



FREE STATE DEVELOPMENT CORPORATION

**APPOINTMENT OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES AND LEGAL SUPPORT TO THE
FREE STATE DEVELOPMENT CORPORATION FOR A PERIOD OF ONE (1) YEAR.**

BID NUMBER: FDC BID NO. 007/2020

COMPULSORY BRIEFING SESSION: N/A

CLOSING DATE: 27 AUGUST 2020 AT 12:00

PREPARED BY:

FREE STATE DEVELOPMENT CORPORATION

33 KELLNER STREET

WESTDENE BLOEMFONTEIN

9301

TECHNICAL CONTACT PERSON: THABANG TAKA

**SUPPLY CHAIN MANAGEMENT CONTACT PERSON: NTOMBI
MTIMKULU**

REQUEST FOR PROPOSALS

| | |
|--|--|
| YOU ARE HEREBY INVITED TO SUBMIT A BID TO MEET THE REQUIREMENTS OF FREE STATE DEVELOPMENT CORPORATION | |
| BID NUMBER: | FDC BID NO. 007/2020 |
| DATE OF ADVERTISING | 31 JULY 2020 |
| COMPULSORY BRIEFING SESSION DATE: | N/A |
| COMPULSORY BRIEFING SESSION TIME: | N/A |
| CLOSING DATE: | 27 AUGUST 2020 |
| CLOSING TIME: | 12:00 |
| CLOSING DATE FOR BID ENQUIRIES | 19 AUGUST 2020 at 12:00 All enquiries must be directed to thabang@fdc.co.za |
| PERIOD FOR WHICH BIDS ARE REQUIRED TO REMAIN OPEN FOR ACCEPTANCE: | 90 days (submissions must be valid for 90 days after the closing date) |
| DESCRIPTION OF BID: | APPOINTMENT OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES AND LEGAL SUPPORT TO FREE STATE DEVELOPMENT CORPORATION FOR A PERIOD OF ONE (1) YEAR. |
| BID DOCUMENTS DELIVERY ADDRESS: | FDC BUILDING 33 KELLNER STREET WESTDENE BLOEMFONTEIN |
| NAME OF BIDDER: | |
| CONTACT PERSON: | |
| E-MAIL ADDRESS: | |
| TELEPHONE NUMBER: | |
| FAX NUMBER: | |
| BIDDER'S STAMP OR SIGNATURE | |

CHECKLIST OF COMPULSORY RETURNABLE SCHEDULES AND DOCUMENTS

Please adhere to the following instructions

- Tick in the relevant block below.
- Use the prescribed sequence in attaching the annexures when completing the Bid Document.
- Ensure that the following documents are completed and signed where applicable:

NB: Should any of these documents not be included, the bidders **may** be disqualified on the basis of non-compliance.

| YES | NO | |
|-----|----|---|
| | | Original Bid and a Copy – (both hard copies clearly marked as either original and copy) and one Electronic Copy. Important: Kindly note that every document that is submitted as part of the original submission must be <u>duly authorised with the required signatures or initials on each and every page</u> . Failure to comply will result in the bid being noted as incomplete. |
| | | Specifications, Conditions of BID and Undertakings by Bidder |
| | | Certificate of Authority for Joint Ventures |
| | | SBD 1 - Invitation to Bid |
| | | SBD 2 - Tax Clearance Certificate Requirement and CSD Report |
| | | SBD 4 - Declaration of Interest |
| | | SBD 6.1 and B-BBEE status level certificate |
| | | SBD 8 - Declaration of Bidder's Past Supply Chain Practices |
| | | SBD 9 - Certificate of Independent Bid Determination |
| | | Company registration documents |
| | | B-BBEE Certificate |
| | | Tax Clearance Certificate or Valid SARS pin number confirmation certificate |
| | | Proof of registration with National Treasury Central Supplier Database |
| | | Proof of address of the business |
| | | Proof of accreditation |
| | | Contactable references |
| | | Bidder's Company Profile. |
| | | Expertise of Key Personnel: Curriculum Vitae |
| | | Confirmation of enrolment as a practising attorney. |
| | | Proof of Attorneys Fidelity Fund Insurance. |
| | | Letter of good standing. |

1. SUPPLY CHAIN MANAGEMENT UNIT

- 1.1 Only questions, queries clarifications which are submitted to this e-mail address, thabang@fdc.co.za will be addressed.
- 1.2 Bid documents must be submitted as follows:
 - 1.2.1 Original Bid – and
 - 1.2.2 One Soft/ electronic Copy (CD or memory stick).

2. BID TIMETABLE

This timetable is provided as an indication of the timing of the bidding process. It is indicative only and subject to change by Free State Development Corporation.

| Activity | Date |
|--------------------------------|---|
| Advertisement of bid | 31 July 2020 |
| Bid document available | 31 July 2020 |
| Closing date for bid enquiries | 19 August 2020 at 12:00 All enquiries must be directed to: thabang@fdc.co.za |
| Briefing Session | N/A |
| Closing date and time | 27 August 2020 at 12:00 |

**PART A
INVITATION TO BID**

| | | | | | |
|--|--|---------------|--|--|--------------|
| YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE FREE STATE DEVELOPMENT CORPORATION | | | | | |
| BID NUMBER: | FDC BID NO. 007/2020 | CLOSING DATE: | 27 AUGUST 2020 | CLOSING TIME: | 12:00 |
| DESCRIPTION | APPOINTMENT OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES AND LEGAL SUPPORT TO FREE STATE DEVELOPEMNT CORPORATION FOR A PERIOD OF ONE (1) YEAR. | | | | |
| BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS) | | | | | |
| FDC BUILDING, 33 KELLNER STREET, WESTDENE, BLOEMFONTEIN | | | | | |
| BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO | | | TECHNICAL ENQUIRIES MAY BE DIRECTED TO: | | |
| CONTACT PERSON | NTOMBI MTIMKULU | | CONTACT PERSON | THABANG TAKA | |
| TELEPHONE NUMBER | 051 400 0800 | | TELEPHONE NUMBER | 051 400 0800 | |
| FACSIMILE NUMBER | | | FACSIMILE NUMBER | | |
| E-MAIL ADDRESS | ntombi@fdc.co.za/ scmqueries@fdc.co.za | | E-MAIL ADDRESS | thabang@fdc.co.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:

3. REQUEST FOR PROPOSAL

APPOINTMENT OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES AND LEGAL SUPPORT TO FREE STATE DEVELOPMENT CORPORATION FOR A PERIOD OF ONE (1) YEAR.

INTRODUCTION

The Free State Development Corporation (FDC) is a public entity established in terms of the FDC Act 6 of 1995. In terms of the Public Finance Management Act it is classified as a schedule 3D entity.

The mandate of the FDC is to establish and develop sustainable SMMEs in the Free State Province by providing both financial and non-financial support services.

FDC Mission

To provide financial and business support services to SMME's and Cooperatives; to undertake the development and management of properties; and to facilitate and promote investments and exports in the Free State Province.

FDC Vision

To be the development and investment agency of choice in contributing to the economic growth of the Free State Province.

APPOINTMENT OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES AND LEGAL SUPPORT TO FREE STATE DEVELOPMENT CORPORATION FOR A PERIOD OF ONE (1) YEAR.

4. INVITATION TO BID

The FDC in Bloemfontein hereby invites bids **APPOINTMENT OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES AND LEGAL SUPPORT TO FREE STATE DEVELOPMENT CORPORATION FOR A PERIOD OF ONE (1) YEAR.**

5. SCOPE

The Legal Department will utilize the following services from law firms:

- a) **Labour and employment law** – collective and individual labour, employees' benefits, pension fund law, employment due diligence, labour and employment due diligence, labour and employment litigation and alternative disputes resolution, skills development, occupation health and safety.
- b) **Intellectual property, information technology and telecommunication** – IP registration and renewals, litigation, drafting of licensing technology, research and development, acquisition and disposal of IP/technology agreements and any other legal services relating to IP, drafting of licensing, maintenance and support, service level, IT outsourcing agreements, attending to litigation, providing legal opinion and rendering any other legal services relating to ICT sector.
- c) **Litigation** – courts and arbitration/ alternative dispute resolution excluding labour, IP and debt collection.
- d) **Debt collection**
- e) **Environment** – environmental law and compliance, environmental impact assessments, compliance audits, due diligence, environmental management plans, legal registers and all other aspects related to environmental law.
- f) **Funding and project finance** – bond and other funding instruments, export credit funding, development funding, equity investments.
- g) **Energy** – electricity, liquids fuels, hydro, gas, renewable energy and related infrastructure.
- h) **Corporate law** – companies, corporate governance, PFMA, insolvent estates and curatorship and consumer protection and credit law.
- i) **Administrative and procurement** – PAIA, PAJA and associated regulations and directives, Supply Chain Management.
- j) **Regulatory law** – compliance with relevant statutes including electricity, telecommunications, PFMA, Consumer protection Act, Credit Act and Covid -19 regulations
- k) **Cross border and IPP** – cross border transaction structuring, including but not limited to DFI and project finance structures, inter-governmental treaties, concession agreements, power purchase agreements, inter-connection agreements, wheeling agreements, knowledge of Southern African DoE IPP and determinations.
- l) **Conveyancing** – transfers of properties, bond cancellations, subdivisions of land, registration of bonds, zoning and any other related conveyancing services.
- m) **Construction law** – NEC, JBCC, adjudication, litigation including arbitration, ADR, CIDB.
- n) **Commercial law**
- o) **Any other matter that might require legal opinion/ action.**

Should the service provider formulate a conclusion that the instruction given will need the services of an Advocate, FDC should be consulted for approval.

The consultation will include the following:

- a) **Reasons for briefing an Advocate; and**
- b) **The expected amount to be incurred by the FDC.**

6. BID REQUIREMENTS

6.1 The following documents must accompany the bid proposal:

- a) Company registration documents;
- b) Proof of accreditation;
- c) Valid Tax Clearance Certificate;
- d) B-BBEE certificate;
- e) Proof of registration with National Treasury Central Supplier Database;
- f) Proof of address for the business,
- g) Company profile;
- h) Contactable references.
- i) Letter of good standing.
- j) Proof of Attorneys Fidelity Fund Insurance.
- k) Confirmation of enrolment as a practising attorney.
- l) Expertise of Key Personnel: Curriculum Vitae

6.2 Costing Model

6.2.1 For High Court, Lower Court & any other matters, tariffs would be as follows:

FDC costing model will be guarded and rooted based on Magistrate Court, High Court, and any other relevant court tariffs as prescribed by the Rules of Court and published by the Department of Justice and Constitutional Development.

6.2.2. Collection tariffs would claim as follows:

- a) A bidder would collect on a contingency agreement/ no collection on pay.
- b) A bidder shall be entitled to 10% of the collected amount.
- c) A bidder shall collect fees and disbursements from the debtor.
- d) High Court & Lower Court tariffs would be used to claim for fees & disbursements.
- e) Should the bidder fail to collect fees and disbursements from the debtor he/she is not entitled to claim them from FDC.

6.3. Panel Utilisation guideline

- a) The panel will consist of legal firms /bidders who have achieved the minimum evaluation threshold of 75%.
- b) The selection of service providers for specific work assignment will be on a rotational basis or be guided by the specific service required.
- c) There is no guarantee that a service provider on a panel will be contracted for a specific work assignment during the tenure of this
- d) contract.

Bids must be clearly marked **APPOINTMENT OF A PANEL OF LEGAL FIRMS TO PROVIDE LEGAL SERVICES AND LEGAL SUPPORT TO FREE STATE DEVELOPMENT CORPORATION FOR A PERIOD OF ONE (1) YEAR.**

FDC Bid Number 007/2020 must be submitted in a sealed envelope and be placed only in the tender box at the FDC’s office which is located at Free State Development Corporation, 33 Kellner street, West Dene, Bloemfontein. **KINDLY PROVIDER A COPY OF YOUR TENDER DOCUMENT IN A CD or MEMORY STICK.**

For any enquiries, please contact Mr Thabang Taka on 051 400 0800.

The closing date for the bid submission is **27 August 2020 at 12h00.**

No faxed, e-mailed or late bid proposal will be accepted.

NB: Bidders are requested to tick their area of expertise which they will be evaluated on.

| AREA OF EXPERTISE | |
|---|--|
| 1. Labour and employment law | |
| 2. Intellectual property, information technology and telecommunication | |
| 3. Litigation | |
| 4. Debt collection | |
| 5. Environment | |
| 6. Funding and project finance | |
| 7. Energy Corporate law | |
| 8. Corporate law | |
| 9. Administrative and procurement | |
| 10. Regulatory law | |
| 11. Cross border and IPP | |
| 12. Conveyancing | |
| 13. Construction law | |
| 14. Commercial law | |
| 15. Any other matter that might require legal opinion/ action. (please specify) | |
| | |
| | |
| | |

7. Functionality Evaluation

NB. The Functionality Criteria will be used to test the capability of Bidders on each and every area of expertise, the areas of expertise selected above will be evaluated individually.

| NO. | CRITERIA | | TOTAL POINTS | SCORE |
|-----|--|--|--|-------|
| 1. | <p>Bidders experience supported by evidence of the firm's engagement for services rendered or reference letters from an Organ of State(s) or any other company registered in terms of Companies Act of 2008.</p> <p>Bidders will be evaluated based on the quality and number of letters submitted. The bidders must submit reference letters from current and previous clients where legal services were successfully provided. All letters must be on the company letter head of the referee and signed by referee. The referee must be contactable.</p> | <p>6 or more reference letters – 30 points 5 reference letters – 25 points 4 reference letters - 20 points 3 reference letters - 15 points 2 reference letters - 10 points 1 reference letter - 05 points</p> | 30 Points | |
| 2. | <p>Key Personnel (Bidder to submit CV's of its Director(s) or Partner(s).</p> <p>Director/ Partner Attorney /Associate Candidate Attorney</p> | <p>Director/ Partner</p> <p>If the bidder has more than 15 years' and above – 25 points If the bidder has more than 10 years to 15 years' – 20 points If the bidder has more than 5 years to 10 years' – 15 points If the bidder has more than 3 years to 5 years' – 10 points If the bidder has less than 0 years - 0 points</p> <p>Attorney /Associate</p> <p>If the bidder has more than 5 years' experience. – 15 points If the bidder has more than 4 years' experience – 10 points If the bidder has more than 3 years' experience – 5 point</p> <p>Candidate Attorney</p> <p>1- 2 years' experience – 10 points 0 -1-year experience – 5 points</p> | <p>25 Points</p> <p>15 points</p> <p>10 points</p> | |
| 3. | <p>Free State Based Companies (Attach lease agreement or municipal account)</p> | | 20 Points | |
| | TOTAL POINTS | | 100 Points | |

NB: A minimum of 75 points out of 100 for the functional evaluation will qualify the Bid to be included in the panel

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 / perusal 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.

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 attach proof of such authority to the bid document? **YES / NO**

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

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

SBD 6.1

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

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

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

1. GENERAL CONDITIONS

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

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

1.2

a) The value of this bid is estimated to **not exceed** R50 000 000 (all applicable taxes included) and therefore 80/20 preference point system shall be applicable; or

1.3 Points for this bid shall be awarded for:

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

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

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

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

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

2. DEFINITIONS

- (a) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **"B-BBEE status level of contributor"** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **"EME"** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **"functionality"** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the

tender documents.

- (g) "prices" includes all applicable taxes less all unconditional discounts;
- (h) "proof of B-BBEE status level of contributor" means:
 1. B-BBEE Status level certificate issued by an authorized body or person;
 2. A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 3. Any other requirement prescribed in terms of the B-BBEE Act;
- (i) "QSE" means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) "rand value" means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

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

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

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

Where

- Ps = Points scored for price of bid under consideration
- Pt = Price of bid under consideration
- PMing = Price of lowest acceptable bid

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

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

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

5. BID DECLARATION

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

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

6.1 B-BBEE Status Level of Contributor: . = (maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

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

(Tick applicable box)

| | | | |
|-----|--|----|--|
| YES | | NO | |
|-----|--|----|--|

7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....? %

ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

(Tick applicable box)

| | | | |
|-----|--|----|--|
| YES | | NO | |
|-----|--|----|--|

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

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

8. DECLARATION WITH REGARD TO COMPANY/FIRM

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

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

8.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

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

| |
|---|
| Witnesses 1. _____ 2. _____ |
| |

| |
|--|
| _____ Signatures of bidders. Date _____ Address _____ |
| |

CONTRACT FORM - RENDERING OF SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution)..... in accordance with the requirements and task directives / proposals specifications stipulated in Bid Number..... at the price/s quoted. My offer/s remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid .
2. The following documents shall be deemed to form and be read and construed as part of this agreement:
 - (i) Bidding documents, viz
 - Invitation to bid;
 - Tax clearance certificate;
 - Pricing schedule(s);
 - Filled in task directive/proposal;
 - Preference claims for Broad Based Black Economic Empowerment Status Level of Contributor in terms of the Preferential Procurement Regulations 2011;
 - Declaration of interest;
 - Declaration of bidder's past SCM practices;
 - Certificate of Independent Bid Determination;
 - Special Conditions of Contract;
 - (ii) General Conditions of Contract; and
 - (iii) Other (specify)
3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.
4. I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.
5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.
6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

| | |
|------------------|-------|
| WITNESSES | |
| 1 | |
| 2 | |
| DATE: | |

CONTRACT FORM - RENDERING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I..... in my capacity as.....
accept your bid under reference numberdated.....for the rendering of services indicated hereunder and/or further specified in the annexure(s).
2. An official order indicating service delivery instructions is forthcoming.
3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract, within 30 (thirty) days after receipt of an invoice.

| DESCRIPTION OF SERVICE | PRICE (ALL APPLICABLE TAXES INCLUDED) | COMPLETION DATE | B-BBEE STATUS LEVEL OF CONTRIBUTION | MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable) |
|------------------------|---------------------------------------|-----------------|-------------------------------------|--|
| | | | | |

4. I confirm that I am duly authorised to sign this contract.

SIGNED ATON.....

NAME (PRINT)

SIGNATURE

OFFICIAL STAMP

WITNESSES

1

2

DATE:

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: | | |
| 4.4 | Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4.4.1 | If so, furnish particulars: | | |

CERTIFICATION

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

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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
FREE STATE DEVELOPMENT CORPORATION

(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

SBD 9

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.

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