

## BIDS ADVERTISEMENT FORM

|                                                                    |                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                   |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| BID DESCRIPTION                                                    | INVITATION OF BIDS FOR THE ESTABLISHMENT OF A PANEL OF CONSULTANTS TO ASSIST OR CONDUCT COMPLIANCE ENFORCEMENT ACTIVITIES AND FORENSIC SERVICES ON BEHALF OF THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION IN TERMS OF VARIOUS APPROPRIATE SECTIONS OF THE COMPANIES ACT, NO 71 OF 2008, AS AMENDED, AND COMMISSION ACTIVITIES AND PROCEDURES FOR A PERIOD OF (36) THIRTY SIX MONTHS |                                                                                                                                                   |
| BID NUMBER                                                         | CIPC BID NUMBER: 03/2015/2016                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                   |
| NAME OF INSTITUTION                                                | COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC)                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                   |
| THE PLACE WHERE GOODS WORKS OR SERVICES ARE REQUIRED               | PRETORIA                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                   |
| BID OPENING                                                        | DATE: 30 JUNE 2015                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                   |
| BID CLOSING                                                        | DATE: 29 JULY 2015                                                                                                                                                                                                                                                                                                                                                                        | TIME: 11H00                                                                                                                                       |
| CONTACT DETAILS                                                    | POSTAL ADDRESS                                                                                                                                                                                                                                                                                                                                                                            | P.O. BOX 429, PRETORIA ,0001                                                                                                                      |
|                                                                    | PHYSICAL ADDRESS                                                                                                                                                                                                                                                                                                                                                                          | THE BID BOX IS SITUATED AT: CIPC, MAIN RECEPTION, ENTFUTFUKWENI BUILDING (BLOCK "F"), 77 MEINTJIES STREET, SUNNYSIDE, "THE DTI" CAMPUS, PRETORIA. |
|                                                                    | TEL                                                                                                                                                                                                                                                                                                                                                                                       | Tel: +27 (12) 394-5344                                                                                                                            |
|                                                                    | EMAIL                                                                                                                                                                                                                                                                                                                                                                                     | NMAQHULA@CIPC.CO.ZA                                                                                                                               |
|                                                                    | CONTACT PERSON                                                                                                                                                                                                                                                                                                                                                                            | NTOMBI MAQHULA                                                                                                                                    |
| A FEE OF R 100.00 IS PAYABLE BEFORE RECEIPT OF THE BID DOCUMENT    | PROOF OF PAYMENT SHOULD BE ATTACHED TO THE SUBMITTED PROPOSAL                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                   |
| PAYMENT DETAILS                                                    | ACCOUNT NAME: COMPANIES AND INTELLECTUAL PROPERTY COMMISSION                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                   |
|                                                                    | BANK: ABSA                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                   |
|                                                                    | ACCOUNT NUMBER: 4055272046                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                   |
| <b>FAILURE TO PROVIDE PROOF OF PAYMENT WILL DISQUALIFY THE BID</b> |                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                   |
| WHERE BIDS CAN BE COLLECTED                                        | AT CIPC, MAIN RECEPTION, ENTFUTFUKWENI BUILDING (BLOCK "F"), 77 MEINTJIES STREET, SUNNYSIDE, "THE DTI" CAMPUS, PRETORIA OR CIPC WEBSITE UNDER TENDERS, <a href="http://www.cipc.co.za">www.cipc.co.za</a> OR EMAIL: <a href="mailto:NMAQHULA@CIPC.CO.ZA">NMAQHULA@CIPC.CO.ZA</a>                                                                                                          |                                                                                                                                                   |
| WHERE BIDS SHOULD BE DELIVERED                                     | THE BID BOX IS SITUATED AT: CIPC, MAIN RECEPTION, ENTFUTFUKWENI BUILDING (BLOCK "F"), 77 MEINTJIES STREET, SUNNYSIDE, "THE DTI" CAMPUS, PRETORIA.                                                                                                                                                                                                                                         |                                                                                                                                                   |
| CATEGORY (REFER ANNEXURE A)                                        | SERVICES: PROFESSIONAL                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                   |
| SECTOR                                                             | PUBLIC ENTITY                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                   |
| REGION                                                             | GAUTENG                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                   |
| COMPULSORY BRIEFING SESSION/ SITE VISITS                           | NONE                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                   |

**NB:** It is the prospective bidders' responsibility to obtain bid documents in time so as to ensure that responses reach CIPC, timeously.

CIPC shall not be held responsible for delays in the postal service.

## TENDER DOCUMENTATION

1. Bidders should ensure that bids are delivered in time to the correct address. Late proposals will not be accepted for consideration.
2. All bids must be submitted on the official forms – (not to be re-typed)
3. Bidders should ensure that bids are delivered timeously to the correct address, bids submitted by telegram, Facsimile or other similar apparatus will not be accepted for consideration.
4. This bid is inter alia subject to the general conditions of contract (GCC) and, if applicable, any other special conditions of contract.
5. The following particulars must be furnished.

### **5.1 BIDDING STRUCTURE**

| Indicate the type of Bidding structure by marking with an 'X' |  |
|---------------------------------------------------------------|--|
| Individual Bidder                                             |  |
| Joint Venture                                                 |  |
| Consortium                                                    |  |
| With Sub Contractors                                          |  |
| Other                                                         |  |

| <b>If Joint Venture or Consortium, indicate the name/s of the partners:</b> |  |
|-----------------------------------------------------------------------------|--|
| Company Name                                                                |  |
| Registration Number                                                         |  |
| Vat registration Number                                                     |  |
| Contact Person                                                              |  |
| Telephone Number                                                            |  |
| Fax Number                                                                  |  |
| Postal Address                                                              |  |
| Physical Address                                                            |  |

|                         |  |
|-------------------------|--|
| <b>If Individual:</b>   |  |
| Name of Bidder          |  |
| Registration Number     |  |
| Vat registration Number |  |
| Contact Person          |  |
| Telephone Number        |  |
| Mobile Number           |  |
| E-mail address          |  |
| Fax Number              |  |
| Postal Address          |  |
| Physical Address        |  |

**6. PLEASE SEE ATTACHED SBD (STANDARD BIDDING DOCUMENTS THAT NEED TO BE COMPLETED AND SUBMITTED) AND ATTACHMENTS**

- ❖ **Annexure A:** SBD 1: INVITATION TO BID
- ❖ **Annexure B:** SBD 2: TAX CLEARANCE CERTIFICATE REQUIREMENTS
- ❖ **Annexure C :** SBD 3: PRICING SCHEDULE- **(NOT FOR THE PURPOSE OF THIS BID)**
- ❖ **Annexure C:** SBD 4: DECLARATION OF INTEREST
- ❖ **Annexure E:** SBD 6.1: PREFERENCE POINTS CLAIM
- ❖ **Annexure F :** SDD 8: DECLARATION OF INTEREST
- ❖ **Annexure G:** SBD 9: CERTIFICATE IF INDEPENDENT BID
- ❖ **Annexure H:** TERMS OF REFERENCE (SPECIFICATIONS) **FROM PAGE 42**

**7. CONFIDENTIAL INFORMATION DISCLOSURE NOTICE.**

- 7.1** This document may contain confidential information that is the property of CIPC.
- 7.2** .No part of the contents may be used, copied, disclosed or conveyed in whole or in part to any party in any manner whatsoever other than for preparing a proposal in response to this Bid, without prior written permission from CIPC.
- 7.3** All copyrights and Intellectual Property herein vests with CIPC.

## 8. INTRODUCTION

### 8.1 PURPOSE OF BID.

- 8.1.1 The purpose of this RFB (request for bid) (is an invitation to potential suppliers (hereinafter referred to as “Bidders”) to submit Bids for the items/products/solutions or services as detailed under Technical/solution specification or Terms of Reference.

### 8.2 OBJECTIVES.

- 8.2.1 Compliance with all relevant legislations and regulations.
- 8.2.2 Based on the Bids submitted and the outcome of the evaluation process according to the set evaluation criteria CIPC intends to select a preferred bidder/s with the view of concluding a service a service level agreement (SLA) with such successful bidder. The Bid will be evaluated in terms of the **PPPFA 80/20 preferential points system**.

### 8.3 ENQUIRIES

- 8.3.1 Should it be necessary for a bidder to obtain clarity on any matter arising from or referred to in this RFB document, please refer queries, **in writing**, to the contact person(s) listed below. Under no circumstances may any other employee within CIPC be approached for any information. Any such action might result in a disqualification of a response submitted in competition to the RFB. CIPC reserves the right to place responses to such queries on the website.

|                   |           |                                                              |
|-------------------|-----------|--------------------------------------------------------------|
| Ms Ntombi Maqhula | Telephone | 012 394-5344                                                 |
|                   | E-mail    | <a href="mailto:Nmaqhula@cipc.co.za">Nmaqhula@cipc.co.za</a> |

## 9. Definitions

- 9.1 The Companies and Intellectual Property Commission [hereinafter referred to as “CIPC”] was in terms of the provisions of the Public Finance Management Act (PFMA), established as a trading entity on 4 March 2002. Its formulation brought together the South African Companies Registration Office (SACRO) and the South African Patents and Trademarks Office (SAPTO), both former directorates of **the dti**.
- 9.2 CIPC, a trading entity within the Department of Trade and Industry, exists to register businesses and intellectual property rights, maintain related registers and develop information for disclosure to stakeholders.
- 9.3 “Acceptable Bid”-means any bid, which, in all respects complies with the specifications and conditions of the Request for bid as set out in this document.
- 9.4 “Acts” – Means the Preferential Procurement Policy Framework Act. (Act No 5 of 2000).
- 9.5 “**Agent**” ” – means a person mandated by another person (“the principal”) to do business for and on behalf of or to represent in business transaction the principal, and thereby acquire rights for the principal against an organ of state and incur obligations binding the principal in favour of an organ of state.
- 9.6 “**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 services or goods.
- 9.7 “**Bidders**” - means any enterprise, consortium or person, partnership, company, close corporation, firm or any other form of enterprise or person, legal or natural, which has been invited by CIPC to submit a bid in response to this bid invitation.
- 9.8 “**Client**” - means internal and external customers that participate in CIPC registration processes.

- 9.9 **“Comparative Price”** -- means the price after deduction or addition of non-firm price factors, unconditional discounts, etc.
- 9.10 **“Consortium”** - means several entities joining forces as an umbrella entity to gain strategic collaborative advantage by combining their expertise, capital, efforts, skills and knowledge for the purpose of executing this tender.
- 9.11 **“Firm Price”** -means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition or abolition of customs or excise duty and any other duty, levy or tax which, in terms of a law or regulation is binding on the contractor and demonstrably has influence on the price of any supplies or the rendering cost of any service, for the execution of a contract.
- 9.12 **“Goods”** – means any work, equipment, machinery, tools, materials or anything of whatever nature to be rendered to CIPRO or CIPC’s delegate by the successful vendor in terms of this bid.
- 9.13 provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution is deemed not to be an HDI.
- 9.14 **“Hosting Partners”** - means companies who entered into an agreement with CIPC in the areas of application management; application hosting, application service provision, and marketplace hosting are incorporated in this category.
- 9.15 **“Internal Collaboration”** - means collaborative arrangements within a group of companies or within various strategic business units/subsidiaries/operating divisions in order to gain a strategic position whilst sharing resources, profits and losses as well as risks
- 9.16 **“Joint Ownership”** - (also known as equity JVs) means the establishment by two parent companies of a child company for a specific task within which both parent companies invest in order to overcome the limited capabilities vested within them in order that they can both benefit from the combined investment.
- 9.17 **“Joint Venture” - (Project)** means two or more businesses joining together under a contractual agreement to conduct a specific business enterprise with both parties sharing profit and losses. The venture is for one specific project only, rather than for a continuing business relationship as in a strategic alliance. It is about sharing risk with others and providing one or more missing and needed assets and competencies.
- 9.18 **“Licenses”** - means conditional use of another party’s intellectual property rights.
- 9.19 **“Management”** - in relation to an enterprise or business, means an activity inclusive of control, and performed on a daily basis, by any person who is a principal executive officer of the company, by whatever name that person may be designated, and whether or not that person is a director.
- 9.20 **“Non-firm Price(s)”**- means all price(s) other than “firm” price(s).
- 9.21 **“Organ of State”** ” - means a constitutional institution defined in the Public Finance Management Act, Act 1 of 1999.
- 9.22 **“Person(s)”** -) - refers to a natural and/or juristic person(s).
- 9.23 **“Rand Value”** - means the total estimated value of a contract in Rand denomination, which is calculated at the time of proposal invitations and includes all applicable taxes and excise duties.
- 9.24 **“Successful Vendor”** - means the organization or person with whom the order is placed or who is contracted to execute the work as detailed in the bid.
- 9.25 **“Prime Vendor”** – means any person (natural or juristic) who forwards an acceptable proposal in response to this RFB with the intention of being the main contractor should the proposal be awarded to him/her.
- 9.26 **“Vendor Agent”** - means any person mandated by a prime vendor or consortium/joint venture to do business for and on behalf of, or to represent in a business transaction, the prime vendor and thereby acquire rights for the prime vendor or consortium/joint venture against CIPC or an organ of state and incur obligations binding the prime vendor or consortium/joint

venture in favour of CIPC or an organ of state.

- 9.27 **“SMME”** – bears the same meaning assigned to this expression in the National Small Business Act, 1996 (Act No. 102 of 1996).
- 9.28 **“Service Partners”** - means any successful vendor who is awarded the proposal or who entered into an agreement with CIPC and/or its clients to offer consulting services in areas such as but not limited to, strategic e-business consulting, evaluation, implementation and continuous improvement or system integration.
- 9.29 **“Support Partners”** – means any successful vendor who entered into partnership agreement with CIPC and/or its clients for the provision of support services to a specific solution.
- 9.30 **“Sub-Contracting”** - means the primary contractor’s assigning or leasing or making out work to, or employing another person to support such primary contractor in executing part of a project in terms of a contract.
- 9.31 **“Trust”** - means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person.
- 9.32 **“Trustee”** - means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

## 10. ACRONYMS AND ABBREVIATIONS

- I. The following acronyms and abbreviations are used in this proposal and must be similarly used in the proposal submitted in response and shall have the meaning ascribed thereto below.

| Abbreviations/Acronyms | Description                                                      |
|------------------------|------------------------------------------------------------------|
| BEE                    | Black Economic Empowerment.                                      |
| CPI                    | Consumer Price Index.                                            |
| COTS                   | Commercial of the shelf system                                   |
| DTI                    | Department of Trade and Industry                                 |
| HDI                    | Historically Disadvantaged Individuals                           |
| EDMS                   | Electronic Document Management System                            |
| IS                     | Information Systems                                              |
| ISO                    | International Standard Organization                              |
| IT                     | Information Technology                                           |
| LAN                    | Local Area Network                                               |
| NIA                    | National Intelligence Agency                                     |
| OCR/ICR                | Optical Character Recognition/Intellectual Character Recognition |
| OEM                    | Original Equipment Manufacturer                                  |
| PPPFA                  | Preferential Procurement Policy Framework Act                    |
| RFB                    | Request for Bid                                                  |
| RFP                    | Request for Proposal                                             |
| RSA                    | Republic of South Africa                                         |
| SITA                   | State Information Technology Agency                              |
| SLA                    | Service Level Agreement                                          |

|     |                   |
|-----|-------------------|
| SW  | Software          |
| WAN | Wide Area Network |
| WF  | Weighing factor   |

## **11. GENERAL RULES AND INSTRUCTIONS.**

### **11.1 CONFIDENTIALITY.**

**11.1.1** The information contained in this document is of a confidential nature, and must only be used for purposes of responding to this RFB. This confidentiality clause extends to Bidder partners and/or implementation agents, whom the Bidder may decide to involve in preparing a response to this RFB.

**11.1.2** For purposes of this process, the term “Confidential Information” shall include all technical and business information, including, without limiting the generality of the foregoing, all secret knowledge and information (including any and all financial, commercial, market, technical, functional and scientific information, and information relating to a party’s strategic objectives and planning and its past, present and future research and development), technical, functional and scientific requirements and specifications, data concerning business relationships, demonstrations, processes, machinery, know-how, architectural information, information contained in a party’s software and associated material and documentation, plans, designs and drawings and all material of whatever description, whether subject to or protected by copyright, patent or trademark, registered or un-registered, or otherwise disclosed or communicated before or after the date of this process.

**11.1.3** The receiving party shall not, during the period of validity of this process, or at any time thereafter, use or disclose, directly or indirectly, the confidential information of CIPC (even if received before the date of this process) to any person whether in the employment of the receiving party or not, who does not take part in the performance of this process.

**11.1.4** The receiving party shall take all such steps as may be reasonably necessary to prevent CIPC’s confidential information coming into the possession of unauthorised third parties. In protecting the receiving party’s confidential information, CIPC shall use the same degree of care, which does not amount to less than a reasonable degree of care, to prevent the unauthorised use or disclosure of the confidential information as the receiving party uses to protect its own confidential information.

**11.1.5** Any documentation, software or records relating to confidential information of CIPC, which comes into the possession of the receiving party during the period of validity of this process or at any time thereafter or which has so come into its possession before the period of validity of this process:

- Shall be deemed to form part of the confidential information of CIPC.
- Shall be deemed to be the property of CIPC.
- shall not be copied, reproduced, published or circulated by the receiving party unless and to the extent that such copying is necessary for the performance of this process and all other processes as contemplated in; and
- Shall be surrendered to CIPC on demand, and in any event on the termination of the investigations and negotiations, and the receiving party shall not retain any extracts.

### **11.2 News and press releases.**

**11.2.1** Bidders or their agents shall not make any news releases concerning this RFB or the awarding of the same or any resulting agreement(s) without the consent of, and then only in co-ordination with CIPC.

### **11.3 Precedence of documents.**

- 11.3.1 **11.3.1** This RFB consists of a number of sections (see list). Where there is a contradiction in terms between the clauses, phrases, words, stipulations or terms and herein referred to generally as stipulations in this RFB and the stipulations in any other document attached hereto, or the RFB submitted hereto, the relevant stipulations in this RFB shall take precedence.
- 11.3.2 Where this RFB is silent on any matter, the relevant stipulations addressing such matter and which appears in the PPPFA shall take precedence. Vendors shall refrain from incorporating any additional stipulations in its proposal submitted in terms hereof other than in the form of a clearly marked recommendation that CIPC may in its sole discretion elect to import or to ignore. Any such inclusion shall not be used for any purpose of interpretation unless it has been so imported or acknowledged by CIPC.
- 11.3.3 It is acknowledged that all stipulations in the PPPFA are not equally applicable to all matters addressed in this RFB. It however remains the exclusive domain and election of CIPC as to which of these stipulations are applicable and to what extent. Vendors are hereby acknowledging that the decision of CIPC in this regard is final and binding. The onus to enquire and obtain clarity in this regard rests with the vendor(s). The vendor(s) shall take care to restrict its enquiries in this regard to the most reasonable interpretations required to ensure the necessary consensus.

### **11.4 PREFERENTIAL PROCUREMENT REFORM.**

- 11.4.1 CIPC supports Black Economic Empowerment as an essential ingredient of its business. In accordance with government policy, CIPC insists that the private sector demonstrates its commitment and track record to Black Economic Empowerment in the areas of ownership (shareholding), skills transfer, employment equity and procurement practices (SMME Development) etc.
- 11.4.2 **CIPC will apply the principles of the Preferential Procurement Policy Framework Act, (Act No. 5 of 2000) to this proposal.**
- 11.4.3 Vendors shall complete the preference certificate attached to this proposal. In the case of a consortium and sub contractors, the preference certificate must be completed for each legal.

### **11.5 NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME.**

- 11.5.1 The Industrial Participation (IP) policy, which was endorsed by Cabinet on 30 April 1997, is applicable to contracts that have an imported content. This programme is intended to enable the DTI to negotiate obligation agreements, such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development collaboration, with service that have imported content. Clearance must be obtained from the DTI prior the award of any bid that has imported content in excess of R10 million (ten million rands).

### **11.6 LANGUAGE**

- 11.6.1 Bids shall be submitted in **English**.



## 11.7 GENDER

11.7.1 Any word implying any gender shall be interpreted to imply all other genders.

## 11.8 HEADINGS

11.8.1 Headings are incorporated into this proposal and submitted in response thereto, for ease of reference only and shall not form part thereof for any purpose of interpretation or for any other purpose.

## 11.9 SECURITY CLEARANCES.

11.9.1 Employees and sub-contractors of the vendors *may* be required to be in possession of valid security clearances to the level determined by NIA and/or CIPC commensurate with the nature of the project activities they are involved in. The cost of obtaining suitable clearances is for the account of the bidders. The vendors shall supply and maintain a list of personnel involved on the project indicating their clearance status.

## 11.10 FORMAL CONTRACT

11.10.1 This RFB, all the appended documentation and the proposal in response thereto read together, forms the basis for a formal contract to be negotiated and finalized between CIPC and the enterprise(s) to whom CIPC awards the bid in whole or in part.

11.10.2 a mere offer and acceptance shall not constitute a formal contract of any nature for any purpose between CIPC and any vendor.

## 11.11 INSTRUCTIONS FOR THE SUBMISSIONS OF A PROPOSAL.

11.11.1 **One (1) original and one (1) copy and (PDF).of the Bid shall be submitted on the date of closure of the Bid.**

- **NB: PRICING/ COSTING SCHEDULE MUST BE SUBMITTED IN A SEPARATE SEALED ENVELOPE.**
- The original copy **MUST BE SIGNED IN INK** by an authorized employee, agent or representative of the bidder and each and every page of the proposal shall contain the initials of same signatories.
- Bidders shall submit proposal responses in accordance with the prescribed manner of submissions as specified above.
- Bids must be submitted in a prescribed response format herewith reflected as [Response Format](#), and be **sealed in an envelope.**

11.11.1.1 Bidders shall submit proposal responses in accordance with the prescribed manner of submissions as specified above.

11.11.1.2 Bids must be submitted in a prescribed response format herewith reflected as [Response Format](#), and be sealed in an envelope.

11.11.1.3 Bids must be deposited into CIPC's Bid Box on or before, **29 JULY 2015, WEDNESDAY, not later than 11h00**. The Bid Box is situated at the Entfufukweni Building, Block F, Ground Floor (Reception), The DTI Campus.

11.11.1.4 The physical size of the envelope must be limited to Depth = **750mm x Width = 380mm x Height = 140mm** as the bid box aperture cannot accommodate larger sizes.

11.11.1.5 All Bids in this regard shall only be accepted if they have been placed in the bid box before or on the closing date and stipulated time.

11.11.1.6 **Bids received after the time stipulated will not be considered.**

11.11.1.7 Bid responses sent by post or courier must reach this office at least **36 hours** before the closing date to be

- 11.11.1.8 deposited into the proposal box. Failure to comply with this requirement will result in your proposal being treated as a “late proposal” and will not be entertained. Such proposal will be returned to the respective vendors.
- 11.11.1.9 **A non-refundable fee of one hundred rand (R 100.00) will be charged for bid documents, (if Consortium, Joint Venture of Sub contractor only one (1) payment per tender response must be submitted).**
- 11.11.1.10 No proposal shall be accepted by CIPC if submitted in any manner other than as **prescribed above**

## **12. RESPONSE FORMAT**

- 12.1 Bidders shall submit response in accordance with the response format specified below. Failure to do so will result in rejecting vendor’s response. No referrals may be made to comment. Failure to comply will result in the bidder being penalized

### **12.2.1. MANDATORY DOCUMENTS.**

- 12.2.1.1 Original and valid tax clearance certificate (no certified or scanned copy will be accepted). If a Consortium or Joint Venture. Original and valid Tax Clearance Certificate must be submitted for each member.

- 1.2.2.1.2 **Proof of payment must be attached upon submission of the document.**

### **12.2.2 Executive Summary**

- 12.2.2.1 The executive summary must cover the following:

- The Bidder needs to indicate to us that he is responding as a Prime contractor, joint venture, consortium or partnership and list the parties concerned
- Bidder needs to inform us that as the executive committee of the company we have duly designated the following employee name and surname to act on our behalf for the consortium, joint venture, partnership or Prime contractor.
- The Bidder markets themselves by informing us that they have done similar work for other companies and must provide us with contact details as references.
- The Bidder gives us a short summary or clarification of their response.

### **12.2.3 BIDDER PROFILE**

- Individual company/joint venture/consortium shareholders certificate(s)
- Credentials of the company/consortium members etc
- Structure of the company/ consortium members etc.
- Legal agreement between Partners, subcontractors, joint venture or consortium. In case of joint venture include *Memorandum of Understanding* governing the partnership. Whereas in the consortium, partners must submit resolutions and documentation substantiating the latter.

### 12.3 BIDDER BACKGROUND INFORMATION MATERIALS:

- 12.3.1 Bidder Operating Organisation – Provide an overview of the operating structure and geographical locations of the firm at the national, regional, and local levels.
- 12.3.2 Standards – Include information regarding your firm's utilization of widely known Industry Standards and guidelines, as they apply to your firm, your firm's proposal and proposed hardware assets.
- 12.3. Company Contact(s) – Provide the name, title, street address, city, state, telephone and fax numbers and e-mail of the primary company's contact person, and for any sub-Contractors.
- 12.3.4 Corporate Financial Status - Audited financial statements from the most recent financial year, and the preceding two financial years:
- 12.3.4.1 Indicate the percentage of total annual revenue that the proposed service generated for the most recent and the preceding two financial years.

### 12.4. LIST OF PERSONNEL

- 12.4.1 List of all personnel to be assigned to this project, by employer, identifying their qualifications to perform the tasks or functions to be assigned (include CV's).
- 12.4.2 Identify key personnel, by employer (include sub-Contractor(s)), and provide contact information.

### 13. SPECIAL CONDITIONS/ REQUIREMENTS

- Travel between the prospective contractors place of work to **the dti** (CIPC) vice versa will not be for the account of this organization, including any other disbursements.
- Government Procurement General Conditions of contract (GCC) as issued by National Treasury will be applicable on all instances. The general conditions are available on the National Treasury website ([www.treasury.gov.za](http://www.treasury.gov.za)).
- No advance payment would be made. Payment would be made in terms of the agreement signed between CIPC and the service provider. Invoices shall be entertained in terms of the PFMA and therefore paid within (30) days on receipt of an invoice
- The price quoted by the services must include Value Added Tax (VAT). Failing to comply with the condition will invalidate the prospective bidder's bid.
- The successful Bidder must at all times comply with CIPC's policies and procedures as well as maintain a high level of confidentiality of information. Failing to comply with the condition will invalidate the prospective bidder's bid.
- CIPC will not be held responsible for any costs incurred by the service provider in the preparation and submission of the Bid.
- The successful bidder and its Shareholders and Members, may be subjected to a security screening conducted by the NIA (National Intelligence Agency).
- The employees of the successful bidder, directly involved in the project, may also be subjected to a formal security clearance process. In the event of the employee not being security competent the company shall be requested to immediately replace the employee with a security competent person. In addition, all persons directly involved in the project shall be required to sign a "declaration of secrecy".

- The successful Bidder will be required to enter into a Service Level Agreement with CIPC, within One (1) month after receiving official confirmation of being awarded the Bid.
- The Bidder shall bear all costs and expenses associated with preparation and submission of its tender, and the corporation shall under no circumstances be responsible or liable for any such costs, regardless of, without limitation, the conduct or outcome of the bidding, evaluation, and selection process.
- The successful bidder will be required to fill in and sign a written Contract Form (SBD 7)/ SERVICE LEVEL AGREEMENT

#### 14. REASONS FOR DISQUALIFICATION

- 14.1 CIPC reserves the right to disqualify any bidder which does any one or more of the following, and such disqualification may take place without prior notice to the offending bidder, however the bidder will be notified in writing of such disqualification:
- 14.1.2 Bidders who do not submit a valid and original Tax Clearance Certificate on the closing date and time of the bid;
- 14.1.3 Bidders who submitted incomplete information and documentation according to the requirements of this RFB;
- 14.1.4 Bidders who submitted information that is fraudulent, factually untrue or inaccurate, for example memberships that do not exist, BEE credentials, experience, etc.
- 14.1.5 Bidders who received information not available to other vendors through fraudulent means; and/or
- 14.1.6 bidders who do not comply with *mandatory requirements* as stipulated in this RFB.
- 14.1.7 Bidders who have been blacklisted as per the National treasury database
- 14.1.8 Bidders who fail to pay/submit proof of payment
- 14.2 There will be **NO PUBLIC OPENING** of the Bids received; however, the list of bids received may be published on the CIPC website. There will be no discussions with any enterprise until evaluation of the proposal has been complete. Any subsequent discussions shall be at the discretion of CIPC. Unless specifically provided for in the proposal document, bids submitted by means of telegram, telex, facsimile or similar means will not be considered.
- 14.3 No Bids from any bidder will be accepted if sent via the Internet or e-mail.
- 14.4 All questions in respect of this proposal must be addressed by emailed to: [Nmaqhula@cipc.co.za](mailto:Nmaqhula@cipc.co.za)

#### BID PREPARATION

- 15.1 All additions to the proposal documents i.e. annexes, supporting documentation pamphlets, photographs, technical specifications and other support documentation covering the equipment and/or services offered etc. shall be neatly bound as part of the schedule concerned.
- 15.2 All responses with regard to questions posed in the bid documents shall be answered in accordance with the prescribed **RFB Response Format**.

#### 15.3 ORAL PRESENTATION AND BRIEFING SESSIONS

- 15.3.1 Bidders who submit Bids in response to this RFB may be required to give an oral presentation, which may include, but is

not limited to, an equipment/service demonstration of their proposal to CIPC. This provides an opportunity for the vendor to clarify or elaborate on the proposal. This is a fact finding and explanation session only and does not include negotiation. CIPC will schedule the time and location of these presentations. Oral presentations are an option of CIPC and may or may not be conducted. **There is NO Tender briefing session.**

15.3.2 All questions after the compulsory information/briefing session must be sent per e-mail to [Nmaghula@cipc.co.za](mailto:Nmaghula@cipc.co.za)

15.3.3 Any bidder who has reasons to believe that the tender specification is based on a specific brand must inform CIPC not later than three (3) working days after the briefing session or seven (7) working days if there is no compulsory briefing session.

## 15. GENERAL CONDITIONS OF CONTRACT/BID

Bidders shall provide full and accurate answers to all including mandatory questions posed in this document, and are required to explicitly state either "Comply/Accept (with a√)" or "Do not comply/Do not accept (with an X)" regarding compliance to the requirements. Where necessary, the bidder shall substantiate their response to a specific question.

|                                                                                                                                                                                                                                                                                                                                                            |               |                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------------|
| The laws of the Republic of South Africa shall govern this RFB and any agreement entered into. Bidders accept hereby that the courts of the Republic of South Africa shall have jurisdiction.                                                                                                                                                              | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                            |               |                      |
| CIPC shall not be liable for any costs incurred by the bidder in the preparation of response to this RFB. The preparation of response will be made without obligation to acquire any of the items included in any bidder's proposal or to select any proposal, or to discuss the reasons why such bidder's or any other proposal was accepted or rejected. | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                            |               |                      |
| CIPC may request written clarification or further information regarding any aspect of this proposal. The bidders must supply the requested information in writing within two <b>(2) days</b> after the request has been made, otherwise the proposal may be disqualified.                                                                                  | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                            |               |                      |
| In the case of consortium, Joint Venture or subcontractors, bidders are required to provide copies of signed agreements stipulating the work split and Rand value.                                                                                                                                                                                         | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                            |               |                      |
| CIPC reserves the right to; cancel/reject any proposal and not to award the proposal to the lowest bidder or award parts of the proposal to different bidders, or not to award the proposal at all.                                                                                                                                                        | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                            |               |                      |
| Where applicable, bidders who are distributors, resellers and installers of network equipment are required to submit back-to-back agreements and service level agreements with their principals.                                                                                                                                                           | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                            |               |                      |
| By submitting a proposal in response to this RFB, the bidders accept the evaluation criteria as it stands.                                                                                                                                                                                                                                                 | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                            |               |                      |
| Where applicable, CIPC reserves the right to run benchmarks on equipment during the evaluation and after the evaluation.                                                                                                                                                                                                                                   | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                            |               |                      |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |               |                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------------|
| CIPC reserves the right to conduct a pre-award survey during the source selection process to evaluate contractors' capabilities to meet the requirements specified in the RFB and supporting documents.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |               |                      |
| The bidder should not qualify the proposal with own conditions.<br><b>Caution:</b> If the bidder does not specifically withdraw its own conditions of proposal when called upon to do so, the bid response may be disqualified.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Accept</b> | <b>Do not accept</b> |
| Should the bidder withdraw the proposal before the proposal validity period expires, CIPC reserves the right to recover any additional expense incurred by CIPC having to accept any less favorable proposal or the additional expenditure incurred by CIPC in the preparation of a new RFB and by the subsequent acceptance of any less favourable proposal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |               |                      |
| Delivery of and acceptance of correspondence between CIPC and the bidder sent by prepaid registered post (by air mail if appropriate) in a correctly addressed envelope to either party's postal address or address for service of legal documents will be deemed to have been received and accepted after (2) two days from the date of postage to the South African Post Office Ltd.                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Accept</b> | <b>Do not accept</b> |
| Should the parties at any time before and or after the award of the proposal and prior to, and or after conclusion of the contract fail to agree on any significant product price or service price adjustments, change in technical specification, change in services, etc. CIPC shall be entitled within 14 (fourteen) days of such failure to agree, to recall the letter of award and cancel the proposal by giving the bidder not less than 90 (ninety) days written notice of such cancellation, in which event all fees on which the parties failed to agree increases or decreases shall, for the duration of such notice period, remain fixed on those fee/price applicable prior to the negotiations.<br><br>Such cancellation shall mean that CIPC reserves the right to award the same proposal to next best bidders as it deems fit. | <b>Accept</b> | <b>Do not accept</b> |
| In the case of a consortium or JV each of the authorized enterprise's members and/or partners of the different enterprises must co-sign this document.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |               |                      |
| Any amendment or change of any nature made to this RFB shall only be of force and effect if it is in writing, signed by CIPC authorized signatory and added to this RFB as an addendum.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |               |                      |
| Failure or neglect by either party to (at any time) enforce any of the provisions of this proposal shall not, in any manner, be construed to be a waiver of any of that party's right in that regard and in terms of this proposal. Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this proposal, or prejudice the right of that party to institute subsequent action.                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Accept</b> | <b>Do not accept</b> |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------------|
| <u>Bidders who make use of sub-contractors.</u>                                                                                                                                                                                                                                                                                                                                                                                                         | <b>Accept</b> | <b>Do not accept</b> |
| The proposal will however be awarded to the bidder as a primary contractor who will be responsible for the management of the awarded proposal. No separate contract will be entered into between CIPC and any such sub-contractors. Copies of the signed agreements between the relevant parties must be attached to the proposal responses.                                                                                                            |               |                      |
| No interest shall be payable on accounts due to the successful bidder in an event of a dispute arising on any stipulation in the contract.                                                                                                                                                                                                                                                                                                              | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| Evaluation of Bids will be performed by an evaluation panel established by CIPC. Bids will be evaluated on the basis of conformance to the required specifications as outlined in the RFB. Points will be allocated to each bidder, on the basis that the maximum number of points that may be scored for a combination of functionality and price is 90, and the maximum number of preference points that may be claimed for BEE (as per PPPFA) is 10. | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| CIPC will not be held liable for any expenses incurred by bidders, in preparing and submitting the proposal.                                                                                                                                                                                                                                                                                                                                            | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| If the successful bidder disregards contractual specifications, this action may result in the termination of the contract.                                                                                                                                                                                                                                                                                                                              | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| The bidders' response to this bid or parts of the response may be included as a whole or by reference in the final contract.                                                                                                                                                                                                                                                                                                                            | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| All bidders' who are tertiary institutions or public companies cannot claim preferential points as per the PPPFA regulations of 2001: 13. (5b).                                                                                                                                                                                                                                                                                                         | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| All bidders' who do not sign the declaration forms will not be considered for preference points.                                                                                                                                                                                                                                                                                                                                                        | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| In the evaluation of proposal, the Authority reserves the right to conduct independent reference checks.                                                                                                                                                                                                                                                                                                                                                | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| CIPC will not respond to any enquiries seventy-two (72) hours before the closing date of the bid                                                                                                                                                                                                                                                                                                                                                        | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| Should the bidder change any wording or phrase in this document, the bid will be evaluated as though no change has been effected and the original wording or phrasing will be used.                                                                                                                                                                                                                                                                     | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| Should the evaluation of this bid not be completed within the validity period of the bid, CIPC has discretion to extend the validity period.                                                                                                                                                                                                                                                                                                            | <b>Accept</b> | <b>Do not accept</b> |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                         |               |                      |
| Upon receipt of the request to extend the validity period of the bid, the bidder must respond within the required timeframes and in writing on whether or not s/he agrees to hold his/her original bid responses valid under the same terms and conditions for a further period.                                                                                                                                                                        | <b>Accept</b> | <b>Do not accept</b> |

|                                                                                                                                                                                                                                                                  |               |                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|----------------------|
| CIPC will not make any upfront/deposit payments to a successful service provider. Payments will only be made in accordance to the deliverables that will be agreed upon by the both parties.                                                                     | <b>Accept</b> | <b>Do not accept</b> |
| Respondents may not alter the wording of any criterion/question posed in this document. During the evaluation, it shall be assumed that all criteria/questions are worded as they were in the original document and the answers shall be evaluated on this basis | <b>Accept</b> | <b>Do not accept</b> |



## ANNEXURE “A”

### SBD 1

#### INVITATION TO BID

Please attach proof of payment

|                                                             |
|-------------------------------------------------------------|
| YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE CIPC) |
|-------------------------------------------------------------|

BID NUMBER\_CIPC BID NUMBER: 03/2015/2016 CLOSING DATE: 29 JULY 2015 CLOSING TIME: 11:00

|                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>BID DISCRPTION:</b> INVITATION OF BIDS FOR THE ESTABLISHMENT OF A PANEL OF CONSULTANTS TO ASSIST OR CONDUCT COMPLIANCE ENFORCEMENT ACTIVITIES AND FORENSIC SERVICES ON BEHALF OF THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION IN TERMS OF VARIOUS APPROPRIATE SECTIONS OF THE COMPANIES ACT, NO 71 OF 2008, AS AMENDED, AND COMMISSION ACTIVITIES AND PROCEDURES FOR A PERIOD OF (36) THIRTY SIX MONTHS |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### BID DOCUMENTS MAY BE POSTED TO:

77 Mentjies Street,  
Sunnyside Pretoria,  
dti Campus Block F,  
Ground Floor

OR

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)

77 Mentjies Street,  
Sunnyside Pretoria,  
dti Campus Block F,  
Ground Floor

The bid box is generally open 24 hours a day, 7 days a week.

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

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

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

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

NAME OF BIDDER: .....

POSTAL ADDRESS: .....

STREET ADDRESS: .....

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

CELLPHONE NUMBER : .....

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

E-MAIL ADDRESS .....

VAT REGISTRATION NUMBER.....

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2)

**YES or NO**

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (SBD 6.1)

**YES or NO**

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA).....☐

A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS); OR.....☐

A REGISTERED AUDITOR .....☐

**[TICK APPLICABLE BOX]**

(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE 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?  
YES or NO

IF YES ENCLOSE PROOF

SIGNATURE OF BIDDER .....

DATE .....

CAPACITY UNDER WHICH THIS BID IS

.....SIGNED.....

## **ANNEXURE “B”**

### **SBD 2**

#### **TAX CLEARANCE CERTIFICATE REQUIREMENTS**

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

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

## ANNEXURE “C”

SBD 3.3 (NOT ATTACHED)

## Annexure “D”

### SBD 4

#### DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
  - the bidder is employed by the state; and/or
  - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.
2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
  - 2.1 Full Name of bidder or his or her representative: .....
  - 2.2 Identity Number:.....
  - 2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>): .....
  - 2.4 Company Registration Number: .....  
Tax Reference Number: .....
  - 2.5 VAT Registration Number: .....
  - 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

<sup>1</sup>“State” means –

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

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

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

2.7.1 If so, furnish the following particulars:

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

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

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

Any other particulars: .....

.....

.....

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

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

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

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

.....

.....

.....

ISO 9001: 2008 Certified

The dtiCampus (Block F - Entfufukweni), 77 Meintjies Street, Sunnyside, Pretoria P O Box 429, Pretoria, 0001

Tel: +27 12 394 9973 | Fax: +27 12 394 1015 | Call Centre: 086 100 2472

Email: [tobeconfirmedbyclient@cipc.co.za](mailto:tobeconfirmedbyclient@cipc.co.za) | Website: [www.cipc.co.za](http://www.cipc.co.za)

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

2.8.1 If so, furnish particulars:

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

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

2.9.1 If so, furnish particulars.

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

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

2.10.1 If so, furnish particulars.

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

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

2.11.1 If so, furnish particulars:

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



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

| Full Name | Identity Number | Personal Tax<br>Reference Number | State Employee Number /<br>Persal Number |
|-----------|-----------------|----------------------------------|------------------------------------------|
|           |                 |                                  |                                          |
|           |                 |                                  |                                          |
|           |                 |                                  |                                          |
|           |                 |                                  |                                          |
|           |                 |                                  |                                          |
|           |                 |                                  |                                          |
|           |                 |                                  |                                          |
|           |                 |                                  |                                          |
|           |                 |                                  |                                          |



Companies and Intellectual  
Property Commission

a member of the dti group

#### 4 DECLARATION

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

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE  
GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

May 2011

ISO 9001: 2008 Certified

The dtiCampus (Block F - Entfufukweni), 77 Meintjies Street, Sunnyside, Pretoria P O Box 429, Pretoria, 0001

Tel: +27 12 394 9973 | Fax: +27 12 394 1015 | Call Centre: 086 100 2472

Email: [tobeconfirmedbyclient@cipc.co.za](mailto:tobeconfirmedbyclient@cipc.co.za) | Website: [www.cipc.co.za](http://www.cipc.co.za)

## ANNEXURE “E”

### SBD 6.1

#### PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

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, 2011.**

---

#### 1. GENERAL CONDITIONS

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

- the 90/10 system for requirements with a Rand value of up to R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed/not exceed R1 000 000 (all applicable taxes included) and therefore the.....system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

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

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

**POINTS**

1.3.1.1 **PRICE**

.....

ISO 9001: 2008 Certified

The dtiCampus (Block F - Entfufukweni), 77 Meintjies Street, Sunnyside, Pretoria P O Box 429, Pretoria, 0001

Tel: +27 12 394 9973 | Fax: +27 12 394 1015 | Call Centre: 086 100 2472

Email: [tobeconfirmedbyclient@cipc.co.za](mailto:tobeconfirmedbyclient@cipc.co.za) | Website: [www.cipc.co.za](http://www.cipc.co.za)

### 1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION .....

**Total points for Price and B-BBEE must not exceed 100**

- 1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.5 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

- 2.1 **“all applicable taxes”** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- 2.2 **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- 2.3 **“B-BBEE status level of contributor”** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- 2.4 **“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 services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- 2.5 **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- 2.6 **“comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;
- 2.7 **“consortium or joint venture”** 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;
- 2.8 **“contract”** means the agreement that results from the acceptance of a bid by an organ of state;
- 2.9 **“EME”** means any enterprise with an annual total revenue of R5 million or less.

- 2.10 **“Firm price”** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;
- 2.11 **“functionality”** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;
- 2.12 **“non-firm prices”** means all prices other than “firm” prices;
- 2.13 **“person”** includes a juristic person;
- 2.14 **“rand value”** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;
- 2.15 **“sub-contract”** means the primary contractor’s assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;
- 2.16 **“total revenue”** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;
- 2.17 **“trust”** means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person; and
- 2.18 **“trustee”** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

### 3. ADJUDICATION USING A POINT SYSTEM

- 3.1 The bidder obtaining the highest number of total points will be awarded the contract.
- 3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.
- 3.3 Points scored must be rounded off to the nearest 2 decimal places.
- 3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.
- 3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.
- 3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.





#### 4.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

**80/20**                      or                      **90/10**

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

$P_{min}$  = Comparative price of lowest acceptable bid

5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

| B-BBEE Status Level of Contributor | Number of points<br>(90/10 system) | Number of points<br>(80/20 system) |
|------------------------------------|------------------------------------|------------------------------------|
| 1                                  | 10                                 | 20                                 |
| 2                                  | 9                                  | 18                                 |
| 3                                  | 8                                  | 16                                 |
| 4                                  | 5                                  | 12                                 |
| 5                                  | 4                                  | 8                                  |
| 6                                  | 3                                  | 6                                  |
| 7                                  | 2                                  | 4                                  |
| 8                                  | 1                                  | 2                                  |
| Non-compliant contributor          | 0                                  | 0                                  |

5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

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Property Commission

- 5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 5.5 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 bid.
- 5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute sub-contract.

## 6. BID DECLARATION

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

## 7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1

- 7.1 B-BBEE Status Level of Contribution: ..... = ..... (maximum of 10 or 20 points)(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).

## 8 SUB-CONTRACTING

- 8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

- 8.1.1 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? **YES / NO** (delete which is not applicable)

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9 DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of company/firm .....

9.2 VAT registration number : .....

9.3 Company registration number .....

9.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

9.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

9.6 COMPANY CLASSIFICATION

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

[TICK APPLICABLE BOX]

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

9.8 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 contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:



- (i) The information furnished is true and correct;
- (ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form.
- (iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, 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 contribution 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) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, 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

**SIGNATURE(S) OF BIDDER(S)**

**WITNESSES:**

1. ....

2. ....

**DATE:** .....

**ADDRESS:** .....

.....

.....

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## ANNEXURE “F”

### SBD 8

#### DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
  - a. abused the institution’s supply chain management system;
  - b. committed fraud or any other improper conduct in relation to such system; or
  - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

| Item  | Question                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Yes                                 | No                                 |
|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|------------------------------------|
| 4.1   | <p>Is the bidder or any of its directors listed on the National Treasury’s Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury’s website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p> | <p>Yes</p> <input type="checkbox"/> | <p>No</p> <input type="checkbox"/> |
| 4.1.1 | If so, furnish particulars:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                     |                                    |



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Prevention and Combating of  
Corrupt Activities

|       |                                                                                                                                                                                                                                                                                                                                                                                                             |                                 |                                |
|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|--------------------------------|
| 4.2   | Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?<br><b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b> | Yes<br><input type="checkbox"/> | No<br><input type="checkbox"/> |
| 4.2.1 | If so, furnish particulars:                                                                                                                                                                                                                                                                                                                                                                                 |                                 |                                |
| 4.3   | Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?                                                                                                                                                                                                                          | Yes<br><input type="checkbox"/> | No<br><input type="checkbox"/> |
| 4.3.1 | If so, furnish particulars:                                                                                                                                                                                                                                                                                                                                                                                 |                                 |                                |
| 4.4   | Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?                                                                                                                                                                                                                                           | Yes<br><input type="checkbox"/> | No<br><input type="checkbox"/> |
| 4.4.1 | If so, furnish particulars:                                                                                                                                                                                                                                                                                                                                                                                 |                                 |                                |

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Continuation: SBD 8

## CERTIFICATION

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

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

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

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

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## ANNEXURE “G”

### SBD 9

#### CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> invited.
2. Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
3. Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
4. This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
5. In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

Continuation:- SBD 9

## CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

**Bid Number:** \_\_\_\_\_

**Description** \_\_\_\_\_  
\_\_\_\_\_

in response to the invitation for the bid made by: \_\_\_\_\_

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

I certify, on behalf of: \_\_\_\_\_ that:  
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

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**Continuation:- SBD 9**

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

<sup>3</sup> **Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.**



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**Continuation:-SBD 9**

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

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## **ANNEXURE “H”**

# **TERMS OF REFERENCE**

**CIPC BID NUMBER: 03/2015/2016**

**DISCRIPTION:**    **TERMS OF REFERENCE FOR ESTABLISHMENT OF A PANEL OF CONSULTANTS TO ASSIST OR CONDUCT COMPLIANCE ENFORCEMENT ACTIVITIES AND FORENSIC SERVICES ON BEHALF OF THE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION IN TERMS OF VARIOUS APPROPRIATE SECTIONS OF THE COMPANIES ACT, NO 71 OF 2008, AS AMENDED, AND COMMISSION ACTIVITIES AND PROCEDURES FOR A PERIOD OF (36) THIRTY SIX MONTHS**



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## 1. OBJECTIVE

The Companies and Intellectual Property Commission (“Commission”) wishes to establish a panel of consultants who can be contracted to assist the Commission with executing activities relating to the compliance, enforcement and forensic service functions in terms of the Companies Act, Act 71 of 2008, as amended (“the Act”) and Commission activities and procedures.

## 2. BACKGROUND

2.1 The Commission’s functions are outlined in Section 187 of the Act. The relevant functions for the purpose of the tender are:

### 187. Functions of Commission.

- (1) In this section, “this Act” has the meaning set out in section 1, but also includes any legislation listed in Schedule
- (2) Other than with respect to matters within the jurisdiction of the Takeover Regulation Panel, the Commission must enforce this Act, by, among other things,—

- (a) ....
- (b) monitoring proper compliance with this Act;
- (c) receiving or initiating complaints concerning alleged contraventions of this Act, evaluating those complaints, and initiating investigations into complaints;
- (d) receiving directions from the Minister in terms of section 190, concerning investigations to be conducted into alleged contraventions of this Act, or other circumstances, and conducting any such investigation;
- (e) ensuring that contraventions of this Act are promptly and properly investigated;
- (f) negotiating and concluding undertakings and consent orders contemplated in section 169 (1) (b) and 173;
- (g) issuing and enforcing compliance notices;
- (h) referring alleged offences in terms of this Act to the National Prosecuting Authority; and
- (i) referring matters to a court, and appearing before the court or the Companies Tribunal, as permitted or required by this Act.

- (3) The Commission must promote the reliability of financial statements by, among other things—

- (a) monitoring patterns of compliance with, and contraventions of, financial reporting standards; and
- (b) making recommendations to the Council for amendments to financial reporting standards, to secure better reliability and compliance.

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(4) .....

## 2.2 LEGISLATIVE FRAMEWORK

Sections that are relevant to the assistance the Commission wishes to obtain from consultant are the attached as **Annexure “A”**

## 3. ACTIVITIES RELATING TO THE COMPLIANCE, ENFORCEMENT FUNCTIONS AND FORENSIC SERVICES

3.1 The compliance, enforcement and forensic service activities require a mix of specialized legal and accounting skills and “**as and when required**” the Commission will contract consultants in order to enhance its capacity to fulfill its functions in terms of Sections 187 of the Act and the Commission procedures.

3.3 As the frequency and number of activities in terms whereof assistance might be required are not always known, it has been decided to establish a panel of consultants to draw from as and when the need arises. The consultants will be categorized in three categories:

- (i) Specialized Attorneys to provide legal and related services;
- (ii) Chartered Accountants to provide accounting services and
- (iii) Investigators to provide forensic services

## 4. INVITATION

4.1 Specialized Attorneys firms, Chartered Accountants and Forensic Investigation firms are invited to send proposals to the Commission for consideration.

4.2 In preparing the proposals it is emphasized that the profile of the firms of attorneys, accounting and forensic investigation firms must submit demonstrated expertise together with the national / international acceptability of the experts in the respective fields of law, accounting and forensic investigations together with their experience reflected in projects already dealt with. With regard to the profile of the firms, please provide among others the composition of the firm in terms of shareholding; personnel complement; and the financial position of the firms.

4.3 The respective proposals must be limited to a maximum of five pages.

4.4 It is important that the respective firms ensure continuous quality and consistency of advice and assistance.

## 5. EVALUATION

5.1 Each proposal will be evaluated in terms of the evaluation matrix as set out in paragraph 12 hereof. It must be noticed that the price is not the sole determining factor in appointing the successful firms to the proposed panel.

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## 6. SCOPE OF WORK

6.1 The respective firms will be required to render services to the Commission on a wide range of issues relating to their respective fields of law, accounting and forensic investigations, with regard to the compliance, enforcement and forensic functions and activities in respect of the following legislation and Commission activities and procedures:

- ✓ Companies Act, 2008 (Act No 71 of 2008)
- ✓ Close Corporations Act, 1984 (Act No. 69 of 1984)
- ✓ Share Blocks Control Act, 1980 (Act No. 59 of 1980)
- ✓ Co-operatives Act, 2005 (Act No. 14 of 2005)
- ✓ Copyright Act, 1978 (Act No. 98 of 1978)
- ✓ Part A of Chapter 4 of the Consumer Protection Act, 2008 (Act No. 68 of 2008)

6.2 The compliance, enforcement and forensic functions and activities range from any assistance that might be required as from initiation of the compliance, including compliance with financial reporting standards that must be in accordance with the International Financial Reporting Standards, enforcement and forensic activities up to possible criminal, civil or regulatory outcomes. **This will include procuring the services of counsel “as and when required”.**

## 7. CONDITIONS OF TENDER

7.1 This panel will be established for a period of thirty Six (36) months from date of appointment. Should it come to light during the course of the aforesaid period that the amount set aside by the Commission will be exceeded, it will become necessary to revert to the Commissioner and the Bid Adjudication Committee for approval in this regard.

7.2 Only legal practices established in accordance with the provisions of the Attorneys Act, 1979 (Act No 53 of 1979 as amended) will be considered for this tender with regard to the rendering of legal services. Confirmation of its establishment in terms of the mentioned Act must be submitted

7.3 Only Chartered Accountants registered with the Independent Regulatory Board for Auditors in accordance with Auditing Profession Act, 2005 (Act No 26 of 2005) will be considered for this tender with regard to the rendering of accounting services. Expertise with regards to International Financial Reporting Standards is critical as there will from time to time be a need to conduct sample reviews of financial statements which will have been reviewed internally by an analyst and relevant internal committees.

- 7.4 Forensic firms that want to tender will only be considered for this tender if they provide proof of their registration with appropriate and relevant institutions.
- 7.5 The requirements of the Preferential Procurement Policy Framework Act, 2000 (Act No 5 of 2000) will be applicable to the selection process in respect of this tender proposal is 80/20
- 7.6 Firms that do not score 60% or more on the technical evaluation will not be appointed to the panel.
- 7.7 A contract will be signed with each member appointed on the panel.
- 7.8 The firms will be required to sign confidentiality and indemnity agreements with the Commission.
- 7.9 The cost of every assignment will be negotiated with the relevant tendering panel members and a letter of appointment will be issued for each assignment awarded.
- 7.10 Panel members are not guaranteed any work under this tender proposal.
- 7.11 Firms / individuals will be placed on approved lists for
- i. Specialized Attorneys to provide legal and related services;
  - ii. Chartered Accountants to provide accounting services;
  - iii. Forensic Services activities.
- Only the successful applicants on the lists will be approached, either by obtaining quotes on a rotation basis or according to the bid procedure when services are required. The bid procedure will not be advertised in the Government Gazette Tender Bulletin.
- 7.12 The Commission may at its own discretion vary an instruction to include more work or to exclude work areas in the case of the latter, the firms will not be entitled to claim for any additional costs.
- 7.13 The firms may not cede or assign any part of its agreement with the Commission nor subcontract any part of the work assigned to them without prior written authorization of the Commission.
- 7.14 Failure to comply with any condition of this request for a proposal will invalidate respective tender proposal.
- 7.15 Firms must declare any interest it has in an assignment as well as declare any possible conflict of interest with the Commission in the pursuance of the proposed assignment.
- 7.16 In the event that any conflict of interest is discovered during the assignment, the Commission reserves the right to summarily cancel the agreement and demand that all information, documentation and property of the Commission be returned forthwith.
- 7.17 Assignments awarded in the last three months of the contract period will be allowed to continue after expiry of this contract period.
- 7.18 Attached herewith find [CIPC Supplier Database Annexure "B"](#) to be completed by bidders

## 8. FUTURE PROPOSAL /RFQ REQUIREMENTS





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- 8.1 Each proposal must include the specialist field of law or accounting. If a firm has expertise in more than one field of law or accounting, all relevant fields must be indicated in the proposal together with demonstrated experience in the specialized areas of law, accounting and forensic services.
- 8.2 The persons available to provide the services must be identified and their CV's provided.
- 8.3 The hourly rate of each person must be included in the proposal.
- 8.4 An assignment fee will be negotiated for every assignment issued.
- 8.5 All expenditure claims will have to be accompanied by detail time records indicating the time spend and a brief description of the activity conducted.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All copyright and intellectual property rights that may result as a consequence of the work to be performed will become the property of the Commission.
- 9.2 Firms must hand over all documents and information in any format, including copies thereof, that it received from the Commission or that it had access to during the assignment immediately after completion of the assignment to the Commission.
- 9.3 Firms shall deliver to the Commission, on completion of an assignment, any security devices, passwords or protective mechanisms to the soft versions of documents that were written and the Commission will have the right to amend and change these without obligation whatsoever to the firms upon completion of the assignment.

## **10. PROCUREMENT POLICIES AND PROCEDURES**

- 10.1 The general conditions of tender, contract and order is applicable to this tender.
- 10.2 The bidders are required to provide CV's of personnel who will be involved in an investigation, and failure to submit such will result in the invalidation of your proposal.
- 10.3 Failure to provide the following might result in a bid not to be considered: (MINIMUM REQUIREMENTS)
  - a) Bid offers must be properly received on the tender closing date and time specified on the invitation, fully completed and signed in ink as per Standard Conditions of Tender;
  - b) Submission and completion of the Declaration of Interest;
  - c) Submission of an original and valid Tax Clearance Certificate; and
  - d) Submission of the company's disclosure certificates from the Register of Companies (CIPC).

ISO 9001: 2008 Certified

The dtiCampus (Block F - Entfufukweni), 77 Meintjies Street, Sunnyside, Pretoria P O Box 429, Pretoria, 0001

Tel: +27 12 394 9973 | Fax: +27 12 394 1015 | Call Centre: 086 100 2472

Email: [tobeconfirmedbyclient@cipc.co.za](mailto:tobeconfirmedbyclient@cipc.co.za) | Website: [www.cipc.co.za](http://www.cipc.co.za)

## 11. EVALUATION CRITERIA

11.1 In order to be considered for placement on the panel, a minimum overall score of is this not 60% percent must be obtained to be placed on the panel. Bids will be evaluated in accordance with the 80/20 preference point system contemplated in the Preferential Procurement Policy Framework Act (Act 5 of 2000) as amended 2011.

| Evaluation Criteria                                                                                                                                                                                                                                                                               | Rating |   |   |   |   | Weight | Total |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|---|---|---|---|--------|-------|
|                                                                                                                                                                                                                                                                                                   | 1      | 2 | 3 | 4 | 5 |        |       |
| Functional Requirements (Please address the below mentioned criterion individually to enable proper evaluation)                                                                                                                                                                                   |        |   |   |   |   |        |       |
| Provide proof that bidder is a recognized and established Attorney/CA/Forensic Service e.g. Statutory Registrations and Professional bodies                                                                                                                                                       |        |   |   |   |   | 10     |       |
| Demonstrate current and previous projects that your company provided resources. (Please submit at least three contactable i.e. companies of similar size as references).                                                                                                                          |        |   |   |   |   | 20     |       |
| Demonstrate company experience in the mentioned services.<br>The following ratings will apply:<br>10 years and above + 3 references = 5 rating<br>6 years + 3 references = 4 rating<br>4 years + 3 references = 3 rating<br>2 years + 3 references = 2 rating<br>1 year + 3 references = 1 rating |        |   |   |   |   | 30     |       |
| Demonstrate <u>knowledge</u> of relevant legislation and regulations in respect:<br><ul style="list-style-type: none"><li>Drafting of interpretations or opinions of legislation / regulations /standards;</li><li>Understanding regulatory functions and requirements</li></ul>                  |        |   |   |   |   | 30     |       |
| Capacity/ Resources/ of the company include audited financial statements, <b>Attach CV of Key Personnel (Maximum of 3 CVs for Key Personnel)</b> in the company who will be involved on the projects should you be awarded, qualifications and experience etc.                                    |        |   |   |   |   | 10     |       |
| TOTAL                                                                                                                                                                                                                                                                                             |        |   |   |   |   | 100    |       |

**IMPORTANT:** The above criterion must be separately addressed and elaborated to allow proper evaluation of the proposal. A company profile might NOT cover all the above.



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## 12. **SUBMISSION OF PROPOSALS**

***Sealed proposals will be received at the: Tender Box at the Reception,***

77 Meintjies Street

Sunnyside, the dti campus, Block F.

**Proposals should be addressed to:**

*Manager (Supply Chain Management)*

Companies and Intellectual Property Registration Office

Block F, the dti Campus,

77 Meintjies Street,

Sunnyside

**PRETORIA**

## 13. **ENQUIRIES**

### **A. TECHNICAL QUERIES TO BE ADDRESSED TO**

Ms. Lana van Zyl

Tel: (012) 394 1151

E mail: [LvanZyl@cipc.co.za](mailto:LvanZyl@cipc.co.za)

**OR**

Mr. Joey Mathekga

Tel: (012) 394 3990

E-mail: [JMathekga@cipc.co.za](mailto:JMathekga@cipc.co.za)

### **B. SUPPLY CHAIN QUERIES TO BE ADDRESSED TO**

Mr. Solomon Motshweni

Tel: (012) 394 3971

Email: [Smotshweni@cipc.co.za](mailto:Smotshweni@cipc.co.za)

**OR**

Ms Ntombi Maqhula

Tel: (012) 394 5344

Email: [Nmaghula@cipc.co.za](mailto:Nmaghula@cipc.co.za)

## 14. **ATTACHEMENTS:**

**Annexure "A"**

**Annexure "B"**

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## **LEGISLATIVE FRAMEWORK**

Sections that are relevant to the assistance the Commission wishes to obtain from consultant are the following:

### **169. Investigation by Commission or Panel.**

- (1) Upon initiating or receiving a complaint, or receiving a direction from the Minister, in terms of this Act, the Commission or Panel, as the case may be, may—**
  - (a) except in the case of a direction from the Minister, issue a notice to the complainant in the prescribed form indicating that it will not investigate the complaint, if the complaint appears to be frivolous or vexatious, or does not allege any facts that, if proven, would constitute grounds for remedy under this Act;**
  - (b) if they think it expedient as a means of resolving the matter, refer the complainant to the Companies Tribunal, or to an accredited entity, as defined in section 166 (3), with a recommendation that the complainant seek to resolve the matter with the assistance of that agency or person; or**
  - (c) direct an inspector or investigator to investigate the complaint as quickly as practicable, in any other case.**
- (2) At any time during an investigation, the Commission or Panel, as the case may be, may—**
  - (a) designate one or more persons to assist the inspector or investigator conducting the investigation; or**
  - (b) if a complaint concerns a dispute that is internal to a particular company, and does not appear to implicate a party other than the company, the holders of its securities, its directors, committees, prescribed officers, company secretary, or auditor—**
    - (i) submit a proposal to the company seeking an agreement to jointly appoint an independent investigator—**
      - (aa) at the expense of the company, or on a cost-shared basis; and**
      - (bb) to report to both the company, and to the Commission or Panel, as the case may be; or**
    - (ii) apply to a court for an order appointing an independent investigator—**
      - (aa) at the expense of the company; and**
      - (bb) to report to both the Commission or Panel, as the case may be, and the company.**
- (3) In conducting an investigation contemplated in this section an inspector or investigator may investigate any person—**
  - (a) named in the complaint, or related to a person named in the complaint; or**
  - (b) whom the inspector reasonably considers may have information relevant to the investigation of the complaint.**

### **170. Outcome of investigation.**

- (1) After receiving the report of an inspector or independent investigator, the Commission or Panel, as the case may be, may—
- (a) excuse any person as a respondent in the complaint, if the Commission or Panel considers it reasonable to do so, having regard to the person's conduct, and the degree to which the person has cooperated with the Commission or Panel in the investigation;
  - (b) refer the complaint to the Companies Tribunal, or to the Commission or the Panel as the case may be, if the matter falls within their respective jurisdictions in terms of this Act;
  - (c) issue a notice of non-referral to the complainant, with a statement advising the complainant of any rights they may have under this Act to seek a remedy in court;
  - (d) in the case of the Commission, propose that the complainant and any affected person meet with the Commission or with the Companies Tribunal, with a view to resolving the matter by consent order;
  - (e) commence proceedings in a court in the name of the complainant, if the complainant—
    - (i) has a right in terms of this Act to apply to a court in respect of that matter; and
    - (ii) has consented to the Commission or Panel, as the case may be, doing so;
  - (f) refer the matter to the National Prosecuting Authority, or other regulatory authority concerned, if the Commission or Panel, as the case may be, alleges that a person has committed an offence in terms of this Act or any other legislation; or
  - (g) in the case of—
    - (i) the Commission, issue a compliance notice in terms of section 171; or
    - (ii) the Panel, refer the matter to the Executive Director, who may, among other things, issue a compliance notice in terms of section 171.
- (2) The Commission or Panel, as the case may be—
- (a) in its sole discretion, may publish a report contemplated in subsection (1); and
  - (b) irrespective whether it publishes such a report, must deliver a copy of the report to—
    - (i) the complainant, or a regulatory authority that requested the initiation of the complaint;
    - (ii) any person who was a subject of the investigation;
    - (iii) any court, if requested or ordered to do so by the court; and
    - (iv) any holder of securities, or creditor, of a company that was the subject of the report, or any other person implicated in the report, upon payment of the prescribed fee.
171. Issuance of compliance notices.—(1) Subject to subsection (3), the Commission, or the Executive Director of the Panel, may issue a compliance notice in the prescribed form to any person whom the Commission or Executive Director, as the case may be, on reasonable grounds believes—

- (a) has contravened this Act; or
  - (b) assented to, was implicated in, or directly or indirectly benefited from, a contravention of this Act, unless the alleged contravention could otherwise be addressed in terms of this Act by an application to a court or to the Companies Tribunal.
- (2) A compliance notice may require the person to whom it is addressed to—
- (a) cease, correct or reverse any action in contravention of this Act;
  - (b) take any action required by this Act;
  - (c) restore assets or their value to a company or any other person;
  - (d) provide a community service, in the case of a notice issued by the Commission; or
  - (e) take any other steps reasonably related to the contravention and designed to rectify its effect.
- (3) When issuing a notice in terms of subsection (1) to a regulated person or entity, the Commission or Executive Director, as the case may be, must send a copy of the notice to the regulatory authority that granted a licence or similar authority to that regulated person or entity, and in terms of which that person is authorised to conduct business.
- (4) A compliance notice contemplated in subsection (1) must set out—
- (a) the person or association to whom the notice applies;
  - (b) the provision of this Act that has been contravened;
  - (c) details of the nature and extent of the non-compliance;
  - (d) any steps that are required to be taken and the period within which those steps must be taken; and
  - (e) any penalty that may be imposed in terms of this Act if those steps are not taken.
- (5) A compliance notice issued in terms of this section, or any part of it, remains in force until—
- (a) it is set aside by—
    - (i) the Companies Tribunal, or a court upon a review of the notice, in the case of a notice issued by the Commission; or
    - (ii) the Takeover Special Committee, or a court upon a review of the notice, in the case of a notice issued by the Executive Director; or
  - (b) the Commission, or Executive Director, as the case may be, issues a compliance certificate contemplated in subsection (6).
- (6) If the requirements of a compliance notice issued in terms of subsection (1) have been satisfied, the Commission or the Executive Director, as the case may be, must issue a compliance certificate.
- (7) If a person to whom a compliance notice has been issued fails to comply with the notice, the Commission or the Executive Director, as the case may be, may either—
- (a) apply to a court for the imposition of an administrative fine; or

- (b) refer the matter to the National Prosecuting Authority for prosecution as an offence in terms of section 214 (3), but may not do both in respect of any particular compliance notice.
- 173. Consent orders.—(1) If a matter has been investigated in terms of this Part, and the Commission and the respondent have agreed a resolution of the complaint, the Commission may—
  - (a) record the resolution in the form of an order; and
  - (b) if the person who is the subject of the complaint consents to that order, apply to the High Court to have it confirmed as a consent order, in terms of its rules.
- (2) Section 167 (2) to (4), read with the changes required by the context, applies to an application contemplated in subsection (1).
- 167. Dispute resolution may result in consent order.—(1) If the Companies Tribunal, or an entity accredited in terms of section 166, has resolved, or assisted parties in resolving, a dispute in terms of this Part the Tribunal or accredited entity may—
  - (a) record the resolution of that dispute in the form of an order; and
  - (b) if the parties to the dispute consent to that order, submit it to a court to be confirmed as a consent order, in terms of its rules.
- (2) After hearing an application for a consent order, the court may—
  - (a) make the order as agreed and proposed in the application;
  - (b) indicate any changes that must be made to the draft order before it will be made an order of the court; or
  - (c) refuse to make the order.
- (3) A consent order confirmed in terms of subsection (2)—
  - (a) may include an award of damages; and
  - (b) does not preclude a person applying for an award of civil damages, unless the consent order includes an award of damages to that person.
- (4) A court hearing any proceedings concerning a dispute arising out of a consent order may order the proceedings closed to the public if it is the interest of the confidentiality of the parties to the consent order to do so.
- 84. Application of Chapter.—(1) This Chapter applies to—
  - (a) every public company, subject to sections 5 (6) and 94 (1);
  - (b) every company that is a state-owned company—
    - (i) except to the extent that the company has been exempted from the application of this Chapter, in terms of section 9; and
    - (ii) subject to subsection (3); and
  - (c) a private company, a personal liability company or a non-profit company—



- (i) if the company is required by this Act or the regulations to have its annual financial statements audited every year: Provided that the provisions of Parts B and D of this Chapter will not apply to any such company; or
  - (ii) otherwise, only to the extent that the company's Memorandum of Incorporation so requires, as contemplated in section 34 (2).
- (2) . . . . .
- (3) In the case of a state-owned company—
    - (a) if there is a conflict between a provision of this Chapter and a provision of the Public Audit Act, 2004 (Act No. 25 of 2004), the provisions of that Act prevail;
    - (b) despite the provisions of this Chapter to the contrary, the state-owned company is not required to appoint an auditor for any financial year in respect of which the Auditor-General has elected, in terms of the Public Audit Act, 2004 (Act No. 25 of 2004), to conduct an audit of that enterprise; and
    - (c) in any year in which the state-owned company is required by this Chapter to appoint an auditor, any requirement in terms of the Public Audit Act, 2004 (Act No. 25 of 2004), to have the appointment of the company's auditor approved by the Auditor-General applies to that company, in addition to the relevant provisions of this Chapter.
  - (4) Every company contemplated in subsection (1) (a) or (b) must appoint—
    - (a) a person to serve as company secretary, in the manner and for the purposes set out in Part B;
    - (b) a person to serve as auditor, in the manner and for the purposes set out in Part C; and
    - (c) an audit committee, in the manner and for the purposes set out in Part D.
  - (5) A person who is disqualified in terms of section 69 (8) to serve as a director of any particular company may not be appointed or continue to serve that company in any capacity mentioned in subsection (4), irrespective of whether that appointment is made—
    - (a) as required by this Chapter; or
    - (b) voluntarily, as contemplated in section 34 (2).
  - (6) If the board of a company fails to make an appointment as required by this Part—
    - (a) the Commission may issue a notice to that company to show cause why the Commission should not proceed to convene a shareholders meeting for the purpose of making that appointment; and
    - (b) if the company fails to respond to a notice contemplated in paragraph (a) or, in responding, fails to satisfy the Commission that the board will make the appointment, or convene a shareholders meeting to make the appointment, within an acceptable period, the Commission may—

- (i) give notice to the holders of the company's securities of a general meeting, and convene such a meeting, to make that appointment; and
  - (ii) assess a pro-rata share of the cost of convening the general meeting to each director of the company who knowingly permitted the company to fail to make the appointment in accordance with this Part.
- (7) A company that has been given notice contemplated in subsection (6) (a), or a director who has been assessed any portion of the costs of a meeting, as contemplated in subsection (6) (b), may apply to the Companies Tribunal to set aside the notice, or the assessment, in whole or in part. R 44. Appointment of auditor or company secretary
- (1) A notice of appointment of auditor, or company secretary, or of person ceasing to act in such capacity, as contemplated in section 85 (3), must be in Form CoR 44.
- (2) A notice issued by the Commission to a company that has failed to appoint an auditor, company secretary, audit committee or social and ethics committee, as required by the Act must be in the form of a compliance notice.
157. Extended standing to apply for remedies.—(1) When, in terms of this Act, an application can be made to, or a matter can be brought before, a court, the Companies Tribunal, the Panel or the Commission, the right to make the application or bring the matter may be exercised by a person—
- (a) directly contemplated in the particular provision of this Act;
  - (b) acting on behalf of a person contemplated in paragraph (a), who cannot act in their own name;
  - (c) acting as a member of, or in the interest of, a group or class of affected persons, or an association acting in the interest of its members; or
  - (d) acting in the public interest, with leave of the court.
- (2) The Commission or the Panel, acting in either case on its own motion and in its absolute discretion, may—
- (a) commence any proceedings in a court in the name of a person who, when filing a complaint with the Commission or Panel, as the case may be, in respect of the matter giving rise to those proceedings, also made a written request that the Commission or Panel do so; or
  - (b) apply for leave to intervene in any court proceedings arising in terms of this Act, in order to represent any interest that would not otherwise be adequately represented in those proceedings.
- (3) For greater certainty, nothing in this section creates a right of any person to commence any legal proceedings contemplated in section 165 (1), other than—
- (a) on behalf of a person entitled to make a demand in terms of section 165 (2); and
  - (b) in the manner set out in section 165.

#### **Section 162. Application to declare director delinquent or under probation.**

- (1) In this section, “legislation” means any national or provincial legislation—
- (a) relating to the promotion, formation or management of a juristic person;

- (b) regulating an industry or sector of an industry; or
  - (c) imposing obligations on, prohibiting any conduct by, or otherwise regulating the activities of, a juristic person.
- (2) A company, a shareholder, director, company secretary or prescribed officer of a company, a registered trade union that represents employees of the company or another representative of the employees of a company may apply to a court for an order declaring a person delinquent or under probation if—
- (a) the person is a director of that company or, within the 24 months immediately preceding the application, was a director of that company; and
  - (b) any of the circumstances contemplated in—
    - (i) subsection (5) (a) to (c) apply, in the case of an application for a declaration of delinquency; or
    - (ii) subsections (7) (a) and (8) apply, in the case of an application for probation.
- (3) The Commission or the Panel may apply to a court for an order declaring a person delinquent or under probation if—
- (a) the person is a director of a company or, within the 24 months immediately preceding the application, was a director of a company; and
  - (b) any of the circumstances contemplated in—
    - (i) subsection (5) apply, in the case of an application for a declaration of delinquency; or
    - (ii) subsections (7) and (8) apply, in the case of an application for probation.
- (4) Any organ of state responsible for the administration of any legislation may apply to a court for an order declaring a person delinquent if—
- (a) the person is a director of a company or, within the 24 months immediately preceding the application, was a director of a company; and
  - (b) any of the circumstances contemplated in subsection (5) (d) to (f) apply with respect to any legislation administered by that organ of state.
- (5) A court must make an order declaring a person to be a delinquent director if the person—
- (a) consented to serve as a director, or acted in the capacity of a director or prescribed officer, while ineligible or disqualified in terms of section 69, unless the person was acting—
    - (i) under the protection of a court order contemplated in section 69 (11); or
    - (ii) as a director as contemplated in section 69 (12);
  - (b) while under an order of probation in terms of this section or section 47 of the Close Corporations Act, 1984 (Act No. 69 of 1984), acted as a director in a manner that contravened that order;
  - (c) while a director—
    - (i) grossly abused the position of director;
    - (ii) took personal advantage of information or an opportunity, contrary to section 76 (2) (a);

- (iii) intentionally, or by gross negligence, inflicted harm upon the company or a subsidiary of the company, contrary to section 76 (2) (a);
- (iv) acted in a manner—
  - (aa) that amounted to gross negligence, wilful misconduct or breach of trust in relation to the performance of the director's functions within, and duties to, the company; or
  - (bb) contemplated in section 77 (3) (a), (b) or (c);
- (d) has repeatedly been personally subject to a compliance notice or similar enforcement mechanism, for substantially similar conduct, in terms of any legislation;
- (e) has at least twice been personally convicted of an offence, or subjected to an administrative fine or similar penalty, in terms of any legislation; or
- (f) within a period of five years, was a director of one or more companies or a managing member of one or more close corporations, or controlled or participated in the control of a juristic person, irrespective of whether concurrently, sequentially or at unrelated times, that were convicted of an offence, or subjected to an administrative fine or similar penalty, in terms of any legislation, and—
  - (i) the person was a director of each such company, or a managing member of each such close corporation or was responsible for the management of each such juristic person, at the time of the contravention that resulted in the conviction, administrative fine or other penalty; and
  - (ii) the court is satisfied that the declaration of delinquency is justified, having regard to the nature of the contraventions, and the person's conduct in relation to the management, business or property of any company, close corporation or juristic person at the time.
- (6) A declaration of delinquency in terms of—
  - (a) subsection (5) (a) or (b) is unconditional, and subsists for the lifetime of the person declared delinquent; or
  - (b) subsection (5) (c) to (f)—
    - (i) may be made subject to any conditions the court considers appropriate, including conditions limiting the application of the declaration to one or more particular categories of companies; and
    - (ii) subsists for seven years from the date of the order, or such longer period as determined by the court at the time of making the declaration, subject to subsections (11) and (12);
- (7) A court may make an order placing a person under probation, if—
  - (a) while serving as a director, the person—
    - (i) was present at a meeting and failed to vote against a resolution despite the inability of the company to satisfy the solvency and liquidity test, contrary to this Act;
    - (ii) otherwise acted in a manner materially inconsistent with the duties of a director; or
    - (iii) acted in, or supported a decision of the company to act in, a manner contemplated in section 163 (1); or



- (b) within any period of 10 years after the effective date—
- (i) the person has been a director of more than one company, or a managing member of more than one close corporation, irrespective of whether concurrently, sequentially or at unrelated times; and
- (ii) during the time that the person was a director of each such company or managing member of each such close corporation, two or more of those companies or close corporations each failed to fully pay all of its creditors or meet all of its obligations, except in terms of—
- (aa) a business rescue plan resulting from a resolution of the board in terms of section 129; or
- (bb) a compromise with creditors in terms of section 155.
- (8) The court may declare a person under probation in the circumstances contemplated in—
- (a) subsection (7) (a) (iii), only if the court is satisfied that the declaration is justified having regard to the circumstances of the company's or close corporation's conduct, if applicable, and the person's conduct in relation to the management, business or property of the company or close corporation at the time; or
- (b) subsection (7) (b), only if the court is satisfied that—
- (i) the manner in which the company or close corporation was managed was wholly or partly responsible for it failing to meet its obligations; and
- (ii) the declaration is justified, having regard to the circumstances of the company's or close corporation's failure, and the person's conduct in relation to the management, business or property of the company or close corporation at the time.
- (9) A declaration placing a person under probation—
- (a) may be made subject to any conditions the court considers appropriate, including conditions limiting the application of the declaration to one or more particular categories of companies; and
- (b) subsists for a period not exceeding five years, as determined by the court at the time it makes the declaration, subject to subsections (11) and (12).
- (10) Without limiting the powers of the court, a court may order, as conditions applicable or ancillary to a declaration of delinquency or probation, that the person concerned—
- (a) undertake a designated programme of remedial education relevant to the nature of the person's conduct as director;
- (b) carry out a designated programme of community service;
- (c) pay compensation to any person adversely affected by the person's conduct as a director, to the extent that such a victim does not otherwise have a legal basis to claim compensation; or
- (d) in the case of an order of probation—
- (i) be supervised by a mentor in any future participation as a director while the order remains in force; or

- (ii) be limited to serving as a director of a private company, or of a company of which that person is the sole shareholder.
  - (11) A person who has been declared delinquent, other than as contemplated in subsection (6) (a), or is subject to an order of probation, may apply to a court—
    - (a) to suspend the order of delinquency, and substitute an order of probation, with or without conditions, at any time more than three years after the order of delinquency was made; or
    - (b) to set aside an order of—
      - (i) delinquency at any time more than two years after it was suspended as contemplated in paragraph (a); or
      - (ii) of probation, at any time more than two years after it was made.
  - (12) On considering an application contemplated in subsection (11), the court may—
    - (a) not grant the order applied for unless the applicant has satisfied any conditions that were attached to the original order, or imposed in terms of subsection (11) (a); and
    - (b) grant an order if, having regard to the circumstances leading to the original order, and the conduct of the applicant in the ensuing period, the court is satisfied that—
      - (i) the applicant has demonstrated satisfactory progress towards rehabilitation, and
      - (ii) there is a reasonable prospect that the applicant would be able to serve successfully as a director of a company in the future.
  - (13) An applicant in terms of subsection (4) must serve the Commission with a copy of the application.
29. Financial statements.—(1) If a company provides any financial statements, including any annual financial statements, to any person for any reason, those statements must—
- (a) satisfy the financial reporting standards as to form and content, if any such standards are prescribed;
  - (b) present fairly the state of affairs and business of the company, and explain the transactions and financial position of the business of the company;
  - (c) show the company's assets, liabilities and equity, as well as its income and expenses, and any other prescribed information;
  - (d) set out the date on which the statements were published, and the accounting period to which the statements apply; and
  - (e) bear, on the first page of the statements, a prominent notice indicating—
    - (i) whether the statements—
      - (aa) have been audited in compliance with any applicable requirements of this Act;
      - (bb) if not audited, have been independently reviewed in compliance with any applicable requirements of this Act;
    - or
    - (cc) have not been audited or independently reviewed; and

- (ii) the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, those statements.
- (2) Any financial statements prepared by a company, including any annual financial statements of a company as contemplated in section 30, must not be—
  - (a) false or misleading in any material respect; or
  - (b) incomplete in any material particular, subject only to subsection (3).
- (3) A company may provide any person with a summary of any particular financial statements, but—
  - (a) any such summary must comply with any prescribed requirements; and
  - (b) the first page of the summary must bear a prominent notice—
    - (i) stating that it is a summary of particular financial statements prepared by the company, and setting out the date of those statements;
    - (ii) stating whether the financial statements that it summarises have been audited, independently reviewed, or are unaudited, as contemplated in subsection (1) (e);
    - (iii) stating the name, and professional designation, if any, of the individual who prepared, or supervised the preparation of, the financial statements that it summarises; and
    - (iv) setting out the steps required to obtain a copy of the financial statements that it summarises.
- (4) Subject to subsection (5), the Minister, after consulting the Council, may make regulations prescribing—
  - (a) financial reporting standards contemplated in this Part; or
  - (b) form and content requirements for summaries contemplated in subsection (3).
- (5) Any regulations contemplated in subsection (4)—
  - (a) must promote sound and consistent accounting practices;
  - (b) in the case of financial reporting standards for public companies, must be in accordance with the International Financial Reporting Standards of the International Accounting Standards Board or its successor body; and
  - (c) may establish different standards applicable to—
    - (i) profit and non-profit companies; and
    - (ii) different categories of profit companies.
- (6) Subject to section 214 (2), a person is guilty of an offence if the person is a party to the preparation, approval, dissemination or publication of—
  - (a) any financial statements, including any annual financial statements contemplated in section 30, knowing that those statements—
    - (i) fail in a material way to comply with the requirements of subsection (1); or
    - (ii) are materially false or misleading, as contemplated in subsection (2); or

- (b) a summary of any financial statements, knowing that—
    - (i) the statements that it summarises do not comply with the requirements of subsection (1), or are materially false or misleading, as contemplated in subsection (2); or
    - (ii) the summary does not comply with the requirements of subsection (3), or is materially false or misleading.
- 188. Reporting, research, public information and relations with other regulators.**
- (1) In addition to any other advice or reporting requirements set out in this Part, the Commission is responsible to —
- (a) advise the Minister on matters of national policy relating to company and intellectual property law, and recommend to the Minister changes to bring the law and the administration of this Act up to date and in line with international best practice;
  - (b) report to the Minister annually on the volume and nature of registration and enforcement activities in terms of this Act and on any other matter as prescribed by the Minister; and
  - (c) enquire into and report to the Minister on any matter concerning the purposes of this Act, and advise the Minister in respect of any matter referred to it by the Minister.
- (2) The Commission must increase knowledge of the nature and dynamics of company and intellectual property law, and promote public awareness of company and intellectual property law matters, by—
- (a) implementing education and information measures to develop public awareness of the provisions of this Act, and in particular to advance the purposes of this Act;
  - (b) providing guidance to the public by—
    - (i) issuing explanatory notices outlining its procedures, or its non-binding opinion on the interpretation of any provision of this Act; or
    - (ii) applying to a court for a declaratory order on the interpretation or application of any provision of this Act;
  - (c) conducting research relating to its mandate and activities and, from time to time, publishing the results of that research; and
  - (d) over time, reviewing legislation and public regulations, and reporting to the Minister concerning matters relating to company and intellectual property law.
- (3) The Commission may—
- (a) liaise with any regulatory authority on matters of common interest, and without limiting the generality of this paragraph, may exchange information with, and receive information from any such regulatory authority pertaining to—
    - (i) matters of common interest; or
    - (ii) a specific complaint or investigation;



- (b) negotiate agreements with any regulatory authority, and exercise its authority through any such agreement, to—**
- (i) co-ordinate and harmonise the exercise of jurisdiction over company and intellectual property law matters within the relevant industry or sector; and**
- (ii) ensure the consistent application of the principles of this Act;**
- (c) participate in the proceedings of any regulatory authority; and**
- (d) advise, or receive advice from, any regulatory authority.**
- (4) The Commission may liaise with any foreign or international authorities having any objects similar to the functions and powers of the Commission.**
- (5) The Commission may refer to—**
  - (a) the Competition Commission any concerns regarding conduct that may be prohibited or regulated in terms of the Competition Act;**
  - (b) the South Africa Revenue Service any concerns regarding behaviour or conduct that may be prohibited or regulated in terms of legislation within the jurisdiction of that Service;**
  - (c) the Independent Regulatory Board for Auditors any concerns regarding behaviour or conduct that may be prohibited or regulated in terms of the Auditing Profession Act; or**
  - (d) any other regulatory authority any concerns regarding behaviour or conduct that may be prohibited or regulated in terms of legislation within the jurisdiction of that regulatory authority.**