



**national film and video foundation**  
SOUTH AFRICA  
an agency of the Department of Sport, Arts and Culture

## **NATIONAL FILM AND VIDEO FOUNDATION**

### **REQUEST FOR PROPOSALS**

**DATE OF ISSUE: 11 OCTOBER 2022**

**YOU ARE HEREBY INVITED TO BID FOR THE REQUIREMENTS OF NATIONAL FILM AND VIDEO FOUNDATION**

**RFP REFERENCE NUMBER: RFP 12 2022-2023**

**CLOSING DATE: 21 OCTOBER 2022**

**CLOSING TIME: 11:00**

**RFP VALIDITY PERIOD: 90 DAYS**

**DESCRIPTION: THE APPOINTMENT OF AN EXPERIENCED COMPANY TO PROVIDE SECRETARIAT SERVICES TO THE NFVF COUNCIL AND COUNCIL COMMITTEES.**

**RFP SUBMISSION REQUIREMENTS: SUBMISSIONS MUST BE EMAILED TO [nfvftenders@nfvf.co.za](mailto:nfvftenders@nfvf.co.za)**

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### MANDATORY DOCUMENTS

#### CONDITIONS FOR COMPLETING BID DOCUMENTS (FAILURE TO COMPLY/SUBMIT OR FULLY COMPLETION OF ANY OF THE DOCUMENTS STATED BELOW, MAY RESULT IN DISQUALIFICATION)

Document	Comments	Submitted? (Yes / No)
<b>SBD 1</b> (Invitation to bid)	Make sure it is signed	
<b>SBD 2</b> (Tax Clearance Certificate)	Certificate must be original and valid	
<b>SBD 4</b> (Declaration of interest)	Make sure it is fully signed	
<b>SBD 8</b> (Declaration of Bidder's past supply chain management practices)	Make sure it is fully completed and signed	
<b>SBD 9</b> (Certificate of Independent Bid Determination)	Make sure it is fully completed and signed	
Certified copies of Original of Company Registration Documentation  NB: Certification stamp must be original and no more than 3 months old as at date of closing of tender	1. certificate of registration, 2. change of name certificate (if applicable) 3. register of directors, and most current registered business address (Company Registration: CM1 and CK1, Change of Name Certificate:CM9, Latest Registered address: CM22,Most current register of directors CM29 and CK2)	
Total Bid Price	Bidders to complete price schedule or provide a separate financial proposal	
Vat Registration Certificate	If applicable	
BBBEE Certificate & BBBEE Statement or Sworn Affidavit	Valid certified copies must be submitted	
Company Profile	Include structure of the company	
Certified copies of Share Certificates	For all current shareholders if applicable	
Certified copies of identity documents	For all current shareholders / members	
CSD Registration	Proof of CSD registration	

**IF ANY OF THE ABOVEMENTIONED CONDITIONS IS NOT MET AND/OR ANY OF THE REQUESTED DOCUMENTS ARE NOT SUBMITTED AS PRESCRIBED, THE BID EVALUATION COMMITTEE SHALL HAVE THE DISCRETION TO DISQUALIFY THE BID**

1. Bid Documents must be completed with ink (Blue or black) and not typed. No tippex is allowed. All changes must be scratched out and a signature appended next to each change.
2. All certified documents must be within the current six (6) months. Copies of previously certified documents will not be accepted and may result in automatic disqualification.
3. Bid documents must be secured together preferably bound or contained in a lever arch file as National Film and Video Foundation will not take any responsibility for any loss of documents as a result of not being properly secured upon submission.

# PART A

**YOU ARE HEREBY INVITED TO BID FOR THE REQUIREMENTS OF NATIONAL FILM AND VIDEO FOUNDATION**

BID NUMBER: RFP 12 2022-2023

CLOSING DATE: **21/10/2022**

TIME: **11:00**

DESCRIPTION: **THE APPOINTMENT OF AN EXPERIENCED COMPANY TO PROVIDE SECRETARIAT SERVICES TO THE NFVF COUNCIL AND COUNCIL COMMITTEES**

BID DOCUMENTS MUST BE EMAILED TO [nfvftenders@nfvf.co.za](mailto:nfvftenders@nfvf.co.za)

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

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

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

**THE FOLLOWING PARTICULARS MUST BE FURNISHED  
(FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED)**

NAME OF BIDDER.....

POSTAL ADDRESS.....

.....

STREET ADDRESS.....

TELEPHONE NUMBER CODE..... NUMBER.....

CELL PHONE NUMBER.....

FACSIMILE NUMBER CODE..... NUMBER.....

VAT REGISTRATION NUMBER.....

HAS A TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? YES/NO

ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS/SERVICES OFFERED BY YOU? YES/NO

(IF YES ENCLOSE PROOF)

SIGNATURE OF BIDDER:.....DATE: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED.....

**A.1.1. CONDITIONS OF BIDDING**

**1 Proprietary Information**

- 1.1 National Film and Video Foundation considers this tender and all related information, either written or verbal, which is provided to the respondent, to be proprietary to NFVF. It shall be kept confidential by the respondent and its officers, employees, agents and representatives. The respondent shall not disclose, publish, or advertise this specification or related information to any third party without the prior written consent of NFVF.

## 2 Enquiries

- 2.1 All communication and attempts to solicit information of any kind relative to this RFP should be in writing and channeled to: Email address: [nkinamab@nfvf.co.za](mailto:nkinamab@nfvf.co.za)

- 2.2 *Bidders may not contact any other NFVF employee besides contact person mentioned on Paragraph 2.1 above on any matter pertaining to the bid from the time when bid is advertised to the time the bid is awarded. Any effort by a bidder to influence bid evaluation, bid comparisons or bid award decisions in any manner, may result in rejection of the bid concerned.*

- 2.3 All the documentation submitted in response to this tender must be in English.

- 2.4 The Bidder should check the numbers of the pages to satisfy themselves that none are missing or duplicated. No liability will be accepted by NFVF regarding anything arising from the fact that pages are missing or duplicated.

## 3 Validity Period

- 3.1 Responses to this RFP received from suppliers will be valid for a period of **90 days** counted from the closing date of the tender.

## 4 Submission of RFP

- 4.1. The proposals received by the deadline of 21 October 2022 at 11h00 will be reviewed by the NFVF and shortlist of qualifying service providers will be compiled. Bidders included in the shortlist will be notified.

- 4.2. The tender should be submitted by email to [nfvftenders@nfvf.co.za](mailto:nfvftenders@nfvf.co.za) by no later than 11h00 on the 21 October 2022.

- 4.3. Late bids will not be considered.

- 4.4. The bidder is responsible for all the cost that they shall incur related to the preparation and submission of the bid document.

- 4.5. Kindly note that **NFVF** is entitled to amend any bid conditions, validity period, specifications, or extend the closing date of bids before the closing date. All bidders, to whom the bid documents have been issued, will be advised in writing of such amendments in good time.

- 4.6. **NFVF** reserves that right not to accept the lowest bid of any tender in part or in whole. It normally awards the contract to the bidder who proves to be fully capable of handling the contract and financially advantageous to NFVF.

- 4.7. NFVF also reserves the right to award this bid to a purely empowerment company or may award this bid on conditions that a joint venture with an empowerment company is formed. This may be added to the criteria when evaluating the bids.

- 4.8. NFVF also reserves the right to award this bid as a whole or in part without furnishing reasons.

- 4.9. NFVF reserves the right to, amongst other things, conduct unscheduled or scheduled site visit/s to satisfy itself, as to the validity of the information provided on this bid documents.

**It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.**

1. To meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate.
2. Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
3. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
4. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.
5. In bids where Consortia / Joint Ventures / Sub-contractors are involved; each party must submit a separate Tax Clearance Certificate.
6. Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website [www.sars.gov.za](http://www.sars.gov.za).
7. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website [www.efiling.co.za](http://www.efiling.co.za)



## TERMS OF REFERENCE

### 1. Background

The National Film and Video Foundation (NFVF) is an agency of Department of Sport, Arts and Culture that was created to ensure equitable growth of South Africa's film and video industry. We do this by providing funding for the development, production, marketing and distribution of films and also the training and development of filmmakers.

In addition, the NFVF commissions research and produces industry statistics that provide both the public and stakeholders with valuable insights into the South African film industry.

The National Film and Video Foundation (NFVF)'s Vision, Mission and Objectives:

### 2. Special Instruction to Bidders

2.1. Bidders must be registered on the National Treasury Central Supplier Database (CSD) prior to submitting a bid. Note: Bidders registration on CSD will be verified.

2.2. By submitting a proposal for this Bid, the Bidder(s) confirms that they have read and understood the terms and conditions as set out in this RFP document.

### 3. Objectives

The NFVF seeks to appoint an experienced service provider to provide secretariat services to the NFVF Council and Council committees for a period of four (4) months, ending 31 January 2023.

The appointed service provider will work very close with the NFVF Council Chairperson, Chairs of Council committees, and the NFVF CEO in ensuring that the NFVF operates in accordance with legal and governance requirements, as well as best practice. The appointed service provider will further be responsible for ensuring that the administrative requirements of the Council and Council committees have been fulfilled, and that meetings are conducted in accordance with legislative requirements.

The appointed service provider will be required to have solid governance background, and be in a position to guide and advise Council and Council committees on governance matters at all times.

### 4. Project Objectives & Deliverables

4.1. The appointed service provider is expected to fulfil the following key performance areas:

- Provide Council Members and Council Committees with guidance about their roles, responsibilities, and power;
- Advise Council Members and Council Committees on any laws and guidelines relevant to/ affecting public

entities that the NFVF must comply with (including amendments to legislation);

- Report to Council members any failure on the part of the company or management to comply with the applicable legislation;
- Distribute NFVF's annual financial statements to relevant stakeholders as per National Treasury regulations and/or Ministerial directives;
- Conduct the induction, orientation, ongoing training and education of Council Members and Council Committees;
- Conduct the annual evaluation of the Council with the relevant members for submission to the Executive Authority;
- Manage and coordinate Council administrative and logistical requirements;
- Manage the overall company secretary and administrative functions not limited to report writing/minute taking;
- Ensure effective communication and engagement between the Council and its stakeholders;
- In partnership with the Chairperson and individual members, ensure that the Council is properly capacitated and effective;
- Ensure that Council and Council Committees' charters and terms of reference are updated;
- Conduct quality assurance and circulate meeting documents for Council and Council Committees;
- Communicate meeting dates and times with relevant stakeholders;
- Finalise agendas of meetings with the Chairperson of Council and/or Committees;
- Compile and distribute meeting packs to members timeously;
- Compile registers for all meetings for Council and Council Committees;
- Compile and maintain a register of matters arising for Council and Council Committees;
- Maintain a register of minutes of all meetings for Council and Council Committees;
- Draft and send official communication to the Executive Authority and other stakeholders as and when required by the Council;
- Prepare Council summaries for Executive Authority meetings;
- Maintain a register of official Council requests to the management team;
- Record proceedings of the Council and Council Committee meetings;
- Draft minutes of the meetings with the Council and Council Committee, obtain approval from Chairperson and distribute minutes timeously to all members and relevant stakeholders;
- Draft terms of reference for additional expertise in consultation with the Council;
- Any other relevant functions as required.

## **5. Project Duration**

The project duration is four (4) months, October 2022 – 31 January 2023

## **6. MINIMUM REQUIREMENTS**

6.1. Must be a reputable service provider legally established for at least 8 years, with extensive experience in company secretariat scope within a public sector.

6.2. The leading resource for the NFVF must have handled at least three (03) similar engagements within the public sector for a minimum of 5 years in a similar role.

6.3. The leading resource for the NFVF must possess the following educational background and experience:

- Degree in Legal/Governance or equivalent;
- 5+ years' experience in a legal advisory capacity;
- 3+ years' experience in administration/coordination;
- Public Sector experience non-negotiable;
- CIS Certification would be an advantage.

## 7. EVALUATION CRITERIA

7.1. Bidders will be evaluated in three (03) stages

- Stage 1: Compliance evaluation
- Stage 2: Technical evaluation
- Stage3: Price evaluation

### 7.1.1. Stage 1

Bidders must be able to submit all required documents. The bidders who managed to provide all required documents will then be evaluated on the next stage of evaluation.

### 7.1.2. Stage 2

Bidders who provided all required documents will be evaluated on the functionality criteria. The minimum threshold for this evaluation stage is 70 points.

### 7.1.3. Stage 3

Bidders who scored 70 points or above will be evaluated on price only.

Minimum threshold for the functionality evaluation is 70 points.

## TECHNICAL EVALUATION CRITERIA

TECHNICAL CRITERIA	WEIGHT
1. <b>Capacity and experience of the Project Leader on similar project</b>  The bidder must provide a CV that will be used as evidence to	<b>30 Points</b>

<p>substantiate the number of years of experience. If no proof of years of experience can be obtained from the CV provided, it will not be considered for the purpose of the calculation of the score.</p> <p>(a) Less than 03 years = 5 points  (b) 03 to 04 years = 10 points  (c) 05 to 6 years = 15 points  (d) 07 to 08 years = 20 points  (e) 09 and above = 30 points</p>	
<p><b>2. Contactable Reference</b></p> <p>The bidder to submit reference letters from clients who have acquired the same type of service from the bidder. Reference letters must include the name of the organisation, contact person, contact details and it must be signed and be on the client's letterhead.</p> <p>The bidder to provide a minimum of 03 reference letters.</p> <p>(a) Less than 03 reference letters = 10 points  (b) 03 to 04 reference letters = 20 points  (c) 05 and Above reference letters = 30 points</p>	<b>30 Points</b>
<p><b>3. Methodology and Approach</b></p> <p>The bidder must demonstrate the approach, methodology and implementation plan (including a detailed phased in implementation plan with testing schedules)</p> <ul style="list-style-type: none"> <li>➤ Methodology with clear activities, realistic time frames, key tasks, sub tasks, distribution of resources and reporting structure = 30 points</li> <li>➤ Methodology with clear activities, realistic time frames, key tasks, sub tasks and resources = 25 points</li> <li>➤ Methodology with clear activities, realistic time frames, key tasks and sub tasks = 15 points</li> <li>➤ Methodology with clear activities, realistic time frames and key tasks = 10 points</li> <li>➤ Project plan with activities only = 5 points</li> <li>➤ No Project Plan with tasks = 0 point</li> </ul>	<b>30 Points</b>
<p><b>4. Qualification of the Project Leader</b></p> <p>Formal certified qualifications in Legal/Governance related fields must be submitted.</p> <p>5. MBA/Masters = (10 Points)  6. Honours = (8 Points)  7. Degree = (6 Points)  8. Diploma = (4 Points)</p>	<b>10 Points</b>
<b>TOTAL EVALUATION POINTS</b>	<b>100 POINTS</b>

Minimum threshold for the functionality evaluation is 70 points.

Bidders may be required to conduct presentations on the programme rollout before final decision is made.

# **PART B**

**DECLARATION OF INTEREST**

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

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

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

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

2.2 Identity Number: .....

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

2.4 Company Registration Number:.....

2.5 Tax Reference Number: .....

2.6 VAT Registration Number: .....

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

<sup>1</sup>“State” means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

<sup>2</sup>“Shareholder” means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

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

2.7.1 If so, furnish the following particulars:

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

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

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

Any other particulars:

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

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

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

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

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

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

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

**2.8.1** If so, furnish particulars:

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

**2.9** Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid?

**YES / NO**

**2.9.1** If so, furnish particulars.

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

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

**2.10.1** If so, furnish particulars.

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

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

**2.11.1** If so, furnish particulars:

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

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

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


**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



**PART D –  
DECLARATION OF  
BIDDER’S PAST SCM  
PRACTICES**

## 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 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 National Treasury after the <i>audi alteram partem</i> rule was applied).	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)? To access this Register enter the National Treasury's website, <a href="http://www.treasury.gov.za">www.treasury.gov.za</a> , click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 3265445.	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

### D2: CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_  
(Bid Number and Description)

in response to the invitation for the bid made by:

\_\_\_\_\_  
(Name of Institution)

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

I certify, on behalf of: \_\_\_\_\_ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
  2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
  3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
  4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
  5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
    - (a) has been requested to submit a bid in response to this bid invitation;
    - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
    - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
  6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
  7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
    - (a) prices;
    - (b) geographical area where product or service will be rendered (market allocation)
    - (c) methods, factors or formulas used to calculate prices;
    - (d) the intention or decision to submit or not to submit, a bid;
    - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
    - (f) bidding with the intention not to win the bid.
  8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
  9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- <sup>3</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

# PART E

## **E2: GENERAL CONDITIONS OF CONTRACT**

### **NOTES**

The purpose of this document is to:

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

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

- The General Conditions of Contract will form part of all bid and contract documents.

- (iii) Special Condition of Contract pertaining to contracts of this nature will be negotiated with the successful bidder.

## TABLE OF CLAUSES

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## GENERAL CONDITIONS OF CONTRACT

### 1. Definitions

The following terms shall be interpreted as indicated:

- 1.1 "Closing time" means the date and hour specified in the bidding documents for the receipt of bids.
- 1.2 "Contract" means the written agreement entered into between the client and the service provider, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference herein.
- 1.3 "Contract price" means the price payable to the service provider under the contract for the full and proper performance of his contractual obligations.
- 1.4 "Corrupt practice" means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.
- 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
- 1.6 "Day" means calendar day.

- 1.7 “Delivery” means delivery in compliance of the conditions of the contract or order.
- 1.8 “Force majeure” means an event beyond the control of the service provider and not involving the service provider’s fault or negligence and not foreseeable.
- Such events may include, but is not restricted to, acts of the client in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.9 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.10 “GCC” means the General Conditions of Contract.
- 1.11 “Goods” means all of the equipment, machinery, service and/or other materials that the service provider is required to supply to the client under the contract.
- 1.12 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the service provider or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.13 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.14 “Order” means an official written order issued for the rendering of a service.
- 1.15 “Project site,” where applicable, means the place indicated in bidding documents.
- 1.16 “The client” means the organization purchasing the service.
- 1.17 “Republic” means the Republic of South Africa.
- 1.18 “SCC” means the Special Conditions of Contract.
- 1.19 “Services” means those functional services ancillary to the rendering of the service, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the service provider covered under the contract.
- 1.20 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

## **2. Application**

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

## **3. General**



- 3.1 Unless otherwise indicated in the bidding documents, the client shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)
- 4. Standards**
- 4.1 The service rendered shall conform to the standards mentioned in the bidding documents and specifications.
- 5. Use of contract documents and information; inspection**
- 5.1 The service provider shall not, without the client's prior written consent, contract disclose the contract, or any provision thereof, or any specification, documents plan, drawing, pattern, sample, or information furnished by or on and behalf of the client in connection therewith, to any person other than a person employed by the service provider in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The service provider shall not, without the client's prior written consent, make use of any document or information mentioned in GCC clause except for purposes of performing the contract.
- 5.3 Any document, other than the contract itself mentioned in GCC Clause shall remain the property of the client and shall be returned (all copies) to the client on completion of the service provider's performance under the contract if so required by the client.
- 5.4 The service provider shall permit the client to inspect the service provider's records relating to the performance of the service provider and to have them audited by auditors appointed by the client, if so required by the client.
- 6. Patent rights**
- 6.1 The service provider shall indemnify the client against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the service or any part thereof by the client.
- 7. Performance Security**
- 7.1 Within thirty (30) days of receipt of the notification of contract award, security the successful bidder shall furnish to the client the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the client as compensation for any loss resulting from the service provider's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract or in a freely convertible currency acceptable to the client and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the client's country or abroad, acceptable to the client, in the form provided in the bidding documents or another form acceptable to the client; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the client and returned to the service provider not later than thirty (30) days following the date of completion of the service provider's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.
- 8. Delivery and Documents**

- 8.1 Rendering of service shall be made by the service provider in accordance with the document and terms as specified in the contract. The details of shipping and/or other documents to be furnished by the service provider are specified in SCC.
- 8.2 Documents to be submitted by the service provider are specified in SCC.
- 9. Insurance**
- 9.1 The service rendered under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.
- 10. Transportation**
- 10.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.
- 11. Incidental Service**
- 11.1 The service provider may be required to provide any or all of the following services, including additional services, if any, specified in SCC:
- (a) performance or supervision of on-site assembly and/or commissioning of the rendered service;
  - (b) furnishing of tools required for assembly and/or maintenance of the rendered service;
  - (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the rendered service;
  - (d) performance or supervision or maintenance and/or repair of the rendered service, for a period of time agreed by the parties, provided that this service shall not relieve the service provider of any warranty obligations under this contract; and
  - (e) training of the client's personnel, at the service provider's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the rendered service.
- 11.2 Prices charged by the service provider for incidental services, if not included in the contract price for the service, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the service provider for similar services.
- 12. Warranty**
- 12.1 The service provider warrants that the service rendered under the contract are new, unused, of the most recent or current models and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The service provider further warrants that all service rendered under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the client's specifications) or from any act or omission of the service provider, that may develop under normal use of the rendered service in the conditions prevailing in the country of final destination.
- 12.2 This warranty shall remain valid for twelve (12) months after the service, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 12.3 The client shall promptly notify the service provider in writing of any claims arising under this warranty.
- 12.4 If the service provider, having been notified, fails to remedy the defect(s) within the period specified in SCC, the client may proceed to take such remedial action as may be necessary, at the service provider's risk and expense and without prejudice to any other rights which the client may have against the service provider under the contract.

**13. Payment**

- 13.1 The method and conditions of payment to be made to the service provider under this contract shall be specified in SCC.
- 13.2 The service provider shall furnish the client with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 13.3 Payments shall be made promptly by the client, but in no case later than thirty (30) days after submission of an invoice or claim by the service provider.
- 13.4 Payment will be made in South African Rand unless otherwise stipulated in SCC.

**14. Prices**

- 14.1 Prices charged by the service provider for services performed under the contract shall not vary from the prices quoted by the service provider in his bid, with the exception of any price adjustments authorized in SCC or in the client's request for bid validity extension, as the case may be.

**15. Contract amendments**

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

**16. Assignment**

- 16.1 The service provider shall not assign, in whole or in part, its obligations to perform under the contract, except with the client's prior written consent.

**17. Subcontracts**

- 17.1 The service provider shall notify the client in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the service provider from any liability or obligation under the contract.

**18. Delays in the service provider's performance**

- 18.1 Performance of services shall be made by the service provider in accordance with the time schedule prescribed by the client in the contract.
- 18.2 If at any time during performance of the contract, the service provider or its subcontractor(s) should encounter conditions impeding timely performance of services, the service provider shall promptly notify the client in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the service provider's notice, the client shall evaluate the situation and may at his discretion extend the service provider's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 18.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 18.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the service provider's point of supply is not situated at or near the place where the supplies are required, or the service provider's services are not readily available.
- 18.5 Except as provided under GCC Clause 25, a delay by the service provider in the performance of its delivery obligations shall render the service provider liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.
- 18.6 Upon any delay beyond the delivery period in the case of a supplies contract, the client shall, without cancelling the contract, be entitled to purchase service of a similar quality and up to the same quantity in

substitution of the service not rendered in conformity with the contract and to return any service rendered later at the service provider's expense and risk, or to cancel the contract and buy such service as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the service provider.

## **19. Penalties**

19.1 Subject to GCC Clause 25, if the service provider fail to perform services within the period(s) specified in the contract, the client shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The client may also consider termination of the contract pursuant to GCC Clause 23.

## **20. Termination for default**

20.1 The client, without prejudice to any other remedy for breach of for default contract, by written notice of default sent to the service provider, may terminate this contract in whole or in part:

- (a) if the service provider fails to deliver service within the period(s) specified in the contract, or within any extension thereof granted by the client pursuant to GCC Clause 21.2;
- (b) if the service provider fails to perform any other obligation(s) under the contract; or
- (c) if the service provider, in the judgment of the client, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

20.2 In the event the client terminates the contract in whole or in part, the client may procure, upon such terms and in such manner as it deems appropriate, services similar to those undelivered, and the service provider shall be liable to the client for any excess costs for such similar services. However, the service provider shall continue performance of the contract to the extent not terminated.

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

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

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

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

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

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

20.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the

Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

## **21. Force Majeure**

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

## **22. Termination for insolvency**

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

## **23. Settlement of Disputes**

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

## **24. Limitation of liability**

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

**25. Governing language**

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

**26. Applicable law**

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

**27. Notices**

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

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

**28. Taxes and duties**

28.1 A foreign the service provider shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the client's country.

28.2 A local the service provider shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted service to the client.

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

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

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

**NAME OF YOUR COMPANY (IN BLOCK LETTERS)**

**SIGNATURE(S) OF THE BIDDER OR ASSIGNEE(S)**

**DATE**

**NAME OF PERSON SIGNING (IN BLOCK LETTERS)**

**CAPACITY**

**ARE YOU DULY AUTHORISED TO SIGN THIS BID?**

**COMPANY REGISTRATION NUMBER** \_\_\_\_\_

**VAT REGISTRATION NUMBER** \_\_\_\_\_

**POSTAL ADDRESS (IN BLOCK LETTERS)**

**PHYSICAL ADDRESS (IN BLCOK LETTERS)**

**CONTACT PERSON**

**TELEPHONE NUMBER** \_\_\_\_\_ **FAX NUMBER** \_\_\_\_\_

**CELLPHONE NUMBER** \_\_\_\_\_

**E-MAIL** \_\_\_\_\_

**TYPES OF BUSINESS** \_\_\_\_\_

**PRINCIPAL BUSINESS ACTIVITIES** \_\_\_\_\_