

NATIONAL HOUSING FINANCE CORPORATION SOC LTD (NHFC)

BID NUMBER: OM01/09/2022

BID DESCRIPTION: Provision for Panel of Attorneys for a period of three (3) years.



Issued by:
NHFC 1ST Floor Old Trafford 3 Isle of Houghton 11 Boundary Road Houghton

Full Name of Bidding/Tendering Entity: _____

Contact Person: _____

Tel Number: _____

Advert Date: **30 September 2022**

Closing Date and Time: **26 October 2022**

Bid enquiries: Tenders01@nhfc.co.za

Bidder's Authorised Signatory:

Initials and Surname: _____

Signature: _____

BID DOCUMENTS CHECK LIST:

The contents of the BID document must be as follows, and numbered as per the numbering below, with each schedule separated from the next schedule with a divider. All must be bound or in a file. Please complete the checklist below to verify your submission of the relevant documents:

Schedules	Description	Submitted – Indicate YES or NO
Annexure 1	TCS PIN certificate	
Annexure 2	Certified copies of Company Registration Documents	
Annexure 3	Certified copy of B-BBEE Certificate/ Sworn Affidavit	
Annexure 4	SBD 1: Invitation to Bid	
Annexure 5	SBD 3.3 Pricing Schedule	
Annexure 6	SBD 4: Declaration of Interest	
Annexure 7	SBD 6.1: Preference Point Claim Form in Terms of Preferential Procurement Regulations 2017	
Annexure 8	SBD 7.2 Contract Form Rendering of Services	
Annexure 9	Signed and Initialized General Conditions of Contract (GCC)	
Annexure 10	Resolution authorising the signatory to Sign	
Annexure 11	List of partners / directors of firm.	
Annexure 12	One (1) original hard copy and a soft copy (USB only) must be submitted in a sealed envelope, appropriately addressed.	
Annexure 13	Copy firm's Indemnity Certificate issued by the Attorneys Insurance Fidelity Fund for the present year	
Annexure 14	Submission of a valid letter of good standing issued by the Law Society	
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1. Overview of the Bidding Process

The evaluation process shall comprise of 3 main phases:

- 1) **Pre-qualification or mandatory information** which involves completing and submitting certain documents/information which will be considered when evaluating the proposal.
- 2) **Functionality qualification phase** – Bidders are required to score a minimum of **80%** to qualify for the last evaluation phase.
- 3) **Evaluation based on the Pricing and B-BBEE score** - Bidder will be subjected to Preferential Procurement Framework Act and its Regulations.
- 4) Determine whether the service provider has any serious adverse reports such as; cited as aiding and abetting state capture, fraud and corrupt activities or misrepresenting audit outcomes of an organisation; suffered reputational harm due to wrongdoing; listed on the National Treasury restricted database; under investigation or facing charges for wrongdoing. .

2. Tender Conditions

- This bid is subject to the Preferential Procurement Policy Framework Act 2000 , the General Conditions of Contract (GCC) and, if applicable, any other legislation or special conditions of contract.
- The lowest or any bid will not necessarily be accepted.
- NHFC reserves the right to reject submitted proposal if deemed necessary. Should it be discovered by the NHFC that the bidder did not act in good faith and/or has declared incorrectly/falsely, NHFC reserves the right to disqualify or reject the bid.
- The NHFC reserves the right to disqualify a bid proposal if the bidders' proposal is not compliant with the scope of work/terms of reference,
- The NHFC reserves the right to reject a bid based on a perception of reputation risk that may arise if the bidder is appointed.
- If there is risk of litigation involving the bidder that may cause the going concern status of the bidder to be in doubt, the NHFC may reject the bid.
- The bidder is subjected to due-diligence process which includes, screening, vetting, and/or any best practice that may subject NHFC to comply with legislation and its Policies and Procedures.
- The NHFC reserves the right to disqualify a bid if the bidder fails to provide reasonable request (s) within reasonable timelines this includes the set deadline per request,
- Bid rigging/collusive behaviour by the bidder will result in disqualification and a report to National Treasury.
- No director may appear on more than one bidding company.
- This bid is subject to the Preferential Procurement Policy Framework Act
- This bid is subject to the General Conditions Contract as stipulated in this invitation.
- The NHFC deems the Bidder has read and accepted these Conditions of Contract.

- Any discrepancy between the evaluation copies and the master (original Hard copy) record, the master record will supersede the soft copy. Any discrepancy between the original sets deposited to the NHFC and that kept by the bidder, the original set deposited with the NHFC is the master contract for both parties.
- The NHFC undertakes to pay out within 30 days from issuance of substantiated invoices issued in terms of this appointment (Payment schedule as defined in the service level agreement). No payment will be made on outstanding information not submitted by the service provider.
- The panel will be reviewed on a 3 (three) yearly basis and attorneys on the panel may have to resubmit their proposals in response to specific terms of reference as and when work arises.
- Service delivery levels and quality of work will be measured by the NHFC and these will serve as a measure of retention on the panel (within the 3 years period).
- There will be no guarantee that attorneys will receive instructions if they are appointed onto the NHFC panel.
- The successful bidders will not be entitled to a retainer fee.
- The NHFC shall be entitled in its discretion to remove a firm of attorneys from the panel before the expiry of the said 3 (three) years by written notice and recall all the files in the possession of the said law firm.
- The firm shall have at least 5 (five) years' experience. In the case of a new firm, the attorneys who will be dealing with the NHFC matters shall have at least five years' experience as admitted attorneys.
- The identified attorneys will be appointed to the NHFC legal services panel and must be available to start immediately after the panel has been approved by the NHFC and service providers should be registered on the CSD.
- The firms will also be required to ensure transfer of skills to in house legal advisors of the NHFC.
- The NHFC reserves the right under exceptional circumstances, to appoint attorneys outside the panel attorneys.
- Bidders will be allocated work based on a rotational basis. The register will be maintained to ensure rotation of work during the three years of contract. Rotations system will only be used to allocate work based on their chronological order of award in the database. When appointing members from the panel to act, the first choice will be the one operating in the same city/province as the company to be placed into litigation. On completion of the issued work, bidder will be added at the bottom of the list for future allocation.
- Upon the issuing of an instruction by the NHFC, the firm will respond within the time set out in the instruction with a proposal outlining their proposed approach and methodology to the legal matter, the resources they will dedicate to it as well as their total estimated fee.

- Bidders will have to provide hourly rate for the applicable year, as well as escalation rate over the next 2 years should the litigation proceed over to the next financial year. The attorneys will be held to the hourly rates as quoted.

SBD 1 INVITATION TO BID – PART A

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE NHFC SOC LTD.					
BID NUMBER:	OM01/09/2022	CLOSING DATE:	26 October 2022	CLOSING TIME:	11:00
DESCRIPTION	Provision for Panel of Attorneys for a period of three (3) years.				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
1st Floor, Old Trafford 3, Isle of Houghton, 11 Boundary Road, Houghton					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Pabalelo Shirindza		CONTACT PERSON		
TELEPHONE NUMBER	011 644 9800		TELEPHONE NUMBER		
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER		
E-MAIL ADDRESS	Tenders01@nhfc.co.za		E-MAIL ADDRESS		
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?

YES NO

DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?

YES NO

IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?

YES 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 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).**
- 1.5. **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.”**

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.

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:.....

TENDER CONDITIONS

3. DEFINITIONS

- (a) The word “Bidder” in these conditions shall mean and include any firm of Contractors, Suppliers, Service Providers or any company or body incorporated or unincorporated.
- (b) The word “Employer” in these conditions shall mean the NHFC.

4. COMPULSORY REQUIREMENTS

- (a) Valid TCS PIN
- (b) Proof of Company Registration.
- (c) Submission of the following Signed and Completed Standard Bid Documents (SBD) Forms
 - SBD 1: Invitation to Bid
 - Pricing Schedule
 - SBD 4: Declaration of Interest
 - SBD 6.1 Preference Points Claim Form in terms of preferential procurement
 - SBD 7.2 Contract Form – Rendering of Services
 - Signed and initial General Conditions of Contract (GCC)
- (d) Protection of personal information Consent Form
- (e) Copy of B-BBEE certificate/ Sworn Affidavit
- (f) List of partners / directors of firm.
- (g) Copy firm’s Indemnity Certificate issued by the Attorneys Insurance Fidelity Fund for the present year
- (h) Submission of a valid letter of good standing issued by the Law Society

All forms, annexures, addendums and specifications shall be signed and completed and returned with the Bid Document as a whole.

5. BID DOCUMENT

- (a) The bid document must be completed in all respects in non-erasable ink.
- (b) Bids must be submitted on original bid documents.
- (c) Bid documents must remain intact and no portion may be detached.

6. PERIOD OF VALIDITY FOR BIDS AND WITHDRAWAL OF BID AFTER CLOSING DATE

All Bids must remain valid for a period of 120 days from the closing date as stipulated in the Bid document.

7. VALUE ADDED TAX

In calculating the cost of the supply and delivery of services and / or material, the supplier will issue a “Tax Invoice” for all services rendered and / or materials supplied, which will reflect the exclusive

cost of such services, goods or materials with the relevant Value Added Tax being added to the total. VAT must be included in the Bid price, but must be shown separately. Should a bidder not be VAT registered at the time of the bid and subsequently register for VAT, the price may not be adjusted.

8. AUTHORITY TO SIGN BID DOCUMENTS

In the case of a Bid being submitted on behalf of a company, close corporation or partnership, evidence must be submitted to the Employer at the time of submission of the Bid that the Bid has been signed by persons properly authorised thereto by resolution of the directors or under the articles of the entity.

9. SUBMITTING OF BIDS

Bids must be submitted in sealed envelopes clearly marked “**Provision of Panel of Attorneys**”

The Bid must be deposited in the bid box at the below address:

**1ST Floor
Old Trafford 3
Isle of Houghton
11 Boundary Road
Houghton**

10. CLOSING DATE AND TIME

Bid should reach the above address for submission by no later than **26 October 2022**. No late bids will be accepted or considered.

11. BID ENQUIRIES

Please refer all enquiries to the below mentioned persons for assistance during normal office hours viz. 08:30 – 16:30 Mondays to Fridays.

**Bidding Procedure Enquires
Name: Pabalelo Shirindza
Email address: Tenders01@nhfc.co.za**

12. JOINT VENTURE REQUIREMENTS

DEFINITION:- “**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.

Should a group of companies/firms and/or interested parties wish to enter into a joint venture/consortium agreement the following minimum requirements must be met:-

- (a) A properly signed copy of the joint venture/consortium agreement must be attached.
- (b) Each member of the joint venture/consortium must provide a Tax Clearance Certificate.

- (c) After the award of a contract to a joint venture/consortium, the successful joint venture group or consortium must provide a combined joint venture/consortium Tax Clearance Certificate.
- (d) After the award of a contract to a joint venture/consortium, the successful joint venture group or consortium must provide the details of the joint venture / consortium banking details.
- (e) A trust, consortium or joint venture will qualify for points of their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- (f) A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate tender.

13. THE JOINT VENTURE/CONSORTIUM AGREEMENT MUST CONTAIN THE FOLLOWING: -

- (a) Who the managing member will be.
- (b) Who the signatory of authority will be.
- (c) How the joint venture/consortium share of profit will be split.
- (d) The bank account details where payments will be deposited into.
- (e) The agreement must be signed by all parties.
- (f) The agreement must be certified by a Commissioner of Oaths.
- (g) The postal and physical address where all correspondence will be sent to.

14. TERMS OF REFERENCE

14.1 Introduction

The NHFC, a Schedule 3A Development Finance Institution (DFI) of the National Department of Human Settlements, was established in 1996 with the principal mandate of broadening and deepening access to finance for the low to middle income South African households. The NHFC is largely a wholesale financier of social housing institutions, non-banking retail intermediaries, privately owned property developers and investors.

The target market of the NHFC is the low-to-middle income housing market which typically includes households who earn between R3 500 and R22 000 per month. The NHFC mandate requires the company to make housing and housing finance accessible and affordable to facilitate this objective.

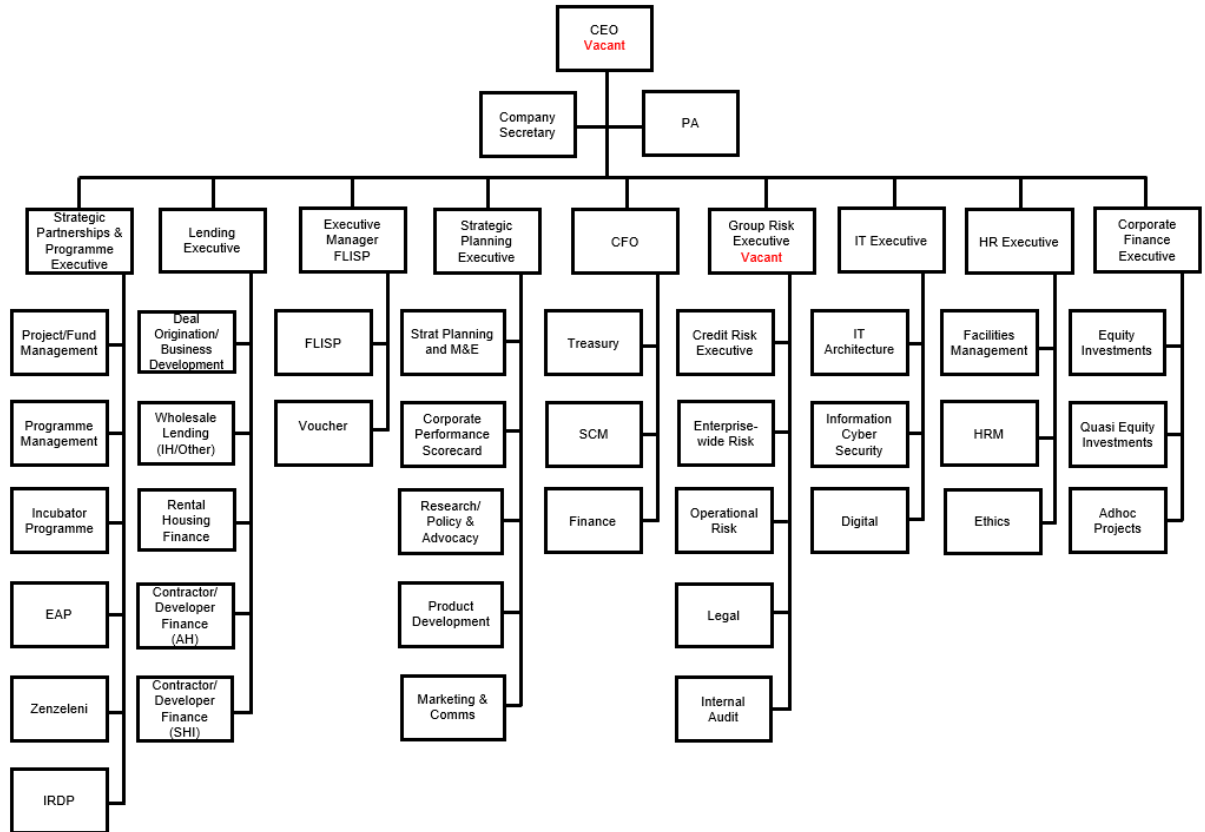
This is done through:

- providing wholesale funding to housing development projects for ownership, social housing and private rental, including inner cities, and for incremental housing purposes;
- partnering with banks and other non-banking retail financial intermediaries to increase their sustained lending and innovation in the target market served; and
- Leveraging private sector funding for the sustainable development of human settlements.

More specifically, NHFC's strategic priorities are to:

- Expand housing finance activities, through the effective provision of housing finance solutions, enabling low-to-middle income households to have the choice of renting, owning or incrementally building to meet their housing needs;
- Facilitate increased and sustained lending by financial institutions to the affordable housing market;
- Mobilise funding into the human settlements space on a sustainable basis, in partnership with a broad range of institutions;
- Conduct the business activities of the NHFC in an ethical manner that ensures the continued economic sustainability of the NHFC, while promoting sustainable social and environmental development; and
- Stimulate the low-to-middle income housing sector by providing robust, relevant and timely research and market analysis to practitioners and housing customers.

As at end of March 2021, NHFC's (in the company accounts) total assets were R5.5 billion and total assets for the consolidated/group accounts were R6.9 billion. NHFC employs 126 people and below is the NHFC organogram indicating structure of the organisation.



NHFC also has two operating subsidiary companies, namely Cape Town Community Housing Company (CTCHC) – based in Cape Town with a total of 5 employees and NHFC Management Services (NMS). CTCHC is mainly involved in collections of proceeds from housing developments and income (mainly interest) from houses sold via Instalment Purchase Agreements (IPAs) while NMS provide programme and fund management services. Both of these are VAT registered.

14.2 Establishment of Human Settlements Development Bank

NHFC supports the National Department of Human Settlements (NDOHS) in its objective to achieve housing mandate for the country. In October 2018 a consolidation of three DFI's was finalised, namely NHFC, Rural Housing Loan Fund SOC NPC (RHLF) and the National Urban Reconstruction and Housing Agency SOC NPC (NURCHA).

The drive to scale housing finance provision, to greater leverage private sector contribution and thus significantly grow the human settlement development impact, became the strategic rationale for the consolidation of the three DFIs.

The National Department of Human Settlements has committed itself to the establishment of a Human Settlements Development Bank (“HSDB”) in support of the entire human settlements’ delivery value-chain.

The HSDB establishment will include, among others, the Policy, Enabling Legislation, Business Case and Capitalisation, leading to a fully integrated HSDB. The timeframe for full establishment of HSDB is yet to be determined.

15. PURPOSE OF THE REQUEST FOR PROPOSAL (RFP)

The purpose of this document is to table the tender specification for the appointment of a panel of attorneys comprising 20 firms which shall be engaged on a needs basis to the NHFC and its wholly owned subsidiaries. The NHFC promotes development of local talent and expertise and for the purposes of this tender, the NHFC reserves the right to only consider South African based law firms for appointment under this tender.

16. SCOPE OF WORK

The successful 20 law firms will be required to assist the NHFC with services in the following categories:

-

Legal Recoveries

Attorneys will attend to legal recoveries on behalf of the NHFC. Attorneys are required to have an in-depth knowledge of litigation procedures in the High Court and Magistrate’s Court as well as the relevant legislation and case law in the recovery process. Practical knowledge is required in all spheres of commercial and banking law including but not limited to National Credit Act, the PFMA and the Consumer Protection Act. A thorough knowledge of the nature and effect of securities documents and the perfection thereof is required.

Insolvency

Attorneys will be required to assist the NHFC in obtaining legal opinions and/or pursue litigation within the insolvency/business rescue/liquidation process. A thorough knowledge of the nature, effect and experience of insolvency/business rescue/liquidation legislation and case law is required.

Corporate Law and Corporate Finance Transactions

Practical knowledge is required in all spheres of commercial, finance and banking law including but not limited to knowledge and application of the National Credit Act, the PFMA, the Companies Act (1973 and 2008), Insolvency Act, Deeds Registries Act and Consumer Protection Act. Drafting, negotiation and interpretation of commercial agreements, credit and finance agreements more specifically but not limited to:

- Loan Agreements;
- Security Documents;
- Shareholders Agreements;
- Purchase and Sale Agreements;

- Lease Agreements;
- Service Level Agreements; and Memorandum of Understandings.as well as dispute resolution and/or litigation related thereto.

Conveyancing

Attorneys will be required to assist the NHFC with respect to conveyancing and related matters.

Labour Law

Expertise in labour matters are required, more specifically but not limited to:

- Provision of general labour related advice, legal opinions or related services;
- Drafting of relevant labour related documentation;
- Provision of specific labour related advice, legal opinions or related services as it relates to collective bargaining and union related matters, where applicable;
- Provision of labour relations training as and when required; and
- Litigation relating to labour law matters.

17. CONTRACT DURATION

The duration of this contract is three (3) years or thirty-six (36) months and is subject to successful performance evaluation.

18. CONTENT OF THE RFP PROPOSAL

All the tender proposals submitted for the panel of attorneys should include a technical component as well as a financial/pricing component.

The Technical Component must include the following:

- Company profile
The company profile must address the following areas/headings in the following order:
 - a) History**
Provide a brief history of the firm, an outline of the firm's organogram and an outline of the firm's geographic structure (provincial/regional offices within the Republic of South Africa but excluding alliances or affiliations you may have with other law firms).
 - b) Client Base**
Provide a list of clients for whom legal services were rendered on a regular basis in the past three years. The most recently served clients must be mentioned first and specify the nature of all work done.
 - c) Field of Expertise**

Each proposal must include the specialist fields of law of the firm, with specific reference to the fields as set out in paragraph 16 above. If a firm of attorneys has expertise in more than one field of law, all relevant fields must be indicated in the proposal together with demonstrated experience in specified areas of law. Clearly indicate for which of the five specialist fields (as set out in paragraph 16) your firm is bidding for.

d) Your Team

Curriculum Vitae's of the core service team that will be attending to the NHFC work with specific reference to their educational and professional background and their relevant experience.

- Company registered address
- Name of Principal Applicant (Must be authorised to act on behalf of the Company) and contact details including telephone, fax numbers and email address.
- For firms applying for the category of conveyancing, a certificate of admission as a conveyancer for the individual conveyancer(s) employed on a full time basis must be provided
- Proposed methodology and approach to be used in keeping with the scope of works.
- Full and comprehensive description of similar work undertaken in the past 3 years.
- List of current clients and references
- Please indicate the firm's value proposition and indicate what sets you apart in the legal services fraternity

All the documentation submitted in response to this RFP must be in English.

Note: Failure to comply with the requirements of the Technical Component above, may lead to disqualification of bids.

Financial/Pricing Component

The attorneys will be evaluated purely on their score achieved on pricing and B-BBEE in accordance with the Preferential Procurement Policy Framework Act.

Bidders are to complete a Pricing schedule in the format of **SBD3.3**

19. EVALUATION CRITERIA

Criterion 1 – Compulsory Requirements

Bidders will first be evaluated in terms of the gatekeeper/minimum requirements on page 10 of this document. Bidders who do not fulfil all the requirements or do not submit the required documents will not proceed to the next phase of functionality. Those who fulfil all the requirements or have submitted the required documents will be further evaluated on functionality.

Criterion 2 – Functionality

Functionality is worth 100 points. The minimum threshold is **80** points. Bidders who score less than **80** points on functionality will therefore be disqualified. Bidders who score **80** points and above will be further evaluated in terms of price and preference points. The functionality evaluation is broken down as follows:

Category	Criteria	Weighting
1.	<p>Experience and Expertise of the Organization:</p> <p>Bidders must have experience relevant to the scope of work and submit 5 recent relevant reference letters in respect of similar work undertaken.</p> <p>5 contactable reference letters=25 points 4 contactable reference letters=20 points 3 contactable reference letters=15 points 2 contactable reference letters=10 points 1 contactable reference letter=5 points</p> <p>References must be signed and contactable.</p>	25
2.	<p>Stability and Track Record</p> <p>This will be assessed based on the company profile as set out in clause 18 of this RFP</p> <p>Client base = 5</p> <p>List five client's in the financial sector as well as the nature of work performed for them.</p> <p>Field of Expertise = 10</p> <p>Field of specialization-5 areas =10 Field of specialization-4 areas=7 Field of specialization-3 areas =4 Field of specialization-2 areas =3</p>	25

	Your Team = 10 Director's knowledge and experience-7 years=10 Director's knowledge and experience-5 years=7 Director's knowledge and experience-3 years=3	
3.	Approach and Methodology Demonstrates a good approach and procedure: 30 Demonstrates a fair approach and procedure: 20 Demonstrates a poor approach and procedure: 10 No approach and methodology: 0	30
4.	Value Proposition and Skills Transfer (e.g. Access to complimentary workshops, presentations on legal aspects/developments relevant to the NHFC = 5 Supplying the NHFC with monthly newsletters on relevant fields of law and relevant case law = 5 And availability to discuss legal problems, concepts and ideas = 10	20
	TOTAL	100

Criterion 3 – Price and Preference Evaluation

Bidders who score a minimum of **80** points on functionality will be further evaluated in terms of Price and Preference points (B-BBEE status level of contributor). As per the table below, price is evaluated over **80** points and preference points over 20:

As per the table below, price is evaluated over 80 points and preference points over 20:

Price Assessment	80 Points
TOTAL	80
Preferential Elements	20 Points
B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

20. PRICING SCHEDULE

SBD 3.3

PRICING SCHEDULE
(Professional Services)

NAME OF BIDDER:	BID NO.:
CLOSING TIME 11:00	CLOSINGDATE: 26 October 2022

OFFER TO BE VALID FORDAYS FROM THE CLOSING DATE OF BID.

ITEM DESCRIPTION	BID PRICE IN RSA CURRENCY
NO**(ALL APPLICABLE TAXES INCLUDED)	

- 1.The accompanying information must be used for the formulation of proposals.
- 2.Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.

R.....

3.PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND

RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

Levels of Staff, broken down into departments if necessary	Rate per Hour (For first 12 months, Year 1) Including VAT	Rate per Hour (month 13 to 24, Year 2) Including VAT	Rate per Hour (month 25 to 36, Year 3) Including VAT
Director/Partner			
Senior Associate (more than 4 years post admission as attorney)			
Professional Associate (admitted attorney with up to 4 years post admission as attorney)			

Candidate Attorney (graduate but not yet admitted as attorney)			
Support staff (non- professional staff)			
Travel and all other reimbursable costs (photocopies, telephone calls, etc)			

All prices must be in South African Rand and inclusive of VAT.

5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED

RATE	QUANTITY	AMOUNT
-----	R.....
-----	R.....
-----	R.....
-----	R.....

TOTAL: R.....

BIDDER'S DISCLOSURE

1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest¹ in the enterprise, employed by the state? **YES/NO**

2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

¹ the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

.....
.....

3 DECLARATION

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

- 3.1 I have read, and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect.
- 3.3 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 consortium² will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 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.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT. I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

..... Signature Date
..... Position Name of bidder

² 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.

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 exceed/not exceed R50 000 000 (all applicable taxes included) and therefore the 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:

80/20

or

90/10

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

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = Price of lowest acceptable bid

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

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

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

5. BID DECLARATION

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

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

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

7. SUB-CONTRACTING

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

(Tick applicable box)

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

7.1.1 If yes, indicate:

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

(Tick applicable box)

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

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

Designated Group: An EME or QSE which is at 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 certificates, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

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

WITNESSES
1.
2.

..... SIGNATURE(S) OF BIDDERS(S)
DATE:
ADDRESS
.....
.....

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)

I hereby undertake to render services described in the attached bidding documents to NHFC 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.

The following documents shall be deemed to form and be read and construed as part of this agreement:

- 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 Contribution 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;
- General Conditions of Contract; and

Other (specify)

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.

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 fulfilment of this contract.

I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.

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)

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).

An official order indicating service delivery instructions is forthcoming.

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

....

RESOLUTION TO SIGN

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

An example is given below:

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

Mr/Mrs, whose signature appears below, has been duly authorised

to sign all documents in connection with the Bid for Contract No. and any Contract that may arise there from on behalf of (name of Bidder in block capitals)

.....

SIGNED ON BEHALF OF THE COMPANY:

IN HIS/HER CAPACITY AS:

DATE:

SIGNATURE OF SIGNATORY:.....

- WITNESSES:**
- 1.
 - 2.

CURRENT AND PAST EXPERIENCE FOR NHFC AND OTHER INSTITUTIONS

Bidders must furnish hereunder details of similar works/service, which they are currently undertaking or have undertaken. Bidders to provide contactable references for all projects listed below.

EMPLOYER/INSITUTION NAME	NATURE OF WORK/PROJECT NAME	AWARDED AMOUNT	COMMENCEMENT DATE	COMPLETION DATE	EMPLOYER CONTACT NO AND CONTACT PERSON

.....
DATE

.....
SIGNATURE OF TENDERER

GENERAL CONDITIONS OF CONTRACT

GOVERNMENT PROCUREMENT

GENERAL CONDITIONS OF CONTRACT July 2010

NOTES

The purpose of this document is to:

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

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

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

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
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5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
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11. Contract amendments
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15. Penalties
16. Termination for default
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18. Force Majeure
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24. Notices
25. Taxes and duties
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27. Prohibition of restrictive practices

General Conditions of Contract

1. Definitions

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

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

maintenance and other such obligations of the supplier covered under the contract.

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

2. Application

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

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

5. Use of contract documents and information; inspection.

5.1 The supplier shall not, without the purchaser's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser's prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier's performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier's records relating to the performance of the supplier and to have

them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

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

7. Performance security

7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
- (b) a cashier's or certified cheque

7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

8. Inspections, tests and analyses

8.1 All pre-bidding testing will be for the account of the bidder.

8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.
- 8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Payment

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

10. Prices

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

12. Contract amendments

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

13. Assignment

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

14. Subcontracts 14.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

15. Delays in the supplier's performance 15.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

15.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

15.3 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.

15.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

16.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

15.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

16. Penalties 16.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual

delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

**17. Termination
for default**

17.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

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

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

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

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

17.5 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.

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

the name and address of the supplier and / or person restricted by the purchaser.

- (i) the date of commencement of the restriction
- (ii) the period of restriction; and
- (iii) the reasons for the restriction.

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

17.5 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.

18. Anti- dumping and countervailing duties and rights

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

19. Force Majeure

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

19.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical and shall seek all

reasonable alternative means for performance not prevented by the force majeure event.

20. Termination for insolvency

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

21. Settlement of Disputes

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

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

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

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

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

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and

(b) the purchaser shall pay the supplier any monies due the supplier.

22. Limitation of liability

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

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

(b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

- 23. Governing language** 23.1 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.
- 24. Applicable Law** 24.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 25. Notices** Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 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.
- 26. Taxes and duties** 26.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 26.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 26.3 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.
- 27 National Industrial Participation (NIP) Programme** 27.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 28. Prohibition of Restrictive Practices** 28.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 28.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
- 28.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to

any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.

SIGNED ATON.....

NAME (PRINT).....

SIGNATURE

1. PROTECTION OF PERSONAL INFORMATION

- 1.1. The Service Provider shall ensure that its employees, representatives and officers, comply with the provisions of the Protection of Personal Information Act, 2013 (“POPIA”) and all other applicable data protection laws and, without limitation to the a foregoing, shall ensure the security and confidentiality of all Personal Information processed by that Party is in accordance with POPIA and all other applicable data protection laws.
- 1.2. The Service Provider must only process personal information of the NHFC and third parties on behalf of the NHFC, with the NHFC’s knowledge or authorisation, treat such information which comes to their knowledge as confidential and must not disclose it unless required by law or in the course of the proper performance of the Service Provider’s duties. The Service Provider must comply with the responsible party’s obligations in clause section 19 of POPIA.
- 1.3. Where the Service Provider, its agents, subcontractors, officers, directors, shareholders, representatives, or employees has/have access to any Personal Information held by the NHFC for any reason in connection with this Agreement or is/are supplied with or otherwise provided with Personal Information by the NHFC or on behalf of the NHFC for any purpose, or are supplied with or otherwise provided with Personal Information relating to the Services, the Service Provider shall:
 - 1.3.1. process such Personal Information only for purposes of performing its/their obligations under this Agreement and shall not otherwise modify, amend or alter the contents of such Personal Information or disclose or permit the disclosure of such Personal Information to any third party, unless specifically authorised to do so by the NHFC or as required by law or any regulatory authority, and shall take all such steps as may be necessary to protect and safeguard such Personal Information;
 - 1.3.2. without prejudice to the generality of the foregoing, ensure that appropriate, reasonable technical and organisational measures shall be taken by it/them to prevent
 - 1.3.2.1. the unauthorised or unlawful processing of such Personal Information; and
 - 1.3.2.2. the accidental loss or destruction of, or damage to, such Personal Information; and
 - 1.3.2.3. promptly notify the NHFC when it becomes aware of any unauthorised, unlawful or dishonest conduct or activities, or any breach of the terms of this Agreement relating to Personal Information.

- 1.4. Both Parties will comply with their obligations under POPIA in relation to personal information for which they are the responsible party.
- 1.5. The Service Provider must notify the NHFC immediately where there are reasonable grounds to believe that personal information has been accessed or acquired by any unauthorised person (Data Breach) and must assist the NHFC, at its own cost:
 - 1.5.1. with any investigation or notice to the Regulator or data subjects that the NHFC may make in relation to a Data Breach; and
 - 1.5.2. in responding to any directions by the Regulator to publicise the Data Breach, including assisting the NHFC to make public announcements if required.
 - 1.5.3 The Service Provider indemnifies the NHFC against any civil or criminal action or administrative fine or other penalty or loss as a result of the Service Provider's breach of this clause.

2. POPIA CONSENT

- 2.1. The Service Provider, by submitting its proposal/ quotation, consents to the use of his/her personal information contained therein and confirms that:
 - 2.1.1. The information is voluntarily supplied, without undue influence from any party; and
 - 2.1.2. The information is necessary for the purposes of the engagement with NHFC.
- 2.2. The tenderer acknowledges that he /she is aware of his/her right to:
 - 2.2.1. Access the information at any reasonable time for the purposes of rectification thereof;
 - 2.2.2. Object to the processing of the information;
 - 2.2.3. Lodge a complaint with the Information Regulator.

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME)
 CERTIFY THAT WE CONSENT TO THE ABOVE AS PER REQUIREMENTS OF THE
 PROTECTION OF PERSONAL INFORMATION ACT.

.....
 Signature

.....
 Date

.....
 Position

.....