



HEALTH

REPUBLIC OF SOUTH AFRICA

**HP17-2021TWDV
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Page	Clause	Question	Answer
DELIVERY/VACCINATION SITES			
		Can you please share the locations of the Delivery Sites?	The sites will be provided to the service provider on award and based on the specific implementation phase. It will include both public and private sectors.
		Will Vaccination Delivery Sites store bulk product on site or will they receive vaccination deliveries per day based on the amount of people waiting to be vaccinated on the day?	Sites will be storing vaccines on site according to their storage capacity. The distributor will be required to deliver at least once per week or according to a delivery schedule agreed with the NDoH.
4	1.1.14	Depots are demarcated as delivery sites – what would the role of the depot be? Delivery to a depot is fundamentally different to delivery to a DDV, furthermore you state that its our role to collect our packaging material and the depots re-use our packaging to on deliver to DDV's. If depots are used will they then return our packaging material? This is key to cost as the validated packaging attracts a high cost and if it's not returned we can't re-use it. It has re-usability up to 10 times.	Depots will play a role in supplying vaccines to sites together with the direct delivery model (DDV). Depots will return the packaging material within a reasonable time.



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21	5.2.14.2	5.2.14.12 asks for a record of the continuous cold chain maintenance to be supplied by the site – this information is practically not going to be forthcoming as in the normal course of business when we have asked for this neither the public nor private sector can supply it. What is the process to follow if this record is not available?	The NDOH will request that information/record from the site at the time of requesting the return. For Returns, the Service Provider must keep a record indicating that the cold chain was maintained from the site from which the product was uplifted to the premises of the service provider.
		Will delivery sites consist of central locations in each province or are the delivery sites specific vaccination sites? In other words, will fine distribution be required?	Yes, fine distribution will be required. 2.1.10 “Delivery Sites” means public and private sector vaccination sites, provincial pharmaceutical depots and other approved storage sites.
		At what point can you supply a list of vaccination sites per geographic region?.	The sites will be provided to the service provider on award and based on the specific implementation phase. It will include both public and private sectors.
		Please can you provide your solution concept for vaccination stations: a. Will vaccination stations have capacity to store all 3 storage conditions.	These questions are irrelevant for purposes of bidders responding to the RFP. N/A
		b. Is every storage condition going to go to every vaccination station (and if not how would you determine where they go)?	Yes
		c. The -70 vaccine is best utilized	N/A



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		by large, dedicated vaccine stations with -70 freezers, will you follow this principle?	
		d. How many orders will be placed per week by vaccination stations/vaccination points.	At a minimum weekly orders and weekly deliveries. Please also refer to clause 5.2.12.8 on Page 20.
		e. Can you give an indication of the number of vaccination stations in phase 1 and then in full ramp up and is there a list of proposed vaccination stations	The sites will be provided to the service provider on award and based on the specific implementation phase. It will include both public and private sectors.
ORDERS AND ORDER FREQUENCY			
		Please confirm order frequency per site – how many times per week or month can a site be expected to order? Delivery to a site once per week or 5 times per week will attract a fundamentally different cost structure.	At a minimum Weekly orders and weekly deliveries. Please also refer to 5.2.12.8 on Page 20.
		The vaccines volume is provided – are you in a position to indicate how you intend to purchase the vaccine and how frequently the vaccines will be delivered to the service providers.	This information is currently unavailable. The Service Provider will receive pre-notification of future deliveries.
		In terms of inbound vaccines – what is the importation frequency for each cold condition and what is the quantity of vaccines coming in per shipment. This is	This information is currently unavailable. The Service Provider will receive pre-notification of future deliveries.



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		very important to determine how large the storage solution should be.	
		For each dose, will State/Vaccination Delivery Site, provide a delivery list with for example with ID numbers of the patients against which orders will be fulfilled?	No.
		Who will place orders – a central point or each site?	This will depend on the phase of the implementation of the vaccination program. This may include a central point or a site.
18	5.2.10.7	5.2.10.7 makes provision for amending an order with authorized delivery site or departments consent. Will the department consider amending orders to comply with best utilization of packaging material or manufacturer carton quantities (within reason of course)?	Yes, the NDoH will consider such amendments. However, amendments can only be made with the written consent of the NDoH.
17	5.2.10.4	5.2.10.4 states that service provider must acknowledge receipt of an order in a manner stipulated by the department – what will that manner be?	The manner will be stipulated to the service provider at the time of award.
20	5.2.12.6	The 3 day lead time from order (5.2.12.6) is problematic and leads to a costly solution. Can it be revised to 5 days or 3 days for all areas other than defined far outlying areas where 4 or 5 will apply. This type of supply chain	Orders will be once per week. But urgent orders may be requested. Please see clause 5.2.12.7 of the RFP which deals with weekends and public holidays.



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		<p>should be based on reliability and cost effectiveness and a 3 day SLA will give neither. From the point at which the order is received we have to verify it, then pick and pack and then only transport – the verify and pick pack will take one day – leaving only two for transport (which for some areas means costly air freight). Also if an order arrives on a Thursday or Friday for a far destination its only picked on a Sunday night (it cant be delivered on the weekend so its not practical to pick it on the Thursday or Friday.</p>	
21	5.2.12.14	<p>5.2.12.14 The SLA of 2 days is not possible – product is delivered, then return request is logged (that may take a day or two) then collection in outlying areas could take up to 3 days. This must be read with 5.2.14.1 which says the department must authorize every return.</p>	<p>The return must be uplifted within 48 hours of the NDoH authorising that return.</p>
		<p>SLA does not feature cut off times for placement of order to meet delivery lead times – we can propose what we want?</p>	<p>Order cut-off at midday.</p>
VALUE			
106	17	<p>What is the approx. value per vial per the 3 temperature classes or per box? This is critical to understand the risk associated with each delivery</p>	<p>Prices are subject to non-disclosure agreements with suppliers. As has been reported the price range is likely to be USD10 - 30 per dose (not vial) and is subject to change.</p>



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106	17	The contract states that we must insure the vaccines for all risk – if this is the case please provide the value to be insured for warehousing (maximum value to be held at any time) for each cold condition.	Same as comment as above
79	11	Insurance This clause is adjusted by the contents of Annexure 3 and 4 (which would be the Special Conditions of Contract (SCC's).	The terms of the Agreements as contained in Annexures 3 and 4 will prevail over the GCC's (see Section 4, paragraph 8.2 of the RFP which states that in the event of a conflict between the Agreements (SRCC's) and the GCC, the Agreements will prevail. This is also provided for on page 73 of the RFP, the notes to the GCCs). As such, where the GCCs deal with a specific issue differently to the Agreement and the SCCs, the latter will prevail and regulate that specific issue.
35	6.3.3.3.2.3	Does the cost per vial also include the accessories, will accessories imported with the vaccines?	No
10	3.9	The Department estimates the product volumes..., a. What time period do these estimates cover? In other words, for cold chain solution 1, over what time period does the estimated 6 million vials cover? Is it the duration of the contract or a shorter time?	This information is currently unavailable as this is part of current non-disclosure agreements. The Service Provider will receive pre-notification of future deliveries.



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		<p>b. What is the estimated pallet space at any given point in time?</p> <p>c. What size vaccine vials will be supplied for each cold chain solution as some manufacturers have more than one pack size for their multidose vials?</p>	
QUANTITY AND PACKAGING			
		<p>What is the pallet configuration? How many boxes/trays/vials per pallet?</p>	<p>This will vary from vaccine to vaccine. Some of the products are not registered as yet and therefore the information is not available.</p> <p>Pfizer To be provided at time of award</p> <p>J&J No data available at present</p>
		<p>How many vials per shipper and what is the dimensions?</p>	<p>This will vary from vaccine to vaccine. Some of the products are not registered as yet and therefore the information is not available.</p>
		<p>Will orders be placed in trays/full cases?</p>	<p>In trays or secondary packaging configurations. Not single vials.</p>



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18	5.2.11.5	<p>5.2.11.5 states that packing material must be validated for trip duration x2. What is the rationale for this? Practically for far outlying areas where the trip is 3 days you are looking for 6 day validation – no service provider in South Africa can provide 6 day validation (maximum validation is 4 days). This requirement drives cost because a) it means we have to use air freight and b) in every instance (other than local [within 200km of distributing DC] we must use a 4 day validated box which is the most expensive box and</p> <p>c) boxes must be selected for payload (number of vaccines they store) and if we cant do this we will either end up sending large boxes half empty or lots of small boxes (when loads are large).</p>	<p>The rationale is to ensure the cold chain is maintained on the return leg should there be failed delivery.</p> <p>The Service Provider must demonstrate that all possible delivery sites can be reached.</p>
20	5.2.12.12	<p>5.2.12.12 States that service provider must collect all packaging material post delivery. From this is it correct that a) packaging material remains the property of the service provider and b) All facilities, public and private (including depots) must make the packaging material available for us to collect.</p>	<p>Yes, packaging must be collected within a reasonable time. The NDoH is not responsible for the loss or damage of any packaging material. All delivery sites will be encouraged to return the packaging material to the Service Provider.</p>
79	9.1	<p>This clause requires the Supplier to provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final</p>	<p>It is agreed. Packaging material together with the packing protocol employed must protect the product and maintain</p>



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		<p>destination as indicated in the contract. We don't see any specific requirements in the actual agreement relating to packing (other than cold storage transport requirements) and would therefore assume that this obligation is still applicable. Given the cold chain/temperature controlled requirements in the scope of work, inadequate packing and failure to comply with these terms would be an additional item of liability.</p>	<p>the temperature as per the Manufacturer's requirements.</p>
5	1.1.31	<p>Clause 1.1.31 refers to the validation process for cold boxes. If cold boxes are validated and if the Service Providers has exemption from SAHPRA which states that we need not use temp loggers in the boxes then do we still have to use temp loggers in each box for this tender. Bear in mind they attract a significant cost and we are looking for a best cost solution for the NDOH.</p>	<p>Temperature loggers are a requirement of this tender, irrespective of any exemption received.</p>
		<p>If we only participate to bid in Part A do we need to supply packaging for the Vaccines?</p>	<p>The Service Provider must ensure that the cold chain is maintained. It is not envisaged that the Service Provider must provide packaging.</p>
PFIZER VACCINE			
		<p>Please confirm that the Pfizer vaccine must be delivered with dry ice and that</p>	<p>The vaccine must be delivered at -70, using either dry ice or any other</p>



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		the facilities receiving the vaccine have storage capacity at -70?	mechanism capable of maintaining the required temperature. The requirements for the delivery site fall outside of the scope of this bid
		Also, in regard to the Pfizer vaccine please confirm that the storage unit will be one box of 195 vials.	Correct: storage unit will be a tray of 195 vials
		Also, in regard to the Pfizer vaccine please confirm that the MOQ will be 1 box of 195 vials and that we will not have to distribute vials as individual units (i.e. break up the box of 195 vials).	Correct: storage unit will be a tray of 195 vials
LIABILITY			
81	21	Delays in the Supplier's performance Please take note that this general clause is significantly adjusted in terms of Annexure 3 and 4 in that it does not allow for any delays and there is a strict liability and penalty imposition in the event of default. Please take note of the provisions of Clause 2.15 which indicates except as provided for under GCC Clause 25 (which is the force majeure clause) a delay will render the Supplier liable for the imposition of penalties. We submit that clarification should be secured to confirm that this clause is not altered by the contents of Annexure 3 and 4 being the SCC's.	It seems that this is meant to refer to clause 21.5. The terms of the Agreements as contained in Annexures 3 and 4 will prevail over the GCC's (see Section 4, paragraph 8.2 of the RFP which states that in the event of a conflict between the Agreements (SRCC's) and the GCC, the Agreements will prevail. This is also provided for on page 73 of the RFP, the notes to the GCCs). As such, where the GCCs deal with a specific issue differently to the Agreement, the latter will prevail and regulate that specific issue. Please note that the Agreements contain a force majeure clause (clause



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			22) which provides for specific delays that will not attract the imposition of penalties.
84	28	<p>Limitation of Liability The Annexure 3 and 4 also excludes liability for indirect or consequential losses or damages in the indemnity clauses. Consequential losses only apply in the event of criminal negligence or willful misconduct. Please take note of the contents of Clause 28(b) in terms of which the GCC's indicate that the aggregate liability of the Supplier to the Purchaser shall not exceed the total contract price. Please clarify as to whether this limitation of liability has been precluded by Annexure 3 and 4 which seem to indicate that liability is for full value and not just limited to the contract price.</p>	<p>The Agreements are intended to prevail over the GCC's and accordingly liability is for the full value not limited to the contract price where the damage pertains to liability as set out in the relevant Agreement and there is accordingly a conflict with the GCCs.</p>
149	13.1 13.4	<p>The Service Provider is responsible for any and all liabilities arising from its acts or omissions and the indemnity relates to any and all claims arising out of any individual or collective, wilful or negligent act or omission by the Service Provider or any of its subcontractors. There is a qualification in Clause 13.4 which indicates that the parties are not liable to each other for indirect, special and consequential damages arising out of or in connection with the agreement,</p>	<p>Clause 13.4 makes it plain that the Parties agree not to be liable to each other for any indirect or inconsequential damages that might arise in connection with the Agreement, including for the use and sale of the Product.</p>



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		including for the use or sale of the product. Of course it is somewhat problematic in that the Service Provider should not be liable for product liability which does not arise from its conduct and therefore effectively the DoH should be accepting liability for indirect, special and consequential damages arising from the use and/or sale of the product from a product liability perspective.	
150	16	Liability for damages, loss or destruction of the Product. This clause is broad and all encompassing and does not make any kind of acknowledgement of the limitations of liability contained in the GCC's. In other words does this clause actually vary the GCC's to exclude those circumstances such as force majeure, exclusion of consequential losses or damages and the monetary limitation of liability up to the value of the contract?	<p>The terms of the Agreements as contained in Annexures 3 and 4 will prevail over the GCC's (see Section 4, paragraph 8.2 of the RFP which states that in the event of a conflict between the Agreements (SRCC's) and the GCC, the Agreements will prevail). This is also provided for on page 73 of the RFP, the notes to the GCCs). As such, where the GCCs deal with a specific issue differently to the Agreement, the latter will prevail and regulate that specific issue.</p> <p>Clause 16 needs to be read together with clause 22 of the Agreement which makes provisions for Force Majeure. Should a Force Majeure event occur, and should the party claiming Force Majeure prove the requisite items under clause 22, such party will not be liable</p>



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			<p>for any non-performance or delay in performance and shall not be considered to be in breach or default in the event that their performance is prevented or delayed.</p> <p>Clause 13.4 contains an exclusion for indirect and consequential losses.</p> <p>Clause 16 contains the liability provisions, there is no limitation on the liability. The Agreements prevail over the GCC's if there is a conflict. Where the liability extends further than what is catered for in the GCC and there is a conflict with the Agreement's terms, then liability clause as contained in the Agreement will apply to the exclusion of the cap provided for in the GCC.</p>
92	2.1.11	<p>Freight Forwarding</p> <p>Clarification is required as to whether the DoH views air carriers as a subcontractor. Further does the DoH recognize that the terms and conditions of carriage as issued in the airway bill will govern that leg of the transportation? There seems to be an inconsistency between the liability of the Service Provider and the liability that is assumed by the air carrier. In other words the contract expects the Service Provider to bear full value liability for any losses or damages that occurred at any point in</p>	<p>The NDoH views any party that will be undertaking any part of the service with whom the Service Provider contracts for that purpose, such as air carriers, to be subcontractors. As such, the Service Provider will remain responsible and liable for the actions and omissions of the subcontractor and for the performance of its obligations under the Agreement.</p> <p>The provision of the Services of the Service Provider (including the air carrier services) are subject to the applicable Incoterm, meaning liability</p>



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		time after it takes delivery of the goods from the Manufacturer or Supplier in the country of origin however, the air carrier's terms and conditions contain strict limitations of liability. The prospects of recovery against the air carrier will be limited.	would be in accordance with the specific Incoterm. The arrangement between the Service Provider and the air carrier as a subcontractor is separate and independent of the Service Provider's arrangement with the NDoH and any risk lies with the Service Provider.
98	7.6	This clause confirms that any deterioration in the quality of the products due to incorrect handling and/or cold chain and/or cold chain solution or any other related activities will solely be for the Service Provider's account. Clarification is required as to whether or not the Service Provider will be assuming liability for the conduct of an air carrier who should surely be liable on their own terms and conditions for that leg of the transportation. As indicated above there is a discrepancy between the Service Provider's liability in the event that it is liable for air carriers and what the Service Provider can recover from an air carrier should there be losses or damages.	<p>The NDoH views any party that will be undertaking any part of the service with whom the Service Provider contracts for that purpose, such as air carriers, to be subcontractors. As such, the Service Provider will remain responsible and liable for the actions and omissions of the subcontractor and for the performance of its obligations under the Agreement.</p> <p>The provision of the Services of the Service Provider (including the air carrier services) are subject to the applicable Incoterm, meaning liability would be in accordance with the specific Incoterm. The arrangement between the Service Provider and the air carrier as a subcontractor is separate and independent of the Service Provider's arrangement with the NDoH and any risk incurred in regard to the arrangement with the air carrier lies with the Service Provider.</p>



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105	14.2	<p>This clause indicates that all services not conforming to the requirements and standards in the agreement and the tender are considered to be defective performances. There are no exclusions in respect of non-liability for delays caused by persons or circumstances beyond the Contractor's control. Force majeure should surely apply.</p>	<p>The Agreements contain a force majeure clause (clause 22). The force majeure clause provides that the parties will not be liable for any non-performance or delay in performance if such performance is prevented or delayed by Force Majeure. Force Majeure includes acts of God, strikes, labour and/or civil disturbances. Where a situation arises that is due to a Force Majeure event and which might in turn result in non-conformance in terms of clause 14.2, the service provider would need to follow the provisions of this clause to ensure the scenario in clause 14.2 arising.</p>
106	16	<p>Liability for damages, loss or destruction of the Product</p> <p>This liability cannot be accepted. The Service Provider cannot be responsible and assume all responsibility and liability for damage, loss or destruction of the products whilst under its possession or under its care and control. The exclusion of a force majeure circumstance must surely apply as well as the conduct of the DoH themselves. Surely some form of qualification is required especially the exclusion of indirect special and consequential losses or damages. Further, the GCC's indicates that liability</p>	<p>Clause 13.4 contains an exclusion for indirect and consequential losses.</p> <p>Clause 22 of the Agreement addresses Force Majeure. Clause 16 needs to be read together with clause 22 of the Agreement. Should a Force Majeure event occur, and should the party claiming Force Majeure prove the requisite items under clause 22, such party will not be liable for any non-performance or delay in performance and shall not be considered to be in breach or default in the event that their performance is prevented or delayed.</p>



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		<p>is only up to the value of the contract. Clarification is required that this limitation in the GCC's is not altered by the terms of the Services Agreement.</p>	<p>Clause 16 of the Agreement contains the liability provisions, there is no limitation on the liability. The provisions of the Agreement alter and prevail over the GCCs to the extent of any conflict, including in respect of any liability, which is not capped at the contract price. The Agreements prevail over the GCC's if there is a conflict. Accordingly, where the liability extends further than what is catered for in the GCCs and there is a conflict with the Agreement's terms, then liability clause as contained in the Agreement will apply to the exclusion of the cap provided for in the GCC.</p>
<p>84</p>	<p>28</p>	<p>Limitation of Liability</p> <p>The <u>Annexure 3 and 4</u> also excludes liability for indirect or consequential losses or damages in the indemnity clauses. Consequential losses only apply in the event of criminal negligence or willful misconduct. Please take note of the contents of <u>Clause 28(b)</u> in terms of which the GCC's indicate that the <u>aggregate liability of the Supplier to the Purchaser shall not exceed the total contract price</u>. We suggest that clarification is required as to whether this limitation of liability has been <u>precluded by Annexure 3 and 4</u> which seem to indicate that liability is for full value and</p>	<p>The Agreements prevail over the GCC's if there is a conflict. Where the liability extends further than what is catered for in the GCC and this conflicts with the Agreement's terms, the liability clause as contained in the Agreement will apply to the exclusion of the cap provided for in the GCC.</p>



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		not just limited to the contract price. We suggest that clarification is requested.	
105	13.4	We would never be liable for consequential damages arising out of the use or sale of the product in any event as it is not the party using or selling the product.	This appears to be a statement rather than a clarification question. In any event, Clause 13.4 of the Agreements makes it plain that the Parties will not be liable to each other for, amongst others, consequential damages arising out of or in connection with the Agreements, including for the use or sale of the Product.
143	7.8	“The NDoH shall not be liable for any claims on shortfalls and damages”-when looking at shortfalls and damages are we looking at a per vial level for both damages and shortfalls, does this mean we need to open boxes and count vials? Or is these shortfalls only apply on a per box or pallet level	In the normal process of receiving goods, damages must be identified and the NDoH notified. This may apply at a vial, box or pallet level.
FORCE MAJEURE			
84	25	Force Majeure This clause indicates that the Supplier is not liable for forfeiture of its performance security, damages or termination for default to the extent that its delays in performance or other failure to perform its obligations under the contract is the result of an event of force majeure. As indicated hereinabove this definition has been altered by the contents of the Annexure 3 and 4	The terms of the Agreements as contained in Annexures 3 and 4 will prevail over the GCC's (see Section 4, paragraph 8.2 of the RFP which states that in the event of a conflict between the Agreements (SRCC's) and the GCC, the Agreements will prevail. This is also provided for on page 73 of the RFP, the notes to the GCCs). As such, where the GCCs deal with a specific issue



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		agreements. Force majeure should apply no matter what?	differently to the Agreement, the latter will prevail and regulate that specific issue. The Agreements contain a specific force majeure clause (clause 22).
76	1.12	The definition of Force Majeure in the Government Procurement General Conditions of Contract is altered by the definitions of force majeure in both the <u>Annexure 3 Importation Services Agreement</u> and <u>Annexure 4 Logistics Services Agreement</u> . Please take note of the adjustments to the force majeure definition which expressly excludes “ <i>the SARS-COV-2 pandemic or Covid-19 and any quarantine or lockdown that may be implemented by the Government of South Africa or any regulatory authority in South Africa.</i> ” We alert you to the contents of this material alteration to the General Conditions of Contract. Force Majeure seems to be one of the only instances where the Service Provider escapes liability for losses, damages or non-performance. Realistically, irrespective of quarantine or lockdown, these services would be considered essential services so we doubt the exclusion would have any material effect. We highlight this risk factor and amendment to the GCC’s.	We note that this appears to be a commentary as opposed to a clarification question. The NDoH is aware that the force majeure clauses (clauses 22 to the Agreements) amends the GCCs and the Agreements are intended to prevail over the GCCs where there is a departure. We also reiterate that the contents of the Agreements are <u>non-negotiable.</u>



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20	5.2.12.6	The majority of the clause deals with delays and does not permit delays under any circumstances and does not excuse delays if caused by other parties or unforeseen circumstances. (We cannot insure for delay penalties)	Please refer to the Force Majeure clause in the Agreements (clause 22) for the procedure to be followed for delays caused by events or circumstances beyond the Service Provider's control.
157	22.3	Please take note that the NDoH is entitled to exercise step-in rights from the date on which notification of force majeure is given from the Service Provider and is entitled to appoint another third party to act as a Service Provider and perform the services. We trust that this does not involve operating from any of the service provider's premises.	Correct
82	22	<p>Penalties</p> <p>Please take note of the onerous contents of this clause in that the Purchaser has an election other than imposing a penalty to terminate the contract for default. In other words a single delay could render the parties liable for termination of the contract due to default. (We do not know what SLA's have been agreed or offered)</p>	The terms of the Agreements as contained in Annexures 3 and 4 will prevail over the GCC's (see Section 4, paragraph 8.2 of the RFP which states that in the event of a conflict between the Agreements (SRCC's) and the GCC, the Agreements will prevail. This is also provided for on page 73 of the RFP, the notes to the GCCs). As such, where the GCCs deal with a specific issue differently to the Agreement, the latter will prevail and regulate that specific issue. Please note that the Agreements address breach and termination at clause 23.



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			Further, should a delay in performance be caused by a Force Majeure event, there will be no penalty levelled. Due to the urgency and expediency by which the Services are required to be performed under the Agreement, a delay caused by a Force Majeure which lasts 7 days or more may entitle either party, at its discretion, to terminate the Agreement.
PENALTIES			
150	14	Performances and Penalties: We do not agree to example to the penalty clause raised of 20% deduction, how can we address this and with whom?	Please note that the Agreements are <u>non-negotiable</u> .
149	14.3	The penalties constituting penalties for a proven breach of the Service Provider's obligations resulting in late or defective performance. The value is 20% of the service fee per vial. These are excessive and should only start to apply when the service provider exceeds the OTIF KPI agreed with the department	Please note that the Agreements are <u>non-negotiable</u> .
105	14.3	Clause 14.3 imposes a penalty of 20% of the service fee per consignment. It must be clarified that any such penalty cannot apply in respect of physical disbursements for customs VAT and duty and/or third party charges such as	The penalty will be calculated with reference to the total service fee per consignment as quoted in the purchase order issued (which is the amount paid to the Service Provider).



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		air carriers and/or any other physical disbursement. The 20% deduction can only apply in respect of the actual fees earned by the Service Provider.	
82	22	Penalties - The Purchaser has an election other than imposing a penalty to terminate the contract for default. In other words a single delay could render the parties liable for termination of the contract due to default – is this correct	<p>The terms of the Agreements as contained in Annexures 3 and 4 will prevail over the GCC's (see Section 4, paragraph 8.2 of the RFP which states that in the event of a conflict between the Agreements (SRCC's) and the GCC, the Agreements will prevail. This is also provided for on page 73 of the RFP, the notes to the GCCs). As such, where the GCCs deal with a specific issue differently to the Agreement, the latter will prevail and regulate that specific issue. Please note that the Agreements address breach and termination at clause 23.</p> <p>Further, should a delay in performance be caused by a Force Majeure event, there will be no penalty levelled. Due to the urgency and expediency by which the Services are required to be performed under the Agreement, a delay caused by a Force Majeure which lasts 7 days or more may entitle either party, at its discretion, to terminate the Agreement.</p>



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SUB-CONTRACTING			
43	7.10.1.2	<p>Bidders bidding for the provision of the Logistics Services are required to include copies of the applicable subcontracting agreement. Would this not be tantamount to disclosure of private and confidential information particularly since the contract stipulates that the logistic service provider is 100% liable for any of its subcontractors? Why would there be any necessity then to seek approval if they are liable for their conduct in the first instance and as if they were the principal contracting party?</p>	<p>Bidders are required to provide copies of an agreement or letter indicating that the subcontractor agrees to participate in the bid. The NDoH, as a procuring entity, is entitled to be made aware of the identity of the sub-contractor as well as the value of the sub-contracting arrangement (this is to ensure compliance with the Preferential Procurement Framework Act, 2000 and its regulations). Further, the disclosure is necessary to ensure that there is no incidences of fronting, and that the sub-contractor is a reputable entity.</p> <p>To extent that there is confidential or other propriety information contained in the sub-contracting arrangement, this can be redacted.</p>
107	19	<p>Subcontracting</p> <p>It is simply not practical for the Service Provider to seek consent on each and every occasion it utilizes subcontractors in view of the fact that the Service Provider is fully responsible and liable for the actions and omissions of any subcontractor in the first instance why would there be a necessity to seek consent on each and every occasion.</p>	<p>Subcontractors must be included in the response to the bid. For Importation Services the sub-contractor must be detailed in the quotation.</p> <p>The NDoH, as a procuring entity, is entitled to be made aware of the identity of the sub-contractor as well as the value of the sub-contracting arrangement (this is to ensure compliance with the Preferential Procurement Framework</p>



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			<p>Act, 2000, and its regulations). Further, the disclosure is necessary to ensure that there is no incidences of fronting, and that the sub-contractor is a reputable entity.</p> <p>Please note that consent will not be unreasonably withheld by the NDoH.</p>
44	7.10.1.3	<p>It is unclear to us as to whether the DoH regards subcontracting to include parties such as air carriers, ground handling staff, etc. surely there is an understanding that as a freight forwarder there are aspects of the services rendered by third parties and/or possibly subcontractors. Similarly there is strict liability for the conduct of subcontractors therefore we fail to understand why there is a necessity to seek consent of subcontractors in the first instance. Further it is unpractical to seek approval from the Department for any subsequent subcontracting arrangements as this is unpractical and will cause numerous delays.</p>	<p>Subcontractor is defined in clause 2.1.25 on page 94. The NDoH views any party that will be undertaking any part of the service with whom the Service Provider contracts for that purpose, such as air carriers, to be subcontractors. This will, thus, not extend to ground handling staff as the Service Provider does not contract with those providers directly.</p> <p>Provision is made in the RFP for the details of any sub-contractors to be provided and included as part of the bid submission in respect of Part B, or in respect of Part B, these details are to be included in the quote, when requested to be provided.</p> <p>The NDoH, as a procuring entity, is entitled to be made aware of the identity of the sub-contractor as well as the value of the sub-contracting arrangement (this is to ensure compliance with the</p>



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			<p>Preferential Procurement Framework Act, 2000, and its regulations). Further, the disclosure is necessary to ensure that there is no incidences of fronting, and that the sub-contractor is a reputable entity.</p> <p>Please note that consent will not be unreasonably withheld by the NDoH.</p>
151	19	<p>Is there a requirement for the bidder to be the main service provider, or can any portion of the services be subcontracted?</p> <p>With regards to queries above, we specifically want to know if our company can submit a proposal while subcontracting with our subsidiary companies as well as other subcontractors if needed for distribution?</p>	<p>See 19 on Page 151. The details of any subcontracting arrangement will be considered by the NDoH and is subject to their consent. The service provider must act reasonably and should not subcontract all or the majority of the services.</p>
103	13.2	<p>The indemnities contained in this clause are qualified to exclude indirect special and consequential damages. The clause seems to provide an indemnity for collective, willful or negligent conduct. Clarification is required in respect of the definition of “subcontractor”. This surely cannot include air carriers and other third parties.</p>	<p>Subcontractor is defined in clause 2.1.25 on page 94. The NDoH views any party that will be undertaking any part of the service with whom the Service Provider contracts for that purpose, such as air carriers, to be subcontractors.</p>



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RECALL			
20	5.2.15.3	In respect of recall products does the State agree that it is liable for recall costs as well as the costs of destruction? This does not seem to be clear from any of the contract terms or the bid document.	The cost of recalls and associated destruction must be excluded from the cost proposal.
146	10.5.4	This clause relates to the recall of products from the market with the NDoH's prior consent. Clause 10.5.4 indicates that if the recall is due to any of the services including defective storage or handling then the cost is for the Service Provider. It is therefore presumed that in other instances the cost for the recall of products is for the account of the NDoH? This is not clear from the clause dealing with the recalls and in particular that NDoH will be liable for the costs of any reverse logistics or product recall.	The cost of recalls and associated destruction must be excluded from the cost proposal.
PURCHASING AND PAYMENT			
		State will procure the stock from the manufacturer – who will then buy the stock?	The state will be the owner of the stock.
		Who will pay the logistics service provider/bidder? State, the delivery point (vaccination site) or the manufacturer?	The NDoH will be responsible for paying the service provider as per the terms of the Bid.



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158	23.4	<p>The obligation of the NDoH to pay the Service Provider for any unpaid amounts relating to the services already rendered upon termination is applicable whether</p> <p>the agreement is terminated by the NDoH or the Service Provider. Is this clause implying that if the Service Provider terminates it is not entitled to payment?</p>	<p>No. To the extent that either party terminates the Agreement on notice and not as a result of a breach, any amounts then due and outstanding to the Service Provider for services previously fulfilled, provided the services are to the NDoH's satisfaction, will be settled and the Service Provider will be paid.</p>
97	5.2	<p>Why would the Service Provider be obliged to procure and pay for insurance purely at the quotation stage? Surely only once the quotation is accepted will it be able to procure insurance cover in respect of the particular shipment. One would not secure insurance cover in advance because if the Service Provider is not awarded the particular quotation then it has procured insurance cover in the form of marine cargo insurance cover or otherwise which is now no longer necessary. This does not seem to make sense to us. Will the Service Provider secure a general covering policy?</p>	<p>The Service Provider is only required to show that it has been "pre-approved" for such insurance when the quotation is submitted. Once the quotation is accepted the insurance as detailed in the quote will need to be finalised and become effective.</p>
IMPORTATION			
102	8.9	<p>We do not agree that the Service Provider is responsible for processing and securing required authorizations to</p>	<p>It should be noted that the NDoH is not the "importer of record". In this unique scenario, the NDoH is in fact the end</p>



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		<p>import the products. This is the responsibility of the importer of record. This responsibility does not vest with a customs clearing agent or importation Service Provider. The requirements for legal importation must be met by the importer namely the NDoH. Clarity in respect of this clause is required.</p>	<p>customer for purposes of the supply chain and it is procuring the services of a wholesaler/distributor to import the products into the country, and a distributor to perform logistics service provider to deliver the Products to the Sites. As such, it is a requirement of the Medicines and Related Substances Act, 1965 (section 22C(1)(b)) that the party undertaking the importation activity is to hold the requisite licence to import. Similarly, that distributor/wholesaler is required to hold the relevant authorisations under the Pharmacy Act, 1974.]</p>
103	11.6	<p>For importation services it is not possible to agree that the quotation may not be adjusted. There may be fluctuations in third party charges, currency fluctuations and the like.</p>	<p>Any adjustments to a previously approved quote will need to be approved in advance by the NDoH.</p>
28	16.1	<p>Part A – Importation Services</p> <p>We require clarification as to why a pharmacy premises license issued in terms of the Pharmacy Act is required in respect of in transit storage. This does not seem applicable to the scope of services. Certificates issued by SAPC for owner, responsible pharmacist, pharmacy premises and to carry on the business of a pharmacy are also irrelevant for purposes of the importation</p>	<p>It should be noted that the NDoH is not the "importer of record". In this unique scenario, the NDoH is in fact the end customer for purposes of the supply chain and it is procuring the services of a wholesaler/distributor to import the products into the country, and a distributor to perform logistics service provider to deliver the Products to the Sites. As such, it is a requirement of the Medicines and Related Substances Act,</p>



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		<p>services. We will not be responsible for dispensing in terms of any laws and therefore there is no necessity for responsible pharmacists and neither is it carrying on the business of a pharmacy. In respect of the licenses to act as an importer as well as a wholesaler and distributor in terms of Medicines Act is also not a legal requirement for a freight forwarder in respect of the scope of services. The importer of record will be the Department of Health therefore the freight forwarder does not require a license to act as an importer of medicines. The freight forwarding importation scope of services does not involve the scope of work that requires licenses to act as an importer and/or wholesaler/distributor. These licenses would only be relevant in respect of Part B – Logistics Services. The only license of relevance would be customs brokerage licenses and the license to act as a freight forwarder.</p>	<p>1965 (section 22C(1)(b)) that the party undertaking the importation activity is to hold the requisite licence to import. Similarly, that distributor/wholesaler is required to hold the relevant authorisations under the Pharmacy Act, 1974.</p>
<p>38</p>	<p>6.3.4</p>	<p>Phase 4 – Contract Award</p> <p>There is nothing in this clause which expressly indicates that the contract will not be negotiated. It simply says that in respect of importation services the Service Providers will be required to enter into the Importation Services Agreement within two days after being</p>	<p>Please refer to the definition of the "Agreements" in the RFP, which specifically states that the Agreements are non-negotiable. There is no deviation schedule in the RFP.</p>



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		<p>notified that they are a preferred bidder. Please take note of the comments and queries in the deviation schedule relating to the importation services contract. This also applies in respect of contract award for logistics services Part B.</p>	
		<p>We only sign the importation agreement as stated on page 89? Not the part B for Logistics service provider</p>	<p>Successful bidders appointed by the NDoH in respect of Parts A and B are to sign the relevant Agreements within 2 days of contract award.</p>
28		<p>Part A – Importation Services, the below certifications are required.</p> <p>Usually, this is the responsibility of the MA holder/ Importer – in this case the NDoH is importing the stock. The Clearing and forwarding business doesn't not require the below certifications.</p>	<p>It should be noted that the NDoH is not the "importer of record". In this unique scenario, the NDoH is in fact the end customer for purposes of the supply chain and it is procuring the services of a wholesaler/distributor to import the products into the country, and a distributor to perform logistics service provider to deliver the Products to the Sites. As such, it is a requirement of the Medicines and Related Substances Act, 1965 (section 22C(1)(b)) that the party undertaking the importation activity is to hold the requisite licence to import. Similarly, that distributor/wholesaler is required to hold the relevant authorisations under the Pharmacy Act, 1974.</p>



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			Further, these Products are not yet registered, as such there is no MA holder, they are being authorised for use under section 21 of the Medicines and Related Substances Act, 1965.
TERMINATION			
82	23	<p>Termination for default</p> <p>Please also take note of <u>Clause 23.1(b)</u> which indicates that the State has the right to terminate the contract in whole or in part if the Supplier fails to perform any obligations under the contract and in terms of <u>Clause 23.1(a)</u> if it fails to deliver all or any of the goods within the period specified in the contract. One default renders the Service Provider liable for termination.</p>	<p>Please note that the Agreements will prevail over the GCC's. Under the clause 23 of the Agreements, a party is required to first send a notice of breach to the other party and provide such party with an opportunity to remedy the breach. Should the party fail to remedy such breach, only then will the other party be entitled to cancel the Agreement. The NDoH has the right in terms of clause 23.6 to request that the Service Provider gives possession of any Products under its control to such person as the NDoH may specify in the event that notice of a breach is given (whether it is contested or not).</p>
114	23.4	<p>Please take note that either party has <u>the right to terminate this contract on thirty (30) days written notice to the other party</u>. This may be useful in circumstances where the contract becomes unprofitable or where the parties suffer losses that render the</p>	



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		contract non commercially viable. It is mutually applicable.	
GENERAL AND MISCELLANEOUS			
		Does the logistics service provider ever own the stock – I assume never?	No.
76		Is the Purchaser correctly defined?	Yes, in terms of the GCC – in this case, it is the NDoH.
85	33	Who is responsible for the NIP? The assumption is that the service provider/bidder is not responsible for this – they receive a service fee and not goods GP	This is not applicable to this bid and there is no specific NIP obligation contained in the RFP.
		Will only 3 logistics service providers appointed for the entire national distribution (as per the tender), or will there be a discussion to appoint more suppliers?	On the current formulation of the RFP, there could be one or more service providers appointed for the various cold chain solutions but no more than three for Part B.
3	1.1.2	States the agreement is not negotiable – if we propose changes does this disqualify us as a player?	The proposal by a bidder of amendments to the Agreement/s will not automatically disqualify a bidder. A bidder may not, however, make their bid conditional on the acceptance by the NDoH of changes to the Agreement. The NDoH reserve the right to appoint the successful bidder on the terms of the Agreement/s (notwithstanding any proposed changes made by the bidder).



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		Can one legal entity submit more than one bid?	Yes
		In relation to the other vaccines that will be in scope please confirm that the MOQ will also be supplier shipper quantity.	This will vary from vaccine to vaccine. It will be in the secondary packaging or tray.
26	6.1.2.2	6.1.2.2 states that we must supply details of our communication strategy – to whom is this communication and what are the topics of communication?	<p>Communication with the NDoH. Details relate to:</p> <ul style="list-style-type: none"> ● Feedback and escalations mechanisms ● Meetings to review progress and updates <p>Query management.</p>
		For all the KPI's there is no performance measure e.g. it just says receive within 24 hours but does not detail at 95% or 98%. This needs to be specified in the SLA and that penalties will only apply once we are outside of the SLA.	100% compliance
140	4.2	The NDoH reserves the right to extend the agreement for a further six (6) month period as an extended term however, the clause does not deal with increase rates or any rates adjustments for the additional period. What is the NDOH's proposal here?	11.7 Deals with Price Adjustments
141	7.7	Clarity is required in respect of the contents of this clause which requires the final inspection to be conducted by	This allows the service provider to make use of an alternative site other than that designated in the bid response – but in



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		<p>the Service Provider either at designated facilities or at such other venue as designated by the NDoH. What does this mean? Is the Service Provider expected to operate at facilities other than its own? Clarity is required in respect of this clause as why would the Service Provider assume responsibilities or obligations for goods situated at other venues other than its own warehouse.</p>	<p>agreement with the NDoH and therefore designated by the NDoH.</p>
<p>148</p>	<p>12.1.3</p>	<p>12.1.3 This clause relates to an inspection relating to funds transferred to the Service Provider by means of electronic systems and manually. What relevance would this possibly have to the agreement and the services rendered? What is the purpose of the clause and what is the purpose of this audit given that the contract does not have a mutual confidentiality and non-disclosure agreement it would not be unreasonable to require the NDoH to sign unconditional confidentiality and non-disclosure undertakings. Clause 12.7 indicates that if a third party engages the audit then they will ensure that such party signs an irrevocable and unconditional confidentiality and non-disclosure undertaking. This would be applicable to the NDoH as well as an independent third party?</p>	<p>The NDoH as the procuring entity is entitled to ensure the proper flow of funds to the Service Provider arising from the Agreement.</p>



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152	20	Intellectual Property. Why are these terms and conditions not mutually applicable.	It is unilateral.
154	21	Confidentiality. Why are these clauses are not mutually applicable in respect of confidential information and non-disclosure requirements.	This is unilateral because the NDoH needs to be transparent to the public to an extent. In relation to confidentiality, we understand that there may be certain commercially sensitive information that the Service Provider would wish to remain confidential. However, the Government and therefore the NDoH are under significant pressure to provide transparency in respect of the vaccine procurement and roll-out programme, and in particular, lack of transparency in relation to the procurement of vaccines has been a subject of widespread concern in the media and among the public. It ends up being perceived that Government is not being transparent and accountable in respect of the process, and it promotes distrust and scepticism in respect of the vaccination programme and undermines public confidence in the programme and the manner in which the programme is being undertaken. The Government and the NDoH needs to be able to be accountable and transparent.
110	21	Confidentiality	This is a statement and not a clarification question.



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		We bring to your attention that the clause is not mutually applicable.	
96	4.2	The DoH reserves the right to extend the agreement for a further six-month period as an extended term. The contract however does not deal with the increase in rates or rates adjustments for the additional period.	Clause 11.7 deals with Price Adjustments.
99	7.10	We are not aware that it is physically possible for the Service Provider's authorized personnel to inspect the products at the airport upon receipt of the products at the airport. Surely these are services which are handled by ground handling staff and the Service Provider is not permitted access to do so. We will clarify whether it is capable of meeting these requirements.	The Service Provider should inspect the product for visible damages or variances in the number of pallets or shippers on taking control of the product at the airport.
99	7.11	Exactly who is the independent party that will be making decisions in terms of this clause? Exactly who would be qualified to make this assessment in the first instance? This clause requires some clarity otherwise it may be difficult to implement.	The parties will agree on the independent third party who will undertake this assessment.
101	8.1.13	What is meant by the contents of this clause? What applications and authorizations are required under the Medicines and Related Substances Act	In this unique scenario, the NDoH is the end customer for purposes of the supply chain and it is procuring the services of a wholesaler/distributor to import the products into the country, and a



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		and the Pharmacy Act? Clarity is required in respect of this clause.	distributor to perform logistics service provider to deliver the Products to the Sites. As such, it is a requirement of the Medicines and Related Substances Act, 1965 (section 22C(1)(b)) that the party undertaking the importation activity is to hold the requisite licence to import. Similarly, that distributor/wholesaler is required to hold the relevant authorisations under the Pharmacy Act, 1974.
101	8.6	The Service Provider will not be in physical custody and control of the goods at all times therefore to give an undertaking that it will at all times conduct itself in the manner expected is not accurate or realistic.	This is a requirement of the RFP and bidders should accommodate for this in their arrangements with sub-contractors.
103	11.2	What is meant by signed invoices?	A signed copy of the invoice which together with the POD provides evidence of the delivery.
84	27	Settlement of Disputes This clause has been materially altered by the contents of <u>Annexure 3 and 4</u> agreements.	Correct and the Agreements will regulate this issue as they prevail over the GCCs where there is any conflict.
		Please can you verify that all the declarations needed does that need to be on company letterheads or can it be proposed on normal A4 paper?	Declarations are required be in the form contained in the RFP (and on normal A4 paper in respect of the hard copy set of the bid) and need not be on company



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			letterheads, but must be signed by the duly authorised representative.
		If we are only going to bid on Part A does all of the documents need to be paraphrased/signed and indicated as N/A where we are not going to bid?	Please have regard to clauses 6.1.2 on page 26 and clause 7.11 on page 44 of the RFP. The bid must contain all of the required documents and if they are not applicable, these must be clearly stated.
		With who can we raise any exceptions if any identified?	This clarification process was the opportunity to raise any queries.
		Can we add an extra Annexure to the conditions to add our company Conditions of Carriage?	The Agreement is non-negotiable and will not be amended by further conditions.
		If we are selected as a service provider are we allowed to decline to quote on a certain request from the NDoH?	Yes, although the NDoH will require reasons as to why the request is being declined.
		If we do only bid on part A does all relevant certification apply to the services provider?	In this unique scenario, the NDoH is the end customer for purposes of the supply chain and it is procuring the services of a wholesaler/distributor to import the products into the country, and a distributor to perform logistics service provider to deliver the Products to the Sites. As such, it is a requirement of the Medicines and Related Substances Act, 1965 (section 22C(1)(b)) that the party undertaking the importation activity is to hold the requisite licence to import. Similarly, that distributor/wholesaler is required to hold the relevant



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			authorisations under the Pharmacy Act, 1974.
43	7.10.2	On the CSD piece – I check with treasury – they don't know what security code the tender refers to? Is it the Unique reference number?	The bidder must provide a copy of the CSD registration reflecting the MAA number.
15	5.2.7.1	a. What does “qualified” ERP entail? b. What data management system does National DOH currently use, and/or what interfacing capabilities would be required?	Please refer to the Good Wholesaling Practice, July 2016 Details of data submission requirements will be provided on award
		Is it a requirement for the bidder to be a wholesaler?	A bidder is required to be a distributor or a wholesaler, with the requisite licence to act as a distributor or wholesaler under the Medicines and Related Substances Act, 1965.
		Do these national tenders cover all 9 provinces? Or which ones?	Yes, all 9 provinces
		General Requirements and Bid rules Can you clarify if we can tender separately for Private or Public distribution (logistic Services Part B) and not both?	The RFP does not contemplate bidders distinguishing as between private and public delivery sites. The bid must relate to the provision of the service to both public and private delivery sites.
		Logistic Services (Part B) • Please confirm if the	Yes, a single supplier per cold chain solution (although it need not



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		<p>appointment will be for a SINGLE Service provider as per document?</p> <ul style="list-style-type: none"> ● Will this SINGLE Service Provider per cold chain solution need to handle the full volume of the expected cold chain type? ● The definition makes provision in the definition of Delivery Sites to include depots and wholesalers and administration sites <ul style="list-style-type: none"> ○ Is provision made for independent wholesalers (Delivery Sites) in the bid to handle fine distribution to administration sites (Designated Facilities) ○ or is this a sub-contracted function of the Distributor in the Bid <p>or is this function outside of the bid</p>	<p>necessarily result in there being a different Service Provider per cold chain solution).</p> <p>Delivery Sites includes public and private sector vaccination sites, provincial pharmaceutical depots and other approved storage sites.</p> <p>Delivery Sites will be confirmed on award. If a wholesaler is subcontracted this will be at the cost of the Service Provider.</p> <p>The Service Provider is only required to deliver from their premises to the depot, other storage site or vaccination sites. Any further distribution from these delivery points is outside of the scope of this RFP.</p>
		<p>Medical Scheme Patient Supply Chain</p> <ul style="list-style-type: none"> ● Can you clarify if this tender includes role of the wholesaler and smaller distribution to 	<p>The private sector supply chain process contemplated in the question is not envisaged as part of this tender.</p>



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		<p>designated pharmacies for Private Medical Scheme Patients? i.e. where Medical Schemes have specific preferred provider contracted networks</p> <ul style="list-style-type: none">• Can you clarify if a normal medicine supply process will be followed whereby a Wholesaler can procure the vaccines from the contracted distributor at SEP, for sale and supply to pharmacies for private and insured patients.	<p>Delivery sites will include both private and public health establishments.</p>
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END