



# **AFRICAN UNION**

Standard Bidding Document

**Procurement of Goods by Open Tender  
REGIONAL COMPETITIVE BIDDING (RCB)**

## **NEPAD Planning and Coordinating Agency**

**Procurement Number: NPCA/CS/ICT/RFB/G7/2017**

**TENDER FOR THE SUPPLY, INSTALLATION AND  
COMMISSIONING OF ICT EQUIPMENT AND SOFTWARE  
FOR A FULL BACKUP SOLUTION AT NEPAD PLANNING  
AND COORDINATING AGENCY IN MIDRAND**

**Financed By: NEPAD**

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## Section 1: Invitation for Bids (IFB)

### **NEPAD PLANNING AND COORDINATING**

**Procurement Number: NPCA/CS/ICT/RFB/G-7/2017**

**TENDER FOR THE SUPPLY, INSTALLATION AND COMMISSIONING OF ICT EQUIPMENT AND SOFTWARE FOR A BACK-UP SOLUTION FOR NEPAD PLANNING AND COORDINATING AGENCY IN MIDRAND**

The NEPAD Planning and Coordinating Agency (NPCA) has reserved funds from the African Union Members States under the Institutional Transformation. The NEPAD intends to apply some of these funds under the payment for the **Supply, Installation and commissioning of ICT Equipment and Software for a Back-up Solution for NPCA in Midrand, South Africa** for which this Invitation for Bidders (IFB) is issued.

NPCA now invites sealed bids from eligible bidders for the **Supply, Installation and commissioning of ICT Equipment and Software for a Back-up Solution for NPCA in Midrand, South Africa**. Interested eligible bidders may obtain further information and inspect the bidding documents at the NPCA, Procurement and Travel Division, 230, 15<sup>th</sup> Road, Randjespark, P.O Box 218, Midrand, South Africa. The telephone numbers are **+27 11 2563648** or **+27112563600 Ext 3600**. **HOWEVER, TELEGRAPHIC AND/OR ELECTRONIC OFFERS WILL NOT BE ACCEPTED**. The Bid documents can also be accessed on the NEPAD website: [www.nepad.org](http://www.nepad.org) with the link: [www.nepad.org/tenders](http://www.nepad.org/tenders)

Interested bidders may obtain a complete set of bidding documents from NEPAD free of charge at the address indicated above.

The bids should be sent clearly marked, **“Supply, Installation and commissioning of ICT Equipment and Software for a Back-up Solution for NPCA in Midrand, South Africa”** and addressed to the Chairperson, NEPAD Internal Procurement Committee Tender Board, and must be sent not later than **Friday, 19<sup>th</sup> May, 2017 at 14:30hours local time**.

The bids must be deposited in the Tender Box at the Reception, NEPAD Planning and Coordinating Agency, 230, 15<sup>th</sup> Road, Randjespark, P.O Box 218, Midrand, South Africa, on or before **Friday, 19<sup>th</sup> May, 2017 at 14:30hours local time** and must be accompanied by a bid security of not less than 2% of the bid price.

The closing date for the receipt of bids is **Friday, 19<sup>th</sup> May, 2017 at 14:30hours at local time** and any **bid received after the time and date stipulated above will not be accepted**. The bids will be opened thereafter in the **GF10 Conference Room on the 1<sup>st</sup> floor**, at NEPAD Planning and Coordinating Agency, 230, 15<sup>th</sup> Road, Randjespark, P.O Box 218, Midrand, South Africa, **in the presence of bidders or their representatives who choose to attend. Late bids shall not be accepted.**

**Head of Procurement and Travel**  
**NEPAD Planning and Coordinating Agency.**

## Section II. Instructions to Bidders

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## **Instructions to Bidders**

### **A. Introduction**

- 1. Source of Funds**
  - 1.1 The Commission of the African Union (NEPAD) (hereinafter called “the Purchaser”) has an approved budget towards the cost of the procurement specified in the Bid Data Sheet, and intends to apply a portion of the funding to eligible payments under a contract for which this Invitation for Bids is issued.
  
- 2. Eligible Bidders**
  - 2.1 This Invitation for Bids is open to all suppliers from eligible source countries except as provided hereinafter.
  - 2.2 Bidders should not be associated, or have been associated in the past, directly or indirectly, with a firm or any of its affiliates which have been engaged by the Purchaser to provide consulting services for the preparation of the design, specifications, and other documents to be used for the procurement of the goods to be purchased under this Invitation for Bids.
  - 2.3 Bidders must not be under a declaration of suspension for corrupt, fraudulent, collusive, coercive or obstructive practices as issued by the African Union in accordance with ITB Clause 36.1.
  
- 3. Eligible Goods and Services**
  - 3.1 All goods and related services to be supplied under the contract shall have their origin in eligible source countries as defined in the Bid Data Sheet.
  - 3.2 For purposes of this clause, “origin” means the place where the goods are mined, grown, or produced, or the place from which the related services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially-recognised product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 3.3 The origin of goods and services is distinct from the nationality of the Bidder.
  
- 4. Cost of Bidding**
  - 4.1 The Bidder shall bear all costs associated with the preparation and submission of its bid, and the Purchaser will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

## **B. Bidding Documents**

- 5. Content of Bidding Documents**
- 5.1 The goods required, bidding procedures, and contract terms are prescribed in the bidding documents. In addition to the Invitation for Bids, the bidding documents include:
- (a) Instructions to Bidders (ITB)
  - (b) Bid Data Sheet (BDS)
  - (c) General Conditions of Contract (GCC)
  - (d) Special Conditions of Contract (SCC)
  - (e) Schedule of Requirements
  - (f) Technical Specifications
  - (g) Bid Form and Price Schedules
  - (h) Bid Security Form
  - (i) Contract Form
  - (j) Performance Security Form
  - (k) Bank Guarantee Form for Advance Payment
  - (l) Manufacturer's Authorisation Form
- 5.2 The Bidder is expected to examine all instructions, forms, terms, and specifications in the bidding documents. Failure to provide all information required by the bidding documents or submission of a bid not substantially responsive to the bidding documents in every respect will be at the Bidder's risk and may result in the rejection of its bid.
- 6. Clarification of Bidding Documents**
- 6.1 A prospective Bidder requiring any clarification of the bidding documents may notify the Purchaser in writing at the Purchaser's address indicated in the Bid Data Sheet. The Purchaser will respond in writing to any request for clarification of the bidding documents which it receives no later than fifteen (15) days prior to the deadline for the submission of bids prescribed in ITB Clause 19.1. Written copies of the Purchaser's response (including an explanation of the query but without identifying the source of inquiry) will be sent to all prospective bidders that have received the bidding documents.
- 7. Amendment of Bidding Documents**
- 7.1 At any time prior to the deadline for submission of bids, the Purchaser for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, may modify the bidding documents by amendment.
- 7.2 All prospective bidders that have received the bidding documents will be notified of the amendment in writing, and the amendment will be binding on them.
- 7.3 To allow prospective bidders reasonable time in which to take

the amendment into account in preparing their bids, the Purchaser, at its discretion, may extend the deadline for the submission of bids.

### **C. Preparation of Bids**

- 8. Language of Bid** 8.1 The bid prepared by the Bidder, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Purchaser, shall be written in the language specified in the Bid Data Sheet. Supporting documents and printed literature furnished by the Bidder may be in another language provided they are accompanied by an accurate translation of the relevant passages to the language specified in the Bid Data Sheet, in which case, for purposes of interpretation of the Bid, the translation shall govern.
- 9. Documents Constituting the Bid** 9.1 The bid prepared by the Bidder shall comprise the following components:
- (a) a Bid Form and a Price Schedule completed in accordance with ITB Clauses 10, 11, and 12;
  - (b) documentary evidence established in accordance with ITB Clause 13 that the Bidder is eligible to bid and is qualified to perform the contract if its bid is accepted;
  - (c) documentary evidence established in accordance with ITB Clause 14 that the goods and ancillary services to be supplied by the Bidder are eligible goods and services and conform to the bidding documents; and
  - (d) bid security furnished in accordance with ITB Clause 15.
- 10. Bid Form** 10.1 The Bidder shall complete, sign and stamp the Bid Form and the appropriate Price Schedule furnished in the bidding documents, indicating the goods to be supplied, a brief description of the goods, their country of origin, quantity, and prices.
- 10.2 Unless otherwise indicated in the Bid Data Sheet, alternative bids shall not be considered.
- 10.3 In completing the Bid Form the Bidder shall note in particular the provisions of GCC Clause 33 in respect of Taxes and Duties.
- 11. Bid Prices** 11.1 The Bidder shall indicate on the appropriate Price Schedule the unit prices (where applicable) and total bid price of the goods it proposes to supply under the contract.
- 11.2 Prices indicated on the Price Schedule shall be entered separately



in the following manner:

- (a) For goods offered from within the Country specified for delivery:
  - (i) the price of the goods quoted EXW (ex works, ex factory, ex warehouse, ex showroom, or off-the-shelf, as applicable), excluding all customs duties and sales and other taxes payable that are subject to the African Union exemption on payment of duties and taxes;
  - (ii) any such duties and taxes payable on the goods, that will be exempted if the Contract is awarded;
  - (iii) the price for inland transportation, insurance, and other local costs incidental to delivery of the goods to their final destination, if specified in the Bid Data Sheet; and
  - (iv) the price of other (incidental) services, if any, as listed in the Bid Data Sheet.
  
- (b) For goods offered from abroad:
  - (i) the price of the goods shall be quoted CIF named port of destination, or CIP border point, or CIP named place of destination, as specified in the Bid Data Sheet. In quoting the price, the Bidder shall be free to use transportation through carriers registered in any eligible countries. Similarly, the Bidder may obtain insurance services from any eligible source country;
  - (ii) the price of the goods quoted FOB port of shipment (or FCA, as the case may be), if specified in the Bid Data Sheet;
  - (iii) the price of goods quoted CFR port of destination (or CPT as the case may be), if specified in the Bid Data Sheet;
  - (iv) the price for inland transportation, insurance, and other local costs incidental to delivery of the goods from the port of entry to their final destination, if specified in the Bid Data Sheet; and
  - (v) the price of other (incidental) services, if any, as listed in the Bid Data Sheet.

11.3 The terms EXW, CIF, CIP, etc., shall be governed by the rules prescribed in the current edition of *Incoterms* published by the International Chamber of Commerce, Paris.

11.4 The Bidder's separation of price components in accordance with ITB Clause 11.2 above will be solely for the purpose of

facilitating the comparison of bids by the Purchaser and will not in any way limit the Purchaser's right to contract on any of the terms offered.

- 11.5 Prices quoted by the Bidder shall be fixed during the Bidder's performance of the contract and not subject to variation on any account, unless otherwise specified in the Bid Data Sheet. A bid submitted with an adjustable price quotation will be treated as non-responsive and will be rejected, pursuant to ITB Clause 24. If, however, in accordance with the Bid Data Sheet, prices quoted by the Bidder shall be subject to adjustment during the performance of the contract, a bid submitted with a fixed price quotation will not be rejected, but the price adjustment would be treated as zero.
- 11.6 If bids are invited for individual contracts (lots) or for any combination of contracts (packages), bidders wishing to offer any price reduction for the award of more than one Contract, shall specify in the bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package.

**12. Bid Currencies**

- 12.1 Prices shall be quoted in the following currencies:
- (a) For goods and services that the Bidder will supply from within the Country specified for delivery, the prices shall be quoted in currency of the Country specified for delivery, unless otherwise specified in the Bid Data Sheet.
  - (b) For goods and services that the Bidder will supply from outside the Country specified for delivery, the prices shall be quoted in US Dollars unless otherwise specified in the Bid Data Sheet. If the Bidder wishes to be paid in a combination of amounts in different currencies, it may quote its price accordingly but use no more than three currencies.

**13. Documents  
Establishing  
Bidder's  
Eligibility and  
Qualification**

- 13.1 Pursuant to ITB Clause 9, the Bidder shall furnish, as part of its bid, documents establishing the Bidder's eligibility to bid and its qualifications to perform the contract if its bid is accepted.
- 13.2 The documentary evidence of the Bidder's eligibility to bid shall establish to the Purchaser's satisfaction that the Bidder, at the time of submission of its bid, is from an eligible country as defined under ITB Clause 2.
- 13.3 The documentary evidence of the Bidder's qualifications to perform the contract if its bid is accepted shall establish to the Purchaser's satisfaction:
- (a) that, in the case of a Bidder offering to supply goods under

the contract which the Bidder did not manufacture or otherwise produce, the Bidder has been duly authorised by the goods' Manufacturer or producer to supply the goods in the Country specified for delivery;

- (b) that the Bidder has the financial, technical, and production capability necessary to perform the contract;
- (c) that, in the case of a Bidder not doing business within the Country specified for delivery, the Bidder is or will be (if awarded the contract) represented by an Agent in the Country specified for delivery equipped and able to carry out the Supplier's maintenance, repair, and spare parts-stocking obligations prescribed in the Conditions of Contract and/or Technical Specifications; and
- (d) that the Bidder meets the qualification criteria listed in the Bid Data Sheet.

**14. Documents  
Establishing  
Goods'  
Eligibility and  
Conformity to  
Bidding  
Documents**

14.1 Pursuant to ITB Clause 9, the Bidder shall furnish, as part of its bid, documents establishing the eligibility and conformity to the bidding documents of all goods and services which the Bidder proposes to supply under the contract.

14.2 The documentary evidence of the eligibility of the goods and services shall consist of a statement in the Price Schedule of the country of origin of the goods and services offered which shall be confirmed by a certificate of origin issued at the time of shipment.

14.3 The documentary evidence of conformity of the goods and services to the bidding documents may be in the form of literature, drawings, and data, and shall consist of:

- (a) a detailed description of the essential technical and performance characteristics of the goods;
- (b) a list giving full particulars, including available sources and current prices of spare parts, special tools, etc., necessary for the proper and continuing functioning of the goods for a period to be specified in the Bid Data Sheet, following commencement of the use of the goods by the Purchaser; and
- (c) an item-by-item commentary on the Purchaser's Technical Specifications demonstrating substantial responsiveness of the goods and services to those specifications, or a statement of deviations and exceptions to the provisions of the Technical Specifications.

14.4 For purposes of the commentary to be furnished pursuant to ITB Clause 14.3(c) above, the Bidder shall note that standards for workmanship, material, and equipment, as well as references to brand names or catalogue numbers designated by the Purchaser in its Technical Specifications, are intended to be descriptive only and not restrictive. The Bidder may substitute alternative standards, brand names, and/or catalogue numbers in its bid, provided that it demonstrates to the Purchaser's satisfaction that the substitutions ensure substantial equivalence to those designated in the Technical Specifications.

**15. Bid Security**

15.1 Pursuant to ITB Clause 9, the Bidder shall furnish, as part of its bid, a bid security in the amount specified in the Bid Data Sheet.

15.2 The bid security is required to protect the Purchaser against the risk of Bidder's conduct which would warrant the security's forfeiture, pursuant to ITB Clause 15.7.

15.3 The bid security shall be denominated in the currency of the bid or in another freely convertible currency, and shall be in one of the following forms:

- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank, in the form provided in the bidding documents or another form acceptable to the Purchaser and valid for thirty (30) days beyond the validity of the bid; or
- (b) a certified cheque.

15.4 Any bid not secured in accordance with ITB Clauses 15.1 and 15.3 will be rejected by the Purchaser as non-responsive, pursuant to ITB Clause 24.

15.5 Unsuccessful bidders' bid securities will be discharged or returned as promptly as possible but not later than thirty (30) days after the expiration of the period of bid validity prescribed by the Purchaser pursuant to ITB Clause 16.

15.6 The successful Bidder's bid security will be discharged upon the Bidder signing the contract, pursuant to ITB Clause 34, and furnishing the performance security, pursuant to ITB Clause 35.

15.7 The bid security may be forfeited:

- (a) if a Bidder:
  - (i) withdraws its bid during the period of bid validity specified by the Bidder on the Bid Form, or

(ii) does not accept the correction of errors pursuant to ITB Clause 24.2; or

(b) in the case of a successful Bidder, if the Bidder fails:

(i) to sign the contract in accordance with ITB Clause 34; or

(ii) to furnish the performance security in accordance with ITB Clause 35.

**16. Period of Validity of Bids**

16.1 Bids shall remain valid for the period specified in the Bid Data Sheet after the date of bid submission prescribed by the Purchaser, pursuant to ITB Clause 19. A bid valid for a shorter period shall be rejected by the Purchaser as non-responsive.

16.2 In exceptional circumstances, the Purchaser may solicit the Bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. The bid security provided under ITB Clause 15 shall also be suitably extended. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request will not be required nor permitted to modify its bid, except as provided in ITB Clause 16.3.

16.3 In the case of fixed price contracts, if the award is delayed by a period exceeding sixty (60) days beyond the expiry of the initial bid validity, the contract price may be increased by a factor specified in the request for extension.

**17. Format and Signing of Bid**

17.1 The Bidder shall prepare an original and the number of copies of the bid indicated in the Bid Data Sheet, clearly marking each "ORIGINAL BID" and "COPY OF BID," as appropriate. In the event of any discrepancy between them, the original shall govern.

17.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by the Bidder or a person or persons duly authorized to bind the Bidder to the contract. All pages of the original bid, except for unamended printed literature, shall be initialed by the person or persons signing the bid.

17.3 Any interlineations, erasures, or overwriting shall be valid only if they are initialed by the person or persons signing the bid.

17.4 The Bidder shall furnish information as described in the Form of Bid on commissions or gratuities, if any, paid or to be paid to agents relating to this Bid, and to contract execution if the Bidder is awarded the contract.

## **D. Submission of Bids**

### **18. Sealing and Marking of Bids**

18.1 The Bidder shall seal the original and each copy of the bid, in separate envelopes, duly marking the envelopes as “ORIGINAL” and “COPY.” The envelopes shall then be enclosed in an outer envelope and sealed.

18.2 The inner and outer envelopes shall:

- (a) be addressed to the Purchaser at the address given in the Bid Data Sheet; and
- (b) bear the Project name indicated in the Bid Data Sheet, the Invitation for Bids (IFB) title and Procurement Number indicated in the Bid Data Sheet, and a statement: “DO NOT OPEN BEFORE,” to be completed with the time and the date specified in the Bid Data Sheet, pursuant to ITB Clause 22.1.

18.3 The inner envelopes shall also indicate the name and address of the Bidder to enable the bid to be returned unopened in case it is declared “late.”

18.4 If the outer envelope is not sealed and marked as required by ITB Clause 18.2, the Purchaser will assume no responsibility for the bid’s misplacement or premature opening.

### **19. Deadline for Submission of Bids**

19.1 Bids must be received at the address specified under ITB Clause 18.2 (a) by the time and date specified in the Bid Data Sheet.

19.2 The Purchaser may, at its discretion, extend this deadline for the submission of bids by amending the bidding documents in accordance with ITB Clause 7, in which case all rights and obligations of the Purchaser and bidders previously subject to the deadline will thereafter be subject to the deadline as extended.

### **20. Late Bids**

20.1 Any bid received by the Purchaser after the deadline for submission of bids prescribed by the Purchaser pursuant to ITB Clause 19 will be rejected and returned unopened to the Bidder.

### **21. Modification and Withdrawal of Bids**

21.1 A Bidder may modify, substitute or withdraw its bid after the bid’s submission, provided that written notice of the modification, including substitution or withdrawal of the bids, is received by the Purchaser prior to the deadline prescribed for submission of bids.

21.2 The Bidder’s modification or withdrawal notice shall be prepared, sealed, marked, and dispatched in accordance with the provisions of ITB Clause 18 but in addition the envelopes shall

be clearly marked “WITHDRAWAL”, “MODIFICATION” or “REPLACEMENT BID”. A withdrawal notice may also be sent by fax or Email, but followed by a signed confirmation copy, postmarked not later than the deadline for submission of bids.

- 21.3 No bid may be modified after the deadline for submission of bids.
- 21.4 Bids requested to be withdrawn in accordance with ITB Sub-Clause 21.1 shall be returned unopened to the Bidder.
- 21.5 No bid may be withdrawn in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Bid Form. Withdrawal of a bid during this interval may result in the Bidder’s forfeiture of its bid security, pursuant to ITB Clause 15.7.

### **E. Opening and Evaluation of Bids**

#### **22. Opening of Bids by the Purchaser**

- 22.1 The Purchaser will open all bids in the presence of bidders or bidders’ representatives who choose to attend, at the time, on the date, and at the place specified in the Bid Data Sheet. The bidders or bidders’ representatives who are present shall sign an attendance sheet.
- 22.2 Envelopes marked “WITHDRAWAL” shall be opened and read out first. The inner envelopes of bids for which an acceptable notice of withdrawal has been submitted pursuant to ITB Clause 21 shall be returned un-opened to the Bidder.
- 22.3 The bidders’ names, bid modifications or withdrawals, bid prices, discounts, and the presence or absence of requisite bid security and such other details as the Purchaser, at its discretion, may consider appropriate, will be announced at the opening. No bid shall be rejected at bid opening, except for late bids, which shall be returned unopened to the Bidder pursuant to ITB Clause 20.
- 22.4 Bids (and modifications sent pursuant to ITB Clause 21.2) that are not opened and read out at bid opening shall not be considered further for evaluation, irrespective of the circumstances.
- 22.5 The Purchaser will prepare minutes of the bid opening.

#### **23. Clarification of Bids**

- 23.1 During evaluation of the bids, the Purchaser may, at its discretion, ask the Bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the prices or substance of the bid shall be sought, offered, or permitted.

**24. Preliminary Examination**

- 24.1 The Purchaser will examine the bids to determine whether they are complete, whether any computational errors have been made, whether required sureties have been furnished, whether the documents have been properly signed, and whether the bids are generally in order.
- 24.2 Arithmetical errors will be rectified on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected, unless there is an obvious discrepancy in placement of the decimal point. If there is a discrepancy between words and figures, the amount in words will prevail. If the Bidder does not accept the correction of the errors, its bid will be rejected, and its bid security may be forfeited.
- 24.3 The Purchaser may waive any minor informality, nonconformity, or irregularity in a bid which does not constitute a material deviation, provided such waiver does not prejudice or affect the relative ranking of any Bidder.
- 24.4 Prior to the detailed evaluation, pursuant to ITB Clause 26, the Purchaser will determine the substantial responsiveness of each bid to the bidding documents. For purposes of these Clauses, a substantially responsive bid is one that conforms to all the terms and conditions of the bidding documents without material deviations. Deviations from, or objections or reservations to critical provisions, such as those concerning Bid Security (ITB Clause 15), Applicable Law (GCC Clause 31), and Taxes and Duties (GCC Clause 33), will be deemed to be a material deviation. The Purchaser's determination of a bid's responsiveness is to be based on the contents of the bid itself without recourse to extrinsic evidence.
- 24.5 If a bid is not substantially responsive, it will be rejected by the Purchaser and may not subsequently be made responsive by the Bidder by correction of the nonconformity.

**25. Conversion to Single Currency**

- 25.1 To facilitate evaluation and comparison, the Purchaser will convert all bid prices expressed in the amounts in various currencies in which the bid prices are payable to either:
- (a) the currency of the Country specified for delivery at the selling exchange rate established for similar transactions by the national Central Bank;
- or**
- (b) U.S. dollars, at the selling rate of exchange published in the international press for the amount payable in foreign



currency; and at the selling exchange rate established for similar transactions by the Central Bank of the Country specified for delivery for the amount payable in local currency;

(c) the prevailing UN exchange rate

25.2 The currency selected for converting bid prices to a common base for the purpose of evaluation, along with the source and date of the exchange rate, are specified in the Bid Data Sheet.

**26. Evaluation and Comparison of Bids**

26.1 The Purchaser will evaluate and compare the bids which have been determined to be substantially responsive, pursuant to ITB Clause 24.

26.2 The Purchaser's evaluation of a bid will exclude and not take into account:

(a) in the case of goods manufactured in the Country specified for delivery, or goods of foreign origin already located in the Country specified for delivery, sales and other similar taxes, which are or will be subject to the African Union exemption on payment of taxes and duties;

(b) in the case of goods of foreign origin offered from abroad, customs duties and other similar import taxes on the goods where these are subject to the African Union exemption on payment of taxes and duties; and

(c) any allowance for price adjustment during the period of execution of the contract, if provided in the bid.

26.3 Price comparison shall be between the EXW price of the goods offered from within the Country specified for delivery, and the CIF named port of destination (or CIP border point, or CIP named place of destination) price of the goods offered from outside the Country specified for delivery.

26.4 The Purchaser's evaluation of a bid may take into account, in addition to the bid price quoted in accordance with ITB Clause 11.2, one or more of the following factors as specified in the Bid Data Sheet, and quantified in ITB Clause 26.5:

(a) cost of inland transportation, insurance, and other costs within the Country specified for delivery and incidental to delivery of the goods to their final destination.

(b) delivery schedule offered in the bid;

- (c) deviations in payment schedule from that specified in the Special Conditions of Contract;
- (d) the cost of components, mandatory spare parts, and service;
- (e) the availability in the Country specified for delivery of spare parts and after-sales services for the equipment offered in the bid;
- (f) the projected operating and maintenance costs during the life of the equipment;
- (g) the performance and productivity of the equipment offered; and/or
- (h) other specific criteria indicated in the Bid Data Sheet and/or in the Technical Specifications.

26.5 For factors retained in the Bid Data Sheet pursuant to ITB 26.4, one or more of the following quantification methods will be applied, as detailed in the Bid Data Sheet:

- (a) *Inland transportation from EXW/port of entry/border point, insurance, and incidentals.*

Inland transportation, insurance, and other incidental costs for delivery of the goods from EXW/port of entry/border point to the final destination or Project Site named in the Bid Data Sheet will be computed for each bid on the basis of published tariffs by the rail or road transport agencies, insurance companies, and/or other appropriate sources. To facilitate such computation, the Bidder shall furnish in its bid the estimated dimensions and shipping weight and the approximate EXW/CIF (or CIP border point) value of each package. The above cost will be added by the Purchaser to EXW/CIF/CIP border point price.

- (b) *Delivery schedule.*
  - (i) The Purchaser requires that the goods under the Invitation for Bids shall be delivered (shipped) at the time specified in the Schedule of Requirements. The estimated time of arrival of the goods at the final destination or Project Site will be calculated for each bid after allowing for reasonable international and inland transportation time. Treating the bid resulting in the earliest time of arrival as the base, a delivery “adjustment” will be calculated for other bids by applying a percentage, specified in the Bid Data Sheet, of the EXW/CIF/CIP price for each week of

delay beyond the base, and this will be added to the bid price for evaluation. No credit shall be given to early delivery.

**or**

- (ii) The goods covered under this invitation are required to be delivered (shipped) within an acceptable range of weeks specified in the Schedule of Requirement. No credit will be given to earlier deliveries, and bids offering delivery beyond this range will be treated as non-responsive. Within this acceptable range, an adjustment per week, as specified in the Bid Data Sheet, will be added for evaluation to the bid price of bids offering deliveries later than the earliest delivery period specified in the Schedule of Requirements.

**or**

- (iii) The goods covered under this invitation are required to be delivered (shipped) in partial shipments, as specified in the Schedule of Requirements. Bids offering deliveries earlier or later than the specified deliveries will be adjusted in the evaluation by adding to the bid price a factor equal to a percentage, specified in the Bid Data Sheet, of EXW/CIF/CIP price per week of variation from the specified delivery schedule.

(c) *Deviation in payment schedule.*

- (i) Bidders shall state their bid price for the payment schedule outlined in the SCC. Bids will be evaluated on the basis of this base price. Bidders are, however, permitted to state an alternative payment schedule and indicate the reduction in bid price they wish to offer for such alternative payment schedule. The Purchaser may consider the alternative payment schedule offered by the selected Bidder.

**or**

- (ii) The SCC stipulate the payment schedule offered by the Purchaser. If a bid deviates from the schedule and if such deviation is considered acceptable to the Purchaser, the bid will be evaluated by calculating interest earned for any earlier payments involved in the terms outlined in the bid as compared with those stipulated in this invitation, at the rate per annum specified in the Bid Data Sheet.

(d) *Cost of spare parts.*

- (i) The list of items and quantities of major assemblies, components, and selected spare parts, likely to be required during the initial period of operation

specified in the Bid Data Sheet, is annexed to the Technical Specifications. The total cost of these items, at the unit prices quoted in each bid, will be added to the bid price.

**or**

- (ii) The Purchaser will draw up a list of high-usage and high-value items of components and spare parts, along with estimated quantities of usage in the initial period of operation specified in the Bid Data Sheet. The total cost of these items and quantities will be computed from spare parts unit prices submitted by the Bidder and added to the bid price.

**or**

- (iii) The Purchaser will estimate the cost of spare parts usage in the initial period of operation specified in the Bid Data Sheet, based on information furnished by each Bidder, as well as on past experience of the Purchaser or other purchasers in similar situations. Such costs shall be added to the bid price for evaluation.

- (e) *Spare parts and after sales service facilities in the Country specified for delivery.*

The cost to the Purchaser of establishing the minimum service facilities and parts inventories, as outlined in the Bid Data Sheet or elsewhere in the bidding documents, if quoted separately, shall be added to the bid price.

- (f) *Operating and maintenance costs.*

Since the operating and maintenance costs of the goods under procurement form a major part of the life cycle cost of the equipment, these costs will be evaluated in accordance with the criteria specified in the Bid Data Sheet or in the Technical Specifications.

- (g) *Performance and productivity of the equipment.*

- (i) Bidders shall state the guaranteed performance or efficiency in response to the Technical Specification. For each drop in the performance or efficiency below the norm of 100, an adjustment for an amount specified in the Bid Data Sheet will be added to the bid price, representing the capitalised cost of additional operating costs over the life of the plant, using the methodology specified in the Bid Data Sheet or in the Technical Specifications.

**or**

- (ii) Goods offered shall have a minimum productivity specified under the relevant provision in the Technical Specifications to be considered responsive. Evaluation shall be based on the cost per unit of the actual productivity of goods offered in the bid, and adjustment will be added to the bid price using the methodology specified in the Bid Data Sheet or in the Technical Specifications.

(h) *Specific additional criteria*

Other specific additional criteria to be considered in the evaluation and the evaluation method shall be detailed in the Bid Data Sheet and/or the Technical Specifications.

26.6 When bids are invited for individual lots and award of multiple contracts to individual bidders is permitted, the methodology of evaluation and the application of any conditional discounts to determine the award of contracts shall be specified in the Bid Data Sheet.

**27. Margin of Preference**

27.1 If the Bid Data Sheet so specifies, the Purchaser will grant a margin of preference to goods supplied from within African Union Member States for the purpose of bid comparison, for which this clause shall apply.

27.2 African Union bidders shall provide all evidence necessary to prove that they meet the following criteria to be eligible for a margin of preference in the comparison of their bids with those of bidders who do not qualify for the preference. They should:

- (a) be registered within a Member State of the African Union;
- (b) have majority ownership by nationals of Member States of the African Union;
- (c) not subcontract more than ten (10) percent of the Contract Price to foreign suppliers; and
- (d) satisfy any other criteria specified for the purpose of eligibility for the margin of preference, as specified in the Bidding Data.

27.3 Joint ventures of African Union Member State firms may be eligible for the margin of preference provided that:

- (a) individual partners satisfy the criteria of eligibility of ITB Clauses 27.2 (a) and (b);

- (b) the joint venture is registered in the Country specified for performance of the works;
- (c) the joint venture shall not subcontract more than ten (10) percent of the Contract Price, to foreign firms; and
- (d) satisfy any other criteria specified for the purpose of margin of preference eligibility, as specified in the Bidding Data.

27.4 The following procedure will be used to apply the margin of preference:

- (a) Responsive bids will be classified into the following groups:
  - (i) Group A: bids offered by African Union Member State bidders and joint ventures meeting the respective criteria of ITB Clauses 27.2 and 27.3 above; and
  - (ii) Group B: all other bids.
- (b) For the purpose of evaluation and comparison of bids only, an amount equal to the percentage stated in the Bidding Data of the evaluated Bid prices determined in accordance with ITB Clause 26. will be added to all bids classified in Group B.

**28. Contacting the Purchaser**

- 28.1 From the time of bid opening to the time of contract award, if any bidder wishes to contact the Purchaser on any matter related to the bid, it should do so in writing.
- 28.2 Any effort by a Bidder to influence the Purchaser in its decisions on bid evaluation, bid comparison, or contract award shall result in the rejection of the Bidder's bid.

**F. Award of Contract**

**29. Post-qualification**

- 29.1 In the absence of pre-qualification, the Purchaser will determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated cost responsive bid is qualified to perform the contract satisfactorily, in accordance with the criteria listed in ITB Clause 13.3.
- 29.2 The determination will take into account the Bidder's financial, technical, and production capabilities. It will be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB Clause 13.3, as well as such other information as the Purchaser deems

necessary and appropriate.

29.3 An affirmative determination will be a prerequisite for award of the contract to the Bidder. A negative determination will result in rejection of the Bidder's bid, in which event the Purchaser will proceed to the next lowest evaluated cost bid to make a similar determination of that Bidder's capabilities to perform satisfactorily.

**30. Award  
Criteria**

30.1 Subject to ITB Clause 32, the Purchaser will award the contract to the successful Bidder whose bid has been determined to be substantially responsive and has been determined to be the lowest evaluated cost bid, provided further that the Bidder is determined to be qualified to perform the contract satisfactorily.

**31. Purchaser's  
Right to Vary  
Quantities at  
Time of Award**

31.1 The Purchaser reserves the right at the time of contract award to increase or decrease, by the percentage indicated in the Bid Data Sheet, the quantity of goods and services originally specified in the Schedule of Requirements without any change in unit price or other terms and conditions.

**32. Purchaser's  
Right to  
Accept Any  
Bid and to  
Reject Any or  
All Bids**

32.1 The Purchaser reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to the affected Bidder or bidders.

**33. Notification of  
Award**

33.1 Prior to the expiration of the period of bid validity, the Purchaser will notify the successful Bidder in writing by registered letter or courier service that its bid has been accepted.

33.2 The notification of award will constitute the formation of the Contract.

33.3 Upon the successful Bidder's furnishing of the performance security pursuant to ITB Clause 35, the Purchaser will promptly notify the name of the winning Bidder to each unsuccessful Bidder and will discharge its bid security, pursuant to ITB Clause 15.

33.4 If, after notification of award, a Bidder wishes to ascertain the grounds on which its bid was not selected, it should address its request to the Purchaser. The Purchaser will promptly respond in writing to the unsuccessful Bidder.

**34. Signing of  
Contract**

34.1 At the same time as the Purchaser notifies the successful Bidder that its bid has been accepted, the Purchaser will send the Bidder the Contract Form provided in the bidding documents,

incorporating all agreements between the parties.

34.2 Within fourteen (14) days of receipt of the Contract Form, the successful Bidder shall sign and date the contract and return it to the Purchaser

**35. Performance Security**

35.1 Within fourteen (14) days of the receipt of notification of award from the Purchaser, the successful Bidder shall, if required, furnish the performance security in accordance with the Conditions of Contract, using the Performance Security Form provided in the bidding documents, or in another form acceptable to the Purchaser.

35.2 Failure of the successful Bidder to comply with the requirement of ITB Clause 34.2 or ITB Clause 35.1 shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security, in which event the Purchaser may make the award to the next lowest evaluated cost Bidder or call for new bids.

**36. Fraud and Corruption**

36.1 The African Union requires that Officers of the AU, as well as Bidders/ Suppliers/Contractors, observe the highest standard of ethics during the procurement and execution of such contracts.<sup>1</sup> In pursuance of this policy the AU:

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
  - (i) “corrupt practice”<sup>2</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
  - (ii) “fraudulent practice”<sup>3</sup> is any act or omission including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
  - (iii) “collusive practice”<sup>4</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

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<sup>1</sup> *In this context, any action taken by a bidder, supplier, contractor, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.*

<sup>2</sup> *“another party” refers to an officer of the AU acting in relation to the procurement process or contract execution. In this context, “officer of the AU” includes staff and employees of other organisations taking or reviewing procurement decisions.*

<sup>3</sup> *a “party” refers to any officer of the AU; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.*

<sup>4</sup> *“parties” refers to any participants in the procurement process (including officers of the AU) attempting to establish bid prices at artificial, non competitive levels.*



- (iv) “coercive practice”<sup>5</sup> is impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
  - (v) “obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to any investigation or making false statements to investigators in order to materially impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation;
- (b) will reject a recommendation for award of contract if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;
  - (c) will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded an African Union financed contract if it at any time determines that the firm has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for, or in executing, an African Union financed contract.

36.2 Furthermore, Bidders shall be aware of the provision stated in Clause 24.1 of the General Conditions of Contract.

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<sup>5</sup> a “party” refers to any participant in the procurement process or contract execution.

## Section III. Bid Data Sheet

The following specific data for the goods to be procured shall complement, supplement, or amend the provisions in the Instructions to Bidders (ITB). Whenever there is a conflict, the provisions herein shall prevail over those in the ITB.

<b>Introduction</b>	
<b>ITB Clause 1.1</b>	Funding for this procurement is provided by: <b>NEPAD Planning and Coordinating Agency</b>
<b>ITB Clause 1.1</b>	Name of Purchaser: <b>NEPAD Planning and Coordinating Agency</b>
<b>ITB Clause 1.1</b>	The Procurement Number is: <b>NPCA/CS/ICT/RFB/G-7/2017</b>
<b>ITB Clause 1.1</b>	Project Title/Name of Contract:  <b>TENDER FOR THE SUPPLY, INSTALLATION AND COMMISSIONING OF ICT EQUIPMENT AND SOFTWARE FOR A BACK-UP SOLUTION FOR NEPAD PLANNING AND COORDINATING AGENCY IN MIDRAND</b>
<b>ITB Clause 3.1</b>	The eligible origin of goods and services shall be restricted to countries that are Member States of the <b>United Nations and African Union.</b>
<b>ITB Clause 6.1</b>	Purchaser's address, telephone, and facsimile numbers.  <b>NEPAD Planning and Coordinating Agency, Procurement &amp; Travel Division 230, 15<sup>th</sup> Road, Randjespark P.O. Box 218 Midrand, Johannesburg, South Africa.</b>  <b>Email: <a href="mailto:vincentm@nepad.org">vincentm@nepad.org</a> or <a href="mailto:victorineb@nepad.org">victorineb@nepad.org</a></b>
<b>ITB Clause 8.1</b>	The Language of the Bid is: <b>English</b>

<b>Bid Price and Currency</b>	
<b>ITB Clause 11.2</b> <b>(a)</b> <b>(iii) or (iv)</b> <b>(optional)</b>	<i>Prices for inland transportation must also be quoted in addition to the CIF or CIP total prices: <b>Not Applicable</b></i>
<b>ITB Clause 11.2</b> <b>(b)(i)</b>	The price of the goods shall be quoted on: <b>CIF NEPAD Offices in Randjespark, Midrand or CIP OR Tambo International Airport terms.</b>

ITB Clause 11.2 (b)	NEPAD shall be responsible for Tax Waiver Formalities in case of CIP/CIF Terms.
ITB Clause 11.2 (b) [(iv) or (v) (optional)]	The Prices or Costs of Installations and Commissioning shall be included as part of the CIF/CIP Price Schedule with a Break down indicated in the Price Schedule.

<b>Preparation and Submission of Bids</b>	
ITB Clause 13.3 (d)	<p>The required documentary evidence to be submitted by the bidder to confirm eligibility to bid is as follows:</p> <ol style="list-style-type: none"> <li>I. <b>Signed Bid Form</b></li> <li>II. <b>Priced Schedule for Both Local &amp; International Goods</b></li> <li>III. <b>Manufacturer 's Authorisation Certificate/License</b></li> <li>IV. <b>Evidence of Registration &amp; Trading Certificate/Licence</b></li> <li>V. <b>Evidence of VAT/clearance certificate</b></li> <li>VI. <b>Evidence of having performed a similar type of tender.</b></li> <li>VII. <b>The Outer Envelope must be clearly marked with the Bid Title and Number.</b></li> </ol>
ITB Clause 14.3 (b)	<p>Spare parts are required to be available for at least five (5) of years of operation.</p> <p><b>Evidence of availability of spare parts, special tools, Backup and Maintenance Support Services is required by a Bidders' Branch Office or Agent in the Country/Region for the continued operation of the Equipment &amp; infrastructure for a period of at least five (5) years</b></p>
ITB Clause 15.1	<p>The Bid shall include a Bid Security (issued by bank or surety) included in Section VIII Bidding Forms of Not less than 2% of the total price of the bid and should be provided in any freely convertible currency.</p> <p><b>The Bid security must be in the form of an unconditional bank guarantee or bank certified cheque and must be valid for at least 30 days beyond the bid validity period, i.e. at least 120 days after the date of bid opening.</b></p>
ITB Clause 16.1	The period of bid validity shall be <b>90days</b> from the date for submission of bids.
ITB Clause 17.1	In addition to the original of the bid, the number of copies required is: <b>one (1) Original Bid, three (3) Copies and one (1) Electronic Copy.</b>

<b>ITB Clause 18.2</b> <b>(a)</b>	<p>The address for submission of bids is:</p> <p><i>The chairperson , NEPAD Internal Procurement Committee, 230, 15<sup>th</sup> Road, Randjespark, Midrand 1685 P.O. Box 3243, Addis Ababa, Ethiopia</i></p> <p><i>Tel : +27 (0) 11 256 3600</i></p> <p><i>However faxed and emailed bids and any other form of electronic Bids Shall not be Considered.</i></p>
<b>ITB Clause 18.2</b> <b>(b)</b>	<p>IFB title and Procurement Number are:</p> <p>Procurement Number: <b>NPCA/CS/ICT/RFB/G-7/2017</b></p> <p><b>IFB Title: TENDER FOR THE SUPPLY, INSTALLATION AND COMMISSIONING OF ICT EQUIPMENT AND SOFTWARE FOR A BACK-UP SOLUTION FOR NEPAD PLANNING AND COORDINATING AGENCY IN MIDRAND</b></p>
<b>ITB Clause 19.1</b>	<p>The deadline for submission of bids is <b>Friday, 19<sup>th</sup> May 2017 at 14:30hours local time</b></p> <p><b>The Dates for site inspection shall be: 27<sup>th</sup> April, 2017 at 14:30 hours local SA time</b></p>
<b>ITB Clause 22.1</b>	<p><b>The opening of bids shall take place at the Conference Room AT NEPAD, 230, 15<sup>TH</sup> Road, Randjespark, Midrand P.O. Box 218, South Africa at 14:30hours local time on 19<sup>th</sup> May, 2017.</b></p>

<b>Bid Evaluation</b>	
<b>ITB Clause 25.2</b>	<p>The common currency for evaluation purposes is <b>United States Dollars (USD)</b> and all bids in other currencies will be converted to the common currency at the selling exchange rate quoted by the <b>UN exchange rate on the date of the deadline for submission of bids.</b></p>
<b>ITB Clause 26.4</b>	<p>In addition to the bid price the following factors will be taken into account in determining the lowest evaluated cost bid:</p> <p><i>a) CIF or CIP conditions</i>  <i>b) Delivery &amp; Installation Schedule offered in the Bid</i></p>

	<p><i>c) An Independent Price List of components, mandatory spare parts, and service;</i></p> <p><i>d) The availability of spare parts in the Country/Region specified for Installation and after-sales services for the equipment offered in the bid;</i></p> <p><i>e) An Independent projected operating and maintenance costs during the life of the equipment and software (Whole Life Cost -WLC);</i></p> <p><i>f) The performance and productivity of the equipment and software offered; and/or</i></p> <p><i>g) In addition to the above criteria Preliminary and Technical Specifications Adherence or better and Other Commercial/Financial factors will also be considered.</i></p>
<b>ITB Clauses 26.5 (a) to (h)</b>	<i>The Criteria to be used is specified in ITB Clause 26.4 above.</i>
<b>ITB Clause 27.1</b>	A margin of preference for goods manufactured within the African Union will apply. <b>Not Applicable</b>

<b>Contract Award</b>	
<b>ITB Clause 31.1</b>	The percentage for quantity increase or decrease is fifteen (10%) percent

## Section IV. General Conditions of Contract

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## General Conditions of Contract

### 1. Definitions

- 1.1 In this Contract, the following terms shall be interpreted as indicated:
- (a) “The Contract” means the agreement entered into between the Purchaser and the Supplier, as recorded in the Contract Form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - (b) “The Contract Price” means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
  - (c) “The Goods” means all of the equipment, machinery, commodities and/or other materials which the Supplier is required to supply to the Purchaser under the Contract.
  - (d) “The Services” means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
  - (e) “GCC” means the General Conditions of Contract contained in this section.
  - (f) “SCC” means the Special Conditions of Contract.
  - (g) “The Purchaser” means the Commission of the African Union including all national offices and international organs of the African Union purchasing the Goods, as **named in the SCC.**
  - (h) “The Country specified for delivery” is the country **named in the SCC.**
  - (i) “The Supplier” means the individual or firm supplying the Goods and Services under this Contract and **named in SCC.**
  - (j) “The Project Site,” where applicable, means the place or places **named in the SCC.**
  - (k) “Day” means calendar day.

- 2. Application** 2.1 These General Conditions shall apply to the extent that they are not superseded by provisions of other parts of the Contract.
- 3. Country of Origin** 3.1 All Goods and Services supplied under the Contract shall have their origin in eligible countries and territories, as further elaborated **in the SCC**.
- 3.2 For purposes of this Clause, “origin” means the place where the Goods were mined, grown, or produced, or from which the Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 3.3 The origin of Goods and Services is distinct from the nationality of the Supplier.
- 4. Standards** 4.1 The Goods supplied under this Contract shall conform to the standards mentioned in the Technical Specifications, and, when no applicable standard is mentioned, to the authoritative standards appropriate to the Goods’ country of origin. Such standards shall be the latest issued by the concerned institution.
- 5. Use of Contract Documents and Information** 5.1 The Supplier shall not, without the Purchaser’s prior written consent, disclose the Contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the Purchaser in connection therewith, to any person other than a person employed by the Supplier in the performance of the Contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.
- 5.2 The Supplier shall not, without the Purchaser’s prior written consent, make use of any document or information enumerated in GCC Clause 5.1 except for purposes of performing the Contract.
- 5.3 Any document, other than the Contract itself, enumerated in GCC Clause 5.1 shall remain the property of the Purchaser and shall be returned (all copies) to the Purchaser on completion of the Supplier’s performance under the Contract if so required by the Purchaser.
- 6. Patent Rights** 6.1 The Supplier shall indemnify the Purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the Goods or any part thereof in the Country specified for delivery.



- 7. Performance Security**
- 7.1 Within fourteen (14) days of receipt of the notification of Contract award, the successful Bidder shall furnish to the Purchaser the performance security in the amount **specified in SCC**.
- 7.2 The proceeds of the performance security shall be payable to the Purchaser as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.
- 7.3 The performance security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the Purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in a Member State of the African Union or abroad, acceptable to the Purchaser, in the form provided in the bidding documents or another form acceptable to the Purchaser; or
  - (b) a cashier's or certified check.
- 7.4 The performance security will be discharged by the Purchaser and returned to the Supplier not later than thirty (30) days following the date of completion of the Supplier's performance obligations under the Contract, including any warranty obligations, unless otherwise **specified in SCC**.
- 8. Inspections and Tests**
- 8.1 The Purchaser or its representative shall have the right to inspect and/or to test the Goods to confirm their conformity to the Contract specifications at no extra cost to the Purchaser. The **SCC** and the Technical Specifications shall specify what inspections and tests the Purchaser requires and where they are to be conducted. The Purchaser shall notify the Supplier in writing, in a timely manner, of the identity of any representatives retained for these purposes.
- 8.2 The inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the Goods' final destination. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Purchaser.
- 8.3 Should any inspected or tested Goods fail to conform to the Specifications, the Purchaser may reject the Goods, and the Supplier shall either replace the rejected Goods or make alterations necessary to meet specification requirements free of cost to the Purchaser.

8.4 The Purchaser's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival in the Country specified for delivery shall in no way be limited or waived by reason of the Goods having previously been inspected, tested, and passed by the Purchaser or its representative prior to the Goods' shipment from the country of origin.

8.5 Nothing in GCC Clause 8 shall in any way release the Supplier from any warranty or other obligations under this Contract.

## 9. Packing

9.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the Goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, **specified in the SCC**, and in any subsequent instructions ordered by the Purchaser.

## 10. Delivery and Documents

10.1 Delivery of the Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier are **specified in the SCC**.

10.2 For purposes of the Contract, "EXW," "FOB," "FCA," "CIF," "CIP," and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of *Incoterms* published by the International Chamber of Commerce, Paris.

10.3 Documents to be submitted by the Supplier are **specified in the SCC**.

## 11. Insurance

11.1 The Goods supplied under the Contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery in the manner **specified in the SCC**.

11.2 Where delivery of the Goods is required by the Purchaser on a CIF or CIP basis, the Supplier shall arrange and pay for cargo insurance, naming the Purchaser as beneficiary. Where delivery is on a FOB or FCA basis, insurance shall be the responsibility of

the Purchaser.

- 12. Transportation**
- 12.1 Where the Supplier is required under Contract to deliver the Goods FOB, transport of the Goods, up to and including the point of putting the Goods on board the vessel at the specified port of loading, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price. Where the Supplier is required under the Contract to deliver the Goods FCA, transport of the Goods and delivery into the custody of the carrier at the place named by the Purchaser or other agreed point shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 12.2 Where the Supplier is required under Contract to deliver the Goods CIF or CIP, transport of the Goods to the port of destination or such other named place of destination in the Country specified for delivery, as shall be specified in the Contract, shall be arranged and paid for by the Supplier, and the cost thereof shall be included in the Contract Price.
- 12.3 Where the Supplier is required under the Contract to transport the Goods to a specified place of destination within the Country specified for delivery, defined as the Project Site, transport to such place of destination , including insurance and storage, as shall be specified in the Contract, shall be arranged by the Supplier, and related costs shall be included in the Contract Price.
- 12.4 Where the Supplier is required under Contract to deliver the Goods CIF or CIP, no restriction shall be placed on the choice of carrier. Where the Supplier is required under Contract (a) to deliver the Goods FOB or FCA, and (b) to arrange on behalf and at the expense of the Purchaser for international transportation on specified carriers or on national flag carriers of the Country specified for delivery, the Supplier may arrange for such transportation on alternative carriers if the specified or national flag carriers are not available to transport the Goods within the period(s) specified in the Contract.
- 13. Incidental Services**
- 13.1 The Supplier may be required to provide any or all of the following services, including additional services, if any, **specified in the SCC:**
- (a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
  - (b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
  - (c) furnishing of a detailed operations and maintenance manual

for each appropriate unit of the supplied Goods;

- (d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
- (e) training of the Purchaser's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

13.2 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

#### **14. Spare Parts**

14.1 As **specified in the SCC**, the Supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier:

- (a) such spare parts as the Purchaser may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) advance notification to the Purchaser of the pending termination, in sufficient time to permit the Purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the Purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### **15. Warranty**

15.1 The Supplier warrants that the Goods supplied under the Contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the Purchaser's specifications) or from any act or omission of the Supplier, that may develop under normal use of the supplied Goods in the conditions prevailing in the Country specified for

delivery.

- 15.2 This warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the Contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless **specified otherwise in the SCC**.
- 15.3 The Purchaser shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 15.4 Upon receipt of such notice, the Supplier shall, within the period **specified in the SCC** and with all reasonable speed, repair or replace the defective Goods or parts thereof, without costs to the Purchaser other than, where applicable, the cost of inland delivery of the repaired or replaced Goods or parts from EXW or the port or place of entry to the final destination.
- 15.5 If the Supplier, having been notified, fails to remedy the defect(s) within the period **specified in the SCC**, the Purchaser may proceed to take such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the Purchaser may have against the Supplier under the Contract.

## 16. Payment

- 16.1 The method and conditions of payment to be made to the Supplier under this Contract shall be **specified in the SCC**.
- 16.2 The Supplier's request(s) for payment shall be made to the Purchaser in writing, accompanied by an invoice describing, as appropriate, the Goods delivered and Services performed, and by documents submitted pursuant to GCC Clause 10, and upon fulfilment of other obligations stipulated in the Contract.
- 16.3 Payments shall be made promptly by the Purchaser, but in no case later than forty five (45) days after submission of an invoice or claim by the Supplier.
- 16.4 The currency or currencies in which payment is made to the Supplier under this Contract shall be **specified in the SCC** subject to the following general principle: payment will be made in the currency or currencies in which the payment has been requested in the Supplier's bid.
- 16.5 All payments shall be made in the currency or currencies **specified in the SCC** pursuant to GCC 16.4.

- 17. Prices** 17.1 Prices charged by the Supplier for Goods delivered and Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments **authorised in the SCC** or in the Purchaser's request for bid validity extension, as the case may be.
- 18. Change Orders** 18.1 The Purchaser may at any time, by a written order given to the Supplier pursuant to GCC Clause 32, make changes within the general scope of the Contract in any one or more of the following:
- (a) drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the Purchaser;
  - (b) the method of shipment or packing;
  - (c) the place of delivery; and/or
  - (d) the Services to be provided by the Supplier.
- 18.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or delivery schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this clause must be asserted within thirty (30) days from the date of the Supplier's receipt of the Purchaser's change order.
- 19. Contract Amendments** 19.1 Subject to GCC Clause 18, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.
- 20. Assignment** 20.1 The Supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the Purchaser's prior written consent.
- 21. Subcontracts** 21.1 The Supplier shall notify the Purchaser in writing of all subcontracts awarded under this Contract if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the Supplier from any liability or obligation under the Contract.
- 21.2 Subcontracts must comply with the provisions of GCC Clause 3.

**22. Delays in the Supplier's Performance**

- 22.1 Delivery of the Goods and performance of Services shall be made by the Supplier in accordance with the time schedule prescribed by the Purchaser in the Schedule of Requirements.
- 22.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods and performance of Services, the Supplier shall promptly notify the Purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the Supplier's notice, the Purchaser shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.
- 22.3 Except as provided under GCC Clause 25, a delay by the Supplier in the performance of its delivery obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 23, unless an extension of time is agreed upon pursuant to GCC Clause 22.2 without the application of liquidated damages.

**23. Liquidated Damages**

- 23.1 Subject to GCC Clause 25, if the Supplier fails to deliver any or all of the Goods or to perform the Services within the period(s) specified in the Contract, the Purchaser shall, without prejudice to its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in SCC of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage **specified in the SCC**. Once the maximum is reached, the Purchaser may consider termination of the Contract pursuant to GCC Clause 24.

**24. Termination for Default**

- 24.1 The Purchaser, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate this Contract in whole or in part:
- (a) if the Supplier fails to deliver any or all of the Goods within the period(s) specified in the Contract, or within any extension thereof granted by the Purchaser pursuant to GCC Clause 22; or
  - (b) if the Supplier fails to perform any other obligation(s) under the Contract.
  - (c) if the Supplier, in the judgement of the Purchaser, has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for or in executing the

Contract.

For the purpose of this clause:

“corrupt practice”<sup>6</sup> is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

“fraudulent practice”<sup>7</sup> is any act or omission including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

“collusive practice”<sup>8</sup> is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;

“coercive practice”<sup>9</sup> is impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;

“obstructive practice” is deliberately destroying, falsifying, altering or concealing of evidence material to any investigation or making false statements to investigators in order to materially impede any investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation;

24.2 In the event the Purchaser terminates the Contract in whole or in part, pursuant to GCC Clause 24.1, the Purchaser may procure, upon such terms and in such manner as it deems appropriate, Goods or Services similar to those undelivered, and the Supplier shall be liable to the Purchaser for any excess costs for such similar Goods or Services. However, the Supplier shall continue performance of the Contract to the extent not terminated.

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<sup>6</sup> “another party” refers to an officer of the AU acting in relation to the procurement process or contract execution. In this context, “officer of the AU” includes staff and employees of other organisations taking or reviewing procurement decisions.

<sup>7</sup> a “party” refers to any officer of the AU; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

<sup>8</sup> “parties” refers to any participants in the procurement process (including officers of the AU) attempting to establish bid prices at artificial, non competitive levels.

<sup>9</sup> a “party” refers to any participant in the procurement process or contract execution.



- 25. Force Majeure**
- 25.1 Notwithstanding the provisions of GCC Clauses 22, 23, and 24, the Supplier shall not be liable for forfeiture of its performance security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 25.2 For purposes of this clause, “Force Majeure” means an event beyond the control of the Supplier and not involving the Supplier’s fault or negligence and not foreseeable. Such events may include, but are not restricted to, acts of the Purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 25.3 If a Force Majeure situation arises, the Supplier shall promptly notify the Purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the Purchaser in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.
- 26. Termination for Insolvency**
- 26.1 The Purchaser may at any time terminate the Contract by giving written notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the Purchaser.
- 27. Termination for Convenience**
- 27.1 The Purchaser, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the Purchaser’s convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- 27.2 The Goods that are complete and ready for shipment within thirty (30) days after the Supplier’s receipt of notice of termination shall be accepted by the Purchaser at the Contract terms and prices. For the remaining Goods, the Purchaser may elect:
- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Services and for materials and parts previously procured by the Supplier.
- 28. Settlement of**
- 28.1 If any dispute or difference of any kind whatsoever shall arise

**Disputes**

between the Purchaser and the Supplier in connection with or arising out of the Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

28.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Purchaser or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

28.2.1 Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract.

28.2.2 Arbitration proceedings shall be conducted in accordance with the rules of procedure **specified in the SCC**.

28.3 Notwithstanding any reference to arbitration herein,

- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the Purchaser shall pay the Supplier any monies due to the Supplier.

**29. Limitation of Liability**

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

- (a) the Supplier shall not be liable to the Purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Purchaser and
- (b) the aggregate liability of the Supplier to the Purchaser, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

**30. Governing Language**

30.1 The Contract shall be written in English unless otherwise **specified in the SCC**. Subject to GCC Clause 31, the version of the Contract written in the specified language shall govern its

interpretation. All correspondence and other documents pertaining to the Contract which are exchanged by the parties shall be written in the same language.

**31. Applicable Law**

31.1 The Contract shall be interpreted in accordance with International Law, unless otherwise **specified in the SCC.**

**32. Notices**

32.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing to the address **specified in the SCC.**

32.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

**33. Taxes and Duties**

33.1 The African Union and its subsidiary organs are exempted from all direct taxes and are exempted from customs duties in respect of articles imported or exported for its official use in conformity with the General Convention on Privileges and Immunities. Accordingly the Supplier authorises NEPAD to deduct from the Supplier's invoice any amount representing such taxes or duties charged to the African Union by the Supplier. In the event that any taxing authority refuses to accept the African Union's exemption from such taxes or duties, the Supplier shall immediately consult with the NEPAD.

33.2 A Supplier shall be responsible for obtaining exemption for the African Union from all local taxes, duties, and license fees incurred until delivery of the contracted Goods to the Purchaser, unless otherwise agreed in writing by the NEPAD.

## Section V. Special Conditions of Contract

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## Special Conditions of Contract

The following Special Conditions of Contract shall supplement the General Conditions of Contract. Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract. The corresponding clause number of the GCC is indicated in parentheses.

### **GCC Clause 1 - Definitions**

GCC 1.1 (g)—The Purchaser is: **NEPAD Planning and Coordinating Agency**

GCC 1.1 (h)—The Country specified for delivery is: **South Africa** *as per section (vi) of this tender document.*

GCC 1.1 (i)—The Supplier is: TBA

GCC 1.1 (j)—The Project Site or place of delivery is: **NEPAD Planning and Coordinating Agency.**

### **GCC Clause 3.1 - Country of Origin**

All countries and territories which are member states of the **United Nations and African Union** are eligible.

### **GCC Clause 7.1 - Performance Security**

The amount of **performance security**, as a percentage of the Contract Price, shall be a minimum of ---- (percent): **Not Applicable**

### **GCC Clause 8.1 - Inspections and Tests**

**The equipment, and Software and its accessories shall be inspected at the point of delivery at NEPAD Offices and Final Inspection after Installation and Commissioning (Performance and Acceptance) shall also be carried out.**

### **GCC Clause 9.2 - Packing**

The packing, marking and documentation shall be as follows:

***Goods shall be securely contained, packaged (plastic-wrapping and strapped) in pallets, marked and shipped in a manner that protects them from theft, breaking, fire, water and any other hazard, during delivery to their ultimate destination.***

### **GCC Clause 10.3 - Delivery and Documents**

<u>Documents</u>	<u>No of copies required</u>
<b>1. Commercial Invoice</b>	<b>Four(4)</b>
<b>2. Packing List</b>	<b>Three(3)</b>
<b>3. Air way Bill</b>	<b>Three(3)</b>
<b>4. Certificate of origin signed by the competent Authority</b>	<b>Three(3)</b>
<b>5. Insurance Certificate</b>	<b>Two(2)</b>
<b>6. Manufacturer's or Supplier's warranty Certificate</b>	<b>Two(2)</b>

### **GCC Clause 11.1 - Insurance**

The Insurance shall be in an amount equal to **110 percent of the CIF or CIP value of the Goods from “warehouse” to “warehouse” on “All Risks” basis, including War Risks and Strikes.**

### **GCC Clause 13.1 Incidental Services**

Incidental services to be provided are:

**Installation and Commissioning of a complete Back-UP Solution and related accessories for NEPAD.**

### **GCC Clause 14.1 - Spare Parts**

Additional spare parts requirements are:

**The Supplier shall stock sufficient inventories to ensure ex-stock supply of consumables and spare parts for the Equipment and Software. The Supplier must have a Branch Office or an Agent in the country/Region for backup support services, spare parts availability and maintenance services support facilities.**

### **GCC Clause 15.2 - Warranty**

**The warranty period shall be 36 months from date of acceptance of the Goods. The Supplier shall, in addition, comply with the performance and/or consumption guarantees specified under the Contract.**

### **GCC Clause 15.4 - Repair or Replacement of Defective Goods**

The period allowed to the Supplier for correction of defects in the warranty period by the Supplier is **30 days.**

### **GCC Clause 15.5 – Failure to Repair or Replace Defective Goods**

The period allowed to the Supplier after failure of the Supplier to remedy defects in the warranty period and before the Purchaser may take remedial action at the expense of the Supplier is **45 days.**

### **GCC Clause 16.1 - Payment**

The method and conditions of payment to be made to the Supplier under this Contract shall be:

- (i) Payment upon completion and commissioning of the solution or*
- (ii) Advance payment if requested by the supplier accompanied by an Advance Payment bank Guarantee for a bank acceptable to the African Union.*

**GCC Clause 16.4** - The currencies in which payment is to be made to the Supplier are: ***United States Dollars (USD) for international suppliers and South Africa Rand (ZAR) in the case of Local Suppliers. However, this clause is subject to negotiation taking into account the Treasury and central bank regulations.***

### **GCC Clause 23.1 - Liquidated Damages**

The applicable rate for liquidated damages is **half (0.5%) percent** per week or part thereof. The maximum deduction for liquidated damages is **ten (10%) percent.**

**GCC Clause 28.2.2 - Settlement of Disputes**

The basis of arbitration shall be:

**Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.**

**GCC Clause 30.1 - Governing Language**

The Governing Language of the Contract shall be **English**.

**GCC Clause 31.1 - Applicable Law**

The Contract shall be interpreted in accordance with International Law in accordance with provisions of the United Nations Commission on International Trade Arbitration Rules (UNCITRAL).

**GCC Clause 32.1 – Notices- the Purchaser’s address for notice purposes is:**

*The Head of Procurement Division,  
NEPAD Planning and Coordinating Agency,  
230, 15<sup>th</sup> Road, Randjespark,  
P.O. Box 218, Midrand 1685,  
Johannesburg, South Africa.*

*In Attention: Vincent Moola*

**Tel: +27 (0) 11 256 3600 /01107449621**

**Email: [vincentM@nepad.org](mailto:vincentM@nepad.org) or [victorineB@nepad.org](mailto:victorineB@nepad.org)**

The Supplier’s address for notice purposes is: **TBA**

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## **Section VI. Schedule of Requirements**

### **Schedule of Requirements**

#### **1. Scope of work**

The contracted supplier will be required to undertake the following:

1. Global project plan
2. Acquisition and installation of the Software
3. Testing and commissioning
4. Training of 04 staff Members on the operations and configurations of the Backup solution
5. Handing over installation and configuration documentations

**Kindly note that the Installation and Commissioning period required is 4-8 weeks**



## Section VII. Technical Specifications

### Technical Specification and Requirements

The NEPAD Agency would like to acquire and implement a reliable backup solution which will cover its current needs as well as its needs during the next 4 years.

The opted solution is indicated as follows:

1. NEPAD Agency currently has 6 physical servers hosting several virtual servers. Two servers in load balancing mode share a SAN Storage with a capacity of 8TB of which 3TB is used. The others servers have embedded storage capacity of which roughly 7 TB is in use. None of the server in our data centre has a FC interface. The required backup and recovery solutions is sought to take a Disk to Disk (D2D) backup to a digital disk back up device.
2. As disk backups are meant only for fast backup process but not take data off-site, the organization again opted to deploy a tape library backup solution to take Disk to Tape (D2T) backup for off-site storage of data.
3. Therefore, the solution to be deployed needs to satisfy the above business requirement and at least qualify with the following technical requirement indicated below:

#### 2.1 Hardware specifications

<b>Digital Backup Solution</b>	<ul style="list-style-type: none"> <li>• 4U 24 bay Intel Chenbro Server</li> <li>• Motherboard should be Dual socket capable</li> <li>• 1x Intel Xeon processor 6 core minimum (additional processor will be added at a later stage)</li> <li>• 10 Gb Ethernet Card</li> <li>• RAID Card sufficient to run all 24 disks</li> <li>• External SAS connectivity for Tape Drive</li> <li>• Initial usable disk space of +-80 TB in RAID 6 (3.5" SAS Disks)</li> <li>• All cables and connectors should be included</li> <li>• Redundant power supplies</li> </ul>
<b>Tape Drive</b>	<ul style="list-style-type: none"> <li>• LTO-7 Technology tape reader</li> <li>• A SET of 30 LTO Tapes compatible with the solution proposed</li> <li>• Compatible with Backup solution.</li> </ul>
<b>Rack to Mount Devices</b>	<ul style="list-style-type: none"> <li>• The above mentioned devices shall all be mounted and installed in a Half Height Rack Cabinet, closed with perforated door with lockable doors, to be deployed in the Organization's datacentre, to be supplied together.</li> </ul>
<b>Fireproof cupboard X 2 (to Store tape's and other important media)</b>	<ul style="list-style-type: none"> <li>➤ Remote Site storage facility</li> <li>➤ One in our premises for ICT media storage</li> </ul>

## 2.2 Backup Software specifications

Backup software options:

1. Acronis Backup Advanced with (universal licensing for 6 host servers)
2. Veeam Backup & Replication Enterprise for Hyper-V (Licensing for 10 sockets)

- **Compatible Windows Server support (2008 – 2016)**
- **Compatible with Linux based OS**
- **Storage types supported (Disk, Tape, Cloud)**
- **Support for Tape, autoloaders and libraries**
- **Microsoft Hyper-V compatible (agent and agentless for non-windows platforms)**
- **Centralized Management**
- **Support for Microsoft Exchange®, SQL Server®, SharePoint®, Active Directory®**
- **Backup storage deduplication**
- **Policy based group management**
- **Backup validation that can be scheduled**
- **Bare-metal recovery**
- **PXE boot**
- **Reporting and Monitoring**
- **Dynamic and GPT disk support**
- **Remote installation and update**
- **Full disk backup, file backup, granular restore of SQP database's and Exchange with VSS support**
- **Encrypt archives**
- **Backup Compression**
- **Multiple backup destination (replication) and replication schedules**
- **Retention policies**
- **Backup to VM conversion**
- **Software should come with Recovery media**
- **Currently we have 6 physical servers and 10 Virtual servers. This number should increase in mid-term.**
- **Application support is required**
- **Support for 3 years.**

## Section VIII. Sample Forms

### Notes on the Sample Forms

The Bidder shall complete and submit with its bid the **Bid Form** and **Price Schedules** pursuant to ITB Clause 9 and in accordance with the requirements included in the bidding documents.

When requested in the Bid Data Sheet, the Bidder should provide the **Bid Security**, either in the form included hereafter or in another form acceptable to the Purchaser, pursuant to ITB Clause 15.3.

The **Contract Form**, when it is finalised at the time of contract award, should incorporate any corrections or modifications to the accepted bid resulting from price corrections pursuant to ITB Clause 16.3 and GCC Clause 17, acceptable deviations (e.g., payment schedule pursuant to ITB Clause 26.5 (c)), spare parts pursuant to ITB Clause 26.3 (d), or quantity variations pursuant to ITB Clause 31. The Price Schedule and Schedule of Requirements deemed to form part of the contract should be modified accordingly.

The **Performance Security Form** and **Bank Guarantee Form for Advance Payment** should not be completed by the bidders at the time of their bid preparation. Only the successful Bidder will be required to provide performance security and bank guarantee for advance payment in accordance with one of the forms indicated herein or in another form acceptable to the Purchaser and pursuant to GCC Clause 7.3 and SCC 11, respectively.

The **Manufacturer's Authorisation** form should be completed by the Manufacturer, as appropriate, pursuant to ITB Clause 13.3 (a).

### Sample Forms

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# 1. Bid Form and Price Schedules

Date: \_\_\_\_\_

Procurement No: \_\_\_\_\_

To: *[name and address of Purchaser]*

Sir / Madam:

Having examined the bidding documents including Addenda Nos. *[insert numbers]*, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and deliver *[description of goods and services]* in conformity with the said bidding documents for the sum of *[total bid amount in words and figures]* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this Bid.

We undertake, if our Bid is accepted, to deliver the goods in accordance with the delivery schedule specified in the Schedule of Requirements.

If our bid is accepted, we undertake to provide a performance security in the form, in the amounts, and within the times specified in the Bidding Documents.

We agree to abide by this Bid for the Bid Validity Period specified in Clause 16.1 of the Bid Data Sheet and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Commissions or gratuities, if any, paid or to be paid by us to agents relating to this Bid, and to contract execution if we are awarded the contract, are listed below:

Name and address of agent	Amount and Currency	Purpose of Commission or gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

(if none, state "none")

Until a formal Contract is prepared and executed, this Bid, together with your written notification of award, shall constitute a binding Contract between us.

We understand that you are not bound to accept the lowest or any bid you may receive.

We certify/confirm that we comply with the eligibility requirements as per ITB Clause 2 of the bidding documents.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
*[signature]*

\_\_\_\_\_  
*[in the capacity of]*

Duly authorised to sign Bid for and on behalf of \_\_\_\_\_

## Price Schedule for Goods Offered from Abroad

Name of Bidder \_\_\_\_\_ Procurement No. \_\_\_\_\_. Page \_\_\_ of \_\_\_.

1	2	3	4	5	6	7	8
Item	Description	Country of origin	Quantity	Unit price <sup>1</sup> FOB or FCA port or place of loading (specify port or place) <sup>2</sup>	Unit price <sup>1</sup> CIF port of entry (specify port) or CIP named place (specify border point or place of destination)	Total CIF or CIP price per item (col. 4 x 6)	Unit price <sup>1</sup> of inland delivery to final destination and unit price of other incidental services <sup>3</sup>

1. Currencies to be used in accordance with Clause 12 of the Instructions to Bidder.
2. Optional, but in accordance with Clause 11.2 (b) (ii) or (iii) of the Instructions to Bidders and the related provisions in the Bid Data Sheet.
3. Optional, but in accordance with Clause 11.2 (b) (iv) and (v) in the Instructions to Bidders and the related provisions in the Bid Data Sheet.

Signature of Bidder \_\_\_\_\_

*Note:* In the case of discrepancy between the unit price and the total, prices shall be adjusted by the Purchaser in accordance with the provisions of Clause 24.2 of the Instructions to Bidders.

## Price Schedule for Goods Offered from within the Country Specified for Delivery

Name of Bidder \_\_\_\_\_, Procurement No. \_\_\_\_\_, Page \_\_\_ of \_\_\_.

1	2	3	4	5	6	7	8	9
Item	Description	Country of origin	Quantity	Unit price <sup>1</sup> EXW per item	Cost of local labour, raw material, and component <sup>2</sup>	Total price EXW per item (cols. 4 x 5)	Unit prices <sup>1</sup> per item final destination and unit price of other incidental services <sup>3</sup>	Sales and other taxes to be exempted if Contract is awarded

1. Currencies to be used in accordance with Clause 12 of the Instructions to Bidders. The prices in columns 5 to 8 shall exclude all customs duties and sales and other taxes already paid or payable on the components and raw material used in the manufacture or assembly of the item or the customs duties and sales and other taxes paid on the previously imported item offered ex warehouse, ex showroom, or off-the-shelf. These factors should not be entered separately. The total costs of all such taxes and duties to be exempted for the African Union shall be entered in column 9.

2. Indicated as a percentage of the EXW price.

3. Optional and only when required in accordance with Clause 11.2 (a)(iii) and (iv) in the Instructions to Bidders and the related provisions in the Bid Data Sheet.

Signature of Bidder \_\_\_\_\_

*Note:* In the case of discrepancy between the unit price and the total, prices shall be adjusted by the Purchaser in accordance with the provisions of Clause 24.2 of the Instructions to Bidders.

## 2. Bid Security Form

Whereas *[name of the Bidder]* (hereinafter called “the Bidder”) has submitted its bid dated *[date of submission of bid]* for the supply of *[name and/or description of the goods]* (hereinafter called “the Bid”).

KNOW ALL PEOPLE by these presents that WE *[name of bank]* of *[name of country]*, having our registered office at *[address of bank]* (hereinafter called “the Bank”), are bound unto the Commission of the African Union (hereinafter called “the Purchaser”) in the sum of *[amount]* for which payment well and truly to be made to the said Purchaser, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

THE CONDITIONS of this obligation are:

1. If the Bidder
  - (a) withdraws its Bid during the period of bid validity specified by the Bidder on the Bid Form; or
  - (b) does not accept the correction of errors in accordance with the Instructions to Bidders; or
2. If the Bidder, having been notified of the acceptance of its Bid by the Purchaser during the period of bid validity:
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security, in accordance with the Instructions to Bidders;

we undertake to pay to the Purchaser up to the above amount upon receipt of its first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This guarantee will remain in force up to and including thirty (30) days after the period of bid validity, and any demand in respect thereof should reach the Bank not later than the above date.

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*[signature and Seal of the bank]*

### 3. Contract Form

THIS AGREEMENT made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ between the NEPAD [*or name of the AU organ*] (hereinafter called “the Purchaser”) of the one part and [*name of Supplier*] of [*city and country of Supplier*] (hereinafter called “the Supplier”) of the other part:

WHEREAS the Purchaser invited bids for certain goods and ancillary services, viz., [*brief description of goods and services*] and has accepted a bid by the Supplier for the supply of those goods and services in the sum of [*contract price in words and figures*] (hereinafter called “the Contract Price”).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement in the listed order of precedence, viz.:

- (a) Agreement
- (b) Special Conditions of Contract;
- (c) General Conditions of Contract;
- (d) Schedule of Requirements;
- (e) Technical Specifications;
- (f) Bid Form and the Price Schedule submitted by the Bidder;
- (g) Purchaser’s Notification of Award, and
- (h) any other document listed in the Special Conditions of Contract as forming part of the Contract.

3. In consideration of the payments to be made by the Purchaser to the Supplier as hereinafter mentioned, the Supplier hereby covenants with the Purchaser to provide the goods and services and to remedy defects therein in conformity in all respects with the provisions of the Contract

4. The Purchaser hereby covenants to pay the Supplier in consideration of the provision of the goods and services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the contract at the times and in the manner prescribed by the contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed on the day and year first above written.

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Purchaser)

Signed, sealed, delivered by \_\_\_\_\_ the \_\_\_\_\_ (for the Supplier)



#### 4. Performance Security Form

To: The Commission of the African Union

WHEREAS *{name of Supplier}* (hereinafter called “the Supplier”) has undertaken, in pursuance of Contract No. *{reference number of the contract}* dated \_\_\_\_\_ 20\_\_\_\_ to supply *{description of goods and services}* (hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the Supplier shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Supplier’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the Supplier a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the Supplier, up to a total of *{amount of the guarantee in words and figures}*, and we undertake to pay you, upon your first written demand declaring the Supplier to be in default under the Contract and without cavil or argument, any sum or sums within the limits of *{amount of guarantee}* as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Signature and seal of the Guarantors

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*{name of bank or financial institution}*

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*{address}*

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*{date}*

## 5. Bank Guarantee Form for Advance Payment

To: The Commission of the African Union

*{name of Contract}*

Sir / Madam:

In accordance with the payment provision included in the Special Conditions of Contract, which amends Clause 16 of the General Conditions of Contract to provide for advance payment, *{name and address of Supplier}* (hereinafter called “the Supplier”) shall deposit with the Commission of the African Union (hereinafter called “the Purchaser) a bank guarantee to guarantee its proper and faithful performance under the said Clause of the Contract in an amount of *{amount of guarantee in figures and words}*.

We, the *{bank or financial institution}*, as instructed by the Supplier, agree unconditionally and irrevocably to guarantee as primary obligator and not as surety merely, the payment to the Purchaser on its first demand without whatsoever right of objection on our part and without its first claim to the Supplier, in the amount not exceeding *{amount of guarantee in figures and words}*.

We further agree that no change or addition to or other modification of the terms of the Contract to be performed thereunder or of any of the Contract documents which may be made between the Purchaser and the Supplier, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition, or modification.

This guarantee shall remain valid and in full effect from the date of the advance payment received by the Supplier under the Contract until *{date}*.

Yours truly,

Signature and seal of the Guarantors

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*{name of bank or financial institution}*

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{Name and title of authorised signatory}

---

*{address}*

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*{date}*

## 6. Manufacturer's Authorisation Form

[See Clause 13.3 (a) of the Instructions to Bidders.]

To: The Commission of the African Union

WHEREAS *{name of the Manufacturer}* who are established and reputable manufacturers of *{name and/or description of the goods}* having factories at *{address of factory}*.

do hereby authorise *{name and address of Agent}* to submit a bid, and subsequently negotiate and sign the Contract with you against Procurement No. *{reference of the Invitation to Bid}* for the above goods manufactured by us.

We hereby extend our full guarantee and warranty as per Clause 15 of the General Conditions of Contract for the goods offered for supply by the above firm against this Invitation for Bids.

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*{signature for and on behalf of Manufacturer}*

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{Name and title of authorised signatory}

*[Note: This letter of authority should be on the letterhead of the Manufacturer and should be signed by a person competent and having the power of attorney to bind the Manufacturer. It should be included by the Bidder in its bid.]*