

ANNEXURE E

TERMS AND CONDITIONS OF RFP

1. INTERPRETATION

1.1. Where the following words or phrases are used in this RFP, such words or phrases shall have the meaning assigned thereto in this clause, unless the context indicates otherwise:

1.1.1. “**Bid**” means a Bidder’s tendered response to a RFP to the Land Bank;

1.1.2. “**Bidder**” means a party who has submitted a Bid in response to a RFP to the Land Bank;

1.1.3. “**Service Provider Agreement**” means the written agreement signed by the Land Bank and the Service Provider, which shall include these Terms and Conditions, the General Conditions of Contract, the Special Conditions of Contract and all attachments and appendices thereto and all documents incorporated by reference therein;

1.1.4. “the **Land Bank**” means the Land and Agricultural Development Bank of South Africa governed by the Land and Agricultural Development Bank Act, 15 of 2002;

1.1.5. “**RFP**” means this Request for Proposals, together with any annexures thereto;

1.1.6. “**Services**” means the services required by the Land Bank as specified in its RFP;

1.1.7. “**Service Provider**” means the successful Bidder;

1.1.8. “**VAT**” means Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

1.2. The headnotes to the paragraphs to this RFP are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.

1.3. Any reference in this RFP to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted and/or consolidated and/or replaced from time to time.

1.4. This RFP shall be governed by and construed in accordance with the laws of South Africa.

2. **GENERAL**

2.1. This RFP is not intended to form the basis of a decision to enter into any transaction involving the Land Bank, and does not constitute an offer or recommendation to enter into such transaction, or an intention to enter into any legal relationship with any person.

2.2. This RFP has been compiled by the Land Bank and is being made available, on the same basis, to all Bidders.

2.3. Bidders submitting a Bid in response to this RFP will be deemed to do so on the basis that they acknowledge and accept the terms set out below.

2.4. Neither the Land Bank nor any of their respective directors, officers, employees, agents, representatives or advisors will assume any obligation for any costs or expenses incurred by any party in or associated with preparing or submitting a Bid in response to the RFP.

3. **DISTRIBUTION OF RFP**

3.1. Distribution of this RFP outside the Republic of South Africa may be restricted or prohibited by the laws of other countries. Recipients of this RFP are advised to familiarise themselves with and comply with all such restrictions or prohibitions applicable in those jurisdictions, and neither the Land Bank, nor any of their respective directors, officers, employees, agents, representatives or advisors, accept any liability to any person for any damages arising out of or in connection with the breach of any restriction or provision outside the Republic of South Africa. Persons contemplating submitting a Bid are advised to obtain legal advice as to the possible consequences thereof in terms of the law of the jurisdictions in which they are located.

3.2. Recipients of this RFP document may only distribute it to other parties whom they wish to involve as part of their Bidder consortium in submitting a Bid.

4. **BRIEFING SESSION**

Bidders may be required to attend a briefing session should the Land Bank deem it necessary to provide the Bidders with additional information relevant for the compilation of their Bids. Where the RFP indicates that a briefing session will be held; such session is compulsory and Bidders are obliged to attend the briefing session and a failure to do so will result in the disqualification of their Bid. Unless indicated to the contrary, briefing sessions will be held at

the Land Bank's offices situate at Block D, Eco Glades Office Park, Cnr Witch-Hazel Avenue and Olievenhoutbosch Road, 420 Witch Hazel Avenue, Eco Park Centurion.

5. **SUBMISSION OF BIDS**

5.1.A Bid shall be submitted to the Land Bank by no later than the closing date and time specified in accordance with the directions issued in the RFP. Late Bids will not be accepted.

5.2.All Bids must be formulated and submitted in accordance with the requirements of this RFP. The Land Bank and its advisors may rely on a Bid as being accurate and comprehensive in relation to the information and proposals provided therein by the Bidders.

5.3.One original of the Bid shall be submitted, together with one soft copy which shall be provided on a USB Flash Drive. The Tender Number and subject shall be clearly reflected on the front cover of the original Bid.

5.4.No entity may be involved, whether directly or indirectly, in more than one Bid in response to this RFP. A failure to comply with this requirement may, within the sole discretion of the Land Bank, result in disqualification of the relevant entity.

5.5.Any requirement set out in this RFP that stipulates the form and/or content of any aspect of a Bid, is stipulated for the sole benefit of the Land Bank, and save as expressly stated to the contrary, may be waived by the Land Bank in its sole discretion at any stage in the RFP process.

5.6.Any material change in the control and/or composition of any Bidder or any core member of a Bidder after submission of a Bid, shall require the prior written approval of the Land Bank, and any failure to seek such approval from Land Bank shall result in the Land Bank being entitled, in its sole discretion, to exclude the relevant Bidder from any further participation in the bid process. The Land Bank shall be the sole arbiter as to what constitutes a "material change in the control and/or composition of any Bidder", and as to what constitutes a "core member of a Bidder" for purposes of such approval. Any request for such approval shall be made to the Land Bank in writing and shall provide sufficient reasons and information to allow the Land Bank to make a decision. The Land Bank reserves the right to accept or reject any such request for approval in its sole discretion.

6. NO PRICE INCREASE

The successful Bidder shall not increase its prices for the duration of the Service Provider Agreement. Any increase in the Service Provider's costs of production or in any other aspect may not be passed on to the Land Bank by way of an increase in the awarded price or a change in the goods and/or services to be provided.

7. TENDER VALIDITY PERIOD

7.1.A Bid submitted in response to this RFP will constitute a binding offer by the Land Bank which will remain binding and irrevocable for a period of ninety business days from the date of submission to the Land Bank. The offer constituted by the Bid will be deemed not to have been accepted and no agreement will be deemed to be reached with any Bidder, unless and until a definitive Agreement and other related transaction documents are concluded between Land Bank and the Preferred Bidder.

7.2.Bids are valid for acceptance by the Land Bank at any time within the requested validity period after the closing date of the RFP.

7.3.Bidders may be requested to extend their validity period for a specified additional period. In such instances, Bidders will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change is a direct and unavoidable consequence of the Land Bank's extension of the validity period.

8. ERRORS OR OMISSIONS IN BIDS

8.1.Bidders are advised to study the RFP carefully prior to the submission of their Bid. The onus rests on the Bidder to ensure that a complete Bid is submitted.

8.2.The Land Bank will not entertain any request for modifications to the Bid after submission of the Bid or after the RFP closing date. The Bidder shall be responsible for all omissions or errors in their Bid and shall bring such omissions or errors to the attention of the Land Bank as soon as they become aware of the same.

8.3.Any correction or addition shall not be used to alter the Bid in a material way. If the Land Bank considers that correction of any omission or addition alters the original Bid in a material particular, the Bid shall be rejected without any liability whatsoever on the part of the Land Bank.

9. **CLARIFICATION BEFORE TENDER CLOSING DATE**

Should clarification be required on any aspect of the RFP including, but not limited to, questions relating to the specifications required of the Service Provider to perform the project, the tender and evaluation process, before the closing date, the Bidder must direct such queries to the contact person identified in the RFP.

10. **MODIFICATION**

10.1. The Land Bank reserves the right to amend or modify this RFP before the closing date 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 and without liability to compensate or reimburse any person.

10.2. If the Land Bank amends this RFP, the amendment will be sent to each Bidder in writing. No oral amendments by any person will be considered or acknowledged.

10.3. Where the amendment is significant, the Land Bank may at its discretion extend the RFP closing date.

11. **CANCELLAION OF RFP**

11.1. The Land Bank reserves the right to cancel this RFP at any stage up to, and including, the award of the Service Provider Agreement.

11.2. The Land Bank shall not be bound to assign any reason for cancellation and Bidders are not entitled to seek any compensation for the cost or expense of preparing its Bid or negotiating the Service Provider Agreement.

12. **WARRANTY**

12.1. By submitting a Bid, the Bidder warrants and represents to the Land Bank that as at the date of submission of the Bid, the Bidder is in possession of all necessary approvals (including, without limitation, registrations, certificates, permits, licenses and authorisations) to enter into and perform its obligations in respect to the Services.

12.2. As a separate and distinct warranty and without derogating from the aforementioned, the Bidder, by the submission of a Bid, warrants and represents to the Land Bank that it is registered with National Treasury and is listed on the Government's Central Supplier Database.

13. DEFAULT

13.1. If the Bidder, after having been notified of the acceptance of its tender, fails to:

13.1.1. Conclude a formal contract on terms acceptable to the Land Bank and the Bidder within a period stipulated by the Land Bank; or

13.1.2. Accept an order in terms of the tender; or

13.1.3. Furnish security to the satisfaction of the Land Bank when called upon to do so for the fulfilment of the Service Provider Agreement; or

13.1.4. Comply with any condition imposed by the Land Bank;

the Land Bank may, in any of the aforementioned cases, and without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Bidder any additional expense incurred by the Land Bank in calling for new offers or in accepting a less favourable offer.

13.2. If any Bidder who has submitted a Bid and/or concluded a contract with the Land bank, or in the capacity of an agent or subcontractor who has been associated with such Bid or contract:

13.2.1. Has withdrawn such Bid after the advertised date and hour for the receipt of Bids; or

13.2.2. Has, after having been notified of the acceptance of its tender, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the tender documents; or

13.2.3. Has carried out any contract resulting from such tender in an unsatisfactory manner or has breached any condition of such contract; or

13.2.4. Has acted in a fraudulent or improper manner or in bad faith towards the Land Bank or any government department or any public body, company or person; or

13.2.5. Has made any misleading or incorrect statement either:

13.2.5.1. In the affidavit or certificate provided; or

13.2.5.2. In any other document submitted as part of its tender submission and is unable to prove to the satisfaction of the Land Bank that:

13.2.5.3. It made the statement in good faith honestly believing it to be correct; and

13.2.5.4. Before making such statement, it took all reasonable steps to satisfy itself of its correctness; or

13.2.6. Caused the Land Bank damage, or to incur costs in order to meet the service provider's requirements which could not be recovered from the service provider;

13.2.7. Has instituted any court proceedings against the Land Bank in bad faith;

13.2.8. Has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 years;

13.2.9. Has been included as a company or person prohibited from doing business with the public sector on national treasury's database of restricted suppliers or register of tender defaulters; then a tender from any such Bidder shall be disqualified and the person, enterprise or company (including the directors) shall be disqualified from tendering for any Land Bank business.

13.3. Any disqualification imposed upon any person or enterprise or company, may also apply to any other enterprise or company (or associates thereof) and may also be applied to any agent or employee of the person or enterprise or company concerned.

14. **SITE VISITS**

The Land Bank reserves the right to carry out site inspections or call for supporting documentation in order to confirm any information provided by a Bidder in its Bid.

15. **BIDDERS TO INFORM THEMSELVES**

15.1. Submission of a Bid shall be deemed to constitute acceptance by the Bidder of the terms and conditions contained in the RFP.

15.2. By submitting a Bid, Bidders will be deemed to have acknowledged and agreed that it has done so on the basis that it has:

15.2.1. the necessary skills, knowledge and experience to provide the goods and/or services sought; and

15.2.2. in preparing its Bid:

- 15.2.2.1. it has fully examined the RFP and any other information made available by the Land Bank to Bidders for the purpose of this RFP;
- 15.2.2.2. made its own reasonable enquiries (including site inspections, if necessary) to fully inform themselves of all the risks, contingencies and other circumstances which may impact on the Bid and the performance of the Services; and
- 15.2.2.3. has not relied upon any warranty or representation (whether oral or in writing or by conduct) made on behalf of the Land Bank except where such warranty or representation is contained in the RFP or made through the process specified in the RFP.

16. ACCEPTANCE OF BID

- 16.1. The Land Bank reserves the right not to accept any particular Bid, including the lowest priced or any Bid and shall not be bound to assign any reason for its decision.
- 16.2. The Land Bank reserves the right to accept any Bid in whole or in part. Where a Bid is accepted in part, then the price shall be adjusted in accordance with the pricing schedule indicated in the Bid.
- 16.3. Upon the acceptance of a Bid by the Land Bank, the parties shall be bound by these Terms and Conditions, the General Conditions of Contract, the Special Conditions of Contract and any contractual terms and/or any schedule or otherwise which form part of the RFP.

17. CONFIDENTIALITY

- 17.1. This document is released for the sole purpose of responding to this RFP and must be considered confidential. In addition, the use, reproduction or disclosure of the requirements, specifications or other material in this RFP is strictly prohibited.
- 17.2. All Bids submitted to the Land Bank will become the property of the Land Bank and will as such not be returned to the Bidder. The Land Bank will make all reasonable efforts to maintain proposals in confidence. Proprietary information should be identified as such in each proposal.

18. GENERAL CONDITIONS OF CONTRACT

- 18.1. The Service Provider shall be is required to sign a written contract prior to commencement of the Services.

18.2. The Service Provider shall adhere to the General and Special Conditions of Contract issued with the RFP, together with any conditions contained in the RFP.

18.3. Should the Bidder find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/alternatives by written submission on its company letterhead. Any such submission shall be subject to review by the Land Bank's legal advisor who shall determine whether the proposed amendments /alternatives are acceptable or otherwise, as the case may be.

19. **CONTRACT DOCUMENTS**

19.1. The contract documents will comprise the Service Provider Agreement, these Terms and Conditions, the General and Special Conditions of Contract and any schedule of additional conditions which form part of this RFP.

19.2. The abovementioned documents together with the Bidder's Bid response will constitute the Service Provider Agreement between the parties upon receipt by the Bidder of the Land Bank's letter of acceptance/intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

20. **VALUE-ADDED TAX**

In respect of services to be rendered in the Republic of South Africa, the prices quoted by the Bidder are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

21. **SCOPE OF WORK**

The Bidder should note that, unless notified to the contrary by the Land Bank or a designated official by means of an official amendment to the RFP, it is required to tender for the Services strictly in accordance with the scope of work supplied by the Land Bank.

22. **CONFLICT WITH RFP**

Should a conflict arise between these Terms and Conditions and the RFP issued, the conditions stated in the RFP shall prevail.

23. **GOVERNING LAW**

This RFP, and any Agreement concluded pursuant hereto and/or an non-contractual matters or obligations arising out of the Services, shall be governed by, and construed in accordance with, the laws of the Republic of South Africa.

_____ (Registered company name) hereby acknowledges and accepts the terms and conditions stipulated in this annexure for terms and conditions.

These terms and conditions are non-negotiable and hereby binding should this proposal be successful.

Signature _____

Date _____