

PROVINCIAL TENDER BOARD

GENERAL CONDITIONS AND PROCEDURES

(KST 36)

(English text approved by the Board)

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Amendment: May 1994

1. The words and expressions defined in the Act and regulations shall, when used in a particular tender, contract or order, have the meanings so assigned to them, and those defined below shall have the meanings hereby assigned to them unless such meanings are inconsistent with the context of a particular tender, contract or order:
 - 1.1 "acceptance of a tender" means the award of a contract to a tenderer in response to his tender or price quotation;
 - 1.2 "Act" means the State Tender Board Act, 1968 (Act No. 86 of 1968);
 - 1.3 "beneficial use" means the use of a supply or service which has been delivered, partially or completely installed and commissioned and is available for use;
 - 1.4 "Board" means the State Tender Board;
 - 1.5 "closing time" means the date and hour specified in the tender documents for the receipt of tenders;
 - 1.6 "contract" means the agreement which results from the acceptance of a tender;
 - 1.7 "contractor" means any natural or legal person whose tender has been accepted by the State;
 - 1.8 "delivery" means delivery in compliance with the conditions of the contract or order;
 - 1.9 "delivery ex stock" means immediate delivery directly from stock actually on hand;
 - 1.10 "delivery into consignee's store or to his site" means delivered and unloaded

in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the contractor bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained;

1.11 "formal contract" means a written contract, all the terms of which are embodied in a single or composite document signed by all the parties thereto and duly witnessed;

1.12 "free on rail (f.o.r.)" means delivery into a railway truck at the station or private siding of despatch, the contractor bearing all risks connected with and charges for the placing of the supplies into the railway truck, and in the case of supplies which have been railed f.o.r. a private siding, the contractor also bearing the risk until the supplies have been received at the station of destination, the contractor being liable for all shortages, damages and losses; the said expression shall also be interpreted as including free delivery within the free delivery area in which the station of despatch is situated;

- 1.13 "imported content" means that portion of the tender price represented by the costs of components, parts or materials which have been or are still to be imported (whether by the tenderer or his suppliers or subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty, or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies which have been tendered for are manufactured;
- 1.14 "indices" means indices published by the Central Statistical Services, SEIFSA and other bodies approved by the Board reflecting price adjustments or changes in cost;
- 1.15 "local content" means that portion of the tender price which is not included in the imported content provided that local manufacture does take place;
- 1.16 "manufacture" means the production of products in a factory using labour, materials, components and machinery and includes fabrication, assembly or processing;
- 1.17 "order" means an official written order issued for the supply of goods or the rendering of a service;
- 1.18 "period contract" means a contract entered into for the supply of goods, the rendering of services or the disposal of movable State property during a specified period of time;
- 1.19 "preference" means a percentage of the tender price deducted from the tender price of certain products or services, as determined by the Minister of State Expenditure, for use when calculating the comparative price in terms of paragraph 24.7;
- 1.20 "price quotation" means a written offer on any documentation which is not necessarily subject to the general conditions and procedures contained in

this document (ST 36) and which is invited and dealt with in any manner;

- 1.21 "production" means the production of products, whether in a factory or not, and includes manufacturing and other activities such as mining and agriculture;
- 1.22 "regulations" means the regulations promulgated in terms of section 13 of the Act;
- 1.23 "Republic" means the Republic of South Africa;
- 1.24 "State" includes Government departments of the Republic and any other bodies listed in tender documents as participating bodies;
- 1.25 "tender" means a written offer on the official tender documents forming part of an invitation to tender which invitation has been dealt with in accordance with the requirements of the general conditions and procedures contained in this document (ST 36) and, unless otherwise determined by the Board, has been advertised in the State Tender Bulletin;
- 1.26 "tenderer" means any natural or legal person submitting a tender or a price quotation;
- 1.27 "written" or "in writing" means handwritten in ink or any form of mechanical writing.

PART II : GENERAL DIRECTIVES

Conditions and procedures

- 2.1 The following general conditions and procedures have been laid down by the Board in terms of the Act and are applicable to all tenders, contracts and orders, unless otherwise decided by the Board prior to the invitation of tenders.
- 2.2 Where applicable, special conditions or procedures are also laid down by the Board to cover specific supplies or services.
- 2.3 Where such special conditions or procedures are in conflict with these general conditions and procedures, the special conditions or procedures shall apply.

Interpretation of headings

3. The headings used herein shall not be deemed to be part of the conditions and procedures and shall not be taken into consideration in the explanation or interpretation of the conditions and procedures.

Communication with the Chief Directorate

4. All correspondence in regard to this document must be addressed to the Chief Director: Procurement Administration, Private Bag X49, Pretoria, 0001.

Availability of conditions and procedures

5. Copies of this document are available, on application, from the Chief Director: Procurement Administration, Pretoria or from any of his regional offices.

Formal contracts

6. Formal contracts are concluded with contractors only where this requirement is stated in the tender invitation.

SA Post Office Ltd as agent of tenderer or contractor

7. Because the SA Post Office Ltd is regarded as the agent of the tenderer or contractor -
 - 7.1 every written acceptance of a tender shall be posted to the tenderer or contractor concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his tender or to the address notified later by him in writing, and such posting shall be deemed to be proper service of such notice; and
 - 7.2 the time mentioned in this document or in the contract documents, for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

Amendment: March 1994

PART III: INVITATION OF TENDERS

General

- 8.1 Unless otherwise indicated in the tender documents, the State shall not be liable for any expense incurred in the preparation and submission of a tender.
- 8.2 Unless the Board directs otherwise tenders are invited in the Republic only.
- 8.3 Unless the Board decides to the contrary, the laws of the Republic shall govern contracts arising from the acceptance of tenders.
- 8.4 A domicilium citandi et executandi shall be chosen in the Republic and stated in the tender.
- 8.5 With certain exceptions, notifications of tender invitations are published in the State Tender Bulletin only.
- 8.6 The State Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria, 0001.
- 8.7 The tender number must not appear on any envelope unless the envelope contains the tender itself. In particular, the tender number must not appear on an envelope containing a request for tender documents.
- 8.8 The requirements of state-aided or subsidised institutions, bodies or persons are not included in contracts unless otherwise expressly stated.

Quantities

9. An indication is given in the tender documents of the organisations on behalf of which the contract is being arranged or which will participate therein. One of the following methods of indicating the quantity required shall be

adopted:

- 9.1 A quantity which may not be varied without mutual consent;
- 9.2 a quantity subject to a percentage increase or decrease;
- 9.3 a maximum quantity where the minimum quantity ordered cannot be guaranteed but where the maximum quantity may not be exceeded without the consent of the contractor;
- 9.4 a quantity not specified; or
- 9.5 a quantity not guaranteed.

Approved lists of tenderers

- 10.1 Where the Board considers it advisable that invitations to tender for specific supplies or services should be limited to certain tenderers, known, potential tenderers are evaluated in the light of the requirements concerned and invitations are extended to all tenderers found to be suitable.
- 10.2 For certain supplies or services, lists of approved tenderers are compiled. The Board then arranges for the publication in the State Tender Bulletin, or in such other manner as it deems expedient, of a notice inviting potential tenderers to submit applications on or before a stated date for inclusion in such lists. The names of potential tenderers considered to be suitable to undertake contracts are then included in the list.
- 10.2.1 The Board shall remove from a list of approved tenderers the name of any tenderer at his request or if the Board considers him to be no longer suitable to undertake the contracts concerned.
- 10.2.2 From time to time the Board publishes particulars of supplies and services in respect of which there are lists of approved tenderers in the State Tender Bulletin and invites any other potential tenderers to apply for inclusion in such lists.
- 10.2.3 New applications for inclusion in the lists are considered by the Board in the light of the circumstances pertaining to each list.
- 10.2.4 Unless otherwise directed by the Board, invitations to tender for the supplies or services concerned are limited to the tenderers whose names are included in the relevant lists.

Documents to be used and information to be furnished

- 11.1 Tenderers are required to -

- 11.1.1 make use of the prescribed tender documents;
 - 11.1.2 insert tender prices and other required information in the appropriate spaces on the prescribed forms; and
 - 11.1.3 furnish all further information called for in the tender documents and to supply pamphlets, samples, etc., when required.
- 11.2 Failure of the tenderer to submit a tender signed in ink or to complete the tender document certificates, questionnaires and specification forms in all respects, may invalidate the tender.

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

Charge for documents

12. A charge, as required in the tender documents or advertisement, shall be raised for tender documents and shall be refunded on return of the documents and the submission of a bona fide tender only if such a refund is stipulated in the documents or advertisement.

Availability of specifications

13. Where SABS or CKS specifications are referred to in tender documents, requests to consult such specifications or to purchase copies thereof should be made to the local branch of the SA Bureau of Standards.

Samples

- 14.1 Prospective tenderers may be charged for samples supplied to them.
- 14.2 Samples made up from materials supplied by the State shall not be returned to the tenderer, nor shall the State accept any liability for the cost of making up such samples, unless so specified in the tender documents.
- 14.3 When samples are called for in tender documents, samples (marked with the tender and item number as well as the tenderer's name and address) shall be despatched to the addressee mentioned in the tender documents so as to reach him not later than the closing time of the tender. Samples may be sent by air but if air-freighted, shall be delivered by the tenderer's own

courier. Tenders shall not be included in parcels containing samples.

- 14.4 If samples are not submitted as requested, the tender concerned may be declared invalid.
- 14.5 Samples shall not be submitted in support of tenders unless called for in the tender documents.
- 14.6 Samples shall be supplied by a tenderer at his own expense and risk and the State shall not be obliged to pay for such samples.
- 14.7 Unless otherwise specified in the tender documents the State is not liable for the cost of samples supplied by a tenderer and reserves the right not to return such samples and to dispose of them at its discretion.
- 14.8 Where a tender is accepted for the supply of goods according to a sample submitted by the tenderer, such sample becomes the contract sample and further samples as required for the purposes of the contract shall be provided by the contractor as requested by the State and at the contractor's own expense and risk.
- 14.9 When samples have served their purpose and are to be returned to the tenderers, the tenderers shall be given written notice to remove the samples at their own expense and risk within a specified period, failing which the tenderer concerned forfeits ownership and the samples shall forthwith be disposed of at the discretion of the State.

Closing of tenders

- 15.1 Subject to the provisions of paragraph 15.2, tenders close at 11:00 on the closing date indicated in the tender documents.
- 15.2 When the closing date falls on a Saturday, Sunday or public holiday, tenders may be lodged up to 11:00 on the following working day.

- 15.3 Unless the Board decides otherwise, tenders close at least 4 weeks after the date of publication in those cases where the supplies are expected to be in stock in the Republic or manufactured from materials available in the Republic and at least 5 weeks after the date of publication in all other cases.
- 15.4 Extension of the closing date is granted if circumstances justify this action. The closing date is normally extended only if there is sufficient time to publish an amending notification before the original closing date.

Validity periods

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

Tender prices and delivery periods

17. Firm tender prices and delivery periods are preferred. The following considerations shall apply in evaluating tenders with differing price and delivery conditions:
- 17.1 Tenderers may submit firm or non-firm prices.
- 17.1.1 "Firm" prices are deemed to be the prices which, subject to the stipulations of paragraph 17.1.4, are only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which, in terms of a law or regulation is binding upon the contractor and demonstrably have an influence on the prices of any supplies, or the rendering costs of any services, for the execution of the contract. Where different prices are tendered for different periods of the contract, the tender

price applicable in respect of a particular period of the contract shall be a firm price if, as regards such period, it conforms to the preceding definition of "firm prices".

17.1.2 Repealed.

17.1.3 "Non-firm" prices are all prices other than "firm" prices.

17.1.4 When, after the date of tender, provisional payments are required or anti-dumping or countervailing duties are imposed or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import the State is not liable for any amount so required or imposed or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, the provisions of paragraph 54.4 shall apply *mutatis mutandis*.

17.1.5 Claims in respect of exchange rate fluctuations are, in the case of firm as well as non-firm prices, subject to the provisions of paragraphs 52.1 to 53.3.

17.1.6 The Board may, where non-firm prices are offered, require that proof of labour and material costs or other factors which are specified by the tenderer, must be submitted and, should the cost to his opinion not be realistic, it may be brought into consideration in the application of paragraphs 17.3 and 17.7.

17.2 The appropriate questionnaire concerning the status of tendered prices and, if applicable, the form relating to the formula for adjusting prices, which is included in the tender documents, shall be completed in detail and submitted together with the tenders.

17.3 When calculating the comparative prices as provided in paragraph 24.7, non-firm tender prices are adjusted in accordance with the assessed contract price adjustments implicit in the non-firm prices.

- 17.4 Where a range of delivery periods is quoted, the worst implied delivery period is used when calculating the comparative prices as stipulated in paragraph 24.7.
- 17.5 Where a tenderer has not indicated whether his prices or delivery periods are firm or not, the tendered prices and delivery periods are deemed to be firm and the contractor shall be bound thereby.
- 17.6 Expressions such as "soonest" or "earliest" or delivery periods which are unspecified are not acceptable.
- 17.7 After comparisons have been made, the Board may in its discretion award a further preference for firm prices.

Alternative offers

18. Whilst tenders which are to specification are given preference, a tenderer may, unless otherwise directed by the Board, submit offers which are almost, but not strictly to specification, irrespective of whether he also submits offers conforming strictly to specification. Alternative offers shall be submitted on separate copies of the tender documents.

Partial tenders

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

Lodging of tenders

- 20.1 Tenders shall be lodged not later than the closing time specified for their receipt at the address and in accordance with the directives in the tender documents.
- 20.2 Each tender shall be addressed in accordance with the directives in the tender documents and shall be lodged in a separate sealed envelope with the name and address of the tenderer, the tender number and the closing date indicated on the envelope. The envelope shall not contain documents relating to any tender other than that shown on the envelope.
- 20.3 Unless specifically provided for in the tender invitation, no tenders forwarded by telegram, telex, facsimile or similar apparatus are considered. However, photostat copies of tenders or photostat copies of facsimiles which are lodged in the prescribed way and in which the relevant forms and

certificates are signed in ink, after being copied, are accepted as valid tenders.

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

Late tenders

21. Tenders are late if they are received at the address indicated in the tender documents after closing time.
- 21.1 A late tender shall not be admitted for consideration and where practicable shall be returned unopened to the tenderer accompanied by an explanation.

Tenders received without envelopes, in unsealed envelopes and in envelopes without the tender number and closing date on the envelope.

22. All tenders received without envelopes, shall be sealed in an envelope, and the tender number, and closing date written on the envelope. Tenders received in envelopes (sealed or unsealed) without the tender number on the envelope, shall be opened, the tender number ascertained, the envelope sealed, and the tender number and closing date written on the envelope.

All tenders will then be kept unopened in safe custody until the closing time of the tenders.

Opening of tenders

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

- 23.1 Except as provided for in paragraph 23.2, the names only of the tenderers are read out, if so requested, at the time of opening of tenders.
- 23.2 The prices of tenders in the building, civil, mechanical and electrical works categories are disclosed on request at the time of opening of tenders.

Amendment: July 1997

PART IV: CONSIDERATION OF TENDERS

General

- 24.1 All tenders duly admitted are taken into consideration by the Board.
- 24.2 The financial standing of tenderers and their ability to manufacture or to supply goods or to render a service may be examined before their tenders are considered for acceptance.
- 24.3 The Board is not obliged to accept the lowest or any tender.
- 24.4 The Board may, where a tender relates to more than one item, accept such tender in respect of any specific item or items and, subject to the provisions of paragraph 27, also accept part of the specified quantity of any specific item or items.
- 24.5 The Board may accept any offer for a specific supply or the rendering of a specific service to the State or for the purchase of specific supplies from the State notwithstanding the fact that such offer was not made in response to a tender invitation or does not conform to the tender conditions or specifications set out in the tender documents.
- 24.6 Any decision by the Board regarding the awarding of a contract shall be final and the Board is not obliged to give any reason for the acceptance or passing over of a tender.
- 24.7 In comparing tenders, the prices are brought to a comparative level by deducting preferences and other benefits and adding delivery and other costs as applicable and bringing implied contract price adjustments into account.
- 24.8 Where a contract has been awarded on the strength of information furnished by the contractor which, after the conclusion of the relevant

agreement, is proved to have been incorrect, the Board may, in addition to any other legal remedy it may have -

- 24.8.1 recover from the contractor all costs, losses or damages incurred or sustained by the State as a result of the award of the contract; and/or
- 24.8.2 cancel the contract and claim any damages which the State may suffer as a result of having to make less favourable arrangements; and/or
- 24.8.3 impose on the contractor, as provided for in regulation 3(6)(c), a penalty not exceeding five per cent of the value of the contract.

Preferences

- 25. Certain tender price preferences are allowed which do not affect the tender price but which are taken into account when calculating the comparative price in terms of paragraph 24.7.
- 25.1 The following preferences are considered, based on the information provided by tenderers:
 - 25.1.1 A preference based on the local content of either the entire local process or of only that part of the local process involved with electronics.
 - 25.1.2 Repealed.
 - 25.1.3 A preference for the SABS standardisation mark.
 - 25.1.4 Such other preferences as may be determined by the Minister of State Expenditure from time to time.
- 25.2 During the adjudication process or subsequent to the award of the contract, where doubt exists regarding any of the statements made in support of a preference claim, documentary proof may be called for in substantiation of the statements.

Equal tenders

- 26.1 After prices have been brought to a comparative level the following order of priority is normally applied in the consideration of equal tenders:
 - 26.1.1 Supplies manufactured in the Republic from raw materials entirely or partly produced within the Republic;
 - 26.1.2 supplies manufactured in the Republic from entirely imported raw materials or non-fabricated material;

- 26.1.3 supplies assembled in the Republic from entirely or partly imported components;
 - 26.1.4 supplies from imported stocks held in the Republic;
 - 26.1.5 imported supplies from local firms or persons who are in a position to give expert advice or render expert service;
 - 26.1.6 supply from points of despatch nearest to the centres at which delivery is required; and
 - 26.1.7 all things still being equal, the award shall be decided by the drawing of lots.
- 26.2 Notwithstanding the foregoing, supplies of a perishable nature are, as far as practicable and in the interests of economy, purchased at, or as near as possible to, the centre where the supplies are required.

Quantities other than those specified

27. If a tender is based on quantities as defined in paragraphs 9.1, 9.2 or 9.3 and the tender is accepted for a quantity other than that called for or offered, the tenderer is given the option of refusing acceptance if the quantity required is less than that for which he has tendered in the case of quantities based on paragraph 9.1, or less than the minimum quantity in the case of quantities based on paragraph 9.2. However, if the tender is accepted for a larger quantity, only the excess may be refused in the case of quantities based on paragraph 9.1 or the excess above the maximum quantity in the case of quantities based on paragraphs 9.2 or 9.3. Written notification of rejection of the changed quantities must be received from the tenderer within 14 days of the date on which he was advised of the change, failing which he will be deemed to have accepted.

Notification of acceptance

- 28.1 Successful tenderers are notified by registered or certified mail of the acceptance of their tenders.
- 28.2 Except in the case of period contracts, the undermentioned particulars of the successful tenderer are normally published in the State Tender Bulletin for general information:
- 28.2.1 Name;
 - 28.2.2 the price and delivery basis;
 - 28.2.3 the brand name of the product or the name of the manufacturer; and
 - 28.2.4 where applicable, the preference percentages claimed.
- 28.3 Where no tender has been accepted, particulars of the tenders received are not made public.

Additional information

- 29.1 Tenders are not available for perusal by the public, but, at the written request of a tenderer or interested party, the following particulars may be furnished where the information has not been published in the State Tender Bulletin:
- 29.1.1 The names and addresses of all tenderers;
 - 29.1.2 the prices and bases of delivery offered by all tenderers;
 - 29.1.3 the brand name of the product and the name of the manufacturer, if available, in respect of the accepted tender only; and
 - 29.1.4 where applicable, the preference percentages claimed by the successful tenderer.
- 29.2 In addition to the information provided for in paragraph 29.1, any further information may be furnished as deemed necessary by the Board.

Amendment: July 1997

PART V : ADMINISTRATION OF CONTRACTS

Settlement of disputes

30. Should any dispute arise as to the interpretation of the conditions of a tender, contract or order, the decision of the Board shall be final but execution of a contract or order shall not be delayed pending such decision.

Orders

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

Packing, packing material and containers

32. Unless otherwise specifically provided for in a contract, the contractor is responsible for packing supplies at his own cost and in such a manner as to ensure that there is no loss or damage in transit.
- 32.1 Unless otherwise agreed no charge shall be allowed for packing material or containers and such material or containers shall not be returned to the contractor.
- 32.2 Where provision is expressly made in a contract for the return of packing material or containers, such packing material or containers shall be returned at the contractor's expense. Returnable packing material or containers shall be invoiced at the prices given in the contract and full credit shall be allowed therefor on receipt of a department's claim supported by a copy of the freight transit order irrespective of whether they are returnable to the contractor or to a third party.

- 32.3 The mass of bags, containers or packing material is not accepted as part of the supplied mass and such bags, containers or packing material shall not be returned except as provided for in paragraph 32.2. The mass of bags containing maize, maize meal, oats, bran or similar produce is calculated at 1 kg per bag and this mass is deducted from the gross mass irrespective of whether bags of lesser mass may have been used. All bags must be strong, in sound, serviceable condition, and without holes. Supplies packed in bales shall be strongly and securely baled to withstand any damage during transportation.
- 32.4 The contractor is responsible for ensuring that supplies to be shipped or railed are properly packed having regard to the requirements of the order and of the South African Conference Lines or other shipping lines serving South African ports or an inland transport service as the case may be, relating to the use of certain types of containers and wrappers. Unless otherwise expressly agreed, such containers and wrappers will be accepted only on the understanding that the contractor indemnifies the State and its employees against any loss, breakage or damage occasioned by their use. Should bills of lading be claused to the effect that the ship is not responsible for such loss, breakage or damage, the contractor shall accept responsibility therefor.
- 32.5 Any special packing requirements such as palletising, containerisation, etc., shall be provided if necessary or if so required in the tender documents.

Consignment

33. Supplies shall be consigned in the name of the contractor or his representative, otherwise consignments may be rejected. The representative shall have been nominated by the contractor in writing and approved by the State, also in writing, prior to the despatch of the consignment.

Export licence

34. When orders are placed for supplies in respect of which an export licence is required -
- 34.1 the contractor shall not incur any direct or indirect costs in connection with the supply or despatch of such supplies before he has obtained such licence; or
- 34.2 if the Government of the country from which the supplies are to be exported refuses, or fails to grant, such licence within three months from the placing of the order, the order shall be considered to be cancelled and no liability will be accepted for any loss or expenses irrespective of the nature thereof, including loss or expenditure suffered or incurred by the contractor or any other person in respect of the production, supply, transport or delivery of such supplies.

Transport in the Republic

- 35.1 Where use is made of a national transport service for the consignment of supplies and the contractor consigns them by mobile containers, the surcharge for transportation in such containers as well as the extra cost for delivery to the consignee from the destination station and any other incidental charges raised by the transport service are for the contractor's account. Where, however, in exceptional cases, the contract provides for the raising of separate charges for containers, packing or materials for packing and the supplies are, with the prior approval of the department concerned, consigned unpacked in mobile containers, the surcharge for transportation in such mobile containers, plus the extra cost for delivery to the consignee at the destination station and any other incidental charges raised by the transport service, are for the account of the State.
- 35.2 Where the contract provides for despatch by rail from two or more railway stations or sidings the State reserves the right to choose the station or siding from which the supplies are to be despatched, unless otherwise stated in the contract.

Shipping of supplies from the United Kingdom and the continent of Europe

36. It is necessary to conserve foreign exchange and since this purpose can best be served by shipping goods in vessels owned or operated by South African shipping companies or in which such companies have an interest and against bills of lading of such companies, shipping arrangements shall be made accordingly, provided such arrangements do not result in higher costs or excessive delays. Any contractor who intends to make use of a vessel that is not owned or operated by a South African company, or in which such company does not have an interest, shall, to the satisfaction of the Board, produce prior evidence that the said companies cannot readily supply the desired service.
- 36.1 All goods imported by the contractor into the Republic by sea from the United Kingdom or the continent of Europe for the execution of his contract shall be shipped in vessels operated by the EUROPE SOUTH AND SOUTH-EAST AFRICAN CONFERENCE LINES, with which the government has concluded an agreement. The members of the Conference are the following:
- C.M.B. S.A. (Compagnie Maritime Belge S.A.); Compagnie Generale Maritime; Navale Delmas International; Naviera Garcia Minaur S.A. (Consortium Line); Deutsche Afrika-Linien, G.m.b.H.; Ellerman Harrison Container Line Limited; Ignazio Messina & Co., A.p.A.; Lloyd Triestino De Navigazione S.p.A.; Nedlloyd Lijnen B.V.; P & O Containers Limited; Transatlantic Shipping Co.; Royal Swazi National Shipping Co. Limited; South African Marine Corporation Limited; Blue Star Line.
- 36.2 Paragraph 36.1 applies to all contracts, whether relating to the supply of goods and/or services or the participation in capital projects and irrespective of the terms of the contract, e.g. "delivered on site", etc.
- 36.3 It is the responsibility of the contractor to ensure that the requirements set out in paragraphs 36.1 and 36.2 are conveyed in writing to his

subcontractors and adhered to at all times.

- 36.4 Should exceptional circumstances exist which render the contractor or his subcontractors unable to comply with the provisions of paragraph 36.1, the contractor shall obtain prior written approval from the Board to ship the goods in vessels other than those operated by the said Conference Lines. Requests for approval shall be made in good time and prior to entering into any contract of carriage and shall include inter alia the following information:
- 36.4.1 Sound reasons justifying dispensation.
- 36.4.2 Full details of the cargo in question including the total mass and cubic measurement.
- 36.4.3 Name of the proposed carrying vessel.
- 36.4.4 Port(s) of shipment and discharge.
- 36.4.5 Expected date of departure and arrival of the proposed carrying vessel from/to ports as indicated in paragraph 36.4.4.
- 36.4.6 Full details of the contract including the reference number.
- 36.5 Only after written approval has been granted by the Board may the contractor ship in vessels of lines other than those listed.
- 36.6 Should the contractor fail to comply with these conditions the State may claim from the contractor an amount equal to the total cost of transportation of goods in question or deduct that amount from amounts due in terms of the contract.

Shipping of supplies from other countries

- 37.1 All goods imported by the contractor into the Republic by sea from Japan

and South-East Asia (Korea, Taiwan, Hong Kong, Singapore, etc.) for the execution of his contract shall be shipped in vessels operated by the JAPAN AND HONG KONG/SOUTH AFRICA AND STRAITS CONFERENCE, the members of which are indicated below:

South African Marine Corporation Limited; Navale Delmas International; Mitsui O.S.K. Lines Limited; Nippon Yusen Kaishu; Nedlloyd Lijnen B.V. (Nedlloyd Lines); Gold Star Line Limited; Kawasaki Kisen Kaisha Limited; A.P. Moller - Maersk Line.

37.2 All goods imported by the contractor into the Republic by sea from the United States of America and Canada for the execution of his contract shall be shipped in vessels operated by the shipping lines indicated below:

South African Marine Corporation Limited; Lykes Bros. Steamship Company Inc.; Bank Line Limited; Christensen Canadian African Lines; Safbank Line Limited.

37.3 All goods imported by the contractor into the Republic by sea from Israel for the execution of his contract shall be shipped in vessels operated by the shipping lines indicated below:

Unicorn Lines (Pty) Ltd; Zim Israel Navigation Company Ltd.

37.4 All goods imported by the contractor into the Republic by sea from the following South American countries for the execution of his contract shall be shipped in vessels operated by the shipping lines as indicated:

Chili, Peru, Ecuador, Colombia, Argentina, Brazil and Uruguay; Unicorn Lines (Pty) Ltd; Pacific Steam Navigation Co. Ltd (Chili and Peru); Compagnia Chilena de Navigation Interoceanica SA (Chile); Naviera Universal SA (Peru); Transportes Navieros Ecuatorianos (Ecuador); Lineas Agromar SA (Colombia); Empresa Linea Maritima Argentina (Argentina); Lloyd Brasileiro (Brazil); Montemar SA (Uruguay).

- 37.5 The conditions contained in paragraphs 36 and 36.2 to 36.6 shall mutatis mutandis apply to the shipping of supplies from the countries mentioned in paragraphs 37.1 to 37.4.

Insurance

38. Where contractors arrange for insurance of supplies specially imported for the execution of State contracts, such insurance shall be arranged with insurance companies registered in the Republic in terms of the Insurance Act, 1943 (Act No. 27 of 1943), and registered and incorporated under the Companies Act, 1973 (Act No. 61 of 1973).

Quality

- 39.1 Goods supplied and services rendered shall be in accordance with, and the contractor guarantees that they are equal in all respects to, the samples, patterns, drawings and specifications stipulated in the contract or order and unless otherwise specified, supplies shall be new and unused. Where specific grades and special brands are specified, such grades and brands only shall be supplied unless the Board agrees otherwise.
- 39.2 Where a tender calls for a supply or service according to a standard specification of the South African Bureau of Standards, the tenderer is required to take cognisance of the provisions of sections 15(6), (7) and (8) of the Standards Act, 1982 (Act No. 30 of 1982).

Guarantee

- 40.1 Unless the contract stipulates otherwise, the contractor shall guarantee for a period of twelve months that no faulty material or workmanship was used in the manufacture of supplies or in the execution of services and that the finish is not defective. Should the guarantee not be complied with, the State may, without prejudice to any other rights it may have, demand that the supplies be replaced and the services repaired without cost to the State.

40.2 The period of guarantee shall commence on the date of receipt of the supplies by, or handing over of the service to, the department concerned or, where so specified, on the date the supplies or service are brought into commission.

40.3 The liability of the contractor under the guarantee shall inter alia also cover the free delivery to the department concerned of supplies required in replacement of defective supplies, and where parts are to be replaced the liability shall include their free installation. The supplies and the parts so replaced or the services so rendered shall be guaranteed for a similar period.

Substitution for local products

41. In the event of a contract being concluded for the supply of products produced in the Republic, a contractor desiring to substitute imported products therefor may do so only if he obtains the prior approval of the Board.

Mark

42. Whenever practicable, supplies manufactured in the Republic and purchased by the State should be marked by the suppliers "Made in the Republic of South Africa"/"Vervaardig in die Republiek van Suid-Afrika".

Payment for supplies and services

43.1 Subject to the provisions of paragraph 43.2 and any instructions issued with a contract or order, a contractor shall be paid by the department concerned, in accordance with the undermentioned provisions, for supplies delivered and services rendered:

43.1.1 On a basis of delivery f.o.r. a railway station or siding or f.o.r. in customs warehouse at a port in the Republic: in the Republic, only after receipt of a detailed account and a certified transit order , and in the case of f.o.r. a

private siding, after receipt of the supplies at the station of destination.

- 43.1.2 On a basis of delivery into store or to another nominated destination or collected: in the Republic, only after receipt of a detailed account and after delivery has been effected.
- 43.1.3 On a basis of delivered and erected, installed, commissioned or tested: in the Republic, only after receipt of a detailed account supported by a departmental certificate of satisfactory execution.
- 43.1.4 In the case of services rendered: unless otherwise specified, only after receipt of a detailed account supported by a departmental certificate of satisfactory execution.
- 43.1.5 Payment will normally be effected within 30 days of receipt of all the required documentation which should be correct in every respect. Should a contractor indicate a special discount on his account provided payment is made within a certain time, every effort shall be made to take advantage of such discount.
- 43.2 As a rule, payment is made to the contractor only, but when payment is claimed by another party the latter must produce a written transfer, power of attorney or authorisation and, before payment is made, the contractor must confirm that the transfer, power of attorney or authorisation has been given by him and that payment may be claimed in terms thereof.
- 43.3 Any query concerning the non-payment of accounts must be directed to the department concerned and not to Procurement Administration.

Inspections, tests and analyses

- 44.1 If it is a tender condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, then any cost to be recovered shall in all cases be for the account of the tenderer or contractor. The premises of

the tenderer or contractor shall be open, at all reasonable hours, for inspection by a representative of the Board or of an organisation acting on behalf of the State.

- 44.2 Inspections, tests and analyses may be carried out prior to despatch in regard to such contract supplies as may be deemed necessary by the Board and the contractor shall provide, if required, all the required facilities for the inspections, tests and analyses of the supplies free of charge and shall, if required, provide all the materials, samples, labour and available apparatus which may be required for the purpose of such inspections, tests and analyses free of charge unless otherwise specified.
- 44.3 If there are no inspection requirements in the tender documents and no mention thereof is made in the letters of acceptance, but during the contract period it is decided that inspections shall be carried out, the department requesting the inspections shall itself make the necessary arrangements, including payment arrangements, with the testing authority concerned.
- 44.3.1 If the inspections, tests and analyses referred to in paragraphs 44.1 and 44.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the department concerned; otherwise the cost shall be defrayed by the contractor and the State shall have the right, without prejudice to any other legal remedy it may have, to deduct such costs from payments due to the contractor under the contract or under any other contract.
- 44.3.2 Where the supplies or services referred to in paragraph 44.3 do not comply with the contract requirements, but such supplies or services are nevertheless accepted at whatever price, the cost in connection with the inspections, tests or analyses thereof shall be defrayed by the contractor.
- 44.4 Supplies and services which are referred to in paragraphs 44.1, 44.2 and 44.3.1 and which do not comply with the contract requirements may be rejected.

- 44.5 Any contract supplies may on or after delivery be inspected, tested or analysed and may be rejected if found not to comply with the requirements of the contract and such rejected supplies shall be held at the cost and risk of the contractor who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the contractor's cost and risk. Should the contractor fail to provide the substitute supplies forthwith, the State may, without giving the contractor further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the contractor.
- 44.6 Transport costs and any other expenses with regard to the rejected supplies referred to in paragraphs 44.1 and 44.3 shall be refunded by the contractor.
- 44.7 Where imported supplies are to be inspected before shipment, the contractor shall notify his suppliers abroad of the conditions applicable to inspections.
- 44.8 The provisions of paragraphs 44.1 to 44.7 shall not prejudice the right of the State to cancel the contract on account of a breach of the conditions thereof, or to act in terms of paragraphs 45.1 to 45.5 hereof.

Failure to comply with conditions and delayed execution

- 45.1 If a tenderer amends or withdraws his tender after the closing time but before he is notified that his tender has been accepted, or when notified that his tender has been accepted, he fails, within the period stipulated in the conditions of tender or such extended period as the Board may allow, to sign a contract or to provide security when requested to do so, he shall, unless the Board decides otherwise, and without prejudice to any other right which the State may have under paragraphs 45.2 to 45.4, including the right to claim damages if a less favourable tender is accepted or less favourable arrangements are to be made, forfeit any deposit which may have been made with the tender.

- 45.2 Should the contractor fail to comply with any of the conditions of the contract, the State shall be entitled, without prejudice to any of its other rights, to cancel the contract.
- 45.3 Upon any delay beyond the contract period in the case of a supplies contract, the State shall, without cancelling the contract, be entitled forthwith to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any supplies delivered later at the contractor's expense and risk, or forthwith to cancel the contract and buy such supplies as may be required to complete the contract and without prejudice to its other rights, be entitled to claim damages from the contractor.
- 45.4 Upon any delay beyond the contract period in the case of a service contract, the State shall, without prejudice to any other right and without cancelling the contract, be entitled forthwith to arrange for the execution of the service not rendered or not rendered in conformity with the contract or to cancel the contract and without prejudice to its other rights, be entitled to claim damages from the contractor.
- 45.5 In the event of the State availing itself of the remedies provided for in paragraphs 45.2.to 45.4 -
- 45.5.1 the contractor shall bear any adverse difference in price of the said supplies or services and these amounts plus any other damages which may be suffered by the State shall be paid by the contractor to the State immediately on demand or the State may deduct such amounts from moneys (if any) otherwise payable to the contractor in respect of supplies or services rendered or to be rendered under the contract or under any other contract or any other amount due to him; or
- 45.5.2 if the contractor fails to supply the goods or render the service within the period stipulated in the contract, the State shall have the right, unless otherwise directed by the Board, in its sole discretion either to deduct as a penalty from the value of the contract sum an amount of one-fourteenth per

cent thereof per day for the period of delay or to claim any damages or loss suffered in lieu of such penalty: Provided that where beneficial use of the completed portion is enjoyed, the penalty shall be applied to the value of the outstanding portion only.

- 45.6 No penalty or damages shall be claimed in respect of any period of delay which the contractor can prove to the satisfaction of the Board to be directly due to a state of war, sanctions, strikes, lockouts, damage to machinery as a result of accidents, fire, flood or tempest or act of God, which could not be foreseen or overcome by the contractor, or to any act or omission on the part of persons acting in any capacity on behalf of the State.
- 45.7 If the delivery of the supplies or the rendering of the service is likely to be delayed or is in fact being delayed on account of any of the reasons mentioned in paragraph 45.6, full particulars of the circumstances shall be reported forthwith in writing to the Board, and at the same time the contractor shall indicate the extension of the delivery period which is desired.

Remedies in the case of bribes, etc.

46. If the Board is of the opinion that -
- 46.1 a tenderer, in relation to the obtaining of a State contract, or a contractor, in relation to the execution of a State contract, has or has caused to be promised, offered or given to an officer, employee or any other person any bribe, commission, gift, loan, advantage or any other consideration whatsoever; or
- 46.2 a tenderer or a contractor or any enterprise or person with whom a tenderer or contractor is actively associated or, where the tenderer or contractor is a company or partnership, any manager, director or any person who wholly or partly exercises or may exercise control over such a company or partnership, has acted fraudulently or in bad faith or in any improper manner in the obtaining of or in the execution of a contract with the State, an

administration, a public body or company or firm or person; or

46.3 if the entity mentioned in paragraph 46.2, in conducting his business, has contravened or neglected to comply with statutory requirements and as a result thereof has been found guilty of a criminal offence;

46.4 the Board may -

46.4.1 in the case of a tenderer ignore any of his tenders without first advising him thereof; and

46.4.2 in the case of a contractor cancel the contract without prejudice to any other remedies it may have.

Restriction from tendering

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

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

47.1.2 has failed to sign a contract or to provide security within the period stipulated in the conditions of tender, or such extended period as the Board may allow, when required to do so; or

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

47.1.4 has failed to react to written notices sent to him by certified post; or

47.1.5 who has concluded an agreement referred to in section 4(1)(a) of the Act, has promised, offered or given a bribe, or has acted in respect thereof in a

fraudulent manner or in bad faith or in any other improper manner;

- 47.2 The Board may at any time amend or rescind any restriction contemplated in paragraphs 47.1 to 47.1.5.
- 47.3 Any restriction imposed on any tenderer by the Board may at the discretion of the Board also be made applicable to any other enterprise or to any partner, manager, director or other person who wholly or partly exercises or has exercised or may exercise control over the enterprise of the tenderer and with which enterprise or person the tenderer is or was, in the opinion of the Board, actively associated.
- 47.4 For the purpose of paragraphs 47.1 to 47.6 the expression "tenderer", in respect of any restriction, shall also include an employee or agent of such tenderer.
- 47.5 Where the Board imposes a restriction regarding the consideration of offers from a tenderer, or amends or rescinds such restriction, it may inform any other purchasing authority on which it may decide and all Government departments of any resolution relative to such restriction or the rescindment or amendment thereof, and request such authorities and departments to take similar steps.
- 47.6 Whenever it comes to the attention of the Board that any other purchasing authority referred to in paragraph 47.5 has taken a decision referred to in paragraph 47.1 in respect of a tenderer in respect of agreements similar to those contemplated in section 4(1)(a) of the Act, the Board may resolve that a similar restriction be imposed by it on the tenderer concerned in respect of agreements with the Board.

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

- 48.1 In the event of the death of a contractor or the provisional or final sequestration of his estate or of his cession or transfer of a contract without

the approval of the Board or of the surrender of his estate or of his reaching a compromise with his creditors or of the provisional or final liquidation of a contractor's company or the placing of its affairs under judicial management, the State may, without prejudice to any other rights it may have, exercise any of the following options:

- 48.1.1 Cancel the contract and accept any of the tenders which were submitted originally with that of the contractor or any offer subsequently received to complete the contract. In such a case the estate of the contractor shall not be relieved from liability for any claim which has arisen or may arise against the contractor in respect of supplies not delivered or work not carried out by him under the contract, and the State shall have the right to hold and retain all or any of the securities and retention moneys held by it at the date of the aforesaid occurrence until such claim has been satisfied; or
- 48.1.2 allow the executor, trustee, liquidator or judicial manager, as the case may be, for and on behalf of and at the cost and expense of the estate of the contractor to carry on with and complete the contract; or
- 48.1.3 for and on behalf of and at the cost and expense of the estate of the contractor, itself carry on with and complete the contract and in that event the State may take over and utilise, without payment, the contractor's tools, plant and materials in whole or in part until the completion of the contract.
- 48.2 Should the State elect to act in terms of paragraph 48.1.3, it shall give notice of its requirements to the executor, trustee, liquidator or judicial manager of the contractor's estate and should the said executor, trustee, liquidator or judicial manager fail within 14 days of the despatch of such notice to make provision to the satisfaction of the Board for the fulfilment of such requirements, or should no executor, trustee, liquidator or judicial manager be appointed within 14 days of the occurrence mentioned in paragraph 48.1, the State may apply any remedy open to it in terms of the contract as if a breach thereof had taken place.
- 48.3 Should the State act in terms of paragraph 48.1.3 the contractor must leave the premises immediately and may not occupy such premises on account of retention or any other right.

Contractor's liability

49.1 In the event of the contract being cancelled by the State in the exercise of its rights in terms of the Act or regulations or these conditions, the contractor shall be liable to pay to the State any losses sustained and/or additional costs or expenditure incurred as a result of such cancellation and the State shall have the right to recover such losses, damages or additional costs by means of set-off from moneys due or which may become due in terms of the contract or any other contract, or from a guarantee provided for the due fulfilment of the contract and, until such time as the amount of such losses, damages or additional costs has been determined, to retain such moneys or guarantee or any deposit as security for any loss which the State may suffer or have suffered.

49.2 The contractor may be held responsible for any consequential damages and loss sustained which may be caused by any defect, latent or otherwise, in the supply or service rendered or if the supply or service as a result of such defect, latent or otherwise, does not conform to any condition or requirement of the contract.

Price lists

50. Price lists which are part of a contract shall not be amended without the approval of the Board.

Firm prices

51. If the contract is awarded on the basis of firm prices (see paragraph 17) and during the contract period -

(i) a customs or excise duty or any other duty, levy or tax (excluding any anti-dumping and countervailing duties or similar duties), is introduced in terms of any Act or regulation, or

(ii) any such duty, levy or tax is legally changed or abolished,

the said prices shall be adjusted accordingly.

Non-firm prices

- 52.1 In respect of any factors which demonstrably have an influence on the production cost of the supplies or the rendering cost of the service for which there have been tendered on the basis of non-firm prices, price adjustments which become effective during the contract period may be allowed with effect from the date of the change in cost and founded on the actual direct change in the cost as used in the calculation of the tender price, in addition to those provided for in paragraph 51.
- 52.2 Where the contractor himself is the manufacturer of the supplies or the provider of the service, or where he is the accredited agent of the manufacturer or the provider, evidence in support of the price adjustments claimed in terms of paragraph 52.1, shall be produced on demand.
- 52.3 As an alternative to paragraph 52.1 the tenderer may specify a formula on the tender form provided for this purpose (see paragraph 17.2) for the purpose of adjusting prices in accordance with published indices. However, the adjustment formula shall provide for a minimum fixed element of at least 15% of the price which shall not be subject to adjustment.
- 52.4 Where the contractor is not the manufacturer of the supplies or the provider of the service, or where he is not the accredited agent of the manufacturer or the provider, any price adjustment shall be based on the increase or reduction to the contractor in the net cost of the supplies on which the tender price was based. When any such increase or reduction in costs occurs, the contractor shall submit copies of the quotation or price list with reference to which he calculated his tender prices, as well as the revised quotation or price list on which his claim is based.

Rates of exchange

- 53.1 Where the whole or a portion of the tendered price may be affected by the revaluation of currencies or any fluctuation in the rate of exchange, the tenderer shall, in accordance with the tender requirements, state in his tender the amount to be paid in foreign currencies or to be remitted abroad, as well as the rate of exchange applied in the conversion of that amount into South African currency in calculating the tender price, and if the contract is completed within the contract period, any increase or reduction in the relevant amount as a result of any fluctuation in the rate of exchange or revaluation of currencies shall, irrespective of whether the price is firm or not, be for the account of the State, subject to the following conditions:
- 53.1.1 Where payment to the contractor is to be made in the Republic and he is required to remit part or all of the amount abroad, the contract amount in South African currency will be paid to the contractor less, or plus, an amount, as specified on the contractor's invoice and supported by the necessary proof, representing any change in the exchange rate -
- 53.1.1.1 which may have occurred between the date of conversion to South African currency as reflected in the tender documents and the date of the invoice, provided that the invoice date is within 10 days of the date of delivery or shipment; and
- 53.1.1.2 any further fluctuation in the rate of exchange which may occur between the invoice date and the actual date of remittance abroad, shall be paid by the State to the contractor or by the contractor to the State only if the further fluctuation in the exchange rate is more than 1,0% and if the remittance is made within 10 days of the date of the warrant voucher issued in payment.
- 53.1.2 Where it is required of the contractor to remit part or all of the amount abroad before he can invoice the State and this is indicated in his tender and subsequently separately substantiated, the date of such remittance will be regarded as the date in respect of which the adjustments in terms of paragraph 53.1.1 are to be made.

- 53.1.3 All rate of exchange claims shall be accompanied by the following documentary evidence (failure to comply with this condition may delay or invalidate claims):
- 53.1.3.1 In the case of paragraph 53.1.1.1, a copy of the relevant invoice from the foreign supplier.
- 53.1.3.2 In the case of paragraph 53.1.1.2, a copy of the relevant invoice from the foreign supplier for reconciliation with the bank remittance voucher and a copy of the bank remittance voucher.
- 53.1.3.3 If amounts that are not proper to a specific order are included in the remittance abroad, documentary proof or an audited certificate that substantiates the inclusion of the amount.
- 53.1.4 No adjustment shall be done in respect of any amount or percentage of the tender price which was remitted abroad and which exceeds the amount which, as contemplated in paragraph 53.1, is indicated in the tender for that purpose.
- 53.1.5 When the amount remitted abroad constitutes a larger or smaller amount or percentage of the tender price than that indicated for that purpose in the tender in accordance with paragraph 53.1, and the contractor, as a result thereof obtains a financial benefit, such benefit shall devolve upon the State and shall, where applicable, be brought into consideration in computing any claim for compensation.
- 53.2 If it is not a condition of tender that the amount which the contractor will have to pay abroad and the relevant rate of exchange at which the amount was converted to South African currency should be indicated in the tender, price adjustments in respect of fluctuations in the rate of exchange shall be effected only when a devaluation or a revaluation of currencies occurs and satisfactory documentary proof is submitted: Provided that the Board may in such cases cancel the contract and make other arrangements for obtaining

the supplies.

53.3 In the case of period contracts, the tender price referred to in paragraphs 53.1 and 53.2 shall refer to the relevant contracted prices for each consignment separately.

Price adjustments: documentary proof and period for claims

54.1 The adjustment in price as contemplated in paragraphs 51, 52.1 to 52.4 and 53.1 to 53.3 shall cover only the period between the closing date of a tender and the final delivery date in terms of the contract.

54.2 Documentary proof of the price adjustments claimed as contemplated in paragraphs 51, 52.1 to 52.4 and 53.1 to 53.3 and the effect thereof on the contract price shall be submitted by the contractor together with his claim, to the satisfaction of the Board.

54.3 Claims against the State shall, unless otherwise authorised by the Board, be proved to the satisfaction of the Board as soon as possible but in any case not later than the following:

54.3.1 In the case of period contracts, 90 days after the change in cost or the date of advice of acceptance of the tender, whichever date is the later, in which case the prices may be backdated to the date of change in cost. If a claim is received after 90 days, the prices will be backdated only to the date on which the claim was proved to the satisfaction of the Board.

54.3.2 In the case of non-period contracts, 90 days from the date on which the firm contractual delivery period expired if the contractual delivery period was adhered to. If he does not claim within 90 days, the contractor shall forfeit his claim to a price adjustment unless otherwise decided by the Board.

54.4 In cases where a price adjustment is in favour of the State such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may

otherwise be due to the contractor in regard to supplies or services which he delivered or rendered or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

- 54.5 If delivery takes place within the contracted delivery period, the contract price ruling at date of delivery shall apply. Deliveries shall not be withheld for the purpose of benefiting from price increases.

Payment of duties, levies and taxes

55. A contractor for projects in the Republic who is not based in the Republic, or who is based in the Republic but makes purchases for the contract outside the Republic, is responsible for paying all relevant duties, levies and taxes which may be due on the importation of the purchases into the Republic and he indemnifies the State against any liability for the payment of such duties, levies and taxes. If so required by the Board, a contractor must indicate the gross value of the relevant purchases and also furnish the necessary proof that all such duties, levies and taxes have been paid.

Stamp duty, bank charges, etc.

56. The contractor is responsible for stamp duty, bank charges, bank interest and other like charges in respect of a contract.

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Royalties and patent rights

- 57.1 The contractor is responsible for all expenses and other liabilities in regard to royalties, patent rights, trade marks or other protected rights in respect of goods supplied by him to the State and he indemnifies the State against any claims which may arise in connection with such rights.
- 57.2 The contractor shall at any time furnish, on request, adequate security to the satisfaction of the Board for the payment of all costs including attorney and client costs in cases where proceedings are instituted against the State and/or its officers or employees in respect of alleged breach of patent rights,

trade marks or any other protected rights.

State property in possession of a contractor

- 58.1 State property supplied to a contractor for the execution of a contract remains the property of the State and shall at any time be available for inspection by the Board or its representatives. Any such property in the possession of the contractor on completion of the contract shall, at the contractor's expense, be returned to the State forthwith.
- 58.2 The contractor shall be responsible at all times for any loss of or damage to State property in his possession and if required he shall furnish such security for the payment of any such loss or damage as the Board may require.

Statements of supplies and services

59. The contractor shall, when requested to do so, furnish particulars of supplies delivered or services executed. If he fails to do so, the State may, without prejudice to any other rights which it may have, institute inquiries at the expense of the contractor to obtain the required particulars.

Security

- 60.1 Where security is required particulars thereof are indicated in the tender documents. Unless otherwise stated, security covering the following amounts is required from contractors:
- 60.1.1 Where payment is to be made to the State: the estimated amount which is to be paid.
- 60.1.2 Where State property is to be handed to contractors: the value of State property which may be in the possession of the contractor at any time.
- 60.1.3 Where the Board so decides prior to the invitation of tenders: 10 per cent of the value of the contract.

- 60.2 Where approval has been granted for advance or progress payments to a contractor, the security to be provided by the contractor is determined by the Board.
- 60.3 The security required consists of -
- 60.3.1 a guarantee by a banking institution registered in terms of the Banks Act, 1965 (Act No. 23 of 1965), or an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943), to do insurance business, or the Small Business Development Corporation, or cash, negotiable government stock, negotiable approved municipal stock, a security bond or in the case of service contracts, two or more acceptable sureties; or
- 60.3.2 such other form of security as the Board approves.

Transfer of contracts

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

Right to procure outside of the contract

- 62.1 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the contractor's point of supply is not situated at or near the place where the supplies are required, or if the contractor's services are not readily available.
- 62.2 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a Government department or a local authority.

Amendment of contracts

63. No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force and effect

unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

Amendment: July 1997