	Name of Department or Company	Date work done		Value of contract in Rands	Contact details	
				Start date	End date		Telephone	Email Address



17.1.1 Gate one (1): Solution Mandatory Requirements

Table 7: Solution Mandatory Requirements

No	Required Feature	Comments	Feature Exist	
			Yes	No
1)	Detects zero-day threats in near real time and enabling Actionable threat intelligence.			
2)	Classify behaviour to identify attack behaviours and introduce rules to identify future attacks.			
3)	Repairs the endpoint to the last known good state to immediately prevent infection and reduce administrator burdens			
4)	Collects intelligence from multiple sources, enabling security components to instantly communicate with each other about emerging and multiphase advanced attacks.			
5)	Prioritise suspicious processes and applications before trusted processes.			
6)	Adaptive behavioural scanning monitors, targets, and escalates as warranted by suspicious activity.			
7)	Protects, detects, and respond to malware across multiple devices and operating systems.			
8)	Ensures safe browsing with web protection and filtering for endpoints.			
9)	Defends against ransomware and greyware			
10)	Protect endpoints from botnets, DDoS, advanced persistent threats, and suspicious web connections.			
11)	Protecting endpoints when they are not on the corporate network.			
12)	Allow mobile users to update definitions where ever they are.			
13)	Administrators can quickly see where infections are, why they are occurring, and the length of exposure to understand the threat and react more quickly.			
14)	Centralized management offering greater visibility, unifies security, and reduces costs			
15)	Integrated architecture allows endpoint defences to collaborate and communicate for a stronger defence.			
16)	Seamlessly integrates with other third-party products to reduce protection gaps			
17)	Scans for and eradicates malware that arrives on a system.			



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18)	Controls file, registry, and device access and behaviour; also offers whitelisting and blacklisting.			
19)	Ensures endpoints are protected and compliant by enforcing policies, detecting unauthorized changes, and conducting damage assessments; it can also isolate a managed system that does not meet your requirements			
20)	Hardens endpoints by isolating suspicious or malicious apps into 'jail mode' to prevent the execution of privileged operations including downloading executable files, writing to the registry, and more.			
21)	Delivers fixed-function device lock-down by enforcing default-deny to applications and restricting updates to those defined as trusted.			
22)	Offers restricted execution of unauthorized apps for standard endpoints by governing the 'allow' list of approved apps for additional flexibility.			
23)	Ability to auto install in line with group policy.			
24)	Allows federated centralised and distribution of update			
25)	Ability to send alerts to administrator			
26)	Ability to integrate into a SOC, provide dashboard for monitoring and customisable reporting			
27)	On-premises solution deployment			
28)	Support for Cloud technology (e.g. Azure, AWS, Citrix etc.)			
29)	Commitment by the OEM to quality assure that installation was done according to the OEM's standards and best practice. (Provide commitment letter from the OEM).			



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17.1.2 Gate two (2): Functionality Requirements

- 17.1.2.1 The evaluation criteria for functionality aims to assess the bidders' capability, reliability and ability to execute the contract. The minimum points that bidders must obtain in order to progress to the next stage of evaluation is 60.
- 17.1.2.2 Bids that scored less than 60 points on functionality will be disqualified and will not progress to the next stage of evaluation.
- 17.1.2.3 Proposals will be evaluated and points will be allocated on the following basis for functionality:
- 17.1.2.4 The functionality criteria are listed below, and will be rated as follows:

Bidders will be rated on the ratings stated below:

0 - Very Poor; 1 – Poor; 2- Fair; 3 – Good; 4 - Very Good; 5 – Excellent

Score = (Acquired Rating) X (Criteria Weight) / (Maximum Rating)

Table 8: Functionality Scoring

No	CRITERIA	WEIGHT
1)	<p>Track Record</p> <p>Bidders are requested to provide letters with contactable references signed and dated by the clients on the client's letter head as proof where an anti-virus and malware protection solution was successfully deployed and/or supported and maintained in the last five (5) years. Letters must include the name of the organisation, name and contact details of the project sponsor, contract value, contract duration and scope of the work.</p> <p>3 or more reference letters = <u>5 points</u> 2 reference letters = <u>3 points</u> 1 reference letter = <u>1 point</u> 0 reference letter = <u>0 point</u></p>	20

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No	CRITERIA	WEIGHT
2.	<p>Project Plan:</p> <p>Provide your project plan showing sound technical competency in project management.</p> <ul style="list-style-type: none"> • The project plan demonstrates the service provider's full understanding and application of project management principles and concepts. The project plan fully addresses the deliverables and has clearly defined activities including timelines, and shows understanding of the requirements. = 5 points; • The project plan demonstrates the service provider's full understanding and application of project management principles and concepts. The project plan partially addresses the deliverables and has clearly defined activities including timelines, and shows understanding of the requirements. = 4 points; • The project plan partially demonstrates the service provider's understanding and application of project management principles and concepts. The project plan fully addresses the deliverables and has clearly defined activities including timelines, and shows understanding of the requirements. = 3 points; • The project plan partially demonstrates the service provider's understanding and application of project management principles and concepts. The project plan partially addresses the deliverables and has partially defined activities, shows understanding of the requirements. = 2 points; • The project plan does not demonstrate the service provider's understanding and application of project management principles and concepts. The project plan does not address the deliverables and does not have clearly defined activities, shows understanding of the requirements. = 1 points; • No project plan = 0 point; 	10
3.	<p>Solution Architecture</p> <p>The bidder must provide a detailed solution architecture clearly outlining the following aspects of the anti- virus and malware protection solution:</p> <ol style="list-style-type: none"> 1. Solution architecture clearly outlines the functional features, the components of the solution, and details a sound physical and logical layout of the solution in relation to the OCJ ICT Architecture = 5 points 2. Solution architecture clearly outlines the functional features, the components of the solution, but the physical and logical layout of the deployment is not detailed or related to the OCJ ICT Architecture = 3 points 3. Solution architecture does not clearly outline the solution features, or the components of the solution, or the physical and logical layout of the deployment = 1 point 4. Solution architecture does not outline any of the aspects = 0 point 	20

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4.	<p>Experience of Project Personnel</p> <p>Note: this should be different personnel</p> <p>Thought Leadership and Professional Consulting Services: Demonstrate the ability to provide leadership and innovation within the project.</p> <p><u>Project Lead (Solution Specialist)</u></p> <p>Scoring Weight = 10 points</p> <ul style="list-style-type: none"> • Three (3) or more years' experience in the deployment and management of the anti-virus and malware protection of which one (1) year experience as a Project Lead = <u>5 points</u> • Two (2) or more years' experience in the deployment and management of the anti-virus and malware protection of which one (1) year experience as a Project Lead = <u>4 points</u> • One (1) year experience in the deployment and management of the anti-virus and malware protection of which less than (1) year experience as a Project Lead = <u>3 points</u> • One (1) year experience in the deployment and management of the anti-virus and malware protection = <u>2 points</u> • Less than one (1) year' experience in the deployment and management of the anti-virus and malware protection = <u>1 points</u> • No experience = <u>0 points</u> <p><u>Project Manager</u></p> <p>Scoring Weight = 5 points</p> <ul style="list-style-type: none"> • Three (3) or more years managing ICT projects = <u>5 points</u> • Two (2) or more years managing ICT projects = <u>3 points</u> • One (1) or more years managing ICT projects = <u>1 points.</u> • Less than one (1) year managing ICT projects = <u>0 points</u> 	25
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	<p><u>Technical Support Personnel</u></p> <p>Scoring Weight = 10 points</p> <ul style="list-style-type: none"> Four (4) or more years' experience in maintenance and support of the anti-virus and malware protection of which two (2) or more years' experience as a Lead Technician = <u>5 points</u> Three (3) or more years' experience in maintenance and support of the anti-virus and malware protection of which one (1) or more years' experience as a Lead Technician = <u>4 points</u> Two (2) or more years' experience in maintenance and support of the anti-virus and malware protection = <u>3 points</u> One (1) or more years' experience in maintenance and support of the anti-virus and malware protection = <u>2 points</u> Less than one (1) year' experience in maintenance and support of the anti-virus and malware protection = <u>1 points</u> No experience = <u>0 points</u> 	
5.	<p>Certification of Key Project Personnel</p> <p>Project Lead</p> <p>Scoring Weight = 10 points</p> <ul style="list-style-type: none"> IT Qualification NQF Level 5 (National Diploma) or higher with an OEM Certification = <u>5 points</u> An OEM Certification only = <u>3 points</u> IT Qualification NQF Level 5 = <u>1 point</u> No proof of qualification (or certification) = <u>0 points</u> <p>Project Manager</p> <p>Scoring Weight = 5 points</p> <ol style="list-style-type: none"> IT Qualification (NQF Level 5 or higher) & Project Management Certificate (e.g. PMBOK, Prince 2 etc.) = <u>5 points</u> Project Management Certificate (e.g. PMBOK, Prince 2 etc.) = <u>3 points</u> IT Qualification (NQF Level 5 or higher) = <u>1 points</u> No Proof of certification = <u>0 points</u> 	25

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	<p><u>Technical Support Personnel</u></p> <p>Scoring Weight = 10 points</p> <ul style="list-style-type: none"> • IT Qualification NQF Level 5 (National Diploma) or higher with an OEM Certification = <u>5 points</u> • An OEM Certification only = <u>3 points</u> • IT Qualification NQF Level 5 = <u>1 point</u> • No proof of qualification (or certification) = <u>0 points</u> <p>At the project kick-off meeting, the CV's and certification of the above personnel will be validated. In case of misrepresentation, please refer to Section 25 (Misrepresentation during the life cycle of the contract).</p>	
	TOTAL	100

17.2 Gate three (3): Price and BBEE Evaluation (80+20) = 100 points

17.2.1 Only bidders that have scored sixty (60) points and above in Gate 2 will be evaluated in Gate 3 for price and B-BBEE. Price and B-BBEE will be evaluated as follows:

17.2.2 In terms of Regulation 6 of the Preferential Procurement Regulations pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated on the 80/20-preference point system in terms of which points are awarded to bidders on the basis of:

- The bid price (maximum 80 points)
- B-BBEE status level of contributor (maximum 20 points)

17.2.3 Stage 1 – Price Evaluation (80 Points)

a) The following formula will be used to calculate the points for price:

Where

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

P_{min} = Comparative price of lowest acceptable bid

Criteria	Points
<p>Price Evaluation</p> $P_s = 80 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right)$	80

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17.2.4 Gate 3 – B-BBEE Evaluation (20 Points)

17.2.5 Gate 3 (80 + 20 = 100 points)

17.2.6 The Price and B-BBEE points will be consolidated.

17.2.7 B-BBEE Points allocation

- a) A maximum of 20 points may be allocated to a bidder for attaining their B-BBEE status level of contributor in accordance with the table 9 below:

Table 9: B-BBEE Points Allocation

B-BBEE level of contributor	Number of points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- b) The B-BBEE points may be allocated to bidders on submission of the following documentation or evidence:
- A duly completed Preference Point Claim Form: Standard Bidding Document (SBD 6.1); and
 - The B-BBEE Certificate.



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21.2 Gate 3: Price and B-BBEE Evaluation (80+20) = 100 points

- a. Pricing must be itemised.
- b. The price breakdown must be completed as per the template provided below.
- c. Bidders must provide firm prices, not subject to rate of exchange.

18 TRUSTS, CONSORTIUMS AND JOINT VENTURES

- 18.1 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 18.2 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.
- 18.3 Bidders must submit concrete proof of the existence of joint ventures and/or consortium arrangements. The OCJ will accept signed agreements as acceptable proof of the existence of a joint venture and/or consortium arrangement.
- 18.4 The joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the Lead Partner and the joint venture and/or consortium party. The agreement must also clearly identify the Lead Partner, who shall be given the power of attorney to bind the other party/parties in respect of matters pertaining to the joint venture and/or consortium arrangement.

19 SUB- CONTRACTING

- 19.1 Bidders or tenderers who want to claim Preference points will have to comply fully with Regulations 11(8) and 11(9) of the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000) (PPPFA Act) with regard to sub-contracting. The following is an extract from the PPPFA Act:
 - 19.1.1 Section 11(8) "A person must not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub- contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub- contract.
 - 19.1.2 Section 11(9) "A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-

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BBEE status level than the person concerned, unless the contract is sub- contracted to an EME that has the capability and ability to execute the sub-contract.”

20 GENERAL CONDITIONS OF CONTRACT

- 20.1 Any award made to a bidder under this bid is conditional, amongst others, upon:
- 20.2 The bidders accepting the terms and conditions contained in the General Conditions of Contract as the minimum terms and conditions upon which OCJ is prepared to enter into a contract with the successful bidders.
- 20.3 The bidders submitting the General Conditions of Contract to OCJ together with its bid, duly signed by an authorised representative of the bidder.

21 SERVICE LEVEL AGREEMENT

- 21.1 The OCJ and the successful bidder will conclude a Service Level Agreement regulating the specific terms and conditions applicable to the services being procured by the OCJ more or less in the format of the draft Service Level Indicators included in this tender pack. Refusal to sign the service level agreement will lead to termination of the contract.
- 21.2 The OCJ reserves the right to vary the proposed draft Service Level Indicators during the course of negotiations with a bidder by amending or adding thereto.
- 21.3 Bidders are requested to:
 - 21.3.1 Comment on the draft Service Level Indicators and where necessary, make proposals to the indicators;
 - 21.3.2 Explain each comment and/or amendment; and
 - 21.3.3 Use an easily identifiable colour font or “track changes” for all changes and/or amendments to the Service Level Indicators for ease of reference.
- 21.4 The OCJ reserves the right to accept or reject any or all amendments or additions proposed by a bidder if such amendments or additions are unacceptable to the OCJ or pose a risk to the organisation.

22 SPECIAL CONDITIONS OF THIS BID

- 22.1 The OCJ reserves the right not to make an award of any of the responses on this bid.
- 22.2 Bidders must provide an undertaking that reference checks in connection with services rendered may be conducted by the OCJ from previous clients where similar services were provided.

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22.3 The OCJ may vary the scope outlined in this bid to include reasonable additional work within the wider scope of services required.

22.4 The bidders must be accessible to the OCJ at all times

23 DECLARATON REQUIREMENTS FOR BIDDERS

23.1 In the bidder's technical response, bidders are required to declare the following:

23.1.1 Confirm that the bidders:

- a) Act honestly, fairly and with due skill, care and diligence, in the interests of the OCJ;
- b) Have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of the services;
- c) Act with circumspection and treat the OCJ fairly in a situation of conflicting interests;
- d) Comply with all applicable statutory or common law requirements applicable to the conduct of business;
- e) Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with the OCJ;
- f) Avoidance of fraudulent and misleading advertising, canvassing and marketing;
- g) To conduct their business activities with transparency and consistently uphold the interests and needs of the OCJ as a client before any other consideration; and
- h) To ensure that any information acquired by the bidders from the OCJ will not be used or disclosed unless the written consent of the client has been obtained to do so.

24 CONFLICT OF INTEREST, CORRUPTION AND FRAUD

24.1 The OCJ reserves its right to disqualify any bidder who either itself or any of whose members ,save for such members who hold a minority interest in the bidder through shares listed on any recognised stock exchange, indirect members being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange, directors or members of senior management, whether in respect of the OCJ or any other Government organ or entity and whether from the Republic of South Africa or otherwise "Government Entity":

24.1.1 Engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid;

24.1.2 Seeks any assistance, other than assistance officially provided by a Government Entity, from any employee, advisor or other representative of a Government Entity in order to

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obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;

- 24.1.3 Makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of the OCJ's employees or other representatives;
- 24.1.4 Makes or offers any gift, gratuity, anything of any value or other inducement, to any Government Entity's officers, directors, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;
- 24.1.5 Accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to a Government Entity;
- 24.1.6 Pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or results from, the award of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to a Government Entity;
- 24.1.7 Has in the past engaged in any matter referred to above; or
- 24.1.8 Has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such bidder, member or director's name not specifically appearing on the List of Tender Defaulters kept at National Treasury.

25 MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT

- 25.1 The bidder should note that the terms of its tender will be incorporated in the proposed contract by reference and that the OCJ relies upon the bidder's tender as a material representation in making an award to a successful bidder and in concluding an agreement with the bidder.
- 25.2 It follows therefore that misrepresentations in a tender may give rise to service termination and a claim by the OCJ against the bidder notwithstanding the conclusion of the Service Level Agreement between the OCJ and the bidder for the provision of the service in question. In the event of a conflict between the bidder's proposal and the Service Level Agreement concluded between the parties, the Service Level Agreement will prevail.

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26 PREPARATION COSTS

The bidder will bear all its costs in preparing, submitting and presenting any response or tender to this bid and all other costs incurred by it throughout the bid process. Furthermore, no statement in this bid will be construed as placing the OCJ, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the bidders in the preparation of their response to this bid.

27 INDEMNITY

If a bidder breaches the conditions of this bid and, as a result of that breach, the OCJ incurs costs or damages (including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the bid process and/ or enforcement of intellectual property rights or confidentiality obligations), then the bidder indemnifies the OCJ from any legal liability and all such costs which the OCJ may incur and for any damages or losses the OCJ may suffer

28 CONFLICT OF INFORMATION PROVIDED

This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

29 LIMITATION OF LIABILITY

Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to Clause 6 of the general conditions of contract.

The supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/ or damages to the purchaser' and

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.

30 TAX COMPLIANCE

No tender shall be awarded to a bidder who is not tax compliant. The OCJ reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award, or has submitted a fraudulent Tax Clearance Certificate to the OCJ or whose verification against the Central Supplier Database

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(CSD) proves non-compliant. The OCJ further reserves the right to cancel a contract with a successful bidder in the event that such bidder does not remain tax compliant for the full term of the contract.

31 TENDER DEFAULTERS AND RESTRICTED SUPPLIERS

31.1 No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. The OCJ reserves the right to withdraw an award, or cancel a contract concluded with a bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another Government institution.

32 GOVERNING LAW

32.1 South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African Superior Courts in any dispute of any kind that may arise out of or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

33 RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL

33.1 A bidder is responsible for ensuring that its personnel including agents, officers, directors, employees, advisors and other representatives, its sub-contractors, if any and personnel of its sub-contractors comply with all terms and conditions of this bid. Where that the OCJ allows a bidder to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the bidder and the OCJ will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

34 CONFIDENTIALITY

34.1 Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s), will be disclosed by any bidder or other person not officially involved with the OCJ's examination and evaluation of a tender.

34.2 No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a Tender. This bid and any other documents supplied by the OCJ, remain proprietary to the OCJ and must be promptly returned to the OCJ upon request together with all copies, electronic versions, excerpts or summaries thereof or work derived therefrom.

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34.3 Throughout this bid process and thereafter, bidders must secure the OCJ's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this bid relates; or (ii) the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

35 OFFICE OF THE CHIEF JUSTICE PROPRIETARY INFORMATION

35.1 Bidder/s will on their bid cover letter make a declaration that they did not have access to any of the OCJ's proprietary information or any other matter that may have unfairly placed that bidder in a preferential position in relation to any of the other bidders.

36 TERMINATION OF SERVICES

36.1 The OCJ may terminate the Agreement at its own discretion or temporarily suspend all or part of the services by notice to the successful bidder who shall immediately make arrangements to stop the rendering of the services and minimize further expenditure: Provided that the successful bidder shall thereupon be entitled to payment in full for the services delivered, up to the date of the termination.

