



**PROCUREMENT:**

**GENERAL CONDITIONS & PROCEDURES**

## **INDEX:**

1.	Part 1: Definitions, Acronyms and Abbreviations.....	<b>3</b>
2.	Part 2: General.....	<b>7</b>
3.	Part 3: Invitation to Tender.....	<b>9</b>
4.	Part 4: Consideration of Tenders.....	<b>14</b>
5.	Part 5: Administration of Contracts.....	<b>17</b>

## PART 1: DEFINITIONS, ACRONYMS & ABBREVIATIONS

### 1.1 DEFINITIONS:

- 1.1.1 “National Credit Regulator” – means the National Credit Regulator as defined in the National Credit Act 2005.
- 1.1.2 “Acceptable Bid” – means any bid which in all respects, complies with the specifications and conditions of the Invitation to Bid as set out in the bid documents.
- 1.1.3 “Bid” – means a written offer in the prescribed or stipulated form in response to an Invitation to Bid for the provision of goods, works or services.
- 1.1.4 “Broad Based Black Economic Empowerment” – means the economic empowerment of all black people through diverse but integrated socio-economic strategies that include, but not limited to:-
- i. increasing the number of black people that manage, own and control enterprises and productive assets;
  - ii. facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
  - iii. human resources and skills development;
  - iv. achieving equitable representation in all occupational categories and levels in the workforce;
  - v. preferential procurement; and
  - vi. investment in enterprises that are owned or managed by black people.
- 1.1.5 “Comparative prices” – means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration.
- 1.1.6 “Closing time” – means the date and hour specified in the bid documents for the receipt of the bids.
- 1.1.7 “Contract” - means the agreement that results from the acceptance of a bid.
- 1.1.8 “Contractor” – means any natural or legal person whose bid has been accepted by the National Credit Regulator and a contract concluded between the parties.
- 1.1.9 “Control” – means the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business.

- 1.1.10 “Consortium/Joint Venture”- means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract.
- 1.1.11 “Delivery” – means delivery in compliance with the conditions of the contract or order.
- 1.1.12 “Disability” – means, in respect of a person, a permanent impairment of a physical, intellectual or sensory function which results in restricted or lack of ability to perform an activity in the manner or within the range considered normal for a human being.
- 1.1.13 “Equity ownership”- means the percentage of ownership and control exercised by individuals within an enterprise.
- 1.1.14 “Firm prices” – means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition or abolition or customs or excise duty and any other duty, levy or tax which in terms of a law or regulation is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service for the execution of the contract.
- 1.1.15 “Goods” – means any work, services, materials or anything of whatever nature to be rendered to the National Credit Regulator by the successful bidder in terms of the bid.
- 1.1.16 “Historically Disadvantaged Individuals” – means a South African citizen who:-
- due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa , Act No. 110 of 1983 or the Constitution of the Republic of South Africa, Act No. 200 of 1993 [the interim Constitution]; and/or
  - is a female; and/or
  - has a disability.

Provided that, a person who obtained South African citizenship on or after the coming into effect of the Interim Constitution is deemed not to be an HDI.

- 1.1.17 “Local content” – means that portion of the tender price which is not included in the imported content provided that local manufacture does take place.
- 1.1.18 “Management” – in relation to a business or enterprise, means an activity inclusive of control and performed on a daily basis by any person who is a principal executive officer of the company, by whatever name that person may be designated and whether or not that person is a director.

- 1.1.19 “Manufacture” – means the production of products in a factory using labour, materials, components and machinery and includes fabrication, assembly or processing.
- 1.1.20 “Non-firm price” – means all prices other than “firm” prices.
- 1.1.21 “Order” – means an official written order issued for the supply of goods or the rendering of a service.
- 1.1.22 “Organ of state” – means a Constitutional institution defined in the Public Finance Management Act 1 of 1999.
- 1.1.23 “Owned” – means having all the customary elements of ownership, including the right of decision-making and sharing all the risks and profits commensurate with the degree of ownership interests as demonstrated by an examination of the substance rather than the form of ownership arrangements.
- 1.1.24 “Production” – means the production of goods whether in a factory or not and includes manufacturing and other activities such as mining and agriculture.
- 1.1.25 “Price quotations” – means a written offer on any documentation which is not necessarily subject to the general conditions and procedures contained in this document and which is invited and dealt with in any manner.
- 1.1.26 “Period contract” – means a contract entered into for the supply of goods, the rendering of services or the disposal of state property during a specified period of time.
- 1.1.27 “Preference” – means a percentage of the bid price deducted from the bid price of certain products or services as determined by the Minister of State Expenditure for use when calculating the comparative price in terms of sub-paragraph 4.1.5.
- 1.1.28 “Person(s)” – refers to a natural and/or juristic person(s).
- 1.1.29 “Public Finance Management Act” – means the Public Finance Management Act 1 of 1999.
- 1.1.30 “Preferential Procurement Policy Framework Act” – means the Preferential Procurement Policy Framework Act 5 of 2000.
- 1.1.31 “Rand value” – means the total estimated value of a contract in South African Rand denomination which is calculated at the time of bid invitations and includes all applicable taxes and excise duties.
- 1.1.32 “Specific contract participation goals” – means the goals as stipulated in the Preferential Procurement Regulations 2001

1.1.33 “Written” or “in writing” – means handwritten in ink or any form of mechanical writing.

## **1.2 ACCRONYMS AND ABBREVIATIONS:**

BBBEE	Broad Based Black Economic Empowerment
BEE	Black Economic Empowerment
PFMA	Public Finance Management Act
PPPFA	Preferential Procurement Policy Framework Act
NCR	National Credit Regulator
HDIs	Historically Disadvantaged Individuals
SMMEs	Small, Medium and Micro Enterprises
SARS	South African Revenue Services
SLA	Service Level Agreement
VAT	Value Added Tax

## **PART 2: GENERAL**

### **2.1 ENQUIRIES:**

If a bidder requires clarity on any matter pertaining to the bid documents, you may refer your query in writing to:

Name of Contact Person : Elliot Chonco / Cornie Tema  
Telephone number : 011 554-2646/ 554 2784  
Closing date : 29 July 2010

### **2.2 CONDITIONS AND PROCEDURES**

- 2.2.1 The following general conditions and procedures are applicable to all bids, contracts and orders unless otherwise indicated by the NCR before the bid invitation;
- 2.2.2 Where applicable, special conditions or procedures are laid down by the NCR to cover specific supplies/services;
- 2.2.3 Where the special conditions or procedures conflict with these conditions and procedures, the special conditions or procedures shall apply.

### **2.3 OBTAINING BID DOCUMENTS**

Copies of the bid documents are only available at the compulsory briefing session, as indicated in the advertised Invitation to Bid.

### **2.4 NOTICE OF ACCEPTANCE OF THE BID**

- 2.4.1 Notice of acceptance of the bid shall be sent by the NCR per registered or certified mail to the successful bidder and any other notice to the successful bidder shall be posted per ordinary mail to him/her, to the address nominated by the bidder or disclosed in his tender;
- 2.4.2 The South African Post Office Ltd shall be regarded as the agent of the successful bidder and delivery of such notice to the South African Post Office Ltd shall be deemed to be proper service of such notice on the successful bidder, and the time for performing any act as mentioned in this document or in the contract, after such notice has been given, shall be reckoned from the date of posting of such notice;
- 2.4.3 The following particulars of the successful bidder will be published in the Government Tender Bulletin, except in the case of period contracts, namely:-
  - The contract number and description;
  - Name of the successful bidder;

- The contract price and delivery basis, where applicable;
- Preference claimed, if applicable
- The brand name of the product and/or the name of the manufacture, if applicable.

2.4.4 Unsuccessful bidders are notified in writing per ordinary mail. Where no bid has been accepted, particulars of the bids received will not be made public.

## 2.5 AVAILABILITY OF SPECIFICATIONS

Where any specific testing institution's specifications are referred to in the bid documents, the bidder may direct requests to consult such specifications or purchase copies thereof to the local branch of that institution or such other address as indicated in the bid documents.

## 2.6 EVALUATION CRITERIA & PREFERENCE POINTS

The bid will be evaluated in terms of the 90/10 Preference Point scoring system:-

Preference		Price	
HDI	7 points	Price	35% of 90
Women	2 points	Functionality	65% of 90
Disabled	1 point		
Total must equal	10 points	Total must equal	90 points

## 2.7 FORMAL CONTRACTS

A legal contract has been concluded on the issuance of a letter of acceptance. Formal contracts may however be entered into only if this requirement is stated in the tender invitation or letter of conditional acceptance.

## **PART 3: INVITATION OF TENDER**

### **3.1 INVITATION TO TENDER**

- 3.1.1 The NCR shall not be liable for any expense incurred by the bidder in the preparation and submission of the bid, unless otherwise indicated in the bid documents;
- 3.1.2 Bids are invited only in the Republic of South Africa (RSA) unless otherwise indicated in the bid documents;
- 3.1.3 The laws of the RSA shall govern contracts arising from the acceptance of bids, unless otherwise indicated in the bid documents;
- 3.1.4 A domicilium et executandi shall be chosen in the RSA and disclosed in the bid documents by the bidder;
- 3.1.5 In the case of a consortium/joint venture or subcontractors, bidders must provide copies of signed agreements that disclose the work split and the Rand Value;
- 3.1.6 Notice of Invitation to bid are published in the Government Tender Bulletin only, with certain exceptions, and copies of such notice are available from the Government Printers, Private Bag X85, Pretoria, 0001.

### **3.2 TENDER PRICES**

- 3.2.1 All-inclusive bid prices are required. Firm prices and delivery periods are preferred;
- 3.2.2 Bidders may submit firm and non-firm prices;
- 3.2.3 The following shall be considered when evaluating tenders with differing prices and delivery conditions:-
  - i. “Firm” prices are deemed to the prices which are only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which in terms of the law or regulation is binding upon the contractor and demonstrably have an influence on the prices of any supplies or the rendering costs if any service, for the execution of the contract. Where different prices are tendered for different periods of the contract the tender price applicable in respect of a particular period of the contract shall be a firm price if, as regards such period, it conforms to the preceding definition of “firm prices”;

- ii. “Non-firm” prices are all prices other than “firm” prices.
- iii. Where a bidder has not indicated whether his prices or delivery periods are firm or not, the tendered prices and delivery periods are deemed to be firm and the contractor shall be bound thereby;
- iv. When calculating the comparative prices as per *sub-paragraph 4.1.5* non-firm tender prices are adjusted in accordance with the assessed contract price adjustments implicit in the non-firm prices;
- v. After comparisons are made the NCR may in its discretion award a further preference for firm prices;
- vi. In cases where non-firm prices are offered, a break down of the tender price reflecting the different portions of the tender price that might fluctuate must be indicated;
- vii. The pricing schedules and questionnaire concerning the status of tendered prices which are included in the bid documents must be completed and submitted together with the tender;
- viii. Claims in respect of exchange rate fluctuations are subject to the provisions of sub-paragraph 3.16.1.to 3.17;
- ix. Expressions such as “soonest” or “earliest” or delivery periods that are unspecified are not acceptable.

### **3.3 ALTERNATE OFFERS**

No alternative offer will be accepted unless otherwise indicated in the bid documents.

### **3.4 OFFERS NOT STRICTLY TO SPECIFICATIONS**

Offers that do not comply strictly to specifications may be considered.

### **3.5 PARTIAL TENDERS**

Tenders may be submitted for some of the specified items or part of the specified quantity or requirement in respect of tenders for supplies and sales only.

### **3.6 QUANTITIES**

3.6.1 Estimated quantities shall be indicated in the bid invitation when exact quantities are not known;

3.6.2 Quantities may be changed after mutual consent has been reached in writing.

### **3.7 INSTRUCTIONS FOR THE SUBMISSION OF BIDS:**

3.7.1 Three (3) copies of the bid must be submitted on the date of closure of the bid;



### **3.8 CLOSING OF BIDS:**

- 3.8.1 Subject to the provisions of paragraph 3.9, bids close at 11h00 on the closing date stipulated in the bid documents;
- 3.8.2 When the closing date falls on a Saturday, Sunday or a public holiday bids may be lodged up to 11h00 on the following working day;
- 3.8.3 Unless otherwise indicated by the NCR, bids close at least four (4) weeks after the date of publication of the Invitation to bid in the case where the supplies are expected to be in stock in the Republic of South Africa or manufactured from materials available in the Republic or at least five (5) weeks after the date of publication in all other cases.

### **3.9 VALIDITY PERIODS OF BIDS:**

Offers shall remain valid and binding for the period stipulated in the bid documents and is calculated from the closing time on the understanding that offers are to remain in force and binding until the close of business on the last day of the period calculated, and if this day falls on a Saturday, Sunday or public holiday the tender is to remain valid and binding until the close of business on the following working day.

### **3.10 OPENING OF BIDS:**

- 3.10.1 There will be no public opening of bids received and there shall be no discussions with any bidder until the bid evaluations have been completed;
- 3.10.2 Bids sent from within the Republic of South Africa via email or via the Inter-net shall not be accepted;
- 3.10.3 Bids submitted via the Inter-net or email from international bidders who have no offices or representatives in the Republic will be accepted if it is received on or before the closing date and time. In this instance the original signed documents must be submitted within three (3) working days after the closing date and these bids shall not be evaluated until the original signed bid documents are received. In the event that the original signed bid documents are not received within this prescribed time the bid will not be considered;
- 3.10.4 International bidders must submit proof that they do not have offices or representatives within the Republic.

### **3.11 REASONS FOR DISQUALIFICATION:**

Bids may be disqualified if:

- i. there is non-compliance with aforementioned conditions;
- ii. the original valid Tax Clearance Certificate is not submitted as required in terms of Treasury Practice Note Number SCM1 of 2004;
- iii. the information submitted by the bidder is fraudulent, factually untrue or inaccurate;
- iv. the bidder fails to submit the Employment Equity letter from the Department of Labour where the bidder employs less than 50 people or yields an annual return of less than R10 million, if applicable;
- v. the bidder appears on the National Treasury's data base of restricted persons, companies or directors who is prohibited from doing business in the public sector;
- vi. bids submitted by facsimile, telegram or telex shall not be considered.

## **PART 4: CONSIDERATION OF TENDERS**

### **4.1 GENERAL**

- 4.1.1 All bids that comply with the above provisions shall be considered by the NCR;
- 4.1.2 The NCR is not obliged to accept the lowest or any tender;
- 4.1.3 The financial position and the bidder's ability to supply and/or manufacture the goods, services or works shall first be assessed before the bid is considered;
- 4.1.4 The award of a contract by the NCR shall be final and the NCR shall not be obliged to give reasons for the acceptance thereof, save for the information mentioned in sub-paragraph 4.4;
- 4.1.5 In comparing tenders the prices are brought to a comparative level by deducting preferences and other benefits and adding delivery and other costs where applicable and bringing implied contract adjustments into account.

### **4.2 PREFERENCES**

- 4.2.1 Certain tender price preferences are allowed which do not affect the tender price but which are taken into account when calculating the comparative price in terms of sub-paragraph 4.1.5. The following preferences are considered, based on the information furnished by the bidders:-
  - i. a preference based on local content or either the entire local process or of only that part of the local process;
  - ii. a preference for the SABS standardization mark;
  - iii. such other preferences as determined by the Minister of Finance from time to time.
- 4.2.2 If during the adjudication process or subsequent award of the contract, doubt exists regarding any statements made by a bidder with regards to a preference claim, the bidder may be requested to provide documentary proof to substantiate his statements.

### **4.3 EQUAL BIDS**

- 4.3.1 After prices have been brought to a comparative level, the following order of priority shall be applied in the consideration of equal bids:-
  - i. bids scoring the highest HDI equity points;

- ii. bids offering firm prices and firm delivery periods;
  - iii. bids offering the shortest delivery periods;
  - iv. bids offering supplies manufactured in the Republic;
  - v. supplies manufactured in the Republic from entirely imported raw materials or non-fabricated materials;
  - vi. supplies assembled from entirely or partly imported components in the Republic;
  - vii. supplies from imported stocks held in the Republic;
  - viii. imported supplies from local firms or persons who are in a position to give expert advice or render expert services;
  - ix. supply from points of dispatch nearest to the centers at which delivery is required;
  - x. all things still being equal, the award shall be decided by the drawing of lots.
- 4.3.2 Notwithstanding the above, supplies of a perishable nature shall, in the interests of economy, be purchased at or near to the center where the supplies are required.

#### **4.4 DISCLOSURE OF BIDS RECEIVED**

- 4.4.1 Bids received are not available for perusal to the public;
- 4.4.2 At the written request of a bidder, the NCR shall provide the bidder with reasons why his own bid was unsuccessful. The NCR shall not supply reasons why another bidder's bid was successful nor shall it disclose itemized prices other than the formal contract prices of the successful bidder;
- 4.4.3 At the written request of a bidder or interested party the NCR shall, however, furnish the following information if same has not been published in the Government Tender Bulletin, namely:-
- i. the name and address of all bidders;
  - ii. preference percentage points claimed by the successful bidder, if applicable;
  - iii. the brand name of a product and/or the name of the manufacturer in respect of the accepted bid only, if applicable;
  - iv. any further information as provided for by law or deemed necessary by the NCR.

#### **4.5 QUANTITIES OTHER THAN THOSE SPECIFIED**

If a bid is based on quantities as defined in sub-paragraph 3.6 and the bid is accepted for the quantity other than that called for or offered, the bidder is given the option of refusing acceptance if the quantity required is less than that for

which he has bid in the case of quantities based on sub-paragraph 3.6.2 or less than the minimum quantity in the case of quantities based on sub-paragraph 3.6.1. However, if the bid is accepted for a larger quantity only the excess may be refused in the case of quantities based on sub-paragraph 3.6.2 or the excess above the maximum quantity in the case of quantities based on sub-paragraph 3.6.1 and 3.6.2.

Written notification of rejection of the changed quantities must be received from the bidder within fourteen (14) days of the date on which he was advised of the change, failing which he will be deemed to have accepted the change.

## **PART 5: ADMINISTRATION OF CONTRACTS**

### **5.1 SETTLEMENT OF DISPUTES**

- 5.1.1 Should any disputes arise as to the interpretation of the conditions of a bid, contract or order, the accounting officer shall have the option of dealing with the claim directly to determine such dispute or difference. The bidder will be informed in writing of the decision which shall be final and binding on the parties unless the contractor rejects the decision in writing within twenty-one (21) days of receipt thereof;
- 5.1.2 Should the bidder or contractor not accept the decision of the accounting officer, he shall be entitled to have recourse to the courts of law of the Republic, provided that any action taken by the bidder or contractor shall not delay the execution of the contract.

### **5.2 ORDERS**

Supplies shall be delivered and services rendered only on receipt of a written official order from the NCR and accounts shall be rendered as indicated on the official order or in the contract as the case may be.

### **5.3 QUALITY**

- 5.3.1 Goods supplied and services rendered shall be in accordance with, and the contractor guarantees that they are equal in all respects to the samples, patterns, drawings and/or specifications stipulated in the contract or order. Unless otherwise stipulated, supplies shall be new and unused and where specific grades and special brands are specified such grades and brands only shall be supplied unless the NCR otherwise agrees;
- 5.3.2 Where a bid requires a supply or service to a standard specification of any standards body, the bidder is required to take cognizance of the provisions of the Standards Act No 293 of 1993.

### **5.4 GUARANTEE**

- 5.4.1 Unless the contract stipulates otherwise, the contractor shall guarantee for a period of twelve months that no faulty material or workmanship was used in the manufacture of supplies or in the execution of services and that the finish is not defective. Should the guarantee not be complied with the NCR may without prejudice to any other rights it may have, demand that the supplies be replaced and the services repaired at the cost of the contractor;

5.4.2 The period of the guarantee shall commence on the date of receipt of the supplies by, or handing over of the service to the NCR or where specified on the date the supplies or services are brought into commission;

5.4.3 The liability of the contractor under the guarantee shall interalia also cover the free delivery to the NCR of supplies required in replacement of defective supplies and where parts are to be replaced the liability shall include their free installation. The supplies and parts so replaced or services so rendered shall be guaranteed for a similar period.

## **5.5 SECURITY**

5.5.1 Where security is required particulars thereof are indicated in the bid documents.

5.5.2 Where approval has been granted for advance or progress payments to a contractor, the security to be provided shall be determined by the NCR.

5.5.3 The security required may be provided by, alternatively:-

- i. a guarantee by a banking institution registered in terms of the Banks Act No 94 of 1990 as amended;
- ii. a guarantee by an insurer registered in terms of the Insurance Act No 27 of 1943, to do insurance business;
- iii. a guarantee by the Small Business Corporation;
- iv. cash;
- v. negotiable government stock;
- vi. negotiable approved municipal stock;
- vii. a security bond or, two or more acceptable sureties in the case of service contracts;
- viii. such other form of security as the NCR approves.

## **5.6 PAYMENT FOR SUPPLIES AND SERVICES**

Under this regulation, the following payment conditions are applicable:-

- i. in the case of supplies delivered, payment shall be made to the contractor once the supplies have been delivered in accordance with the contract and only on receipt of a detailed statement of account from the contractor;
- ii. in the case of services rendered payment shall be made to the contractor only on receipt of a detailed statement of account and only if the contract has been performed in accordance with the contract;
- iii. payment will normally be effected within thirty (30) days of receipt of the required documentation which should be correct in every respect. Where a contractor offers a special discount on his account, conditional

- upon payment being effected within a certain time, every effort shall be made by the NCR to take advantage of such discount;
- iv. payment shall be made to the contractor only. If payment is claimed by another party such party must produce proof of a written cession, power of attorney or authorization and the contractor must confirm the cession, power of attorney or authorization has been given by him/her and that payment may be claimed in terms thereof, before the NCR shall effect such payment;
  - v. any query concerning the non-payment of accounts must be directed to the NCR: Supply Chain Management Unit.

## **5.7 INSPECTIONS, TESTS & ANALYSIS**

- 5.7.1 All pre-bid testing shall be for the account of the bidder.
- 5.7.2 the premises of the contractor or bidder shall be opened at all reasonable hours for inspection by the NCR or its duly authorized representative;
- 5.7.3 if the bid documents or the letter of acceptance do not stipulate inspection requirements but during the contract period it is decided that such inspection shall be carried out, the NCR shall itself make the necessary arrangements including payment arrangements with the relevant testing authority;
- 5.7.4 if inspections, tests and analyses are required in relation to supplies before dispatch, the contractor shall provide all the required facilities and if required, the materials, samples, labour and available apparatus for the inspections, tests and analysis of the supplies, free of charge unless otherwise indicated;
- 5.7.5 if the inspections, tests and analyses referred to in sub-paragraph 5.7.3 and 5.7.4 shows that the supplies are in accordance with the contract requirements, such costs shall be paid by the NCR;
- 5.7.6 where the supplies or services referred to in sub-paragraph 5.7.3 and 5.7.4 do not comply with the contract requirements irrespective of whether such supplies or services are accepted or not, the cost in connection with the inspections, tests or analyses thereof shall be borne by the contractor;
- 5.7.7 Supplies and services which do not comply with the contract requirements may be rejected;
- 5.7.8 Supplies may be inspected, tested or analyzed on or after delivery and if found to be non-compliant with the contract requirements it may be rejected. Such rejected supplies shall be held at the cost and risk of the contractor and who shall remove same immediately at his own costs when called upon to do so and substitute same with supplies that comply with the contract requirements. Should the contractor fail to affect such removal the supplies

shall be returned at his cost and risk. Should the contractor fail to substitute the supplies forthwith, the NCR shall, without giving the contractor further opportunity to substitute the rejected supplies, purchase such supplies at the cost of the contractor;

- 5.7.9 Transport and any other costs with regards to rejected supplies shall be refunded by the contractor;
- 5.7.10 Where imported supplies are to be inspected before shipment, the contractor shall notify his suppliers abroad of the conditions applicable to inspections;
- 5.7.11 The provisions of sub-paragraphs 5.7.3 to 5.7.10 shall not prejudice the right of the NCR to cancel the contract on account of breach of the conditions thereof, or to act in terms of sub-paragraph 5.9 hereof.

## **5.8 RECOURSE IN THE CASE OF DEATH, SEQUESTRATION, JUDICIAL MANAGEMENT OR LIQUIDATION OF THE CONTRACTOR**

- 5.8.1 In the event of the contractor's death, provisional or final liquidation or sequestration of his estate, cession or transfer of a contract without the consent of the NCR, or the surrender of his estate, or a compromise agreement being reached with the contractor's creditors or the contractor being placed under judicial management, the NCR may, without prejudice to any other rights it may have, exercise the following options:-
  - i. cancel the contract and accept any of the tenders originally submitted or any offer subsequently received to complete the contract. In this event the contractor shall not be absolved of liability for any claim arising or which may arise against him for the supplies not delivered or work not carried out in terms of the contract and the NCR shall have the right to retain all or any of the securities and moneys held by it at the date of such event arising until the claim has been satisfied; or
  - ii. complete the contract for and on behalf of and at the cost of the contractor, and in such event the NCR shall take over and use without payment, the contractor's tools, plant and materials in whole or in part until completion of the contract. In such event the NCR shall give the executor, trustee, liquidator or judicial manager of the contractor's estate notice to fulfill the contractor's obligations in terms of the contract and should the said executor, trustee, liquidator or judicial manager fail to fulfill such obligation with fourteen (14) days of such notice being given, the NCR may apply any remedy open to it in terms of the contract as if the breach thereof had taken place; or
  - iii. allow the executor, trustee, liquidator or judicial manager for and on behalf of and at the cost of the contractor, to complete the contract; or

5.8.2 If an executor, trustee, liquidator or judicial manager is not appointed within fourteen days of the event mentioned in sub-paragraph 5.8.1 above, the NCR may apply any remedy open to it in terms of the contract as if a breach thereof had taken place.

## **5.9 FAILURE TO COMPLY WITH CONDITIONS & DELAYED EXECUTION**

5.9.1 If a bidder amends or withdraws his bid after the closing time but before notification of acceptance of his bid, or when notified of such acceptance he fails to sign a contract or provide the security requested, he shall unless the NCR decides otherwise and without prejudice to any other rights that the NCR may have, forfeit any deposit which may have been paid with the bid;

5.9.2 Should the contractor fail to comply with any of the conditions of the contract, the NCR shall be entitled without prejudice to its other rights, to cancel the contract;

5.9.3 No penalty or damage shall be claimed for a delay which, the contractor can prove to the satisfaction of the NCR, is directly attributed to sanctions, war, lockouts, damage to machinery as a result of fire, flood or tempest or act of God which could not have been foreseen or overcome, or to an act or omission on the part of the person(s) acting for the NCR;

5.9.4 If performance in terms of the contract is likely to be delayed or is being delayed on account of the circumstances mentioned in sub-paragraph 5.9.3, the contractor shall report such to the NCR and indicate the extension of time required to comply with the contract;

5.9.5 If a service contract is delayed beyond the contract period the NCR shall be entitled, without prejudice to any of its other rights and without canceling the contract, to arrange for execution of the services not rendered in accordance with the contract, or to cancel the contract and claim damages from the contractor;

5.9.6 If delivery of a supply is delayed beyond the contract period, the NCR shall be entitled, without canceling the contract and without prejudice to any of its other rights to forthwith purchase supplies of a similar quality and quantity and to return any supplies delivered later at the contractor's expense and risk, or to cancel the contract, purchase the supplies needed to complete the contract and without prejudice to any of its other rights, to claim damages from the contractor;

5.9.7 In the event of the NCR availing itself of the remedies provided for in sub-paragraph 5.9.5 and 5.9.6:-

- i. the contractor shall bear any adverse difference in the price of the said supplies or services and these amounts plus any other damages which may be suffered by the NCR shall be paid by the contractor to the NCR immediately on demand or the NCR may deduct such amounts from moneys, if any, otherwise payable to the contractor in respect of supplies or services rendered or to be rendered under the contract or under any other contract or any other amount due to him;
- ii. if the contractor fails to supply the goods or render the service within the period stipulated in the contract the NCR shall have the right, unless otherwise directed by the NCR, in its sole discretion either to deduct as a penalty from the value of the contract price an amount of one-fourteenth percent thereof per day for the period of the delay or to claim any damages or loss suffered in lieu of such penalty provided that where beneficial use of the completed portion is enjoyed, the penalty shall be applied to the value of the outstanding portion only.

#### **5.10 REMEDIES IN THE CASE OF BRIBES:**

If the NCR is of the opinion that:-

- i. a bidder obtained a bid or a contractor in executing a contract, promised or offered an officer or employee of the NCR or any other person a bribe, commission, gift, loan advantage or any other consideration; or
- ii. a bidder, contractor, enterprise or person with whom a bidder or contractor is actively involved or where the bidder or contractor is a company or partnership, any manager, director or any person who exercises control over the company or partnership in part or wholly, has acted in bad faith, fraudulently or in an improper manner in obtaining or executing the contract with the NCR, an administration, a public body or company or firm or person; or
- iii. if the entity referred to in sub-paragraph 5.10(ii), in conducting his business, has contravened or neglected to comply with statutory requirements or has been found guilty of a criminal offence;

the NCR may in the case of a bidder, ignore his bid without first informing thereof and in the case of a contractor, cancel the contract without prejudice to any of its other rights or remedies it may have against the contractor and impose a penalty of 15% of the value of the contract or the reasonable expected profit margin of the contractor on the contract which ever is the higher.

#### **5.11 RESTRICTIONS FROM BIDDING**

- 5.11.1 In addition to any other remedies that the NCR may have, the NCR may resolve not to consider any offer from a bidder during a specified period, if it is of the opinion that a bidder:-

- i. has amended or withdrawn an offer after the closing time for receipt of bids and before he has been informed of acceptance of his bid; or
  - ii. has failed to sign a contract or provide the requisite security within the time stipulated in the bid documents; or
  - iii. has failed to comply with the conditions of the contract or performs or has performed unsatisfactorily in terms of the contract; or
  - iv. has failed to react to a written notice sent to him by registered post, fax or certified post; or
  - v. who has concluded an agreement with the NCR, has promised, offered or given a bribe or has acted in bad faith, fraudulently or in any other improper manner.
- 5.11.2 The aforementioned restrictions may be amended or rescinded by the NCR at any time. Any restriction imposed on a bidder may also be imposed against any other enterprise, partner, manager, director or other person who wholly or partly exercises control over the enterprise and with which enterprise or person the bidder, in the opinion of the NCR, is or was actively associated;
- 5.11.3 Where the NCR imposes a restriction regarding the consideration of offers from a bidder or amends or rescinds such restriction, it may inform any other purchasing authority on which it may decide and all Government departments of any resolution relative to such restriction or the rescindment or amendment thereof and request such authorities and departments to take similar steps;
- 5.11.4 Whenever it comes to the attention of the NCR that any other government purchasing authority has restricted a bidder, the NCR may resolve that a similar restriction be imposed by it on the bidder concerned in respect of agreements with the NCR.

## **5.12 CONTRACTOR'S LIABILITY**

- 5.12.1 In the event of the contract being cancelled in terms of the Act or regulation or in the exercise of the NCR's rights in terms of these conditions, the contractor shall be liable for any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and the NCR shall have the right to recover such losses, damages or additional costs by means of set-off from monies due or which may become due in terms of the contract, or any other contract, or from a guarantee provided for the due fulfillment of the contract. Until such time as the loss, damage or additional costs has been determined, the NCR shall retain such monies, guarantee or any deposit as surety for any loss which the NCR may suffer or have suffered.
- 5.12.2 The contractor may be liable for any consequential loss or damage suffered by the NCR arising from any defect, latent or otherwise, in the supply or service rendered or if the supply or service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the contract.

### **5.13 SUB-CONTRACTING**

No part of the work covered by the contract may be let or sub-let to persons unless authorized in writing by the accounting officer, which authority, if granted shall not in any way absolve the contractor of liability which might result from the contract.

### **5.14 FIRM PRICES**

If a contract is awarded on the basis of firm prices and during the course of the contract a customs or excise duty or any other duty, levy or tax is introduced in terms of any Act or regulation or such duty, levy or tax is legally changed or abolished, the said prices shall be adjusted accordingly.

### **5.15 NON-FIRM PRICES**

5.15.1 Where the production cost of supplies or the rendering cost of service that have been tendered on the basis of non-firm prices are adjusted during the contract period by other factors, such adjustment may be allowed from the date of such adjustment on the actual direct change in the cost as used in the calculation of the tender price;

5.15.2 If the contractor is the manufacturer or accredited agent of the manufacturer of the supplies or services rendered, evidence of such price adjustment must, on demand, be provided by the contractor;

5.15.3 If the contractor is not the manufacturer or accredited agent of the manufacturer of the supplies or services rendered, the price adjustment shall be based on the actual increase or decrease to the contractor in the net costs of the supplies which the tender price was based. The contractor shall submit copies of the quotation or price list which he used to calculate his tender prices as well as the quotation or price list on which his claim is based.

### **5.16 RATES OF EXCHANGE**

5.16.1 A bidder may be compensated for rate of exchange variations if he states that his tender prices are subject to rate of exchange variations and he must specify the amount to be effected as well as the rate of exchange at the time of bidding in the bid documents;

5.16.2 Where currency revaluations or fluctuations in the exchange rate may affect the whole or portion of a bid price, bidder shall in accordance with the bid requirements, stipulate in his bid the to be paid in foreign currencies or to be remitted abroad as well as the rate of exchange applied in the conversion of that amount into South African currency in calculating the bid price;

- 5.16.3 If the contract is completed within the contract period, any increase or decrease in the relevant amount as a result of any fluctuation in the rate of exchange or revaluation of currency shall be for the account of the NCR regardless of whether the price is firm or not, subject to the following conditions:-
- 5.16.3.1 where payment to the contractor is to be made in the Republic and he is required to remit part or the entire amount abroad, the contract price in SA currency will be paid to the contractor less or plus an amount specified in the contractor's invoice and supported by proof of the change in the exchange rate:-
- i. which may have occurred between the date of conversion to South African currency as stipulated in the bid documents and the date of the invoice, provided that the invoice date is within ten (10) days of the date of delivery or shipment;
  - ii. any fluctuation in the exchange rate which may occur between the invoice date and the actual date of remittance abroad, shall be paid by the NCR to the contractor or vice versa only if the fluctuation is more than 10% and if the remittance is made within ten (10) days of the warrant voucher issued in payment.
- 5.16.3.2 where the contractor is required to remit part or the entire amount abroad before he can invoice the NCR and this is indicated in his bid and subsequently separately substantiated, the date of such remittance will be regarded as the date in respect of which the adjustments in terms of paragraph 5.16.3.1(i) are to be made.
- 5.16.3.3 all exchange rate claims shall be accompanied with the below mentioned documentary evidence and failure to comply herewith shall delay or invalidate claims:-
- i. in the case of 5.16.3.1(i), a copy of the invoice from the foreign supplier;
  - ii. in the case of 5.16.3.1(ii), a copy of the invoice from the foreign supplier for reconciliation with the bank remittance voucher and a copy of the bank remittance voucher;
  - iii. if amounts that are not proper to a specific order are included in the remittance abroad, documentary proof or a certificate of audit substantiating the inclusion thereof.
- 5.16.4 No adjustment shall be done in respect any amount or percentage of bid which was remitted abroad and which exceeds the amount which, as contemplated in sub-paragraph 5.16.1 to 5.16.3, is indicated in the tender for that purpose;
- 5.16.5 When the amount remitted abroad constitutes a larger or smaller amount or percentage of the bid price than that indicated for that purpose in the bid in accordance with sub-paragraph 5.16.1, and the contractor as a result thereof obtains a financial benefit, such benefit shall devolve upon the NCR and shall

where applicable, taken into consideration in computing any claim for compensation;

- 5.16.6 If it is not a condition of bid that the amount which the contractor will have to pay abroad and the relevant rate of exchange at which the amount was converted into South African currency should be indicated in the bid, price adjustments in respect of fluctuations in the rate of exchange shall be effected only when a devaluation or revaluation of currencies occurs and satisfactory documentary proof is submitted , provided that in such cases the NCR may cancel the contract and make other arrangements for obtaining the supplies;
- 5.16.7 In the case of period contracts, the bid price referred to in sub-paragraphs 5.16.1 to 5.16.3 shall refer to the relevant contracted prices for each consignment separately.

## **5.17 PRICE ADJUSTMENTS**

- 5.17.1 Any price adjustments contemplated in sub-paragraphs 3.2.3(vi), 5.14, 5.15 and 5.16.1 to 5.16.7 shall cover only the period between the closing date of a bid and the final delivery date in terms of the contract;
- 5.17.2 A contractor shall submit documentary proof or a certificate of audit issued and signed by a registered chartered accountant external to the business of the contractor, to substantiate his claim together with the effect thereof on the contract price together with his claim, to the satisfaction of the NCR;
- 5.17.3 Claims against the NCR shall, unless otherwise authorized by the NCR, be proved to the satisfaction of the NCR as soon as possible but not later than the following:-
- i. in the case of period contracts, 90 days after the change in cost or the date of notification of acceptance of the bid, whichever date is the later. Prices will be adjusted with effect from the date on which the claim was proved to the satisfaction of the NCR. If the claim is submitted after 90 days the price will be backdated to the date on which the claim was proved to the satisfaction of the NCR.
  - ii. In the case of non-period contracts, 90 days from the date on which the firm contractual delivery period expired if the contractual delivery period was adhered to. If the claim is not submitted within this period, the contractor shall forfeit his right to claim a price adjustment unless the NCR decides otherwise.
- 5.17.4 If delivery is effected within the contract delivery period, the contract price ruling at the date of delivery shall apply. Deliveries shall not be withheld for the purpose of benefiting from the price increase;

5.17.5 If a price adjustment is in favour of the NCR the favourable difference shall be paid immediately to the NCR by the contractor or the NCR may deduct same from any money due to the contractor, if any, in relation to supplies delivered or to be delivered or services rendered or to be rendered in terms of the contract.

## **5.18 MISCELLANEOUS**

### **5.18.1 Transfer of contract**

The contractor shall not transfer, assign, cede, abandon or sub-let a contract or part thereof without the written consent of the NCR.

### **5.18.2 Amendment of contract**

No amendment, variation or waiver of the contract or order shall be of any force and effect unless reduced to writing and signed by the contracting parties

### **5.18.3 Payment of duties, levies and taxes**

The contractor shall be liable for payment of any duty, levy or taxes in respect of the importation of purchases into the Republic and he/she indemnifies the NCR against any liability for payment of such duties, levies or taxes.

### **5.18.4 Stamp duty, bank charges, etc**

The contractor shall be liable for all stamp duties, bank charges, bank interest or other charges in respect of the contract.

### **5.18.5 Statement of supplies and services**

The contractor shall furnish particulars of all supplies delivered or services executed, when requested to do so and if he/she fails to do so, the NCR may without prejudice to any of its other rights, and at the cost of the contractor institute an enquiry to obtain the required particulars.

### **5.18.6 Right to procure outside the contract**

The NCR reserves the right to procure outside the contract small quantities, or to have essential services executed if an emergency arises or the contract's point of supply is not situate at or near the place where the supply is required or if the contractor's services are not readily available. In addition hereto no provision in the contract shall be deemed to prohibit the acquisition of supplies or services from a Government Department or local authority.

### **5.18.7 Royalties and patent rights**

- i. the contractor is liable for all expenses and other liabilities in respect of royalties, patent rights, trade marks or other protected rights in respect of goods supplied by him to the NCR and he indemnifies the NCR against any claims which may arise in connection with such rights;
- ii. The contractor shall at any time furnish on request, adequate surety to the satisfaction of the NCR for the payment of all costs including attorney

and client costs in cases where proceedings are instituted against the NCR or its officers or employees in respect of alleged breach of patent rights, trade marks or any other protected rights.

**5.18.8 NCR property in the possession of the contractor**

- i. NCR property supplied to the contractor for the execution of a contract remains the property of the NCR and shall at any time be available for inspection by the NCR or its representatives. Any such property in the possession of the contractor on completion of the contract, shall at the contractor's expense, be returned to the NCR forthwith;
- ii. The contractor shall be responsible at all times for any loss of or damage to the NCR's property in his possession and if required shall furnish such surety for the payment of any such loss or damage as the NCR may require.
- iii. The BPR will be conducted in two phases. The NCR will at its sole discretion reserve the right to terminate the BPR exercise and/or the services of the appointed bidder after phase 1 and shall not incur any liability whatsoever for any costs associated with phase 2.