

VOLUME 2 GENERAL CONDITIONS OF CONTRACT

Sustainable Health Care Waste Management in Gauteng

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GENERAL CONDITIONS OF TENDER, CONTRACT AND ORDER

PART I: DEFINITIONS

- 1 The words and expressions defined below shall have the meanings hereby assigned to them unless such meanings are inconsistent with the context of a particular tender, contract or order -
- 1.1 **"acceptance of a tender"** means the award of a contract to a tenderer in response to his tender or price quotation;
- 1.2 **"beneficial use"** means the use of a supply or service which has been delivered, partially or completely installed and commissioned and is available for use;
- 1.3 **"Department"** means the relevant institution inviting tenders, and concluding and administering the contract;
- 1.4 **"closing time"** means the date and hour specified in the tender documents for the receipt of tenders;
- 1.5 **"contract"** means the agreement which results from the acceptance of a tender and includes the official offer signed by the tenderer and the letter of acceptance and/or the official order signed by the authorised official of the state;
- 1.6 **"contractor"** means any natural or legal person whose tender has been accepted by the Department;
- 1.7 **"delivery"** means delivery in compliance with the conditions of the contract or order;
- 1.8 **"delivery ex stock"** means immediate delivery directly from stock actually on hand;
- 1.9 **"delivery into consignee's 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 contractor bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained;
- 1.10 **"formal contract"** means a written contract, all the terms of which are embodied in a single or composite document signed by all the parties thereto and duly witnessed;
- 1.11 **"imported content"** means that portion of the tender price represented by the costs of components, parts or materials which have been or are still to be imported (whether by the tenderer or his suppliers or sub-contractors) 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 which have been tendered for are manufactured
- 1.12 **"indices"** means indices published by Statistics South Africa, SEIFSA and other bodies approved by the Department, reflecting price adjustments or changes in cost;
- 1.13 **"local content"** means that portion of the tender price which is not included in the imported content provided that local manufacture does take place;

- 1.14 **"manufacture"** means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities;
- 1.15 **"order"** means an official written order issued for the supply of goods or the rendering of a service;
- 1.16 **"period contract"** means a contract entered into for the supply of goods, the rendering of services or the disposal of movable state property over a specified period of time;
- 1.17 **"price quotation"** means a written offer on any documentation which is not necessarily subject to the general conditions contained in this document and which is invited and dealt with in any manner;
- 1.18 **"production"** means the production of products, whether in a factory or not, and includes manufacturing and other value-adding activities such as mining and agriculture;
- 1.19 **"Republic"** means the Republic of South Africa;
- 1.20 **"tender"** means a written offer on the official tender documents forming part of an invitation to tender, which invitation has been dealt with in accordance with the requirements of the general conditions contained in this document and, unless otherwise determined by the Department, has been advertised in the Government Tender Bulletin;
- 1.21 **"tenderer"** means any natural or legal person submitting a tender or a price quotation;
- 1.22 **"written"** or **"in writing"** means handwritten in ink or any form of electronic or mechanical writing .
- 1.23 In this document words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.

PART II: GENERAL

2. Conditions

- 2.1 The following general conditions are applicable to all tenders, contracts and orders, unless otherwise decided by the Department as indicated in the tender documents.
- 2.2 Where applicable, special conditions are also laid down by the Department to cover specific supplies or services.
- 2.3 Where such special conditions are in conflict with these general conditions, the special conditions shall apply.

3. Communication with the Department

All correspondence in regard to this document must be addressed to the Head of Procurement at the relevant Department.

4. Formal contracts

A legal contract is concluded on the issuance of a letter of acceptance. In addition, a formal contract may be entered into where deemed necessary by the Department, provided that such a contract is submitted to the State Attorney for assessment of the legality and enforceability of the contract conditions, prior to the actual conclusion of the contract.

5. SA Post Office Ltd as agent of the tenderer or the contractor

- 5.1. Because the SA Post Office Ltd is regarded as the agent of the tenderer or the contractor-
 - 5.1.1 Every written acceptance of a tender shall be posted to the tenderer or contractor concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his tender or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.
 - 5.1.2. The time mentioned in this document or 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.

PART III: INVITATION OF TENDERS

6. General

- 6.1 Unless otherwise indicated in the tender documents, the Department shall not be liable for any expense incurred in the preparation and submission of a tender.
- 6.2 Unless the Department directs otherwise, tenders are invited in the Republic of South Africa only.
- 6.3 Unless the Department decides to the contrary, the laws of the Republic of South Africa shall govern contracts arising from the acceptance of tenders.
- 6.4 The tenderer shall choose a physical address in the Republic of South Africa where all legal notices and related documents, including summons and other legal process following from a contract can be served.
- 6.5 With certain exceptions, notifications of tender invitations are only published in the Government Tender Bulletin.
- 6.6 The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria, 0001 or electronically from www.treasury.gov.za
- 6.7 The tender number must not appear on any envelope unless the envelope contains the tender itself. In particular, the tender number must not appear on an envelope containing a request for tender documents.

7. Quantities

- 7.1 An indication is given in the tender documents of the organisations on behalf of which the contract is being arranged or which will participate therein.
- 7.2 Estimated quantities shall be indicated in the tender invitation when exact quantities are not known.
- 7.3 Quantities may be changed after mutual consent has been reached in writing.

8. Documents to be used and information to be furnished

- 8.1 Tenderers shall -
 - 8.1.1 make use of the official prescribed tender documents;
 - 8.1.2 insert tender prices and other required information in the appropriate spaces on the prescribed forms; and
 - 8.1.3 furnish all further information called for in the tender documents and supply pamphlets, samples, etc., when required.
- 8.2 Failure of the tenderer to submit a tender signed in ink or to complete the required certificates, questionnaires and specification forms in all respects, may result in the invalidation of the tender.

- 8.3 Tenders should not be qualified by the tenderer's own conditions of tender. Tenders qualified by a tenderer's own conditions may be rejected as being invalid and failure of the tenderer to renounce such conditions when called upon to do so, may result in the invalidation of the tender.

9. Charge for documents

Where applicable, a refundable/non-refundable fee for tender documents may be charged.

10. Availability of specifications

Where any specific testing institution's specifications are referred to in the tender documents, requests to consult such specifications or to purchase copies thereof should be made to the local branch of that institution, or such other address as indicated in the tender documents.

11. Samples

- 11.1. Prospective tenderers may be charged for samples supplied by the Department.

- 11.2 Where materials are supplied by the Department to suppliers for the manufacture of a sample, the Department shall not return such sample to suppliers nor shall the Department be liable for any cost, except when specified in the tender documents.

- 11.3 When samples are called for in tender documents, samples (marked with the tender and item number as well as the tenderer's name and address) shall be despatched to the addressee mentioned in the tender documents so as to reach him not later than the closing time of the tender. Tenders shall not be included in parcels containing samples.

- 11.4 If samples are not submitted as requested, the tender concerned may be declared invalid.

- 11.5 Samples shall not be submitted in support of tenders unless called for in the tender documents.

- 11.6 Samples shall be supplied by a tenderer at his own expense and risk and the Department shall not be obliged to pay for such samples.

- 11.7 Unless otherwise specified in the tender documents, the Department is not liable for the cost of samples supplied by a tenderer and reserves the right not to return such samples or to dispose of them at its discretion.

- 11.8 Where a tender is accepted for the supply of goods according to a sample submitted by the tenderer, such sample becomes the contract sample and further samples as required for the purposes of the contract shall be provided by the contractor as requested by the Department and at the contractor's own expense and risk.

- 11.9 When samples have served their purpose and are to be returned to the tenderers, the tenderers shall be given written notice to remove the samples at their own expense and risk within a specified period, failing which, the tenderer concerned forfeits ownership and the samples shall forthwith be disposed of at the discretion of the Department.

12. Closing of tenders

- 12.1 Subject to the provisions of paragraph 12.2, tenders close at 11:00 on the closing date indicated in the tender documents.

12.2 When the closing date falls on a Saturday, Sunday or public holiday, tenders may be lodged up to 11:00 on the following working day.

12.3 Unless the Department decides otherwise, tenders close at least 4 weeks after the date of publication.

12.4 Extension of the closing date may be granted if circumstances justify this action. The closing date is normally extended only if there is sufficient time to publish an amending notification before the original closing date.

13. Validity periods

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

14. Tender prices and delivery periods

14.1 All-inclusive tender prices are required. Firm tender prices and delivery periods are preferred. The following considerations shall apply in evaluating tenders with differing price and delivery conditions:

14.1.1 Tenderers may submit firm or non-firm prices.

14.1.2 "Firm " prices are deemed to be fixed prices which are only subject to the following statutory changes:

- (a) VAT,
- (b) Any levy related to customs and excise.

14.1.3 "Non-firm" prices are all prices other than "firm" prices and which is :

- (a) subject to rate of exchange claim, and
- (b) Subject to published indices

14.2 Claims in respect of exchange rate fluctuations are subject to the provisions of paragraphs 39.1 to 40.5

14.3 In cases where non-firm prices are offered, a breakdown of the tender price reflecting the different portions of the tender price that might fluctuate must be indicated.

14.4 When calculating comparative prices, non-firm tender prices may be loaded.

14.5 Where a tenderer has not indicated whether his prices or delivery periods are firm or not, the tendered prices and delivery periods are deemed to be firm and the contractor shall be bound thereby.

14.6 Expressions such as "soonest" or "earliest" or delivery periods which are unspecified are not acceptable.

15. Alternative offers

No alternative offers will be accepted unless specified otherwise in the tender documents.

16. Offers not strictly to specification

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

17. Partial tenders

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

18. Lodging of tenders

18.1 Original tenders signed in ink shall be deposited in the relevant tender box not later than the specified closing time. The responsibility of ensuring that tenders are deposited in the tender box on or before the specified closing time, rests with the tenderer.

18.2 Each tender shall be addressed in accordance with the directives in the tender documents and shall be lodged in a sealed envelope with the name and address of the tenderer, the tender number and the closing date indicated on the envelope. The envelope shall not contain documents relating to any tender other than that shown on the envelope.

18.3 Unless specifically provided for in the tender invitation, no tenders forwarded by telegram, telex, facsimile, e-mail or similar apparatus are considered. However, photostat copies of tenders or photostat copies of facsimiles which are lodged in the prescribed way and in which the relevant forms and certificates are signed in ink, after having been copied, are accepted as valid tenders.

18.4 Tenders shall not be included in packages containing samples as such tenders may be rejected as being invalid.

19. Late tenders

19.1 Tenders are late if they are deposited in the tender box indicated in the tender documents after closing time. Tenders mailed to the address indicated in the tender documents shall on receipt be deposited in the tender box. The responsibility will however remain with the tenderer to ensure that his tender is received at the relevant address in good time to be deposited in the tender box before closing time.

19.2 A late tender shall not be admitted for consideration and where practicable shall be returned unopened to the tenderer accompanied by an explanation.

19.3 Notwithstanding the foregoing, the Department may admit a late tender if no tender or no suitable tender was received by closing time.

20. Tenders received open or without the tender number on the envelope

All tenders received in sealed envelopes with the relevant tender numbers on the envelopes are kept unopened in safe custody until the closing time of the tenders. Where, however, a tender is received open, it shall be sealed. If it is received without the tender number on the envelope, it shall be

opened, the tender number ascertained, the envelope sealed, and the tender number written on the envelope.

21. Opening of tenders

21.1 Tenders are opened in public as soon as practicable after the closing time.

21.2 Except as provided for in paragraph 21.3, the names only of the tenderers are read out, if so requested, at the time of opening of tenders.

21.3 The total prices of tenders in the building, civil, mechanical and electrical works categories are disclosed on request at the time of opening of tenders.

PART IV: CONSIDERATION OF TENDERS

22. General

22.1 All tenders duly admitted are taken into consideration by the Department.

22.2 Tender prices will be brought to a comparative basis for evaluation purposes.

22.3 The financial standing of tenderers and their ability to manufacture or to supply goods or to render a service may be examined before their tenders are considered for acceptance.

22.4 The Department is not obliged to accept any tender. During the evaluation of tenders, the stipulations of the Preferential Procurement Policy Framework Act and its regulations will also be adhered to.

22.5 The Department may, where a tender relates to more than one item, accept such tender in respect of any specific item or items and also accept part of the specified quantity of any specific item or items.

22.6 Where a contract has been awarded on the strength of information furnished by the contractor which, after the conclusion of the relevant agreement, is proved to have been incorrect, the Department may, in addition to any other legal remedy it may have -

22.6.1 recover all costs, losses or damages it has incurred or suffered as a result of that person's conduct;

22.6.2 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;

22.6.3 impose a financial penalty more severe than the theoretical financial preference associated with the claim which was made in the tender and,

22.6.4 restrict the contractor, its shareholders and directors from obtaining business from any organ of state for a period not exceeding 10 years.

23. Equal tenders

23.1 After prices have been brought to a comparative level the following order of priority is normally applied in the consideration of equal tenders -

23.1.1 tenderers scoring the highest HDI equity points;

- 23.1.2 tenderers offering firm tender prices as well as firm delivery periods;
- 23.1.3 tenderers offering the shortest delivery periods;
- 23.1.4 tenderers offering supplies manufactured in the Republic;
- 23.1.5 tenderers offering imported supplies from local firms or persons who are in a position to give expert advice or render expert service; and
- 23.1.6 all things still being equal, the award shall be decided by the drawing of lots.

24. Quantities other than those specified

If a tender is based on quantities as defined in paragraph 7 and the tender is accepted for a quantity other than that called for or offered, the tenderer is given the option of refusing acceptance if the quantity required is less than that for which he has tendered in the case of quantities based on paragraph 7.3, or less than the minimum quantity in the case of quantities based on paragraph 7.2. However, if the tender is accepted for a larger quantity, only the excess may be refused in the case of quantities based on paragraph 7.3 or the excess above maximum quantity in the case of quantities based on paragraph 7.2 or 7.3. Written notification of rejection of the changed quantities must be received from the tenderer within 14 days of the date on which he was advised of the change, failing which he will be deemed to have accepted.

25. Notification of acceptance

- 25.1 Successful tenderers are notified by registered or certified mail.
- 25.2 Unsuccessful tenderers are notified in writing.

PART V: ADMINISTRATION OF CONTRACTS

26. Settlement of disputes

- 26.1 Should any dispute or difference arise as to the interpretation of the conditions of a tender, contract or order, the Accounting Officer shall have the option of dealing with the claim directly to determine such dispute or difference. The tenderer/contractor shall be informed in writing of the decision. The said decision shall be final and binding on the parties unless the contractor rejects the decision in writing within 21 days of receipt thereof.
- 26.2 Should the tenderer/contractor not accept the decision of the Accounting Officer, he shall be entitled to have recourse to the courts of law of the Republic, provided that any action taken by the tenderer/contractor shall not delay the execution of the contract.

27. Orders

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

28. Guarantee

- 28.1 Unless the contract stipulates otherwise, the contractor shall guarantee for a period of twelve months that no faulty material or workmanship was used in the manufacture of supplies or in the execution of services and that the finish is not defective. Should the guarantee not be complied with, the Department may, without prejudice to any other rights it may have, demand that the supplies be replaced and the services rendered without cost to the Department.
- 28.2 The period of guarantee shall commence on the date of receipt of the supplies by, or handing over of the service to, the Department or, where so specified, on the date the supplies or service are brought into commission.
- 28.3 The liability of the contractor under the guarantee shall *inter alia* also cover the free delivery to the Department, of supplies required in replacement of defective supplies, and where parts are to be replaced the liability shall include their free installation. The supplies and the parts so replaced or the services so rendered shall be guaranteed for a similar period.
29. Payment for supplies and services
- 29.1 Unless determined otherwise in a contract or by other agreement, payment will be effected after the contractor has satisfactorily complied with his obligations for which payment is claimed, within 30 days of receipt of all the required documentation that should be correct in every respect. Should a contractor offer a discount on his account provided payment is made within a certain time, every effort shall be made to take advantage of such discount, if it is in the interest of the State.
- 29.2. As a rule, payment is made to the contractor only, but when payment is claimed by another party the latter must produce a written transfer, power of attorney or authorisation and, before payment is made, the contractor must confirm that the transfer, power of attorney or authorisation has been given by him and that payment may be claimed in terms thereof.
30. Quality
- 30.1 Goods supplied and services rendered shall be in accordance with, and the contractor guarantees that they are equal in all respects to, the samples, patterns, drawings and specifications stipulated in the contract or order and unless otherwise specified, supplies shall be new and unused. Where specific grades and special brands are specified, such grades and brands only shall be supplied unless the Department agrees otherwise.
- 30.2 Where a tender calls for a supply or service according to a standard specification of any standards body, the tenderer is required to take cognisance of the provisions of the Standards Act, 1993 (Act No 293 of 1993).
31. Inspections, tests and analyses
- 31.1 All pre-tender testing will be for the account of the tenderer.
- 31.2 Inspections, tests and analyses may be carried out prior to despatch in regard of such contract supplies as may be deemed necessary by the Department. The contractor shall provide all the required facilities for the inspections, tests and analyses of the supplies free of charge and shall provide all the materials, samples, labour and available apparatus which may be required for the purpose of such inspections, tests and analyses free of charge unless otherwise specified.
- 31.3 If there are no inspection requirements in the tender documents and no mention thereof is made in the letters of acceptance, but during the contract period it is decided that inspections shall be carried

out, the Department shall itself make the necessary arrangements, including payment arrangements, with the testing authority concerned.

- 31.4 If the inspections, tests and analyses referred to in paragraphs 31.2 and 31.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the Department.
- 31.5 Where the supplies or services referred to in paragraph 31.2 and 31.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with the inspections, tests or analyses thereof shall be defrayed by the contractor.
- 31.6 Supplies and services which are referred to in paragraphs 31.2 and 31.3 and which do not comply with the contract requirements may be rejected.
- 31.7 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 and such rejected supplies shall be held at the cost and risk of the contractor 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 contractor's cost and risk. Should the contractor fail to provide the substitute supplies forthwith, the Department may, without giving the contractor further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the contractor.
- 31.8 Transport costs and any other expenses with regard to the rejected supplies shall be refunded by the contractor.
- 31.9 Where imported supplies are to be inspected before shipment, the contractor shall notify his suppliers abroad of the conditions applicable to inspections.
- 31.10 The provisions of paragraphs 31.2 to 31.9 shall not prejudice the right of the Department to cancel the contract on account of a breach of the conditions thereof, or to act in terms of paragraphs 32.1 to 32.4 hereof.

32. Failure to comply with conditions and delayed execution

- 32.1 If a tenderer amends or withdraws his tender after the closing time but before he is notified that his tender has been accepted, or when notified that his tender has been accepted, he fails, within the period stipulated in the conditions of tender or such extended period as the Department may allow, to sign a contract or to provide security when requested to do so, he shall, unless the Department decides otherwise, and without prejudice to any other right which the State may have under paragraph 32.2 to 32.4, including the right to claim damages if a less favourable tender is accepted or less favourable arrangements are to be made, forfeit any deposit which may have been made with the tenderer.
- 32.2 Should the contractor fail to comply with any of the conditions of the contract, the Department shall be entitled, without prejudice to any of its other rights, to cancel the contract.
- 32.3 Upon any delay beyond the contract period in the case of a supplies contract, the Department 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 supplies delivered later at the contractor's expense and risk, or to cancel the contract and buy

such supplies as may be required to complete the contract and without prejudice to its other rights, be entitled to claim damages from the contractor.

- 32.4 Upon any delay beyond the contract period in the case of a service contract, the Department shall, without prejudice to any other rights and without cancelling the contract, be entitled to arrange for the execution of the service not rendered, or not rendered in conformity with the contract or to cancel the contract and without prejudice to its other rights, be entitled to claim damages from the contractor.
- 32.5 In the event of the Department availing itself of the remedies provided for in paragraphs 32.2 to 32.4 -
- 32.5.1 the contractor shall bear any adverse difference in price of the said supplies or services and these amounts plus any other damages which may be suffered by the Department shall be paid by the contractor to the Department immediately on demand, or the Department may deduct such amounts from moneys (if any) otherwise payable to the contractor in respect of supplies or services rendered or to be rendered under the contract or under any other contract or any other amount due to him; or
- 32.5.2 if the contractor fails to supply the goods or render the service within the period stipulated in the contract, the Department shall have the right, unless otherwise directed by the Department, in its sole discretion either to deduct as a penalty from the value of the contract sum an amount of one-fourteenth percent thereof per day for the period of delay or to claim any damages or loss suffered in lieu of such penalty provided that where beneficial use of the completed portion is enjoyed, the penalty shall be applied to the value of the outstanding portion only.
- 32.6 No penalty or damages shall be claimed in respect of any period of delay which the contractor can prove to the satisfaction of the Department to be directly due to a state of war, sanctions, strikes, lockouts, damage to machinery as a result of accidents, fire, flood or tempest or act of God, which could not have been foreseen or overcome by the contractor, or to any act or omission on the part of persons acting in any capacity on behalf of the Department.
- 32.7 If the delivery of the supplies or the rendering of the service is likely to be delayed or is in fact being delayed on account of any of the reasons mentioned in paragraph 32.6, full particulars of the circumstances shall be reported forthwith to the Accounting Officer and at the same time the contractor shall indicate the extension of the delivery period which is desired.

33. Remedies in the case of bribes, etc.

- 33.1 If the Department is of the opinion that -
- (i) a tenderer, in relation to the obtaining of a departmental contract, or a contractor, in relation to the execution of a departmental contract has, or has caused to be promised, offered or given to an officer, employee or any other person any bribe, commission, gift, loan, advantage or any other consideration whatsoever; or
 - (ii) a tenderer or a contractor or any enterprise or person with whom a tenderer or contractor is actively associated or, where the tenderer or contractor is a company or partnership, any manager, director or any person who wholly or partly exercises or may exercise control over such a company or partnership, has acted fraudulently or in bad faith or in any improper manner in the obtaining of or in the execution of a contract with the Department, an administration, a public body or company or firm or person; or

- (iii) if the entity mentioned in paragraph 33.1(ii), in conducting his business, has contravened or neglected to comply with statutory requirements and as a result thereof has been found guilty of a criminal offence;

the Department may, without prejudice to any other remedies it may have:

- 33.1.1 in the case of a tenderer, ignore any of his tenders; and
- 33.1.2 in the case of a contractor, cancel the contract and/or in addition impose a penalty not exceeding 5% of the value of the contract or the reasonable expected profit margin of the contractor on the contract which ever is higher.

34. Restriction from tendering

- 34.1 The Department may, in addition to any other legal remedies it may have, resolve that no offer from the tenderer concerned should be considered during such period as the Department may stipulate, if the Department is of the opinion that a tenderer -

- 34.1.1 has amended or withdrawn an offer after the closing time for receipt of offers but before he has been notified of its acceptance; or

- 34.1.2 has failed to sign a contract or to provide surety within the period stipulated in the conditions of tender, or such extended period as the Department may allow, when required to do so; or

- 34.1.3 fails or has failed to comply with any of the conditions of an agreement or performs or has performed unsatisfactorily under an agreement; or

- 34.1.4 has failed to react to written notices sent to him by fax, registered and/ or certified post; or

- 34.1.5 who has concluded an agreement with the department, has promised, offered or given a bribe, or has acted in respect thereof in a fraudulent manner or in bad faith or in any other improper manner.

- 34.2 The Department may at any time amend or rescind any restriction contemplated in paragraphs 34.1.1 to 34.1.5.

- 34.3 For the purpose of paragraphs 34.1 to 34.2 the expression "tenderer", in respect of any restriction, shall also include an employee or agent of such tenderer.

- 34.4 Where the Department imposes a restriction regarding the consideration of offers from a tenderer, or amends or rescinds such restriction, it must inform the National Treasury of any resolution relative to such restriction or the rescindment or amendment thereof.

- 34.5 Whenever it comes to the attention of the Department that any other government purchasing authority has restricted a tenderer, the Department may resolve that a similar restriction be imposed on the tenderer concerned in respect of agreements with the Department.

35. Remedies in the case of death, sequestration, liquidation or judicial management

- 35.1 In the event of the death of a contractor or the provisional or final sequestration of his estate or of his cession or transfer of a contract without the approval of the Department or of the surrender of his estate or of his reaching a compromise with his creditors or of the provisional or final liquidation of a

contractor's company or the placing of its affairs under judicial management, the Department may, without prejudice to any other rights it may have, exercise any of the following options -

- 35.1.1 Cancel the contract and accept any of the tenders which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved from liability for any claim which has arisen or may arise against the contractor in respect of supplies not delivered or work not carried out by him under the contract, and the Department shall have the right to hold and retain all or any of the securities and retention moneys held by it at the date of the aforesaid occurrence until such claim has been satisfied; or
 - 35.1.2 allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expense of the estate or the contractor to carry on with and complete the contract; or
 - 35.1.3 for and on behalf of and at the cost and expense of the estate of the contractor, itself carry on with and complete the contract and in that event the Department may take over and utilise, without payment, the contractor's tools, plant and materials in whole or in part until the completion of the contract.
- 35.2 Should the Department elect to act in terms of paragraph 35.1.3 it shall give notice of its requirements to the executor, trustee, liquidator or judicial manager of the contractor's estate and should the said executor, trustee, liquidator or judicial manager fail within 14 days of the despatch of such notice to make provision to the satisfaction of the Department for the fulfilment of such requirements, or should no executor, trustee, liquidator or judicial manager be appointed within 14 days of the occurrence mentioned in paragraph 35.1, the Department may apply any remedy open to it in terms of the contract as if a breach thereof had taken place.
- 35.3 Should the Department act in terms of paragraph 35.1.3 the contractor must leave the premises immediately and may not occupy such premises on account of retention or any other right.

36. Contractor's liability

- 36.1 In the event of the contract being cancelled by the Department in the exercise of its rights in terms of these conditions, the contractor shall be liable to pay to the Department any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and the Department shall have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the contract or any other contract, or from a guarantee provided for the due fulfilment of the contract and, until such time as the amount of such losses, damages or additional costs has been determined, to retain such moneys or guarantee or any deposit as surety for any loss which the Department may suffer or have suffered.
- 36.2 The contractor may be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in the supply or service rendered or if the supply or service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the contract.

37. Sub-contracting

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

38. Non-firm prices

38.1 Price adjustments shall be considered where non-firm prices are offered on condition that acceptable documentary proof of the fluctuation is submitted.

38.2 As an alternative to paragraph 38.1 the specified formula on the tender form provides for the purpose of adjusting prices in accordance with published indices. However, the adjustment formula shall provide for a minimum fixed element of at least 15% of the price which shall not be subject to adjustment.

39. Rates of exchange

39.1 A tenderer may be compensated for rate of exchange variations, if he states that his tender prices are subjected to rate of exchange variations. He must specify the amount to be affected as well as the rate of exchange at the time of tendering in the tender document. Where the whole or a portion of the tendered price may be affected by fluctuation in the rate of exchange, the tenderer shall, in accordance with the tender requirements, state in his tender the amount to be paid in foreign currencies or to be remitted abroad, as well as the rate of exchange applied in the conversion of that amount into South African currency in calculating the tender price, and if the contract is completed within the contract period, any increase or reduction in the relevant amount as a result of any fluctuation in the rate of exchange, irrespective of whether the price is firm or not, be for the account of the Department, subject to the following conditions:

39.1.1 Where payment to the contractor is to be made in the Republic and he is required to remit part or all of the amount abroad, the contract amount in South African currency will be paid to the contractor less, or plus, an amount, as specified on the contractor's invoice and supported by the necessary proof, representing any change in the exchange rate -

39.1.1.1 which may have occurred between the date of conversion to South African currency as reflected in the tender documents and the date of the invoice, provided that the invoice date is within 10 days of the date of delivery or shipment; and

39.1.1.2 any further fluctuation in the rate of exchange which may occur between the invoice date and the actual date of remittance abroad, shall be paid by the Department to the contractor or by the contractor to the Department only if the further fluctuation in the exchange rate is more than 10% and if the remittance is made within 10 days of the date of the warrant voucher issued in payment.

39.1.2 Where it is required of the contractor to remit part or all of the amount abroad before he can invoice the Department and this is indicated in his tender and subsequently separately substantiated, the date of such remittance will be regarded as the date in respect of which the adjustments in terms of paragraph 39.1.1.1 are to be made.

39.1.3 All rate of exchange claims shall be accompanied by the following documentary evidence (failure to comply with this condition may delay or invalidate claims) -

39.1.3.1 in the case of paragraph 39.1.1.1, a copy of the relevant invoice from the foreign supplier;

39.1.3.2 in the case of paragraph 39.1.1.2, a copy of the relevant invoice from the foreign supplier for reconciliation with the bank remittance voucher and a copy of the bank remittance voucher;

39.1.3.3 if amounts that are not applicable to a specific order are included in the remittance abroad, documentary proof or a certificate of audit that substantiates the inclusion of the amount.

- 39.1.4 No adjustment shall be done in respect of any amount or percentage of the tender price which was remitted abroad and which exceeds the amount which, as contemplated in paragraph 39.1, is indicated in the tender for that purpose.
- 39.1.5 When the amount remitted abroad constitutes a larger or smaller amount or percentage of the tender price than that indicated for that purpose in the tender in accordance with paragraph 39.1 and the contractor, as a result thereof obtains a financial benefit, such benefit shall devolve upon the Department and shall, where applicable, be brought into consideration in computing any claim for compensation.
- 39.2 If it is not a condition of tender that the amount which the contractor will have to pay abroad and the relevant rate of exchange at which the amount was converted to South African currency should be indicated in the tender, price adjustments in respect of fluctuations in the rate of exchange shall be effected only when a fluctuation of currencies occur and satisfactory documentary proof is submitted, provided that the Department may in such cases cancel the contract and make other arrangements for obtaining the supplies.
- 39.3 In the case of period contracts, the tender price referred to in paragraphs 39.1 and 39.2 shall refer to the relevant contracted prices for each consignment separately.
40. Price adjustments: documentary proof and period for claims
- 40.1 The adjustment in price as contemplated in paragraphs 14.3, 38.1 to 38.2 and 39.1 to 39.3 shall cover only the period between the closing date of a tender and the final delivery date in terms of the contract.
- 40.2 Documentary proof or a certificate of audit, issued and signed by a registered chartered accountant external to the business of the contractor, in substantiation of the price adjustments claimed as contemplated in paragraphs 14.3, 38.1 to 38.2 and 39.1 to 39.3 and the effect thereof on the contract price shall be submitted by the contractor together with his claim, to the satisfaction of the Department.
- 40.3 Claims against the Department shall, unless otherwise authorised by the Department, be proved to the satisfaction of the Department as soon as possible but in any case not later than the following -
- 40.3.1 in the case of period contracts, 90 days after the change in cost or the date of advice of acceptance of the tender, whichever date is the later. Prices will be adjusted with effect from the date on which the claim was proved to the satisfaction of the Department;
- 40.3.2 in the case of non-period contracts, 90 days from the date on which the firm contractual delivery period expired if the contractual delivery period was adhered to. If he does not claim within 90 days, the contractor shall forfeit his claim to a price adjustment unless otherwise decided by the Department.
- 40.4 In cases where a price adjustment is in favour of the Department such favourable difference shall on demand be paid forthwith by the contractor to the Department or the Department 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.

- 40.5 If delivery takes place within the contracted delivery period, the contract price ruling at date of delivery shall apply. Deliveries shall not be withheld for the purpose of benefiting from price increases.
41. Stamp duty, bank charges, etc.
- The contractor is responsible for stamp duty, bank charges, bank interest and other like charges in respect of a contract.
42. Royalties and patent rights
- 42.1 The contractor is responsible for all expenses and other liabilities in regard to royalties, patent rights, trade marks or other protected rights in respect of goods supplied by him to the Department and he indemnifies the Department against any claims which may arise in connection with such rights.
- 42.2 The contractor shall at any time furnish on request, adequate surety to the satisfaction of the Department for the payment of all costs including attorney and client costs in cases where proceedings are instituted against the Department and/or its officers or employees in respect of alleged breach of patent rights, trade marks or any other protected rights.
43. State property in possession of a contractor
- 43.1 State property supplied to a contractor for the execution of a contract remains the property of the State and shall at any time be available for inspection by the Department or its representatives. Any such property in the possession of the contractor on completion of the contract shall, at the contractor's expense, be returned to the Department forthwith.
- 43.2 The contractor shall be responsible at all times for any loss of or damage to state property in his possession and if required shall furnish such surety for the payment of any such loss or damage as the Department may require.
44. Statements of supplies and services
- The contractor shall, when requested to do so, furnish particulars of supplies delivered or services rendered. If he fails to do so, the Department may, without prejudice to any other rights which it may have, institute inquiries at the expense of the contractor to obtain the required particulars.
45. Security
- 45.1 Where security is required, particulars thereof are indicated in the tender documents.
- 45.2 Security includes -
- 45.2.1 a guarantee by a banking institution registered in terms of the Banks Act, Act No 94 of 1990, as amended;
- 45.2.2 a guarantee by an insurer registered in terms of the Insurance Act, No 27 of 1943, to do insurance business;
- 45.2.3 a guarantee by the Small Business Development Corporation;
- 45.2.4 cash;

45.2.5 negotiable stock for government consumption;

45.2.6 a security bond, or in the case of service contracts, two or more acceptable sureties; or

45.2.7 such other form of security as the Department approves.

46. Transfer of contracts

The contractor shall not abandon, transfer, assign or sublet a contract or part thereof without the written permission of the Department.

47. Right to procure outside of the contract

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

47.2. 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.

48. Amendment of contracts

No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force and effect unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.