



## SOUTH AFRICAN HUMAN RIGHTS COMMISSION

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**Braamfontein**  
2017

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2041

Tel.: 011 877 3600

### Bid Specifications for Head Office Lease

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**BID NUMBER: SAHRC 01-2023**

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#### 1. BACKGROUND

The South African Human Rights Commission (SAHRC) is a Constitutional body established in terms chapter 9 of the Constitution of South Africa, 1996 as well as the South African Human Rights Commission Act, 40 of 2013. The SAHRC is under the executive authority and strategic leadership of Commissioners. The administration of SAHRC is overseen by a Chief Executive Officer (CEO).

#### 2. PURPOSE

The invitation to bid is intended to obtain leased office premises for the South African Human Rights Commission's (Commission) Head Office.

The Commission requires office space for their offices at Head Office, for a 5-year lease, starting from 1 April 2024 until 31 March 2029 with an **exit clause at the end of three years without any penalties incurred**. The office premises should be in the vicinity of Parktown and/or Killarney and/or Braamfontein.

The building should be accessible for people with disabilities, children, and older persons. It should also take into account security concerns as the Commission host engagements with high profile international and national stakeholders.

The building should also include parking for executives, high profile international and national stakeholders, and staff.

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### 3. THE COMMISSIONS OFFICE BUILDING SPECIFICATIONS

#### 3.1 PROPOSED OFFICE SPACE

Please refer to **ANNEXURE A** on the proposed space for the Commission offices.

#### **Additional Requirement**

The actual office space should be **+3000 m<sup>2</sup>**. The air conditioners in the open plan offices should have a function to control temperature for each section of the office. Fire safety certificate should be submitted.

- a) The building must be Grade A building
- b) It must comply with the OHSA
- c) Office premises must be wheelchair accessible
- d) Premises must have back-up generator or solar system with batteries
- e) Motion detector lights
- f) Premises must have separate male and female toilets and a disability toilet
- g) Server Room should have concrete wall, false floor and air conditioner and hot air ducts.
- h) Records Strong room should have heavy strong door.
- i) Sick room should have washing basin or be closer to bathroom
- j) 110 parking bays as part of the building which is easily accessible into the building.
- k) Offices must provide for ventilation.

#### 4. MINIMUM REQUIREMENTS

- The bidder must provide audited cash flow statement to verify that buildings can be maintained as and when needed.
- Utilities bill must be provided during the evaluation phase to verify that all outstanding municipal services have been paid for and up to date.
- The bidder must provide a generator on site that can handle the capacity during load shedding.
- The bidder must be a company submitting and making proposals.
- The location of offices must be within the areas of Braamfontein, Parktown, Killarney and allowable radius of 5km within these areas.
- The bidder must provide for a portion of tenant installations and the designer will be chosen by the Commission. The design plans must be carried out by the bidder for occupation of the Commission.
- The bidder must provide for pre-occupation where rental will not be paid but to carry out tenant installations and ready the building for occupation.

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## 5. DELIVERABLES

Building or office premises that meet stated specifications and requirement must be ready for occupation by 1 April 2024

Pre occupation and access to the building must be given to the Commission without incurring rental expenses at least 6 months before occupation date to carry out tenant installations, IT and other related infrastructure and readying the building for employees to move in on the 1<sup>st</sup> of April 2024.

## 6. PRICING

Pricing requirements must be inclusive of all applicable taxes (VAT) and consideration should be given to the following:

**ANNEXURE B** must be submitted for pricing requirements including the contributed amount per square meter for tenant installations.

## 7. INDEPENDENCE AND OBJECTIVITY OF STAFF

In carrying out the work, the service provider must ensure that its staff maintains their objectivity by remaining independent of the activities they execute.

## 8. CONFIDENTIALITY

The service provider will hold material and information exchanged in the course of the implementation of this assignment in the strictest confidence, and will take all steps necessary to prevent dissemination of this information to any third party, without the prior written agreement of the Commission. To ensure that at all times compliance with legal obligations including recent laws such as POPIA.

## 9. DURATION OF THE CONTRACT

The Commission will each enter into a contract with the winning bidder. Contract shall commence on the 1 April 2024 and end on 31 March 2029 with an **exit clause at the end of three years with no penalty clause of losses to be incurred.** .

## 10. EVALUATION CRITERIA

South African Human Rights Commission has set minimum standards (Gates) that a bidder needs to meet to be evaluated and selected as a successful bidder. The minimum standards consist of the following:

Pre-qualification Criteria (Gate 0)	Checklist to be completed by the bidder (Gate 1)	Technical Criteria (Gate 2)	Evaluation	Price and Specific Goals (Gate 3)
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Bidders must submit all documents as outlined in (Table 1) below. Only bidders that comply with ALL these criteria will proceed to Gate 1.	Bidders must fill out the checklist, where non-compliance is identified, the bidder will be automatically disqualified from the process and will not be evaluated further.	Bidder(s) are required to achieve a minimum threshold of 70 points to proceed to Gate 3 (Price and BEE).	Bidder(s) who have successfully progressed through gate 0, 1 and 2 will be evaluated in accordance with the 80/20 preference point system contemplated in the Preferential Procurement Policy Framework Act, 2022. 80 points will be awarded for price whilst 20 points will be allocated for preference points for specific goals as prescribed in the regulations.
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### 10.1 Gate 0: Pre-qualification Criteria

Without limiting the generality of South African Human Rights Commission's other critical requirements for this Bid, bidder(s) must submit the documents listed in **Table 1** below. All documents must be completed and signed by the duly authorised representative of the prospective bidder(s). During this phase Bidders' responses will be evaluated based on compliance with the listed administration and mandatory bid requirements. The bidder(s) proposal will be disqualified for non-submission of any of the documents.

**Table 1: Documents to be submitted for Pre-qualification**

Document that must be submitted	Non-submission will result in disqualification	
Invitation to Bid – SBD 1	YES	Complete and sign the supplied pro forma document
Declaration of Interest – SBD 4	YES	Complete and sign the new supplied pro forma document
Registration on Central Supplier Database (CSD)	YES	The service provider must be on the Central Supplier Database (CSD). If you are not registered proceed to complete the registration of your company prior to submitting your proposal. Visit <a href="https://secure.csd.gov.za/">https://secure.csd.gov.za/</a> to obtain your vendor number. Submit your CSD report as part of the proposal
Pricing Schedule ANNEXURE B	YES	Submit full details including totals of the pricing proposal, additional annexures are welcomed with detailed costing breakdown.
Audited cash flow Statements	YES	The bidder must provide audited cash flow statements to show the cashflow of the organisation to carry out maintenance and servicing the Commissions needs including keeping up to date with Municipal services.

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<b>Submit 1 hard copy and 1 soft copy of the proposal</b>	<b>YES</b>	All bidders are required to submit one (1) hard copy of the proposal in the tender box and one (1) soft copy on a USB flash drive or portable hard drive. CD's and DVD's will not result as a soft copy. Failure to submit either will result in disqualification.
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## 10.2 Gate 1: Checklist to be completed by the bidder

Number	Description	Index	Submitted with bid Yes/No Failure to submit will result in disqualification from the bid.
<b>1</b>	<b>THE BUILDING MUST EXIST AT THE TIME OF THE CLOSING OF THE BID</b>		
1.1	State street address of the premises on the bid offered		
1.2	State the ERF number of the premises on the bid offered. The ERF number offered must correspond with the ERF number stated on the documentary proof to be provided.		
1.3	The bidder must confirm the proposed square meters of the existing premise being offered		
1.4	Provide the floor plans of the premise being offered		
<b>2</b>	<b>SUBMIT PROOF OF OWNERSHIP OF THE BUILDING AT CLOSE OF BID</b>		
2.1	The bidder must submit the documentary proof that the bidder is the registered and beneficial owner of the building offered and attached to this bid. Only a copy bond registration document from the bank and/or a title deed /endorsed deeds of transfer by the Registrar of Deeds will be accepted.		
2.2	Where the bidder is bidding on behalf of the owner of the premises being offered– the bidder must submit a written mandate from the owner of the premise with the documentation on 2.1 which must be attached. Failure to supply supporting documentation on 2.1 or 2.2 will result in the bid being eliminated and not evaluated further.		
<b>3</b>	<b>BUILDING REQUIREMENTS COMPLIANCE CONFORMANCE</b>		
3.1	Confirmation that the designated building is not a heritage building. ("Heritage building" is a building possessing architectural, aesthetic, historic or cultural values which is declared as heritage building by the Planning Authority/Heritage conservation committee or any other Competent Authority in whose jurisdiction such building is situated)		

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3.2	The Landlord to confirm that the building offered, the floors to be leased are consecutive floors for the SAHRC occupation if the building is a multi-story building.		
4	<b>COMMITMENTS WITH TENANT INSTALLATIONS</b>		
4.1	Bidder to contribute a portion of the tenant installation costs		
4.2	Amount contribution for tenant installations		
4.3	Designs and layout will be done together with the SAHRC and can only be approved once approval is given by SAHRC on layout, colour schemes and design etc.		

### 10.3 Gate 2: Technical Evaluation Criteria = 100 points

Only Bidders that have met the Pre-Qualification Criteria in (Gate 0) and Checklist in Gate 1 will be evaluated in Gate 2 for functionality. Functionality will be evaluated as follows:

- i. Technical Evaluation – Bidders will be evaluated out of 100 points and are required to achieve minimum threshold of 70 points
- ii. The overall score must be equal or above 70 points to proceed to Gate 3 for Price and Specific Goals evaluations.

The Bidder's information will be scored according to the following points system:

Functionality	Maximum Percentage Achievable	Minimum Threshold
Technical (functionality)Evaluation	100	70 points

**Table 1: Functionality evaluation**

Criteria	Guidelines	Scoring	Maximum score
Bidder's experience	Bidders must demonstrate a minimum of 5-years of experience in the industry of public and/or private sector of renting out commercial buildings.	Registration in 2019 to 2023 = 0 Registration in 2018 = 2 Registration in 2017 = 4 Registration in 2016 = 6 Registration in 2015 = 8	10

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	Scoring will be done by inspection of the CSD report on the registration of the company and/or company documents.	Registration in 2014 or before = 10	
Price	Breakdown of the price and total amount for the duration of the contract together with being cost effective as per ANNEXURE B. Providing the amount per square meter for tenant installation.	No costing breakdown = 0 Total amount for the duration of the contract inclusive of vat = 5 Detailed breakdown per annum for the duration of the contract including total amount for the 5 years inclusive of vat and contributing amount to tenant installations= 10	10
Reference letters	Proven track record with reference letters of public and/or private sector organisations confirming that the landlord has prepared the building and has met the criteria of: Quality of work time frames  Scoring is to be done with the submission of reference letters that MUST contain the following:  Letters must be on the letterhead of the company of the tenant, signed, dated and when the lease was entered into.  Non submission or if any of the above is omitted will not be considered as a valid reference letter.	0 No valid letters = 0  1 valid letter = 5  2 valid letters = 10  3 valid letters = 15	15
Site visits and inspection	Site visitations will take place for all bidders being considered during the phase of functionality.	Within the following regions Braamfontein, Killarney, Parktown Within 5 km of these areas = 10 Within 7 km of these areas = 5 More then 7km of these areas = 0	10
	Lettable space: The amount lettable to the Commission should be provided when site visitations occur via a floor plan.	The floor plan should be in line with the tender document on the ideal size required = 5 no floor plan on size = 0	5

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The building should have a back-up generator and/or solar system to cater for load shedding	No generator and/or solar system = 0 Generator and/or solar system or installation thereof by providing plans by the bidder = 5	5
The building should have enough natural light entering	Bidder to provide a light meter reading of the natural light of the offices = 5 No meter reading and/or below 350 lux = 0	5
The building must have workable air conditioning system in place.	No working air conditioning system or no air conditions = 0 Bidder to physically verify the air conditioning system works = 5	5
The building must have a backup water supply system in place for any water outages.	No back up water supply system = 0 Back up water supply system or plans of a water back up system installed by the bidder = 5	5
The building must cater for disability needs	No disability needs met = 0 Ramp to enter the building = 2 Disability friendly washrooms = 2 Lifts = 1	5
The building must have security measures in place	The bidder to demonstrate security features of the building Demonstrations to include and not limited to: access control into the building, security control room, boom gates etc = 5 No security at the official building = 0	5
Access to parking for staff and public	The bidder to readily demonstrate the parking facilities for the Commission and for Public parking for visitors: within 100 m of building = 5 within 200 m of building = 4 within 300 m of building = 3 within 400 m of building = 2 within 500 m of building = 1 within 600 m of building or more = 0	5
At least one all gender restroom per floor	The bidder to cater for the all gender restrooms no all gender restroom = 0 All gender restroom = 5	5

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Proposed plans on tenant installations and designs	Bidder to submit a proposed plan on the tenant installations which should include the following: Duration of installation Design of the tenant installation Experts the bidder will allocate to carry out tenant installations The Commission reserves the right to appoint our own designer if the bidder designer does not meet the requirements of the Commission.	No submission of proposed plan = 0 Proposed plan with duration of installation = 4 Proposed plan with duration of installation and design = 8 Proposed plan with duration of installation, design and experts = 10	10
<b>TOTAL</b>			<b>100</b>

**10.4 Gate 3: Price and Specific Goals Evaluation (80+20) = 100 points**

Only Bidders that have met the 70 points thresholds in Gate 2 will be evaluated in Gate 3 for price and specific goals. Price and specific goals will be evaluated as follows:

In terms of regulation 6 of the Preferential Procurement Regulations pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated on the 80/20-preference point system in terms of which points are awarded to bidders based on:

- The bid price (maximum 80 points)
- Specific Goals (maximum 20 points)

**i. Stage 1 – Price Evaluation (80 Points)**

Criteria	Points
<b>Price Evaluation</b>  $Ps = 80 \left( 1 - \frac{Pt - P \min}{P \min} \right)$	80

The following formula will be used to calculate the points for price:

Where

Ps = Points scored for comparative price of bid under consideration

Pt = Comparative price of bid under consideration

Pmin = Comparative price of lowest acceptable bid

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ii. **Stage 2 – Specific Goals (20 Points)**

a. **BBBEE Points allocation**

A maximum of 20 points may be allocated to a bidder for attaining their B-BBEE status level of contributor in accordance with the table below:

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

B-BBEE points may be allocated to bidders on submission of the following documentation or evidence:

- B-BBEE Certificate

## 11. Submission Requirements and Contact Details

To be considered as a possible service provider, kindly submit the following:

- 11..1 Proposal
- 11..2 BBBEE Certificate.
- 11..3 Company Profile
- 11..4 SBD 1
- 11..5 SBD 3.3
- 11..6 SBD 4 document
- 11..7 CSD report at time of tender
- 11..8 SBD 6.1
- 11..9 SBD 7.2

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Note: If a bidder is a Consortium, Joint Venture or Prime Contractor with Subcontractor(s), the documents listed above must be submitted for each Consortium/ JV member or Prime Contractor and Subcontractor(s).

## 12. Contact and communication

Activity	Due Date
Advertisement of bid on SAHRC website/ eTender portal	13 July 2023
Briefing session	Not applicable
Questions relating to the bid from bidder(s) must be emailed	<a href="mailto:ARassool@sahrc.org.za">ARassool@sahrc.org.za</a> <a href="mailto:RDiane@sahrc.org.za">RDiane@sahrc.org.za</a>
Bid closing date	03 August 2023
Validity period	120 days
Notice to bidder(s)	South African Human Rights Commission will endeavour to inform bidders of the progress until conclusion of the tender.

- Please submit all tender documents at Head Office by Thursday 03 August 2023, before 11h00.
- The delegated office of South African Human Rights Commission may communicate with Bidder(s) where clarity is sought in the bid proposal. For any SCM related issues kindly contact [Tenderoffice@sahrc.org.za](mailto:Tenderoffice@sahrc.org.za)

Any communication to an official or a person acting in an advisory capacity for South African Human Rights Commission in respect of the bid between the closing date and the award of the bid by the Bidder(s) is discouraged.

- All communication between the Bidder(s) and South African Human Rights Commission must be done in writing.
- Whilst all due care has been taken in connection with the preparation of this bid, South African Human Rights Commission makes no representations or warranties that the content of the bid or any information communicated to or provided to Bidder(s) during the bidding process is, or will be, accurate, current, or complete. South African Human Rights Commission and its employees and

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advisors will not be liable with respect to any information communicated which may not accurate, current, or complete.

- If Bidder(s) finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by South African Human Rights Commission (other than minor clerical matters), the Bidder(s) must promptly notify South African Human Rights Commission in writing of such discrepancy, ambiguity, error, or inconsistency in order to afford South African Human Rights Commission an opportunity to consider what corrective action is necessary (if any).
- Any actual discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by South African Human Rights Commission will, if possible, be corrected and provided to all Bidder(s) without attribution to the Bidder(s) who provided the written notice.
- All persons (including Bidder(s)) obtaining or receiving the bid and any other information in connection with the Bid, or the Tendering process must keep the contents of the Bid and other such information confidential, and not disclose or use the information except as required for the purpose of developing a proposal in response to this Bid.

### **13. LATE BIDS**

Bids received after the closing date and time, at the address indicated in the bid documents, will not be accepted for consideration and where practicable, be returned unopened to the Bidder(s).

### **14. COUNTER CONDITIONS**

Bidders' attention is drawn to the fact that amendments to any of the Bid Conditions or setting of counter conditions by Bidders or qualifying any Bid Conditions will result in the invalidation of such bids.

### **15. FRONTING**

- Government supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent, and legally compliant manner. Against this background the Government condemn any form of fronting.
- The Government, in ensuring that Bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct, or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the

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Department of Trade and Industry, be established during such enquiry / investigation, the onus will be on the Bidder / contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the bid / contract and may also result in the restriction of the Bidder /contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies South African Human Rights Commission may have against the Bidder / contractor concerned.

## 16. SUPPLIER DUE DILIGENCE

South African Human Rights Commission reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include site visits and requests for additional information.

## 17. SUBMISSION OF PROPOSALS

- Bid documents may be placed in the tender box in the aforementioned address on or before the closing date and time.
- Bid documents will only be considered if received by South African Human Rights Commission before the closing date and time.
- **The bidder(s) are required to submit one (1) hard copy of the proposal and one (1) memory stick / USB flash drive with content of each file by the closing date, 03 August 2023 at 11:00. Each file and memory stick / USB flash drive must be marked correctly and sealed separately for ease of reference during the evaluation process.**

## 18. PRESENTATION / DEMONSTRATION

South African Human Rights Commission reserves the right to request presentations/demonstrations from the short-listed Bidders as part of the bid evaluation process.

## 19. GENERAL CONDITIONS OF CONTRACT

Any award made to a bidder(s) under this bid is conditional, amongst others, upon –

- a. The bidder(s) accepting the terms and conditions contained in the General Conditions of Contract as the minimum terms and conditions upon which South African Human Rights Commission is prepared to enter a contract with the successful Bidder(s).

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- b. The bidder submitting the General Conditions of Contract to South African Human Rights Commission together with its bid, duly signed by an authorised representative of the bidder.

## 20. CONTRACT PRICE ADJUSTMENT

Contract price adjustments will be done annually on the anniversary of the contract start date. The price adjustment will be based on the Consumer Price Index Headline Inflation

STATS SA P0141 (CPI), Table E	Table E - All Items
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## 21. SERVICE LEVEL AGREEMENT

- a. Upon award South African Human Rights Commission and the successful bidder will conclude a Service Level Agreement regulating the specific terms and conditions applicable to the services being procured by South African Human Rights Commission
- b. South African Human Rights Commission reserves the right to accept or reject any or all amendments or additions proposed by a bidder if such amendments or additions are unacceptable to South African Human Rights Commission or pose a risk to the organisation.

## 22. SPECIAL CONDITIONS OF THIS BID

South African Human Rights Commission reserves the right:

- a. To award this tender to a bidder that did not score the highest total number of points, only in accordance with section 2(1)(f) of the PPPFA (Act 5 of 2000)
- b. To negotiate with one or more preferred bidder(s) identified in the evaluation process, regarding any terms and conditions, including price without offering the same opportunity to any other bidder(s) who has not been awarded the status of the preferred bidder(s).
- c. To accept part of a tender rather than the whole tender.
- d. To carry out site inspections, product evaluations or explanatory meetings to verify the nature and quality of the services offered by the bidder(s), whether before or after adjudication of the Bid.
- e. To correct any mistakes at any stage of the tender that may have been in the Bid documents or occurred at any stage of the tender process.
- f. To cancel and/or terminate the tender process at any stage, including after the Closing Date and/or after presentations have been made, and/or after tenders have been evaluated and/or after the preferred bidder(s) have been notified of their status as such.

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- g. Award to multiple bidders based either on size or geographic considerations.

### **23. SOUTH AFRICAN HUMAN RIGHTS COMMISSION REQUIRES BIDDER(S) TO DECLARE**

In the Bidder's Technical response, bidder(s) are required to declare the following:

- h. Confirm that the bidder(s) is to: –
  - a. Act honestly, fairly, and with due skill, care, and diligence, in the interests of South African Human Rights Commission
  - b. Have and effectively employ the resources, procedures, and appropriate technological systems for the proper performance of the services.
  - c. Act with circumspection and treat South African Human Rights Commission fairly in a situation of conflicting interests.
  - d. Comply with all applicable statutory or common law requirements applicable to the conduct of business.
  - e. Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with South African Human Rights Commission.
  - f. Avoidance of fraudulent and misleading advertising, canvassing, and marketing.
  - g. To conduct their business activities with transparency and consistently uphold the interests and needs of South African Human Rights Commission as a client before any other consideration; and
  - h. To ensure that any information acquired by the bidder(s) from South African Human Rights Commission will not be used or disclosed unless the written consent of the client has been obtained to do so.

### **24. CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

- i. South African Human Rights Commission reserves its right to disqualify any bidder who either itself or any of whose members (save for such members who hold a minority interest in the bidder through shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange), directors or members of senior management, whether in respect of South African Human Rights Commission or any other government organ or entity and whether from the Republic of South Africa or otherwise ("Government Entity")

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- a. engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid.
- b. seeks any assistance, other than assistance officially provided by a Government Entity, from any employee, advisor, or other representative of a Government Entity to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity.
- c. makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of South African Human Rights Commission's officers, directors, employees, advisors, or other representatives.
- d. makes or offers any gift, gratuity, anything of any value or other inducement, to any Government Entity's officers, directors, employees, advisors, or other representatives to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity.
- e. accepts anything of value or an inducement that would or may provide financial gain, advantage, or benefit in relation to procurement or services provided or to be provided to a Government Entity.
- f. pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift, or any other consideration, that is contingent upon or results from, the award of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to a Government Entity.
- g. has in the past engaged in any matter referred to above; or
- h. has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether a prison term was imposed and despite such bidder, member or director's name not specifically appearing on the List of Tender Defaulters kept at National Treasury.

## **25. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT**

- j. The bidder should note that the terms of its Tender will be incorporated in the proposed contract by reference and that South African Human Rights Commission relies upon the bidder's Tender as a material representation in making an award to a successful bidder and in concluding an agreement with the bidder.
- k. It follows therefore that misrepresentations in a Tender may give rise to service termination and a claim by South African Human Rights Commission against the bidder notwithstanding the conclusion of the Service Level Agreement between South African Human Rights Commission and the bidder for

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the provision of the Service in question. In the event of a conflict between the bidder's proposal and the Service Level Agreement concluded between the parties, the Service Level Agreement will prevail.

## **26. PREPARATION COSTS**

The Bidder will bear all its costs in preparing, submitting, and presenting any response or Tender to this bid and all other costs incurred by it throughout the bid process. Furthermore, no statement in this bid will be construed as placing South African Human Rights Commission, its employees, or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the bidder(s) in the preparation of their response to this bid.

## **27. INDEMNITY**

If a bidder breaches the conditions of this bid and, as a result of that breach South African Human Rights Commission incurs costs or damages (including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations), then the bidder indemnifies and holds South African Human Rights Commission harmless from any and all such costs which South African Human Rights Commission may incur and for any damages or losses South African Human Rights Commission may suffer.

## **28. PRECEDENCE**

This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

## **29. LIMITATION OF LIABILITY**

A bidder participates in this bid process entirely at its own risk and cost. South African Human Rights Commission shall not be liable to compensate a bidder on any grounds whatsoever for any costs incurred or any damages suffered because of the Bidder's participation in this Bid process.

## **30. TAX COMPLIANCE**

No tender shall be awarded to a bidder who is not tax compliant. South African Human Rights Commission reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder if it is established that such bidder was in fact not tax compliant at the time of the award or has submitted a fraudulent Tax Clearance Certificate to South African Human Rights Commission, or whose verification against the Central Supplier Database (CSD) proves non-compliant. South African Human Rights Commission further reserves the right to cancel a contract with a successful bidder if such bidder does not remain tax compliant for the full term of the contract.

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### **31. TENDER DEFAULTERS AND RESTRICTED SUPPLIERS**

No tender shall be awarded to a bidder whose name (or any of its members, directors, partners, or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. South African Human Rights Commission reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another government institution.

### **32. GOVERNING LAW**

South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African courts in any dispute of any kind that may arise out of or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

### **33. RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL**

A bidder is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors, and other representatives), its sub-contractors (if any) and personnel of its sub-contractors comply with all terms and conditions of this bid. If South African Human Rights Commission allows a bidder to make use of sub-contractors, such sub-contractors will always remain the responsibility of the bidder and South African Human Rights Commission will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

### **34. CONFIDENTIALITY**

Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s) will be disclosed by any bidder or other person not officially involved with South African Human Rights Commission's examination and evaluation of a Tender.

No part of the bid may be distributed, reproduced, stored, or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a Tender. This bid and any other documents supplied by South African Human Rights Commission remain proprietary to South African Human Rights Commission and must be promptly returned to South African Human Rights Commission upon request together with all copies, electronic versions, excerpts, or summaries thereof or work derived there from.

Throughout this bid process and thereafter, bidder(s) must secure South African Human Rights Commission's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this bid relates; or (ii) the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

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### **35. SOUTH AFRICAN HUMAN RIGHTS COMMISSION PROPRIETARY INFORMATION**

Bidder will on their bid cover letter make declaration that they did not have access to any South African Human Rights Commission proprietary information or any other matter that may have unfairly placed that bidder in a preferential position in relation to any of the other bidder(s).

### **36. AVAILABILITY OF FUNDS**

Should funds no longer be available to pay for the execution of the responsibilities of this bid, the South African Human Rights Commission may terminate the Agreement at its own discretion or temporarily suspend all or part of the services by notice to the successful bidder who shall immediately make arrangements to stop the performance of the services and minimize further expenditure: Provided that the successful bidder shall thereupon be entitled to payment in full for the services delivered, up to the date of cancellation or suspension.

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