



transport

Department:  
Transport  
REPUBLIC OF SOUTH AFRICA

Private bag x 193, PRETORIA, 0001, Forum Building, Cnr Struben and Bosman Street, PRETORIA.

Ref: CSS 5/11/1

Enq: Mr Skosana or Mrs. L Nzimande

Tel Number: (012) 309-3035/3255

Dear Sir / Madam

**BID NUMBER: SCM/04/2023/RLT**

1. The Department of Transport requires the service as described per attached bid invitation and you are requested to complete the bidding documents and to submit it in accordance with the under mentioned stipulations:
  - The bid must be submitted in a sealed envelope with the name and address of the bidder with the number and closing date indicated on the envelope. The envelope must not contain documents relating to any bid other than that shown on the cover of the envelope;
  - Bids must be submitted in the bid/tender box on or before the closing date and time, couriered bid documents must be received before the closing date and time, failure to do so may invalidate the bid.
  - The attached forms, if completed in detail and returned, will form part of your bid; and
  - Prices must be VAT inclusive and all other expenses/disbursements, and be valid for a period of at least **120 days** from closing date.
  - **Closing date for submitting bids is 27 February 2024 at 11:00 AM**
  - **Briefing session to be held at Department of Transport on 13 February 2024 at 10:00 AM**
2. You are advised to acquaint yourself with the contents of the attached general conditions of contract and the checklist.
3. It will be expected of the successful bidder to sign a formal contract at this office within seven (7) days after receiving a letter of acceptance.
4. **NB. Kindly note that this is a Two envelope system (for financial proposal submit One (1) original hard copy and One (1) scanned USB (PDF): Annexure B, and for Technical Proposal submit One (1) original hard copy and Four (4) scanned USB (PDF) Annexure A. No hard copies except for both originals**

Kind Regards

For **DIRECTOR GENERAL: TRANSPORT**

DATE: 29/01/2024



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**DEPARTMENT OF TRANSPORT**

Directorate: Supply Chain Management

Private Bag X193, PRETORIA, 0001; TEL: (012) 309 3255/3035

**TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE PROJECT MANAGEMENT SUPPORT TO THE INTERIM RAIL ECONOMIC REGULATORY CAPACITY (IRERC) FOR A PERIOD OF TWELVE (12) MONTHS**

**SCM/04/2023/RLT**

**CONTACT DETAILS**

<b>Administrative Contact</b>	<b>Technical Contact</b>
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# TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE PROJECT MANAGEMENT SUPPORT TO THE INTERIM RAIL ECONOMIC REGULATORY CAPACITY (IRERC) FOR A PERIOD OF TWELVE (12) MONTHS

## 1 BACKGROUND

### 1.1 Background of the IRERC

#### 1.1.1 Establishment of IRERC and its mandate

The Minister of Transport and Minister of Public Enterprises entered into a Memorandum of Understanding to establish the Interim Rail Economic Regulatory Capacity (IRERC). The IRERC functions as a Ministerial Task Team but does not have statutory powers to regulate the railway industry. The main objectives of the IRERC are to develop skills and capacity in the area of rail economic regulation, to collect data on the structure and performance of the rail industry, and to research and make concrete recommendations on the future scope and design of economic regulation in the rail transport sector.

The IRERC includes representatives from the Department of Transport (DOT), Department of Public Enterprises (DPE) and National Treasury (NT) and will work in collaboration with key affected stakeholders such as Transnet Freight Rail (TFR), Passenger Rail of South Africa (PRASA), Railway Safety Regulator (RSR) and industry bodies representing the private sector to gain input which can constructively shape the economic regulatory environment for the rail sector.

The IRERC forms part of a wider process which will lead to the establishment of a comprehensive Transport Economic Regulator (TER), with a legislative mandate. It is intended to make a valuable contribution in expediting the operationalization of the rail component of the TER. The skills and capacity established will be migrated to the TER. The

establishment of the IRERC is also aligned with the White Paper on the National Rail Policy (Rail Policy).

The IRERC is guided by the Terms of Reference which set out its functions. The functions of the IRERC include investigating and providing advice and recommendations to the Minister of Transport and Minister of Public Enterprises on issues such as tariff setting, access to the rail network, dispute resolution and other related matters. The IRERC can make recommendations to the Minister of Transport and Minister of Public Enterprises for the approval of guidelines, frameworks, methodologies, institutional arrangements and capacity requirements relating to rail economic regulation. Amongst the responsibilities of the IRERC are to prepare a Workplan for the consideration and approval of the Minister of Transport and Minister of Public Enterprises.

#### 1.1.2 The White Paper on National Rail Transport Policy (Rail Policy)

The Rail Policy was approved by Cabinet on 23 March 2022. The Policy pronounces that the Interim Rail Economic Regulatory Capacity (IRERC) will guide the strategic direction for implementing economic regulation in the rail sector. In addition, IRERC model will be utilised as an interim arrangement for economic regulation within its mandate until the TER is established. The Rail Policy recognises that monopoly within the rail sector needs attention and a revitalised rail sector will have a more complex array of actors and stakeholders. Balancing their different interests will require economic regulation to ensure the sector's fairness and long-term sustainability.

1.2 The current Workplan of the IRERC as approved in May 2022 focuses on the current priorities in the rail sector that require economic regulatory intervention, and IRERC may add workstreams to the Workplan as it deems appropriate. The current approved Workplan of the IRERC is comprised of the following workstreams:

- Workstream A: An inquisitorial approach to third-party access and private sector participation in Transnet Freight Rail's Slot Sales Pilot Project (Pilot Project);
- Workstream B: Developing frameworks relating to the process of third-party access to the rail network;
- Workstream C: Developing skill and capacity in rail economic regulation; and
- Workstream D: Determining the scope and priority of economic regulation for the rail sector.

As the IRERC implements its Workplan, it will be engaging with key stakeholders to solicit inputs before proposing recommendations to the Ministers on economic regulatory interventions that need to be put in place for the rail sector.

## **2 SCOPE OF WORK**

### **2.1 GOAL**

The DOT seeks to appoint a service provider to provide project management support to assist the IRERC and the Directorate: Rail Economic Regulation (D: RER) within the DOT to deliver on the workstreams of the IRERC, and execution of its mandate. The service provider will work closely with the D: RER, the Chairperson of the IRERC and other experts in all secretarial and project management support. The IRERC in practice meets monthly or as required by the business of the IRERC.

### **2.2 OBJECTIVES**

- 2.2.1 The appointment of a service provider for project management and secretariat support will assist in the effective and efficient functioning of the IRERC and address the current capacity gap identified by the IRERC.

### **2.3 DELIVERABLES**

The service provider will be expected to render the following services and deliverables:

#### **2.3.1 Inception Report;**

An Inception Report needs to be produced at the outset to clarify project implementation issues and develop a mutual understanding of the project between the service provider, DOT and key stakeholders. These issues relate to clarification of the interpretation of the Terms of Reference, detailed tasks, time frames and execution of the project. The Inception Report must contain a workplan which indicates the tasks, the timeframe, resources and key deliverables outlined below. A work process flow chart must be included to communicate and keep track of the progress of the project.



- 2.3.2 Assist in the operations of the IRERC, which include but not limited to the following:
- 2.3.2.1 Develop a nucleus and network of skills and capacity related to economic regulation in the rail transport sector;
  - 2.3.2.2 Collect and analyse data on the structure and performance of the rail sector in South Africa and on operator network use and access;
  - 2.3.2.3 Draft regulatory accounting guidelines and templates for data collection and to develop the necessary database and systems for the ongoing maintenance of this data;
  - 2.3.2.4 Conduct research and analysis on economic regulation, access, prices and performance in the rail sector in South Africa and internationally;
  - 2.3.2.5 Gather information on and investigate complaints related to access, performance and tariffs in the rail transport sector;
  - 2.3.2.6 Consult with other economic regulators and Government Departments on issues of policy, jurisdiction and enforcement; and
  - 2.3.2.7 Participate in the process and project leading to the establishment of the Transport Economic Regulator (TER);
- 2.3.3 Capturing of the project plan for each workstream and its sub-programmes (application of project management software is necessary);
- 2.3.4 Monitor the progress in the execution of each workstream in terms of its project plan and budget using project management related software;
- 2.3.5 Manage the electronic documentation management system for collection, storage and maintenance of information collected by the IRERC which will be migrated to the STER once established, within the legislative framework governing protection of information and confidentiality;
- 2.3.6 Support any electronic communication system used by the IRERC for the purposes of communication and dissemination of information e.g. DOT website;
- 2.3.7 Assist in drafting of key project related templates;
- 2.3.8 Coordinate with the service providers appointed to assist the IRERC to achieve specific deliverables under the various workstreams;
- 2.3.9 Support the IRERC in arranging meetings, seminars and workshops for stakeholder engagement and assist in the preparation of related documents;
- 2.3.10 Record, compile and distribute minutes and follow up on action plan arising from the minutes of the IRERC meetings;
- 2.3.11 Compile claims and supporting documents relating to the re-imburement of independent members of the IRERC;



2.3.12 Undertake other secretariat and project related duties as directed by the Chairperson of the IRERC or RERD; and

2.3.13 Skills transfer Plan;

A skills transfer plan should be developed to transfer knowledge to staff involved with the IRERC to enable such staff to sustain and apply such knowledge relating to project management and secretariat support. The plan should, amongst others, identify the areas to be included in the skills transfer, the competencies/skills to be gained, the implementation rollout, timeframes and evaluation of the skills transfer.

### 3 EVALUATION

#### 3.1 STAGE 1: MANDATORY REQUIREMENTS

3.1.1 **Bidders must comply with the requirements and submit all required document(s) indicated hereunder with the bid documents at the closing date and time of bid. This phase is not scored and bidders who fail to comply with all the mandatory criteria will be disqualified.**

3.1.2 Bidders are required to be registered on the Central Supplier Database and the Department of Transport shall verify the bidder's tax compliance status through the Central Supplier Database.

3.1.3 Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

3.1.4 It is therefore a condition of this bid that the tax matters of the bidder be in order at any point in time from the closing date of the bid. This bid will only be awarded to a bidder(s) whose tax status on Central Supplier Database is compliant.

3.1.5 Compliance should remain valid for the duration of the contract

#### 3.2 STAGE 2: FUNCTIONAL EVALUATION CRITERIA

3.2.1 Only bidders who have complied with mandatory requirements will be evaluated for functionality. Bidders must, as part of their bid documents, submit supportive documentation for all functional requirements as indicated hereunder. The Bid Evaluation Committee (BEC) responsible for scoring the respective bids will

evaluate and score all bids based on their submissions and the information provided.

- 3.2.2 The value scored for each criterion will be multiplied with the specified weighting for the relevant criterion to obtain the marks scored for each criterion. These marks will be added and expressed as a fraction of the best possible score for all criteria.
- 3.2.3 Functionality will be evaluated on the basis of the supporting documentation supplied by the bidders in accordance with the below functionality criteria and values.
- 3.2.4 The evaluation of the functionality will be evaluated individually by Members of Bid Evaluation Committee in accordance with the below functionality criteria and values.
- 3.2.5 The applicable values that will be utilized when scoring each criterion ranges from: **1 being Poor, 2 = Average 3 = Good, 4 = Very Good & 5 = Excellent**
- 3.2.6 The Bids that fail to achieve a minimum of **65** points out of **100** points for functionality will be disqualified. This means that such bids will not be evaluated on the Preference Points System stage.

## EVALUATION CRITERIA

EVALUATION CRITERIA	GUIDELINES FOR CRITERIA APPLICATION	WEIGHT
<b>ABILITY AND CAPABILITY</b>	<p><b>Service provider experience:</b> Experience of the service provider in secretarial support/company secretary experience as well as in project management experience in relation to the work of committees.</p> <p>(Reference letter(s) under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was completed successfully.</p>	40

<b>DEMONSTRATE KNOWLEDGE, SKILLS AND COMPETENCY BY TEAM MEMBERS IN AREAS SPECIFIED</b>	<p>A team with appropriate skills and experience to deliver on the Scope of Work. The Bidder must attach personnel CVs with skill(s)/ experience/ qualifications relating to the Scope of Work.</p> <p>Individual Team members must have experience in providing secretarial support/ company secretary experience; project management experience relating to committees; management of processes for stakeholder consultation.</p> <p>Experience in an economic regulatory environment will be an advantage.</p> <p>Knowledge of the rail sector will be an added advantage.</p> <p>The <b>service provider</b> to be utilized in the execution of the contract– please attach personnel CVs.</p>	25
<b>METHODOLOGY</b>	<p>Bidders should provide comprehensive project execution plan covering the entire scope of work including maintenance and support plan as well as proposed work schedule/ training, duty sheet/ work plan with clear deliverables and timeframes for each task to be completed. The application should be concise and related to the scope of the project.</p>	20
<b>TRAINING, SKILLS DEVELOPMENT PLAN AND TRANSFER OF SKILLS ON PROJECT MANAGEMENT AND RELATED ACTIVITIES</b>	<p>A skills transfer plan indicating the training and development initiatives to be provided to the officials associated with the IRERC involved in the project relevant to the Scope of Work should include Project Management and related activities.</p>	15
<b>TOTAL POINTS ON FUNCTIONALITY MUST ADD TO 100</b>		<b>100</b>
<b>EVALUATION CRITERIA</b>	<b>GUIDELINES FOR CRITERIA APPLICATION</b>	<b>WEIGHT</b>

Scoring Criterion	1 Poor	2 Average	3 Good	4 Very Good	5 Excellent
<b>ABILITY AND CAPABILITY</b>					
<b>Service provider experience:</b> Experience of the service provider in providing secretarial support/company secretary experience. (20)	0 to 2 year of similar knowledge and experience	3 to 4 years of similar knowledge and experience	5 to 6 years of similar knowledge and experience	Over 7 to 9 years of similar knowledge and experience	Over 10 years of similar knowledge and experience
The service provider must have skill(s)/ experience in project management / work of committees (10)	0 to 2 year of similar knowledge and experience	3 to 4 years of similar knowledge and experience	5 to 6 years of similar knowledge and experience	Over 7 to 9 years of similar knowledge and experience	Over 10 years of similar knowledge and experience
Experience in management of stakeholder consultation process (5)	0 to 2 years of similar knowledge and experience	3 to 4 years of similar knowledge and experience	5 to 6 years of similar knowledge and experience	7 to 9 years of similar knowledge and experience	Over 10 years of similar knowledge and experience
(Reference letter(s) under the client-company letter head, with contactable details that confirms that the firm is successfully managing or has previously managed projects of a similar nature must be attached). The reference letter must state the duration and if the project was	One (1) completion certificate or reference letter provided on client's letterhead on successfully completed project	Two (2) completion certificate or reference letter provided on client's letterhead on successfully	Three (3) completion certificate or reference letter provided on client's letterhead on successfully	Four (4) completion certificate or reference letter provided on client's letterhead on successfully completed project	Five (5) completion certificate or reference letter provided on client's letterhead on successfully completed project

completed successfully (5) TOTAL 40		completed project	completed project		
<p><b>DEMONSTRATE KNOWLEDGE, SKILLS AND COMPETENCY BY TEAM MEMBERS IN AREAS SPECIFIED</b></p> <p>A multi-disciplinary team with appropriate skills and experience to deliver on the Scope of Work. The Bidder must attach personnel CVs with skill(s)/ experience/ qualifications relating to the Scope of Work.</p> <p>The multidisciplinary Team must comprise of experts in (i) secretarial support (ii) project management (iii) stakeholder engagement (iv) rail industry (v) economic regulation</p> <p>TOTAL 25</p>	Team with 1 stated discipline	Team with 2 stated discipline	Team with 3 stated discipline	Team with 4 stated discipline	Team with more than 4 relevant disciplines
<p><b>Detailed proposed methodology of how the project will be executed</b> that covers the proposed scope of work, proposed work schedule, proposed systems to be used, proposed resources and proposed time frames.</p> <p>TOTAL 25</p>	This proposal is not comprehensive and the project plan is responding poorly to the scope of work.	This proposal is not comprehensive and the project plan is only responding to some of the scope of work.	Comprehensive proposal with a project execution plan covering most of the scope of work, deliverables and timeframes for each task to be completed	Comprehensive proposal with a project execution plan covering the entire scope of work, clear deliverables including timeframes, key tasks, sub tasks, distribution of resources, with project duration and clear	Comprehensive proposal with a project execution plan covering the entire scope of work including timeframes, key tasks, sub tasks, distribution of resources, with project duration and clear completion date.

			and the responsible team member.	completion date.	The proposal undertakes to add value beyond the scope of work.
<b>Training, skills development plan and transfer of skills on Project Management and related activities</b>  TOTAL 15	No plan or plan is irrelevant on Project Management and related activities	Training and skills development plan covering less than 2 area of training on Project Management and related activities	Realistic Training and skills development plan covering 3 areas of training on Project Management and related activities	Training and skills plan covering 4 areas of training on Project Management and related activities	Training and skills programme covering beyond 4 areas of training on Project Management and related activities

### 3.3 **STAGE 3: EVALUATION IN TERMS OF 80/20 PREFERENCE POINTS SYSTEM**

3.3.1 Only bids that achieve the minimum qualifying score for functionality will be evaluated further in accordance with the 80/20 preference points system.

3.3.2 **Price:** The attached **Annexure A** must be utilised for submission of pricing proposals.

#### 3.3.3 **Calculating preference points**

Points will be awarded to a bidder for attaining the BBBEE status level of contribution in accordance with the table below

3.3.4 The points scored will be rounded off to the two decimals

3.3.5 Should two or more bids be equal in all aspects; the award shall be decided by the drawing of the lots.

3.3.6 A contract may on a reasonable and justifiable grounds, be awarded to a bid that did not score the highest number of points.

### 3.4 **POINTS AWARDED FOR BBBEE/PPPFA GOALS**

The following preference point systems are applicable to all quotes and/or bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

**For this specific RFQ/Tender**

- a. The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.

**3.4.2 Points for this bid shall be awarded for:**

- a. Price; and  
b. Preference points in terms of the scorecard.

**3.4.3 The maximum points for this bid are allocated as follows:**

PRICE: 80

PREFERENCE POINTS: 20

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

**3.4.4 Failure on the part of a bidder to submit the required proof together with the bid, will be interpreted to mean that preference is not claimed.****3.4.5 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.****3.5 PREFERENCE POINT SYSTEM APPLICABLE****3.5.1 This Document does not replace SBD6.1, which must still be submitted and completed for preference points to be considered.****3.5.2 The 80/20 or 90/10 Preference Point Systems for Acquisition of Goods or Services.**

- a. A maximum of 80 or 90 points is allocated for price on the following basis:

**80/20 or**

**90/10**

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

or

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

**Where,**

- $P_s$  = Points scored for price of bid under consideration  
 $P_t$  = Price of bid under consideration  
 $P_{min}$  = Price of lowest acceptable bid

### 3.6 SPECIFIC GOALS AND POINTS ALLOCATION

a. The following table will be utilised in evaluating preference:

GOAL	Points out of 20 (80/20)	Required Proof	Points Claimed	Proof Attached Y/N
<b>BLACK OWNED (BO)</b>	<b>MAX 10</b>	<b>B-BBEE Status level certificate issued by an authorized body or person; or A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice</b>		
100% BO	10 points			
≤ 75% BO	8 points			
≤ 50% BO	6 points			
≤ 40% BO	4 points			
<b>WOMEN OWNED (WO)</b>	<b>MAX 5</b>	<b>B-BBEE Status level certificate issued by an authorized body or person; or A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice</b>		
100% WO	5 points			
≤ 75% WO	4 points			
≤ 50% WO	3 points			
≤ 40% WO	2 points			
<b>BLACK DESIGNATED GROUP (BDG)*</b>	<b>MAX 5</b>	<b>B-BBEE Status level certificate issued by an authorized body or person; or A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice</b>		
100% BGD	5 points			
≤ 75% BGD	4 points			
≤ 50% BGD	3 points			
≤ 40% BGD	2 points			
<b>MAXIMUM POINTS</b>	<b>20</b>			

3.6.1 Bidders are required to complete the preference claim form (SBD 6.1), and submit the required supporting documents at the closing date and time of the bid in order to claim the points indicated above. The points scored by a bidder in respect of preference will be added to the points scored for price.

- 3.6.2 Only bidders who have completed and signed the declaration part of the preference claim form and who have submitted the required supporting documents together with the bid will be considered for preference points.
- 3.6.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated score card and supporting documents for every separate tender.
- 3.6.4 Failure on the part of the bidder to comply with paragraphs 3.3.4, 3.3.5 and 3.3.6 above will be deemed that preference points are not claimed and will therefore be allocated a zero (0).
- 3.6.5 The Department of Transport may, before a bid is adjudicated or at any time, require a bidder to substantiate claims it has made with regard to preference.
- 3.6.6 The points scored will be rounded off to the nearest 2 decimals.

In the event that two or more bids have scored equal total points, the award will be done in terms of the Preferential Procurement Regulations 2022, **Section 8: Criteria for breaking deadlock in scoring.**

- 3.6.7 A contract may, on reasonable and justifiable grounds, be awarded to a bid that did not score the highest number of points.

## 4 RULES OF BIDDING

### 4.1 NON-COMPULSORY INFORMATION SESSION

- 4.1.1 A non-compulsory physical briefing session will be held at the **Department of Transport, 159 Forum Building, Cnr Bosman and Struben Street, Pretoria**, on the **date determined by the Department** as detailed in the Advert. The non-compulsory physical briefing session will provide bidders with an opportunity to clarify aspects of the process as set out in this document and to address any substantive issues that bidders may wish to raise. **It is recommended that all interested bidders should attend the briefing session** as it will be beneficial to them. It is not only the technical aspects of this project that will be discussed during the briefing session, but also SCM compliance matters will be discussed and clarity provided where necessary. Any Briefing Notes which may be issued by the Department to the Service Providers should be considered as part of this project.
- 4.1.2 Firms may ask for clarification on this TOR or any of its Annexures up to close of business forty-eight (48) hours before the deadline for the submission of bids. Any request for clarification must be submitted by email to the Bid Office. Copies of questions and answers will be emailed to all firms that register at the briefing session.

## 4.2 FORMAT AND SUBMISSION OF BIDS

- 4.2.1 Bidders must submit their bids on the stipulated closing date and time. Late bids will not be considered. All late bids must be collected within seven (7) days failing which the DOT will discard of such late proposals.
- 4.2.2 Bids must be submitted in **two (2) envelopes**, one (1) with the technical proposal and the other pricing. Supporting documents required for compliance including all the SDB documents except for SBD 3.3, must be submitted together with the technical proposal.
- 4.2.3 Format of submission of proposals:
- a. Envelopes must be clearly marked with Company name, DOT Nr and whether it is the technical or financial response;
  - b. Proposals must be submitted as one (1) original and four protected soft copies. Soft copies must be exact copies of the original document, including all supporting documents, and should be labelled properly.
- 4.2.4 In order to evaluate and adjudicate bids effectively, it is imperative that bidders submit responsive bids. To ensure a bid will be regarded as responsive it is essential to comply with all conditions pertaining to mandatory requirements.
- 4.2.5 Each bidder must attach all applicable documents in support of its bid in accordance with the requirements set out in this bid as well as any other relevant materials, photographs and/or attachments.
- 4.2.6 Each bid, once submitted, constitutes a binding and irrevocable offer to provide the Services on the terms set out in the bid, which offer cannot be amended after its date of submission.
- 4.2.7 The DOT reserves the right to accept or consider any bid in full or in part or any responses or submissions in relation thereto.
- 4.2.8 The DOT reserves the right to appoint more than one bidder whose bid most successfully conforms to the Criteria and the Requirements in accordance with the terms and conditions described in the TOR.
- 4.2.9 The DOT reserves the right to request any additional information that it may require or deem necessary. All such requests shall be in writing.
- 4.2.10 After careful consideration and thorough examination of the proposals, DOT shall select the successful Bidder whose proposal most closely satisfies the criteria and the requirements. The lowest price (management fee where applicable) offered will not necessarily be a decisive factor in choosing between Proposals.



4.2.11 The DOT published the results of the outcome of a tender process, including the details of the successful bidder in the same media that was used to advertise the bid.

### 4.3 SUB-CONTRACTING, PARTNERSHIP/CONSORTIUM/JOINT VENTURE AND COMPANY REQUIREMENTS

4.3.1 A proposal submitted by a company, close corporation or other legal person must be accompanied by a resolution or agreement of the directors or members and be signed by a duly authorized person.

4.3.2 A proposal submitted by a partnership must be accompanied by a written partnership agreement

4.3.3 A proposal submitted by a consortium or joint venture of two or more parties must be accompanied by a signed memorandum of understanding between the parties to such consortium indicating:'

- a. the conditions under which the consortium will function;
- b. its period of duration;
- c. the persons authorized to represent it;
- d. the participation of the several parties forming the consortium;
- e. the benefits that will accrue to each party;
- f. any other information necessary to permit a full appraisal of its functioning.

## 5 CONFIDENTIALITY OF INFORMATION & INTELLECTUAL PROPERTY RIGHTS

### 5.1 CONFIDENTIAL INFORMATION

5.1.1 **Confidentiality obligation.** Each Party ("the receiving Party") must treat and hold as confidential all information which they may receive from the other Party ("the disclosing Party ") or which becomes known to them concerning the disclosing Party during the duration of this Contract.

5.1.2 **Nature of the confidential information.** The confidential information of the disclosing Party shall, without limitation, include:

- a. all software and associated material and Documentation, including information contained therein;
- b. all information relating to:

- i. the disclosing Party's past, present and future research and development;
- ii. the disclosing Party's business activities, products, services, customers and clients, as well as its technical knowledge and trade secrets;
- iii. the terms and conditions of this Contract; and
- iv. the Department's data.

5.1.3 The Parties shall, except as permitted by the Contract, not disclose or publish any confidential information in any manner, for any reason or purpose whatsoever without the prior written consent of the disclosing Party and in the event of the confidential information relating to a third-party, it shall also be incumbent on the receiving Party to obtain the consent of such third-party.

5.1.4 **Receiving Party's obligations with regard to confidential information.** The receiving Party agrees that in order to protect the proprietary interests of the disclosing Party in its confidential information:

- a. it will only make the confidential information available to those of its Personnel who are actively involved in the execution of this Contract;
- b. it will initiate internal security procedures reasonably acceptable to the disclosing Party to prevent unauthorised disclosure and will take all practical steps to impress upon those Personnel who need to be given access to confidential information, the confidential nature thereof;
- c. subject to the right to make the confidential information available to their Personnel under clause 15.4.1 above, they will not at any time, whether during this Contract or thereafter, either use any confidential information of the disclosing Party or directly or indirectly disclose any confidential information of the disclosing Party to third parties;
- d. all written instructions, drawings, notes, memoranda and records of whatever nature relating to the confidential information of the disclosing Party which have or will come into the possession of the receiving Party and its Personnel, will be, and will at all times remain, the sole and absolute property of such Party and shall be promptly handed over to such Party when no longer required for the purposes of this Contract.

5.1.5 **Obligations in respect of confidential information upon termination.** Upon termination or expiry of this Contract, the receiving Party will deliver to the disclosing Party or at the disclosing Party's option, destroy all originals and copies of the disclosing Party's confidential information in its possession.

5.1.6 The aforementioned obligations shall not apply to any information which:

- a. is lawfully in the public domain at the time of disclosure;
- b. subsequently and lawfully becomes part of the public domain by publication or otherwise;

- c. subsequently becomes available to the receiving Party from a source other than the disclosing Party, which source is lawfully entitled without any restriction on disclosure to disclose such confidential information; or
- d. is disclosed pursuant to a requirement or request by operation of law, regulation or court order.

5.1.7 **Disclosure to professional advisors.** Nothing in this clause shall preclude the Parties from disclosing the confidential information to their professional advisors in the *bona fide* course of seeking business and professional advice.

5.1.8 **Severability.** The provisions of this clause 15 are severable from the rest of the provisions of this Contract and shall survive its termination and continue to be of full force and effect for a period of ten (10) years after the date of termination.

## 5.2 INTELLECTUAL PROPERTY RIGHTS

5.2.1 **Ownership in Services vests in Department.** All rights of ownership and copyright in the Services to be provided by the Contractor to the Department shall vest solely with the Department, and the Contractor will not make such information available to any other party without the written consent of the Department on such terms and conditions as may be stipulated by the Department at that time. '

5.2.2 **No aspect of the Services to infringe 3<sup>rd</sup> Party intellectual property rights.** The Contractor warrants that no aspect of the Services provided in terms hereof will infringe any patent, design, copyright, trade secret or other proprietary right of any third-party ("third-party proprietary rights"), and the Contractor shall, at its own cost, defend the Department against any claim that the Services infringe any such third-party proprietary rights, provided that the Department gives prompt notice to the Contractor of such claim and the Contractor controls the defence thereof.

5.2.3 The Contractor further indemnifies the Department against, and undertakes that it will pay all costs, damages and attorney fees, if any, finally awarded against the Department in any action which is attributable to such claim and will reimburse the Department with all costs reasonably incurred by the Department in connection with any such action.

5.2.4 **Process in the event of a claim.** Should any person make any claim against the Department in terms of clause 16.2, the Department shall give the Contractor notice thereof within ten (10) days of becoming aware of such claim to enable the Contractor to take steps to contest it.



- 5.2.5 **Infringement of 3<sup>rd</sup> Party rights.** Should any third-party succeed in its claim for the infringement of any third-party proprietary rights, the Contractor shall, at its discretion and within thirty (30) days of the Services having been found to infringe:
- a. obtain for the Department the right to continue using the subject of infringement or the parts thereof which constitute the infringement; or
  - b. replace the subject of infringement or the parts thereof which constitute the infringement with another product or service which does not infringe, and which is materially similar to the subject of infringement; or
  - c. alter the subject of infringement in such a way as to render it non-infringing while still in all respects operating in substantially the same manner as the subject of infringement; or
  - d. withdraw the subject of infringement.
- 5.2.6 **Ownership.** Ownership of all Departmental data, whether under its control or not, shall continue to vest in the Department and the Contractor shall not obtain any proprietary rights of such data.
- 5.2.7 **Data may only be used in performance of the Services.** The Department's data in the possession of the Contractor, or to which the Contractor may have access during the currency of this Contract, may not be used by the Contractor for any purposes whatsoever other than as may be specifically required to enable the Contractor to comply with its obligations in terms of this Contract.
- 5.2.8 **Preservation of integrity of data.** Both Parties shall take reasonable precautions (having regard to the nature of their obligations in terms of this Contract), to preserve the integrity of the Department's data and to prevent any unauthorised access, corruption, or loss of such data.

## 6 TERMS AND CONDITIONS

### 6.1 GENERAL

- 6.1.1 The Department reserves the right to amend, modify or withdraw this Terms of Reference (TOR) document or amend, modify or terminate any of the procedures or requirements set out herein at any time and from time to time, without prior notice except where required by law, and without liability to compensate or reimburse any Service Provider.
- 6.1.2 Neither the Department, nor any of its respective, officers, or employees may make any representation or warranty, expressed or implied in this TOR document, and nothing contained herein is, or shall be relied upon as, a promise or representation, whether as to the past or the future.
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- 6.1.3 The costs of preparing proposals and of negotiating the Contract will not be reimbursed.
- 6.1.4 The Department also reserves the right to call interviews, site visits and/or call for demos of the product or solution, with short-listed Service Providers before final selection, and to negotiate price with the Preferred Service Providers.
- 6.1.5 Firms may not contact the Department on any matter pertaining to their bid from the time when bids are submitted to the time the Contract is awarded. Any effort by a Service Provider to influence bid evaluation, bid comparisons or award decisions in any manner, may result in rejection of the bid concerned.
- 6.1.6 Bid submission requirements must be completed in sections and appendices provided in the bid document.
- 6.1.7 **ALL BIDDERS MUST BE REGISTERED ON THE CENTRAL SUPPLIER DATABASE AT NATIONAL TREASURY.** More information in this regard is available on [www.ocpo.treasury.gov.za](http://www.ocpo.treasury.gov.za). Proof of registration must be submitted together with the technical proposal.
- 6.1.8 Bidders may provide any additional information deemed important for the DOT to consider.
- 6.1.9 Prospective Bidders must at all times comply with the Department's Supply Chain rules and processes with regard to all projects and payments.

## 6.2 ORDER OF PRECEDENCE.

- 6.2.1 In the event of any conflict between any provisions of the SCC, GCC, Proposal and any other document accompanying the Bid, the following order of precedence shall prevail—
- a. Standard Bidding Documents;
  - b. Standard Condition of Contract (SCC) if applicable
  - c. General Condition of Contract (GCC);
  - d. Terms of Reference (TOR);
  - e. Service Level Agreement (SLA) if applicable; and
  - f. Proposal.

## 6.3 DURATION

- 6.3.1 The project is for a period of twelve (12) months from the signature of the Contract.



- 6.3.2 The Contract shall commence on the Effective Date and, subject to the rights of termination stipulated herein, terminate on the Completion Date as specified in the Contract.

#### 6.4 CONTRACT AMENDMENTS

- 6.4.1 No addition to, or variation, consensual cancellation, or novation of the Contract, and no waiver of any rights arising from the Contract, including this clause, shall be of any force or effect unless reduced to writing and signed by the duly authorised representatives of each of the Parties.

#### 6.5 SUBCONTRACTS

- 6.5.1 The Contractor shall notify the Department in writing of all sub-contracts awarded under the Contract, before the commencement of the Contract, as well as at any time during the Contract.

- 6.5.2 **The right to sub-contract.** The Contractor may, with the prior written consent of the Department, sub-contract any of its obligations in terms of this Contract, or any part thereof, to a third-party, provided that:

- a. such sub-contracting shall not absolve the Contractor from any responsibility for complying with its obligations in terms of this Contract and the Contractor hereby indemnifies and holds the Department harmless against any loss, harm or damage which the Department may suffer as a result of such sub-contracting;
- b. the Contractor shall at all times remain the sole point of contact for the Department in respect of the Services by the Contractor.

- 6.5.3 **Department may withdraw consent.** The Department shall have the right at any time, and upon such good cause shown to withdraw such consent for a sub-contractor on thirty (30) days' notice to the Contractor and in that event no claim against the Department by the Contractor or any other person on the grounds of the granting of such consent or the withdrawal thereof shall be entertained, and the Contractor indemnifies the Department against any such claims and costs so incurred."



## 6.6 CONTRACTOR'S PERSONNEL

- 6.6.1 **Project Team.** The Contractor shall make available the skills and expertise of the Project Team referred to in the Bid who shall be involved in the Contract or the Services, unless otherwise agreed to by the Department, which agreement shall not be unreasonably withheld.
- 6.6.2 **Exceptions.** Notwithstanding the provisions of clause 6.6.1, where, due to circumstances beyond the control of the Contractor, a member of the Project Team cannot act in accordance with the provisions of this clause due to their dismissal, resignation or incapacity, the Contractor shall, to the extent possible, implement an appropriate succession plan to minimise the effect of the unavailability of such member.
- 6.6.3 **Suitably qualified Personnel.** The Contractor shall employ suitably qualified, experienced and trained Personnel to provide the Services, provided that the Contractor shall be entitled in its discretion, to allocate Personnel resources in accordance with the technical or other skills and knowledge required, which discretion shall not have a negative impact on the provision of the Services.
- 6.6.4 The Contractor's Personnel providing the Services may be absent for short periods of time for reasons including annual leave and training. The Contractor undertakes to avoid any disruption of the Services due to such circumstances.
- 6.6.5 **Contractor to adhere to security procedures of the Department.** The Contractor's Personnel including the Project Team shall at all times when on the Department's premises, adhere to the standard health, safety and security procedures and guidelines applicable to the Department's Personnel, as varied and conveyed by the Department to the Contractor from time to time.
- 6.6.6 Should the Department at any time have reason to believe that any of the Contractor's Personnel is failing to comply with such standard health, safety and security procedures and guidelines, the Department may deny such person access to any or all of the Department's premises or systems and require the Contractor to replace such person without delay.



## 6.7 PAYMENT

### 6.7.1 Invoice.

The Contractor's Project Manager shall at the end of each deliverable submit a consolidated invoice, certified as correct by the Contractor's Project Manager, showing the actual work performed, hours worked, and manpower inputs for the task and associated costs accompanied by all supporting documents.

### 6.7.2 Detailed Pricing.

Service Providers must complete the required SBD Pricing documents and ensure that Prices are:

- a. Firm and inclusive of all costs, including disbursements. Firm prices mandate that any escalations/estimated escalations be included in the final ceiling amount.
- b. Inclusive of VAT, if applicable;
- c. Correctly calculated and identical to the financial proposal.
- d. A detailed pricing schedule should be attached to the SBD documents providing a proper cost breakdown, in line with deliverables, and indicating the proposed time frames. If this TOR prescribed a set template for submission of the cost breakdown/pricing, bidders must submit such in the required format.
- e. The Department uses a two-envelope system. **NO PRICES MUST REFLECT IN THE TECHNICAL PROPOSAL.**

### 6.7.3 Fees

Domestic hotel accommodation may not exceed R1440, inclusive of VAT per night per person. (incl. dinner, breakfast and parking), air travel must be restricted to economy class, and travel claims per kilometre may not exceed the rates approved by the Automobile Association of South Africa.

### 6.7.4 Rates

According to the 23 October 2013 Cabinet Resolution as defined in the National Treasury Instruction 01 of 2013/14: Cost Containment Measures sub-paragraph 4.2; the Consultants (or Service Provider) will only be remunerated on the following rates regime:

- a. The "Guidelines for fees" issued by the South African Institute of Chartered Accountants (SAICA);
  - b. The "Guide on Hourly Fee Rates for Consultants", by the Department of Public Service and Administration (DPSA); or
  - c. Based on the body regulating the profession of the Consultant.
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### 6.7.5 **Payment information**

- a. An invoice only becomes due and payable:
  - i. When the Project Manager signs-off on the specific deliverable and submits the invoice for payment;
  - ii. When the invoice is correct with regards to calculations, information contained, banking details and supporting documents;
  - iii. Complies with the original quoted and contracted price.
- b. It is important to ensure that invoices are correctly submitted and reference the project name, DOT number and Order Number.
- c. Non-compliance will delay the payment process.

### 6.7.6 **Total Contract Price.**

The Contract Price payable to the Contractor for the Services **shall not** exceed the ceiling price as set out in the Contract.

### 6.7.7 **Price all-inclusive.**

All prices are inclusive of any Value Added Tax, import, and all other duties. Any risk associated with an omission or miscalculation in pricing proposals, are carried by the bidder.

## 6.8 **DELIVERY AND DOCUMENTS**

- 6.8.1 **Reports.** The Contractor shall provide the Department with detailed Documentation and Reports as set out in the Contract and Project Plan or when required in writing by the Department in both electronic format and hard copy.
- 6.8.2 Reports shall contain accurate information as to enable the Department to monitor and manage the Contractor's performance in terms of this Contract.
- 6.8.3 All Documentation and Reports shall be in English.

## 6.9 **PENALTY REGIME**

- 6.9.1 Poor performance will result in penalties that include withholding of a minimum 30% of the total invoice of each affected phase / milestone until it is fixed before the final product is submitted. In the case where the performance has not been improved to the satisfaction of the Department and the final product is handed over, the original amount held back will not be paid over to the Service Provider under any circumstances. On the other hand, an improved quality and/or performance, at the satisfaction of the Department, will require the outstanding part of the held back invoice to be paid to the Service Provider in full but with no additional interest.

- 6.9.2 The project milestones / phases are expected to be adhered to. Any deviation must be approved by the Department prior to any commencement of the changes. Failure to do so will result in a 5% non-payment of that particular and/or affected phase(s).
- 6.9.3 Notwithstanding item 6.9.2 above, failure to meet the deadline as stipulated in paragraph 2.3 will result in 30% of the total outstanding payments for the project as whole not being paid over to the Service Provider if the poor performance is attributed to the Service Provider unless there is undisputed evidence that the fault lies with the Department.”

## 6.10 TERMINATION

- 6.10.1 Should either Party fail to comply with any provision of this Contract the aggrieved Party may send a letter of demand to the defaulting Party, demanding compliance with such provision and should the defaulting Party, after a period of fourteen (14) days (or such longer periods as may under the circumstances be reasonably necessary) of the date of receipt of such written notice, remain in default, the aggrieved Party shall be entitled, without prejudice to any other rights it may have :
- a. to claim specific performance from the defaulting Party and to claim such damages as it may have suffered; or
  - b. to discharge and execute the defaulting Party’s obligations on its behalf and to recover the costs and disbursements incurred in respect thereof from that Party; or
  - c. to terminate this Contract and claim such damages as the aggrieved Party may have suffered from the defaulting Party.”
- 6.10.2 The Department may, without prejudice to any other rights it may have, terminate this Contract by written notice to the Contractor, upon the occurrence of the following events, namely if:
- a. the Contractor fails to adhere to set timeframes, service levels or service standards as determined in the TOR, SLA and/or Project Plan;
  - b. the Contractor, in the opinion of the Department, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract;
  - c. judicial execution is levied on the Contractor’s goods and which remains unpaid for 14 days after attachment;



- d. there has been a material defect, error or failure by the Contractor to comply with applicable laws or rules in the Bid or in the awarding of this Contract which is incapable of rectification and that requires this Contract to be terminated;
- e. the Contractor, when advised that its Proposal has been accepted, has given notice of inability to sign or execute the Contract;
- f. the Contractor has abandoned its obligations in terms of this Contract;
- g. the Contractor has deliberately furnished inaccurate information in its Bid with regard to its previous experience relating to the Services, or with regard to any other material information; or
- h. the Contractor ceases to carry on business as the Contractor of the Service.

6.10.3 In the event that negotiations between the Department and the Preferred Service Provider/s fail with regard to the conclusion of a Contract, the Department reserves its right not to appoint the Preferred Service Provider/s without incurring any liability to compensate or reimburse the Preferred Service Provider/s.

6.10.4 In the event that the Contractor does not complete Services in terms of this Contract by the Completion Date, the Department may view this as a material breach of this Contract and claim specific performance, and/or damages.

6.10.5 The individuals proposed for professional work on the project shall remain on the project unless the Department grants prior permission to change the team composition. Such permission will not be withheld unreasonably.

6.10.6 The Department reserves the right to terminate the Agreement in the event that no consensus can be reached on the terms and conditions of a subsequent Service Level Agreement.”



**ANNEXURE A: PRICING SCHEDULE**

**Note:** There are Thirteen (13) deliverables as mentioned in **Paragraph 2.3**. Please indicate the estimated cost (Pricing Proposal) of each deliverable.

	<b>DELIVERABLES</b>	<b>PRICING PROPOSAL</b>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		