



## environmental affairs

Department:  
Environmental Affairs  
REPUBLIC OF SOUTH AFRICA

# INVITATION TO BID

## BID REFERENCE NUMBER: E1532

**THE APPOINTMENT OF A CONSULTANT TO PROVIDE CONSULTANCY SERVICES TO PERSONS WITH SPECIAL NEEDS TO ALLOW COMPLIANCE WITH THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS.**

Contact person:

Name: Mr. F. Scheepers

Office Telephone No. (012) 399 9285

E-Mail: [fscheepers@environment.gov.za](mailto:fscheepers@environment.gov.za)

NATIONAL TREASURY CENTRAL SUPPLIER DATABASE (CSD) REGISTRATION INFORMATION

Company name	Supplier registration number	Unique reference number	
			Main contractor
			Sub-contracted/ joint venture comp 1
			Sub-contracted/ joint venture comp 2

CLOSING DATE OF THE BID: 06 DECEMBER 2019 AT 11H00

## PART A INVITATION TO BID

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (NAME OF DEPARTMENT/ PUBLIC ENTITY)</b>					
BID NUMBER:	E1532	CLOSING DATE:	06-12-2019	CLOSING TIME:	11:00
DESCRIPTION	THE APPOINTMENT OF A CONSULTANT TO PROVIDE CONSULTANCY SERVICES TO PERSONS WITH SPECIAL NEEDS TO ALLOW COMPLIANCE WITH THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS				
<b>BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)</b>					
Department of Environmental Affairs; The Environment House,					
473 Steve Biko Road; Cnr Soutpansberg and Steve Biko Road, Arcadia Pretoria /Tshwane					
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>		
CONTACT PERSON	Mr Jonas Nkitseng or Mr Samuel Mofokeng		CONTACT PERSON	Mr. F. Scheepers	
TELEPHONE NUMBER	012 399 9056/9057		TELEPHONE NUMBER	(012) 399 9285	
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	<a href="mailto:jnkitseng@environment.gov.za/">jnkitseng@environment.gov.za/</a> <a href="mailto:Smofokeng@environment.gov.za">Smofokeng@environment.gov.za</a>		E-MAIL ADDRESS	<a href="mailto:fscheepers@environment.gov.za">fscheepers@environment.gov.za</a>	
<b>SUPPLIER INFORMATION</b>					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>					
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER PART B:3]	
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>					
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NODOES	
THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NOIS THE ENTITY	
LIABLE IN THE RSA FOR ANY FORM OF TAXATION?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.					

## PART B TERMS AND CONDITIONS FOR BIDDING

<b>1. BID SUBMISSION:</b>
<p>1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.</p> <p>1.3. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.</p> <p>1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).</p>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
<p>2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.</p> <p>2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.</p> <p>2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.</p> <p>2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p> <p>2.7 NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."</p>

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....  
(Proof of authority must be submitted e.g. company resolution)

DATE: .....

**PRICING SCHEDULE**  
(Professional Services)

NAME OF BIDDER: .....	BID NO: E1532
CLOSING TIME 11h00	CLOSING DATE: 06-12-2019

OFFER TO BE VALID FOR .....90.....DAYS FROM THE CLOSING DATE OF BID.

**DESCRIPTION: THE APPOINTMENT OF A CONSULTANT TO PROVIDE CONSULTANCY SERVICES TO PERSONS WITH SPECIAL NEEDS TO ALLOW COMPLIANCE WITH THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS.**

\*\*(ALL APPLICABLE TAXES INCLUDED)

1. The accompanying information must be used for the formulation of proposals.
2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.
3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

R.....

4. PERSON AND POSITION

HOURLY RATE                      DAILY RATE

.....	R.....	.....
.....	R.....	.....
.....	R.....	.....
.....	R.....	.....
.....	R.....	.....

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

.....	R.....	..... days
.....	R.....	..... days
.....	R.....	..... days
.....	R.....	..... days

5.1 Travel expenses (specify, for example rate/km and total km, class of airtravel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....

TOTAL: R.....

\*\* "all applicable taxes" includes value- added tax, pay as you earn, income tax, unemployment insurance contributions and skills development levies.

5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED	RATE	QUANTITY	AMOUNT
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
.....	.....	.....	R.....
TOTAL: R.....			

- 6. Period required for commencement with project after acceptance of bid .....  
.....
- 7. Estimated man-days for completion of project .....  
.....
- 8. Are the rates quoted firm for the full period of contract? \*YES/NO
- 9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index. ....  
.....  
.....  
.....

\*[DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

Department of Environmental Affairs

Contact Person: Mr Samuel Mofokeng / Mr Jonas Nkitseng

Tel: (012) 399 9057 or (012) 399 9056

E-mail: [SMofokeng@environment.gov.za](mailto:SMofokeng@environment.gov.za) or [jnkitseng@environment.gov.za](mailto:jnkitseng@environment.gov.za)

Or for technical information –

Name: Mr. F. Scheepers

Office Telephone No. (012) 399 9285

E-Mail: [fscheepers@environment.gov.za](mailto:fscheepers@environment.gov.za)

**SBD 4**

**DECLARATION OF INTEREST**

1. Any legal person, including persons employed by the state<sup>1</sup>, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes an advertised competitive bid, a limited bid, a proposal or written price quotation). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

2.1 Full Name of bidder or his or her representative: .....

2.2 Identity Number:.....

2.3 Position occupied in the Company (director, trustee, shareholder<sup>2</sup>, member):  
.....

2.4 Registration number of company, enterprise, close corporation, partnership agreement or trust:  
.....

2.5 Tax Reference Number: .....

2.6 VAT Registration Number: .....

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / PERSAL numbers must be indicated in paragraph 3 below.

<sup>1</sup>"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

<sup>2</sup>"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder presently employed by the state? YES / NO

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member: .....  
Name of state institution at which you or the person connected to the bidder is employed : .....  
Position occupied in the state institution: .....

Any other particulars:  
.....  
.....  
.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? YES / NO

2.7.2.1 If yes, did you attach proof of such authority to the bid document? YES / NO

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....  
.....  
.....

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? YES / NO

2.8.1 If so, furnish particulars:

.....  
.....  
.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? YES / NO

2.9.1 If so, furnish particulars.

.....





**4 DECLARATION**

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.  
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME SHOULD THIS  
DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

November 2011

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL  
PROCUREMENT REGULATIONS 2017**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

**1. GENERAL CONDITIONS**

1.1 The following preference point systems are applicable to all 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).

1.2

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; or

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

	<b>POINTS</b>
<b>PRICE</b>	80
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	20
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 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.



B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

## 5. BID DECLARATION

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

## 6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: . = maximum 20 points  
(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.)

## 7. SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted?

(**Tick applicable box**)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

(**Tick applicable box**)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		

Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

**8. DECLARATION WITH REGARD TO COMPANY/FIRM**

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

**8.4 TYPE OF COMPANY/ FIRM**

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

**8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

.....  
 .....  
 .....  
 .....  
 .....

**8.6 COMPANY CLASSIFICATION**

- Manufacturer
- Supplier
- Professional service provider
- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in

paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;

iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –

- (a) disqualify the person from the bidding process;
- (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

WITNESSES
1. ....
2. ....

.....
SIGNATURE(S) OF BIDDERS(S)
DATE: .....
ADDRESS .....
.....
.....



## **environmental affairs**

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Department:  
Environmental Affairs  
**REPUBLIC OF SOUTH AFRICA**

DEPARTMENT OF ENVIRONMENTAL AFFAIRS (DEA) AS AN ORGAN OF STATE SUBSCRIBES TO AND PROPAGATES BOTH THE NOTION OF BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT, 2003 (Act No. 53 of 2003) (BBBEE), THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 (Act No. 5 of 2000) AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

### **TERMS OF REFERENCE**

**TERMS OF REFERENCE FOR THE APPOINTMENT OF A CONSULTANT TO PROVIDE CONSULTANCY SERVICES TO PERSONS WITH SPECIAL NEEDS TO ALLOW COMPLIANCE WITH THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS.**

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## 1. PURPOSE

To appoint a consultant team to assist the Department by providing consultancy services to persons with special needs enabling them to comply with the EIA Regulations, 2014.

## 2. INTRODUCTION AND BACKGROUND

The EIA Pro Bono initiative seeks to proactively address the objectives of Regulation 47 (a), (b) and (c) of the EIA Regulations, 2014, which states that “The competent authority processing an application in terms of these Regulations must give reasonable assistance to people with: (a) illiteracy; (b) a disability; and (c) any other disadvantage, who cannot, but desire to, comply with these Regulations.”

Through the Medium Term Strategic Framework (MTSF), to address government’s broad national priorities, twelve key outcomes to be implemented by government were identified. These included, amongst other priorities Outcome 10: Protect and enhance our environmental assets and natural resources. The manner in which the environmental assets are to be protected is primarily through administering the Environmental Impact Assessment process which requires the input of environmental impact assessment practitioners (EAPs) and environmental specialists. These EAPs and specialists charge professional fees that are often not affordable to small and medium enterprises, communities, and new entrances into the market and meet the criteria for this programme. In these cases the Department intends to fund a consultancy with a qualified EAP(s) to conduct the Environmental Impact Assessment on a pro-bono basis on their behalf.

The Department’s previous special needs project came to an end in July 2018. The Chief Directorate IEA wishes to start with a similar project. The project also focus on assisting unemployed graduates to gain work experience in the Environmental Management Sector. The appointed service provider will be required to employ unemployed graduates and mentor the individuals in their daily duties (the conducting of EIAs and drafting of EIA reports).

The consultant will be appointed for a period of four (4) years starting from January 2020 to March 2024.

### 2.1 PROBLEM ANALYSIS

The cost of EIAs (to those who cannot afford the undertaking of such) can act as a barrier to entry to the market and further contributes to unequal economic opportunities. In this regard possible small business ventures are often compromised due to amongst other factors, a lack of funds to comply with the NEMA EIA Regulations [i.e. the appointment of a service provider to undertake a Basic Assessment (BA), and a Scoping & Environmental Impact Assessment process (S&EIA)]. It is envisaged that, through this collaborative programme, the Department will make a contribution to meeting the full potential of the small and medium enterprises in South Africa.

The programme provides consultancy services through the employment of young unemployed environmental graduates, thereby providing employment opportunities and equipping these young graduates with valuable work experience while being mentored by an experienced Environmental Assessment Practitioner (EAP).

## 2.2 STRATEGY ANALYSIS

Given the problem outlined above, the following strategy has been devised for the consultant team that is the subject of this terms of reference.

### 2.3 The use of the criteria to assist persons with special needs developed by DEA

The successful consultancy must utilise the criteria to identify persons and communities who qualify for assistance to access consultancy service to conduct assessments, which was developed by DEA (find attached as Annexure A) and is based on a variety of factors including income, access to funds, feasibility of the business venture, type of project and projected cost. Through the criteria, applications will be ranked in order to determine qualifying individuals and person who will be assisted without charge.

### 2.4 Funding of the service

The special needs project will be fully funded over a period of four years by this Department.

## 3. OBJECTIVES

### 3.1 OVERALL OBJECTIVE

The overall objective of the project is framed as:

The roll out of EIA special needs and skills development programme is achieved in the most efficient and effective manner. These included, amongst other priorities, meeting the objective of assisting persons and persons with special needs to access EIAs.

### 3.2 IMMEDIATE PROJECT OBJECTIVE

In order to contribute to the overall project objective, the consultancy has the following immediate objectives:

#### 3.3 Immediate Objective A - Inception workshop and detailed work plan

##### 3.3.1 Objective – Inception workshop

An inception workshop is to be held at Pretoria (Environment House) where aspects of the project will be discussed and agreed between the consultant team and the Department. The consultancy will be expected to take minutes of the meeting and submit such to the Department for written approval by the Project Manager, within 7 working days after the inception meeting.

##### 3.3.2 *Outputs –Comprehensive work plan*

Following the inception workshop, a comprehensive work plan is to be drawn up by the consultant team, confirming identified tasks, staff allocations and timeframes. The work plan is to be approved in writing by the Project Manager before any additional work to 3.3.1 and 3.3.2 commences.

**Table 1: Success indicator**

Description	Verifiable Indicator	Means of verification
-------------	----------------------	-----------------------

Inception workshop and approved work plan.	Inception workshop held and detailed work plan approved in writing.	Minutes of inception meeting and approved work plan available.
--	---	--

### 3.4 Immediate Objective A - Project Management Committee

#### 3.4.1 Objective – Project Management Committee and reporting requirements

The project management committee will be made up of representatives of the Department and the consultancy team. The consultancy must, amongst other team members, be represented by at least one EAP. Project management meetings will be held quarterly for the first year and thereafter, at least twice per year at Pretoria (DEA Environment house) to discuss the project and progress. The consultancy must, at these meetings, identify what actions have been taken to bring the project to the attention of possible beneficiaries. The Department will chair the meetings.

#### 3.4.2 Outputs – Project Management Committee meeting

The project management committee meeting will be convened quarterly for the first year and thereafter, at least twice a year. The consultancy will be expected to take minutes of the meeting and submit such to the Department for written approval by the Project Manager, within 7 working days after the inception meeting.

**Table 2: Success indicator**

Description	Verifiable Indicator	Means of verification
Project Management Committee meetings held.	Project Management Committee set up and meeting quarterly for the first year and thereafter, at least twice a year.	Minutes of meetings available.

### 3.5 Immediate Objective B – Report on progress of the project

#### 3.5.1 Objective – Report on the progress of the project

Quarterly progress reports showing progress made in relation to each of the outputs of this project must be prepared by the service provider and submitted to the Department on a quarterly basis. The first quarterly progress report must be submitted to the Department within 3 months of the inception meeting. The quarterly progress reports following that must be submitted to the Department every 3 months thereafter, for the period during which the contractual agreement is still in effect.

**Table 3: Success indicator**

Description	Verifiable Indicator	Means of verification
Quarterly progress reports	Quarterly progress reports prepared by the service provider and submitted to the Department.	Quarterly progress reports submitted on a quarterly basis

### 3.6 Immediate Objective C – Providing employment opportunity for unemployed graduates

#### 3.6.1 Objective – Employment and training of unemployed graduates to conduct environmental impacts assessments and compile EIA reports

The consultant team is to employ a total of 6 unemployed graduates in two batches where they obtain 2 years each of well-structured mentoring (by an EAP) and real-work experience over the contract period. The consultant team must ensure that, when the requirement to register as environmental assessment practitioner, as contained in Regulation 14 of the Section 24H Registration Authority Regulations, 2016, comes into effect, graduates register as candidate EAPs [refer to Regulation 15(2) of said Regulations].

The time period of the project is four (4) years.

#### 3.6.2 Outputs – Employment of 6 graduates that are currently unemployed. These Individuals to be trained and exposed to work environment in the environmental management sector.

A training programme which identifies how the 6 graduates will be mentored and trained throughout the project must be submitted with the project proposal for this tender. The successful consultant team will need to update and implement the training programme through the period of the project. The training programme must identify the timeframes for their appointment, the training that they will receive, include the staff members and their level of expertise that will be assigned to their mentoring, the time set aside for this mentoring and the mentoring structure within the consultancy including how the graduates will be kept occupied should there be a lull in the work required through the special needs programme.

**Table 4: Success indicator**

Description	Verifiable Indicator	Means of verification
-------------	----------------------	-----------------------

Employ and train 6 unemployed graduates in accordance to the approved training programme to conduct environmental impacts assessments.	6 graduates in total employed in two batches for a period of 2 years each and trained to undertake EIAs through this time.	Updated and approved training programme, letters of appointment, progress reports against the training programme available and confirmation of registration as a candidate EAP in terms of section 24H of NEMA.
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### 3.7 Immediate Objective D – Awareness of the special needs programme

#### 3.7.1 Objective – Create awareness of the special needs programme

During the contract period, the consultant team is to raise awareness (e.g. via e-mail correspondence), of the existence of this project among possible beneficiaries and institutions who facilitate developments for SMMEs and new entrants into the market. Examples of these institutions include, the Land Bank, the Ministry of Agriculture, Rural Development and Land Reform and a variety of provincial departments. The main aim of the awareness, is to enable the consultant to identify and assist persons with special needs obtaining an environmental authorisation (in line with the criteria in 2.3 above).

#### 3.7.2 Outputs – Progress on awareness provided in bi-annual project management committee meetings.

**Table 5: Success Indicator**

Description	Verifiable Indicator	Means of verification
Create awareness of the special needs programme	Awareness mechanisms done	Proof of awareness mechanism created

### 3.8 Immediate Objective E – Assisting persons with special needs to access consultancy services to undertake environmental impact assessments

#### 3.8.1 Objective – Environmental Impact Assessment conducted

The consultants must be prepared to conduct:

- 50 basic assessments including, site visits, specialist work, public consultation, advertising, public meetings etc. for projects and persons which meet the criteria identified in objective 2.3 above. Such projects could include, amongst other, small agriculture, piggeries, poultry, forestry, and aquaculture. The work must meet the requirements of the EIA Regulations, 2014 and must be of a standard to facilitate informed decision making by the competent authority;
- At least 3 scoping and environmental impact assessments including site visits, specialist work, public consultation including advertising, public meetings etc., for persons who meet the criteria identified in objective 2.3 above. The work must meet the requirement of the EIA regulations and should must be of a standard to facilitate informed decision making by the competent authority; and

### 3.8.2 Outputs – Persons with special needs assisted with the undertaking of environmental assessments

The consultants will conduct 50 basic assessments and at least 3 scoping and environmental impact assessments and associated specialist studies for disadvantaged communities.

The 50 basic assessments and 3 or more scoping and environmental impact assessments exclude applications for environmental authorisation in terms of Section 24G of the NEMA.

**Table 6: Success Indicator**

Description	Verifiable Indicator	Means of verification
Persons with special needs assisted with EIAs	50 Basic Assessments concluded and submitted to the competent authority in line with Regulation 19 of the EIA Regulations, 2014.	50 Basic assessment Reports submitted to competent authority and decision from competent authority available.

(This excludes applications for environmental authorisation in terms of Section 24G of the NEMA).	At least 3 Scoping Reports concluded and submitted to the competent authority in line with Regulation 21 of the EIA Regulations, 2014, followed by at least 3 Environmental Impact Assessments Reports (for the same applications for environmental authorisation) submitted in line with Regulation 23 of the EIA Regulations, 2014.	At least 3 Environmental Impact Assessments submitted to competent authority and decision from competent authority available.
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#### 4. SCOPE AND EXTENT OF WORK

Specific activities to be carried out by the consultant in generating the above outputs must be detailed in a proposed work-plan. The proposed work plan must be submitted with the project proposal for this tender. The work plan is to be amended after an inception meeting with the consultant team.

#### 5. EXPECTED DELIVERABLES / OUTCOMES

##### 5.1 PROJECT MANAGEMENT

###### 5.1.1 Project Manager

The Environmental Control Officer (Grade B): Integrated Environmental Management Support: Capacity and Support will be the Project Manager. As such, the contracted consultants will be directed by and report to the Environmental Control Officer (Grade B).

###### 5.1.2 Project Team

The DEA Project Team will comprise of the Director: Integrated Environmental Management: Capacity and Support, the Environmental Control Officer (Grade B): Integrated Environmental Management: Capacity and Support: External IEM Support and Environmental Control Officer (Grade A): Integrated Environmental Management: Capacity and Support: External IEM Support. The day to day management of the project will be the responsibility of the Environmental Control Officer (Grade A).

##### 5.2 PROJECT INFORMATION MANAGEMENT

###### 5.2.1 Internal Consultancy Communication

All decisions, suggestions, recommendations, reports, etc. concerning the consultancy must be submitted in writing. All documents shall be prepared in MS Word and bar charts and spreadsheets in either MS Project or in Microsoft Excel. All required reports must be submitted to the Project Manager in 2 hard copies as well as on an appropriate electronic storage medium (CD).

## 5.2.2 External Consultancy Communication

All communication external to the consultancy (e.g. response to complaints, press/media queries, etc.) other than the awareness activities identified in objective 3.6 will be carried out by either the Project Manager or the Department's communication section. As such, all complaints, press/media queries, etc. must be referred to the Project Manager together with a written briefing on a possible response.

## 5.2.3 Continuity and Profile of Consultant on the Project

Two project team members (leaders), one of which must be the Project Manager must be full time employees of the consultancy. In addition, the consultancy must guarantee the presence of the respective Project Manager. If they have to leave the project, a period of at least a month is required in which they must work in parallel with their replacement(s) (i.e. a senior consultant with similar expertise and equal years of experience) appointed to be able to transfer skills and knowledge.

## 6. PERIOD / DURATION OF PROJECT / ASSIGNMENT

Project must be completed within 48 months or years after the signing of the SLA by both parties. The consultancy will commence following the signing of a contract between the Department and the selected consultancy. The consultancy is expected to have duration of no longer than 48 months.

## 7. COSTING / COMPREHENSIVE BUDGET

Comprehensive budget must be provided in a separate envelope inclusive of all disbursement costs, expenses and VAT. The project proposal must include the costing off all expenses relating to the project, including e.g. consultancy fees (including remuneration of interns, EAPs, specialists), travel, accommodation, S&Ts, allowances, remuneration of external specialists, drafting of quarterly reporting and any other costs related to the project. The Department would like to bring to the attention of the consultant team that this is a pro-bono project and therefore every effort must be made to minimise costs, especially consultancy and specialist fees, any cost savings as well as preferential rates being proposed must be included in the proposal submitted for evaluation (including specialist fees).

## 8. EVALUATION CRITERIA

### 8.1 Pre-Qualification Criteria

Must be completed by bidder by answering yes or no and attach proof.

Pre-qualification criteria:	Requirement	Comply: Yes or No
8.1.1	Only service providers who are EME or QSE, which are, at least 51% owned by black people will be considered for this bid as per Preferential Procurement Regulations 2017. Service providers are required to submit an original or certified copy of the B-BBEE Status Level of contributor issued by SANAS only or an original or certified copy of DTI sworn affidavit in terms of Codes of good practice" indicating that service provider is an EME/ QSE. A sworn affidavit must be signed by the commissioner of oath, and must indicate a financial year and an annual	



	turnover. Failure to submit an original or certified copy of the B-BBEE Status Level of contributor issued by SANAS or an original or certified	
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## 8.2 FUNCTIONALITY CRITERIA

- 8.2.1 Only bid proposals that meets pre-qualification will be considered to be evaluated on functionality criteria.
- 8.2.2 Stage 1: The bidder must score a minimum of **75%** (depending on the nature of the project) during Stage 1 (functionality / technical) of the evaluation to qualify for Stage 2 of the evaluation where only points for price and B-BBEE will be considered.
- 8.2.3 The following values/ indicators will be applicable when evaluating functionality:  
**0 = Non-compliance, 1 = Poor; 2 = Fair; 3 = Average; 4 = Good; 5 = Excellent.**

STAGE 1																		
	Category																	
GUIDELINES FOR CATEGORY CRITERIA	FUNCTIONALITY (To be determine by project managers in line with scope of work): (GUIDELINES FOR CRITERIA APPLICATION)	Weight	Value/ Indicator	Total (Weight X Value awarded)														
A proposed project plan with proposed methodology, deliverables, timeframe/ milestones for the undertaking of Environmental Impact Assessments for people with special needs.	<p>A detailed project plan with proposed methodology, deliverables, timeframes/ milestones, for the undertaking of Environmental Impact Assessments for people with special needs.</p> <table border="1"> <thead> <tr> <th>Project plan with deliverables, timeframes/ milestones,) in rendering catering services.</th> <th>Indicator</th> </tr> </thead> <tbody> <tr> <td>Project plan well broken down with details of deliverables, timeframes/ milestones.</td> <td>5</td> </tr> <tr> <td>Project plan clear deliverables, timeframes/ milestones.</td> <td>4</td> </tr> <tr> <td>Project plan provided with no clear deliverables, timeframes/ milestones in rendering catering services.</td> <td>3</td> </tr> <tr> <td>Limited information provided on deliverables, timeframes/ milestones.</td> <td>2</td> </tr> <tr> <td>Project plan irrelevant</td> <td>1</td> </tr> <tr> <td>No information provided</td> <td>0</td> </tr> </tbody> </table>	Project plan with deliverables, timeframes/ milestones,) in rendering catering services.	Indicator	Project plan well broken down with details of deliverables, timeframes/ milestones.	5	Project plan clear deliverables, timeframes/ milestones.	4	Project plan provided with no clear deliverables, timeframes/ milestones in rendering catering services.	3	Limited information provided on deliverables, timeframes/ milestones.	2	Project plan irrelevant	1	No information provided	0	35		
Project plan with deliverables, timeframes/ milestones,) in rendering catering services.	Indicator																	
Project plan well broken down with details of deliverables, timeframes/ milestones.	5																	
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Limited information provided on deliverables, timeframes/ milestones.	2																	
Project plan irrelevant	1																	
No information provided	0																	
Certified Qualifications of key personnel to be assigned to the project.	<p>Relevant qualification in the areas of environmental management, (waste management in particular), chemistry, environmental law, environmental economics or environmental engineering</p> <table border="1"> <thead> <tr> <th>Qualifications of key personnel</th> <th>Indicator</th> </tr> </thead> <tbody> <tr> <td>A Masters qualification and PHD qualification</td> <td>5</td> </tr> <tr> <td>An honours or equivalent qualification</td> <td>4</td> </tr> <tr> <td>A three year degree qualification</td> <td>3</td> </tr> <tr> <td>A three year diploma qualification</td> <td>2</td> </tr> <tr> <td>Two years diploma or a Grade 12 certificates</td> <td>1</td> </tr> <tr> <td>No qualification (s) attached/ submitted</td> <td>0</td> </tr> </tbody> </table>	Qualifications of key personnel	Indicator	A Masters qualification and PHD qualification	5	An honours or equivalent qualification	4	A three year degree qualification	3	A three year diploma qualification	2	Two years diploma or a Grade 12 certificates	1	No qualification (s) attached/ submitted	0	10		
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A three year diploma qualification	2																	
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No qualification (s) attached/ submitted	0																	

<p>Technical Capability/ expertise and track record of key personnel to be assigned to the project in the field of Environmental Impact Assessments.</p>	<ul style="list-style-type: none"> <li>Bidder (s) are required to demonstrate that they have the necessary resources and technical expertise to undertake and successfully complete the project. Bidder (s) should submit curriculum vitae for the key personnel proposed to be employed on the project. Curriculum vitae are to include specific details of these individuals including, inter alia, relevant experience and at least three contactable reference.</li> </ul> <table border="1" data-bbox="336 405 1007 703"> <thead> <tr> <th>Experience of key personnel in the undertaking of Environmental Impact Assessments.</th> <th>Indicator</th> </tr> </thead> <tbody> <tr> <td>15 years' experience or more</td> <td>5</td> </tr> <tr> <td>10 years' experience or more</td> <td>4</td> </tr> <tr> <td>5 years' experience or more</td> <td>3</td> </tr> <tr> <td>2 years' experience or more</td> <td>2</td> </tr> <tr> <td>1-2 years' experience</td> <td>1</td> </tr> <tr> <td>Less than one year experience</td> <td>0</td> </tr> </tbody> </table>	Experience of key personnel in the undertaking of Environmental Impact Assessments.	Indicator	15 years' experience or more	5	10 years' experience or more	4	5 years' experience or more	3	2 years' experience or more	2	1-2 years' experience	1	Less than one year experience	0	45		
Experience of key personnel in the undertaking of Environmental Impact Assessments.	Indicator																	
15 years' experience or more	5																	
10 years' experience or more	4																	
5 years' experience or more	3																	
2 years' experience or more	2																	
1-2 years' experience	1																	
Less than one year experience	0																	
<p>The company's experience, track record and knowledge in the in the Environmental Impact Assessment field.</p>	<ul style="list-style-type: none"> <li>Bidder (s) are required to demonstrate relevant past experience and competency of the company in the Environmental Impact Assessment field. Bidder (s) should submit full details of, and at least three reliable contactable signed references for, projects of a similar scope which were successfully completed in the past.</li> </ul> <table border="1" data-bbox="336 934 1007 1232"> <thead> <tr> <th>Company experience in the Environmental Impact Assessment field.</th> <th>Indicator</th> </tr> </thead> <tbody> <tr> <td>5 years 'or more experience</td> <td>5</td> </tr> <tr> <td>4 years' experience</td> <td>4</td> </tr> <tr> <td>3 years' experience</td> <td>3</td> </tr> <tr> <td>2 years' experience</td> <td>2</td> </tr> <tr> <td>1 years' experience</td> <td>1</td> </tr> <tr> <td>Less than one year experience</td> <td>0</td> </tr> </tbody> </table>	Company experience in the Environmental Impact Assessment field.	Indicator	5 years 'or more experience	5	4 years' experience	4	3 years' experience	3	2 years' experience	2	1 years' experience	1	Less than one year experience	0	10		
Company experience in the Environmental Impact Assessment field.	Indicator																	
5 years 'or more experience	5																	
4 years' experience	4																	
3 years' experience	3																	
2 years' experience	2																	
1 years' experience	1																	
Less than one year experience	0																	
<p><b>Total points on functionality</b></p>		<p><b>100</b></p>																

### 8.3 STAGE 2: PREFERENCE POINT SYSTEM (80/20)

Bidders will score points out of 80 for price only and 20 points for BBEE. The points scored by a tenderer for B-BBEE contribution must be added to the points scored for price and should be rounded off to the nearest two decimal places.

#### 8.3.1. Calculation of points for price

The PPPFA prescribes that the lowest acceptable bid will score 80 points for price. Bidders that quoted higher prices will score lower points for price on a pro-rata basis. Where functionality is set as a criteria, only bid proposals that meets functionality requirements will be considered to be evaluated on price and B-BBEE.

#### 8.3.2. Calculating of points for B-BBEE status level of contribution

Points will be awarded to a bidder for attaining the B-BBEE status level of contribution or a sworn affidavit certified by the commissioner of oath in accordance with the table below:

B.	PRICE	80	
C.	B-BBEE Status Level Contributor		Number of points (80/20)
	1		20
	2		18
	3		14
	4		12
	5		8
	6		6
	7		4
	8		2
	Non –compliant contributor		0

## 9. SPECIAL CONDITIONS OF CONTRACT

- 9.1 The performance measures for the delivery of the project will be closely monitored by Project Manager.
- 9.2 The Service Provider will submit quarterly progress reports to the Project Manager, within 4 days after the end of each month and quarter for the duration of the project. Failure to submit the required reports on time will result in penalties.
- 9.3 The Project Manager shall do the ongoing performance management of the Service agreement.
- 9.4 The Service Provider must guarantee the presence of the senior in charge of fieldwork throughout the duration of the contract. Prior to the appointment of a replacement, the Project Manager must approve such appointment. If the senior has to leave the project, a period of at least a month is required, in which the senior must work parallel with the next person (senior consultant with similar expertise and equal years of experience) appointed able to transfer skills and knowledge.
- 9.5 All the conditions specified in the **General Conditions of Contract ( GCC )** will apply and where the conditions in the special conditions of contract contradicts the conditions in the general conditions of contract the special conditions of contract will prevail.
- 9.6 Please take note that DEA is not bound to select any of the firms submitting proposals. DEA reserves the right not to award any of the bids and not to award the contract to the lowest bidding price.
- 9.7 Bidders must score a minimum of **75%** (The minimum qualifying score that must be obtained for functionality in order for a tender to be considered further should not be generic. It should be determined separately for each tender on a case-by-case basis. The minimum qualifying score must not be

prescribed so low that it may jeopardize the quality of the service required nor so high that it may be restrictive to the extent that it jeopardizes the fairness of the SCM system).

- 9.8 The proposal must include, amongst other, the following:
- A proposed plan of action;
  - A list of all outputs as identified in the TOR, including allocation of personnel and the time to be spent by the person per output. Failure to provide this will disqualify the proposal
  - The preferential rates and discussion on the measures to be taken to ensure cost effectiveness of the proposal. Failure to provide this information will disqualify the proposal;
  - The training programme. Failure to provide this training programme will disqualify the proposal.
  - A list of references;
  - Ability to ensure continuing of staff on the project.
- 9.9 **A valid copy of the Tax Clearance Certificate/ Tax Compliance Status Pin issued by SARS to the supplier/copy of Central Supplier Database (CSD)/ MA supplier Number must be submitted together with the bid.**
- 9.10 In case of bids where Consortia / Joint Ventures / Sub-contractors are involved, such must be clearly indicated and each party must submit a separate copy of a valid Tax Clearance Certificate or copy of Tax Compliance Status Pin or CSD/ MA supplier Number together with the bid.
- 9.11 Failure to submit a valid Tax Clearance Certificate/ Tax Compliance Status Pin/ copy of CSD/ MA supplier Number may result in the invalidation of the bid.
- 9.12 **A foreign recommended bidder** with neither South African tax obligation nor history of doing business in South Africa must complete Standard Bidding Document (SBD 1) and the information must be submitted to SARS on the following email [governmentinstitute@sars.gov.za](mailto:governmentinstitute@sars.gov.za) to issue a confirmation of the tax obligation letter in terms of **paragraph 3.6** of the instruction note no 9 of 2017/18.
- 9.13 Comprehensive Curriculum Vitae's (CV) of the staff who will be available for the duration of the contract must be attached. **In case where bidders submitted CV's of personnel from other companies, bidders must indicate if the personnel is sub-contracted or employed full time or part-time, and indicate the period of the engagement with the bidder. A signed agreement between two parties or an agreement between personnel and a company must be included with the proposal.**
- 9.14 The bid proposals should be submitted with all required information containing technical information.
- 9.15 DEA Entity Maintenance form included in the bid documents must be completed and returned with the bid proposals).
- 9.16 A breakdown of the hourly tariff inclusive of value-added tax for services rendered. Expenditure incurred without the prior approval of the Project Manager will not be reimbursed. Comprehensive budget must be provided in a separate envelope inclusive of all disbursement costs, expenses and VAT. The project proposal must include the costing off all expenses relating to the project, including e.g. consultancy fees (including remuneration of interns, EAPs, specialists), travel, accommodation, S&Ts, allowances, remuneration of external specialists, drafting of quarterly reporting and any other costs related to the project. The Department would like to bring to the attention of the consultant team that this is a pro-bono project and therefore every effort must be made to minimise costs, especially consultancy and specialist fees, any cost savings as well as preferential rates being proposed must be included in the proposal submitted for evaluation (including specialist fees).

- 9.17 DEA will not be held responsible for any costs incurred by the bidder in the preparation, presentation and submission of the bids.
- 9.18 Travelling costs and time spent or incurred between home and office of consultants and DEA office will not be for the account of DEA.
- 9.19 Skills should be transfer to Departmental interns.
- 9.20 Intellectual property rights will belong to DEA (reports and printing)
- 9.21 Tenderers must submit two identical proposals (**two envelopes**)\_for each bid clearly marked “**original**” and “**copy**”. First envelope **marked original** to include technical proposal (**original and copy of technical**) and the second envelope marked copy to include financial proposal (**original and copy of financials**).
- 9.21.1 First envelope with the technical proposal including the following:
- A valid copy of the Tax Clearance Certificate or Tax Compliance Status Pin issued by SARS or copy of CSD/ MA Supplier Number.
  - Entity registration Certificate (CK1)
  - A response to the terms of reference.
  - A project plan that states the methodology and approach for accomplishing the task, project phases if applicable, time frames and outputs (excluding cost for the project).
  - profile of the company and description of similar work undertaken,
  - numbers, names and CVs of consultants assigned to the project, including their roles and responsibilities,
  - Agreement between service providers in the case of a joint venture/Consortium
  - Letter of authority to sign documents on behalf of the company/joint venture/Consortium.
- 9.21.2 The second envelope with the financial proposal (pricing schedule (SBD3.3) or other spreadsheets with all cost related items, cost breakdown) (original). No financials should be included in the technical proposal (envelope)
- 9.21.3 The following information must be endorsed on each envelope:
- Bid number:
  - Closing date:
  - Name of the Bidder:
  - Technical Proposal or Financial Proposal.
- 9.22 Before any work can commence the service level agreement must be signed by both parties ( DEA and the successful bidder ) as well as the issue of an official order and should there be any dispute regarding the finalisation of the agreement, DEA reserves the right to cancel the contract with no cost implications for the Department.
- 9.23 The evaluation of Bids can only be done based on information required by the department.
- 9.24 Bidders failing to meet pre-qualification criteria will automatically be disqualified.

- 9.25 Tenderers are requested to submit the original and valid B-BBEE Status Level Verification Certificate or certified copies thereof issued by SANAS only or DTI SWORN Affidavit certified by Commissioner of Oath together with their bids, to substantiate their B-BBEE rating claims, failing which the B-BBEE preference points claimed will be forfeited.
- 9.26 In a case whereby a pre-qualification criteria requires B-BBEE status level of contributor bidders **MUST** submit an original or certified copies of B-BBEE certificate or DTI SWORN affidavit, failure to submit an original or certified copies will result in bid being disqualified.
- 9.27 A trust, consortium or joint venture must submit a consolidated B-BBEE Status Level Verification Certificate for every separate bid to substantiate their B-BBEE rating claims.
- 9.28 Public entities and tertiary institutions must also submit B-BBEE Status Level Verification Certificates together with their bids.
- 9.29 A bidder will not be awarded the points claimed for B-BBEE status level of contribution if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for unless the intended sub-contractor is an EME (Exempted Micro Enterprise) that has the capacity and the ability to execute the sub-contract.
- 9.30 A contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME (Exempted Micro Enterprise) that has the capability and ability to execute the sub-contract.
- 9.31 Prospective suppliers and / or public entities interested in pursuing opportunities with the Department and within the South African government must register on the National Treasury Central Supplier Database.
- 9.32 Prospective suppliers and / or public entities must provide the department with their CSD registration number on submission of their bid proposals including those of sub-contractors and/ or joint venture companies.
- 9.33 Any supplier who is not registered on CSD during an award stage of the tender will not be considered.
- 9.34 Attendance of clarification/ briefing meeting is compulsory, failure to attend on the advertised dated will result on bid being disqualified.

## 10 Sub-contracting conditions/ requirements

- 10.1 A tenderer will not be awarded the points claimed for B-BBEE status level of contribution or contract if it is indicated in the bid documents that such a bidder intends subcontracting more that 25% of the contract value to any other enterprise that does not qualify for at least the same number of points that the bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

- 10.2 The contractor is not allowed to sub-contract more than 25% of the contract value to another enterprise that does not have equal or higher B-BBEE status level, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

**11 Payment terms**

DEA undertakes to pay out in full or as per deliverables within 30 (thirty) days all valid claims for work done to its satisfaction upon presentation of a substantiated claim and the required reports stipulated in special conditions. No payment will be made where there is outstanding information/work not submitted by the Service Provider/s until that outstanding information is submitted.

**12 Technical enquiries**

Should you require any further information in this regard, please do not hesitate to contact:

Name: Mr. F. Scheepers  
Office Telephone No. (012) 399 9285  
E-Mail: [fscheepers@environment.gov.za](mailto:fscheepers@environment.gov.za)

# CRITERIA DOCUMENT

## DEVELOPMENT OF CRITERIA FOR THE SELECTION OF SUITABLE CANDIDATES WHO DESERVE ASSISTANCE WITH SPECIAL NEEDS IN TERMS OF EIA REGULATION 70

**May 2014**

(revised – revision 02)

Prepared by:

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## EXECUTIVE SUMMARY

The North West University (Potchefstroom campus) EIA Pro-bono Office was appointed by the Department of Environmental Affairs (DEA) to develop criteria that will guide the selection of suitable candidates who qualify for assistance with special needs in terms of EIA Regulation 70. The content of this report is based on a review of the relevant literature, personal communication with key stakeholders as well as work sessions between representatives from NWU, DEA and the CSIR. The main conclusions are the following:

- Regulation 70 has not been defined in law which leaves a potentially very broad understanding of especially Regulation 70(c) relating to being 'disadvantaged'.
- Based on learning from other contexts/sectors dealing with special needs such as housing, education and legal aid it is recommended that the financial status of the applicant should serve as the primary qualifying consideration for assistance.
- It is difficult to determine from historic data the potential number and type of projects that would require special needs. However, this report suggests that waste management, rural development, LED projects and 'working for' initiatives could serve as specific sectors requiring special needs assistance.
- The selection of special needs cases will rely on two guiding principles which have been translated into primary selection criteria. The guiding principles and criteria are described in section 3.1, Boxes 7 and 8.

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## Section 1: Defining Special Needs

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This section aims to define what is meant by 'special needs cases'. This is done by interpreting the provisions of Regulation 70 of the *Environmental Impact Assessment Regulation* (Government Notice R543 in Government Gazette 33306 of 18 June 2010) which regulates the provision of assistance to people with 'special needs' in the EIA Process. It provides that:

*The competent authority processing an application or the Minister or MEC or Minister of Mineral Resources processing an appeal in terms of these Regulations must give reasonable assistance to people with:*

- (a) illiteracy;*
- (b) a disability; or*
- (c) any other disadvantage*

*who cannot, but desire to, comply with these regulations.*

The following sections reflect first on a legal interpretation (section 1.1) after which 'special needs cases' within other contexts such as housing, education and legal aid are considered (section 1.2).

### 1.1 Legal interpretation

Although the meaning of sub-regulations 70(a) and (b) appear straight-forward, sub-regulation 70(c) is not immediately clear and seems to capture categories of people that do not fall within the preceding sub-regulations, (a) and (b). Sub-regulation 70(c) appears to be a catch-all clause which is open to interpretation. To shed light on the matter, a study of South African jurisprudence to date, considering the interpretation of 'illiterate', 'disability' and 'disadvantage' has been undertaken (sections 1.1.1, 1.1.2 and 1.1.3). As will become evident, in the absence of case law, sub-regulation 70(c) can be interpreted to include persons that do not fall within the traditional categories of previously disadvantaged people for purposes of EIA applications.

### 1.1.1 When is somebody considered to be illiterate?

Courts in South Africa have dealt with a number of cases where illiteracy is raised in defence of different scenarios.<sup>1</sup> Courts have, however, not engaged with the meaning of illiteracy in these cases. The Constitutional Court, in passing, referred to "illiterate employees, unable to read and write", in the context of a labour dispute.<sup>2</sup> This gives the impression that illiterate people are those who cannot read and write. This interpretation is supported by a ministerial report which defines an illiterate person as one who is unable to read, write and lacks basic numeracy.<sup>3</sup>

According to Sibiya, "Many definitions exist for illiteracy. All relate in some way, at their core, to the state of a person who is functionally unskilful in reading and writing and who cannot engage effectively in all those activities in which literacy is normally assumed in his/her group or community".<sup>4</sup> The aforementioned explanation leads one to the conclusion that sub-regulation 70(a) contemplates people who are unable to read and write or do basic numerical calculations in a functional way.

**Box 1:** Interpretation of 'illiterate' in relation to sub-regulation 70(a)

An illiterate person can be defined as somebody who is unable to read and write or do basic numerical calculations in a functional way.

<sup>1</sup> For example, illiteracy was raised as a defense against prescription in a late Road Accident Fund claim in *Road Accident Fund and Another v Mdeyide* 2011(1) BCLR 1 (CC). See *Mphatisi Lusizi v Transnet Ltd t/a Spoornet* (2001) Case No 4816/2001, High Court of South Africa, Cape of Good Hope Provincial Division; *Standard Bank of South Africa Ltd v Dlamini* 2013 (1) SA 219 (KZD);

<sup>2</sup> See *South African Transport and Allied Workers Union (SATAWU) and Others v Moloto NO and Another* 2012 (11) BCLR 1177 (CC) at par 28.

<sup>3</sup> See "Literacy outcomes" in *Ministerial Committee on Literacy: Plans for a Mass Literacy Campaign for South Africa* (2007) 14.

<sup>4</sup> Sibiya H A *Strategy for Alleviating Illiteracy in South Africa: A Historical Inquiry* (PhD Thesis, Faculty of Education, University of Pretoria, 2005) 27.

### 1.1.2 When is somebody considered to be disabled?

While there are cases dealing with alleged unfair discrimination on the basis of disability in the context of employment,<sup>5</sup> for example, there is none that specifically considers the meaning of disability in South Africa. The term has, however, been defined in legislation and policy documents. In accordance with the *Employment Equity Act 55 of 1998*, the concept "people with disabilities" is defined as "*people who have a long-term or recurring physical or mental impairment which substantially limits their prospects of entry into, or advancement in employment*".<sup>6</sup> This definition specifically relates to prospective employment. However, the South African *Policy on Disability* contains a broader definition of disability. According to the *Policy on Disability*, a person is considered to be disabled if his/her ability to function or perform daily activities is limited by moderate to severe physical, sensory, communication, intellectual or mental impairment which may arise from economic, physical, social, attitudinal and/or cultural factors.<sup>7</sup> This definition which is based on the "social model" of disability<sup>8</sup> is also adopted by the South African Human Rights Commission when it asserts that:

A person with a disability is limited in one or more functional activity. This may be in seeing, hearing, communicating, moving, learning or other intellectual or emotional activities. This impairment may be permanent, recurring or transitory. It may be physical, cognitive or psychological."<sup>9</sup>

It appears that sub-regulation 70(b) contemplates that assistance should be given to people whose ability to comply with EIA processes is constrained by a long-term or recurring physical, sensory, communication, intellectual or mental impairment. Based on the above sub-regulation 7(b) is defined in Box 2.

**Box 2:** Interpretation of 'disability' in relation to sub-regulation 70(b)

A disabled person can be defined as somebody who is constrained by a long-term or recurring physical, sensory, communication, intellectual or mental impairment.

<sup>5</sup> See *Singh v Minister of Justice and Constitutional Development and Others* 2013 (3) SA 66; *Independent Municipal and Allied Trade Union v City of Cape Town* [2005] 10 BCLR 1084 (LC); *Standard Bank of South Africa v Commission for Conciliation, Mediation and Arbitration and Others* [2008] 4 BLLR 356 (LC). There has also been a case concerning the right to education of children with severe disabilities. See *Western Cape Forum for Intellectual Disability v Government of South Africa and Another* 2011 (5) SA 87.

<sup>6</sup> See Preamble to the *Employment Equity Act No 55 of 1998*.

<sup>7</sup> Department of Social Development *Policy on Disability* (Unknown) 47. Accessed at: [http://www.dsd.gov.za/services/downloads/Policy\\_on\\_Disability.pdf](http://www.dsd.gov.za/services/downloads/Policy_on_Disability.pdf) [date of use 18 February 2014].

<sup>8</sup> See "The Social Model of Disability" in *The White Paper on Disability: Integrated National Disability Strategy* (1997) Office of the President.

### 1.1.3 When is somebody considered to be disadvantaged?

In terms of the Constitutional Court's jurisprudence, disadvantaged persons refer to the majority of South Africans who suffered different forms of injustices under colonialism and apartheid on the basis of their race, political affiliation or belief.<sup>10</sup> Persons may also be disadvantaged in an economic, social, political or educational sense.<sup>11</sup> One category of disadvantaged people in South Africa is "black people", which is an umbrella term used for Africans, Coloureds, Indians and South Africans of Chinese descent.<sup>12</sup> Other persons recognised as disadvantaged people include, women, disabled people, gays, lesbians and people suffering from HIV.<sup>13</sup>

Like the Constitution, the Prevention of Equality and Prevention of Unfair Discrimination Act (PEPUDA) does not include any grounds for proving disadvantage. The Constitutional Court has indicated that a person or group of persons is considered to be disadvantaged by virtue of their membership in one of the various categories.<sup>14</sup> Due to the fact that South Africa's history of discrimination, colonialism, apartheid and patriarchy and the resultant disadvantage of these groups are sufficiently self-evident they can form a proper subject of judicial notice.<sup>15</sup> Disadvantaged people are therefore not required to prove their disadvantage. It is trite noting that enterprises owned or managed by the various categories of disadvantaged people also qualify as disadvantaged persons.<sup>16</sup>

The above explanation suggests that sub-regulation 70(c) potentially includes a very wide range of people that may not be accommodated by sub-regulations 70(a) and (b). Due to the fact that the courts have not explained the meaning of disadvantaged people within the context of EIAs, it is possible to argue in favour of the addition of other persons to the traditional categories of

<sup>9</sup> SAHRC *Towards a Barrier-free Society: A Report on Accessibility and Built Environments* (2002) 9.

<sup>10</sup> *Minister of Finance v Van Heerden* 2004 6 SA 121 (CC) at pars 38-40. According to the Preamble of PEPUDA (Prevention of Equality and Prevention of Unfair Discrimination Act 4 of 2000), previously disadvantaged individuals and communities include those that were "dispossessed of their land and resources, deprived of human dignity and who continue to endure the consequences".

<sup>11</sup> McGregor M 'Discrimination and disadvantage in the context of affirmative action in South African workplaces' 2011 *De Jure* 111-125 at 114.

<sup>12</sup> See *Brink v Kitshoff NO* 1996 (6) BCLR 752 at par 40; *Chinese Association of South Africa v Minister of Labour* case no 59251/2007 (TPD).

<sup>13</sup> See Preamble and s 4(2) of PEPUDA; McGregor M 'Discrimination and disadvantage in the context of affirmative action in South African workplaces' 2011 *De Jure* 111-125 at 112-114; De Vos P 'Equality, Human Dignity and Privacy Rights' in De Vos P and Freedman W *South African Constitutional Law in Context* (2014) Oxford University Press at 438; Maromoagae MC "Disability Discrimination and the Right of Disabled Persons to access the Labour Market" 2012 15(1) PER 345-428 at 348.

<sup>14</sup> *Minister of Finance v Van Heerden* at pars 85-86.

<sup>15</sup> McGregor M 'Discrimination and disadvantage in the context of affirmative action in South African workplaces' 2011 *De Jure* 111-125 at 123-124. See *Minister of Finance v Van Heerden*, pars 33-40.

(previously) disadvantaged people. It appears that the category of persons contemplated in sub-regulation 70(b) also falls within sub-regulation 70(c).

As alluded to above, the absence of concrete case law or interpretational guidelines pertaining to the content of regulation 70, creates a situation whereby the provision of regulation 70(c) particularly, may be interpreted more widely within the specific context of EIA. That is to say that “disadvantaged” may be interpreted in the light of substantive, technical and procedural EIA considerations. Knowledge or lack thereof of EIA science and discipline, process and law may thus be argued to be a disadvantage and lack of finances even further so. A particular person’s location in relation to distances from resources such as EIA practitioners or government offices may also form part of this argument.

When determining who may be considered as potentially disadvantaged in accordance with regulation 70, possible groups or classes of persons may include potential applicants, potential IA&Ps, as well as landowners on whose land application may be lodged by third parties. IA&Ps potentially being considered the most likely group of persons from whom potentially disadvantaged people may stem. The very nature of the public participation process may place potential IA&Ps at a disadvantage in that they may not fully comprehend the complexities and legalities associated with a project, as well as their procedural rights in terms of the EIA process.

The absence of any concrete guidance resulting from the lack of a formal definition for “disadvantaged” or the lack of a guideline document as to how disadvantaged should be interpreted in the EIA context creates a situation whereby each potential disadvantaged case must be measured on its own merits and on a case by case basis against the background the particular project’s nature, complexity, impacts and location. This necessitates a paradigm shift from the traditional understanding and application of the title “disadvantaged” as discussed above. Although the traditionally accepted groups of disadvantaged persons will fall within the ambit of disadvantaged in the EIA context, it is suggested that the net is cast wider in the interpretation of sub-regulation 70(c). The next step would be to develop a test for “disadvantaged” within the ambit of regulation 70(c). Being mindful of over simplification it is suggested that the particular position of an individual be considered, whether this is financial, personal, in terms of cognisance or physical location, and that this be interrogated and weighed against the Oxford definition of a “disadvantage” and being “disadvantaged”.

The Oxford English Dictionary defines ‘disadvantage’ as: “an unfavourable circumstance or condition that reduces the chances of success or effectiveness” - whilst ‘disadvantaged’ is defined

16

*See Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others [2013] ZACC 42 at pars 49-55.*

as: (of a person or area) “in unfavourable circumstances, especially with regard to financial or social opportunities”<sup>17</sup>

The question which needs answering is whether a particular individual’s circumstances or condition may hinder their chance of success with or effective participation in the EIA process, whether they be applicants or I&APs. Factors which may serve to place such a person at a disadvantage of course being *inter alia* financial and social opportunities along with a range of other factors particular to the EIA context as alluded to above as defined in Box 3.

**Box 3:** Interpretation of ‘disadvantaged’ in relation to sub-regulation 70(c)

An disadvantaged person can be defined as somebody who is constrained by circumstances or condition that hinder their chance of success with or effective participation in the EIA process, whether they be applicants or I&APs.

## 1.2 Special Needs criteria within other contexts

Special needs criteria have also been developed in a number of other context most notably within housing (section 1.2.1), education (section 1.2.2) and legal aid (section 1.2.3). This section provides a summary of the criteria within different contexts with a view to distill possible learning points and examples for the understanding and implementation of ‘special needs’ in relation to NEMA.

### 1.2.1 Housing

South Africa has a long history of low cost housing development. The low cost housing subsidy scheme provides housing for those households who qualify for housing assistance. In recent years a ‘Special needs housing policy framework’ has been under discussion. In particular the extent to which the rights of special needs groups have been promoted through the allocation of housing in the country. Within the housing context it seems that a distinction is made between those who generally qualify for housing subsidies based on household income and special needs cases which are more refined and focused and include disabled persons, orphans, child headed households, the elderly, paroled individuals, refugees, those affected by HIV, persons affected by chronic illness, individuals being rehabilitated from substance abuse, victims of domestic abuse

<sup>17</sup>

Oxford English Dictionary 2014  
[http://www.oed.com/search?searchType=dictionary&q=disadvantage&\\_searchBtn=Search](http://www.oed.com/search?searchType=dictionary&q=disadvantage&_searchBtn=Search).



and military veterans. Although rural housing development policies do not specifically mention or refer to special needs, the rural housing development policy does provide useful housing subsidy qualifying criteria, which are summarized in Box 4.

**Box 4:** RDP housing subsidy qualifying criteria

- be a South African citizen over 21 years of age
- must have a total household income of less than R3 500 per month
- must be married or live with a partner or be single and have dependents
- must never have owned a house or a property anywhere in South Africa
- applicants will only ever get one housing subsidy

The monthly income status of applicants are confirmed through adequate proof of income such as a monthly income statement from an employer, and, in the case of income received through self-employment, a signed affidavit stating the amount earned. For the purposes of assessing whether any particular person is entitled to receive a housing subsidy, the income of his or her spouse (if any) are added to that person's income.

### 1.2.2 Education

Access to education has been a central theme within education policy for decades. Although primary and secondary education have been considered a general human right access to tertiary education have been advanced through bursaries and financial assistance to so-called needy or disadvantaged students / learners. Although no generic national set of criteria for disadvantaged students exist, universities typically develop their own criteria linked to either bursary or loan schemes. What is however important is that the assistance is not merely provided based on financial status but also the ability to study at university reflected by academic achievements. Therefore the assistance (bursary or loan) is provided for students who have the academic potential but lack the funds to study. The assistance schemes of four prominent South African universities were considered for this project.

The first learning point relates to the principle that assistance is only provided to those who have a realistic chance of success. In terms of Regulation 70 the question might be asked if the proposal for which EIA assistance is given is realistic, feasible and sustainable. Screening criteria in this regard might be useful to advise applicant to essentially "stop before they start". Another important

contribution from the education context is the verification arrangements to determine and confirm financial status. The bursary and loan schemes provide good examples in this regard which includes the following:

**Box 5:** Verification criteria of financial status for education bursaries or loans

- Most recent proof of income of salary-/pension slips not older than three months.
- Proof of income by means of sworn statement and 6 months' bank statements, not older than three months must be submitted if you don't receive a salary-/pension slip.
- A certified copy of the pension slip (not older than three months) must be attached if the applicant is a pensioner.
- A sworn statement (not older than three months) must be attached if the applicant is unemployed. Written confirmation from a community leader for example a preacher, attorney or social worker must be attached in addition.
- In the instance of farmers and businesses, the most recent (not older than one year) tax assessment (IT34) and most recent financial statements of the farm/business must be attached.
- If your parents' assets were liquidated and/or placed under administration, attach proof of income as well as proof of liquidation and/or administration order.

### 1.2.3 Legal Assistance / Aid

The single criterion for qualifying for legal assistance / aid is financial status. This is determined through a so-called 'Means Test' which simply requires a statement on monthly income, total assets and monthly expenditure. The Legal Aid Board defines the minimum qualifying income as earning less than R5 000-00 per month, which is verified through providing recent pay slips and proof of earnings. The total income for a married person is slightly higher at R5 500-00 per month. The rationale for focusing on financial status is that other limitation such as illiteracy, being disabled and/or disadvantaged can be overcome by a strong financial position. Essentially, it is argued that, if your financial status allows it you can buy required competence, information and skills.

## Section 2: Types and number of projects

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This section provides a summary of the types and number of special needs projects in relation to the NEMA and NEMWA listed activities. In this regard a survey was conducted of existing literature on the number and extent of EIA applications in South Africa combined with personal communication with key stake holders. The outcome is summarized in Table 1.

### 2.1 Number of cases based on existing literature

As a point of departure we considered existing literature on the extent, type and cost of EIA applications in South Africa. The following are highlighted from the literature<sup>18192021</sup>:

- The total number of EIA authorizations conducted in South Africa under the Environment Conservation Act (ECA – between 1997 and 2006) regime was around 5 000 applications per annum. This number reduced by 27% under the NEMA regime (post 2006) to around 3 600 applications per annum, which is still high compared internationally.
- The large majority of applications are triggered by similar types of listed activities. Research suggests that the main triggering activities related to transformation of land, telecommunication and storage of hazardous materials. However, the types of activities that trigger EIA may vary over time depending on government funding and the state of the economy in certain sectors. For example, we have observed a significant increase in alternative energy applications since 2008.
- Data on the number and extent of Section 24G application is not readily available for South Africa in general. However, research has been conducted for the Gauteng Province which shows that a total number of 1 407 Section 24G applications were submitted for ECA activities between 2005 and 2010. In terms of NEMA activities 195 Section 24G applications were received between 2006 and 2010. Of the NEMA applications 4% were submitted by individuals, 7% by the public sector and 80% by companies. The types of

<sup>18</sup> Kidd, M. and Retief, F. (2009) 'Environmental Assessment'. in Strydom, H, and King, N, (eds) *Fuggle and Rabie's Environmental Management in South Africa*, Juta Publishing, Cape Town.

<sup>19</sup> Retief, F., Welman, C. and Sandham, L. A. (2011) Performance of Environmental Impact Assessment (EIA) screening in South Africa: a comparative analysis between the 1997 and 2006 EIA regimes, *South African Geographical Journal*, vol 93(2), pp 1-18

<sup>20</sup> Retief, F. and Chabalala, B. (2009) 'The cost of environmental impact assessment (EIA) in South Africa' *Journal of Environmental Assessment, Policy and Management*, vol 11, pp 51-68

<sup>21</sup> Lea September (2012) 'A critical analysis of the application of S24G provisions of the National Environmental Management Act (NEMA) – the Gauteng Province experience', dissertation, Masters in Environmental Management, North West University

activities that triggered Section 24G applications varied widely with no particular pattern emerging.

- Although EIA in South Africa is not expensive compared to international standards (as a percentage of total project cost), they are required for relatively small developments (considered against total project cost) which place a particular cost burden on small to medium enterprises.

The learning from the above for the implementation of the special needs initiative is the following:

- The types of applications received vary largely based on economic trends and government spending. It is exceedingly difficult to extrapolate from historic data the potential future number and types of special needs cases. Based on current trends in the literature the following category of applications could be pursued as possible types of special needs cases:
  - *Rural development initiatives* (not strategically funded by government). These may include aquaculture, intensive livestock farming as well as general infrastructure development.
  - *Waste management* related initiatives such as recycling (and reuse) as well as waste handling and storage.
  - *Alternative energy projects* such as solar and methane recovery initiatives. It is reasonable to consider that these types of projects might start off as special needs cases which could then lead to further funding and investment.
- It is impossible to know, from historic data how many special needs cases there might have been. This is because projects that do not or cannot budget for EIA simply do not continue. However, data on the extent of S24G applications provide some perspective on the extent of non-compliance due to either ignorance or possibly direct or indirect financial constraints. In Gauteng only 4% of Section 24G applications under NEMA were submitted by individuals between 2006 and 2010, which amount to around 13 applications for this period, which seems exceedingly low.
- The high cost burden of EIA on small to medium enterprises would suggest that there should be scope to contribute to new young business initiatives. However, it is probable that any special needs initiative will have to actively seek / approach potential special needs cases and that, due to possible ignorance assistance with Section 24G applications should not be excluded.

## 2.2 Types and potential number of special needs projects

This section aims to highlight possible types of special needs projects and provide an estimate on the number of projects that can be expected per annum. However, it must be stressed that the types of projects identified are not exhaustive but are based on preliminary discussions with identified stakeholders. Furthermore the number of project is also a broad estimate at a national scale varying between less than 10 to more than 100 potential projects (nationally). These numbers will vary significantly within different provinces depending on the economic base of the provincial economy. Therefore Table 1 should be seen as a broad indication of the types of special needs projects that could be pursued.

**Table 1:** Summary of types of special needs projects

Type of activity	Related Listed Activity (GNR 544, 545, 921)	Key Role Players	Number of applications (per annum)
<b>Waste Management</b> (Waste recycling and storage)	<i>GNR 921</i> Category A and B	Provincial Government National Department of Environmental Affairs	> 100
<b>Small scale mining</b>	<i>GNR 544</i> 18, 19	Department of Minerals and Energy	> 100
<b>Local Economic Development (LED) Initiatives</b>	<i>GNR 544</i> 1, 9, 10, 11, 18, 22, 47, 23, 24 <i>GNR 545</i> 15	Local Government Development Bank of SA	> 50
<b>Rural Infrastructure Development</b> (housing, bulk services infrastructure)	<i>GNR 544</i> 9, 10, 11, 15, 22, 47, 23, 24, 52, 55 <i>GNR 545</i> 15	Land Bank Development Bank of SA Department of Rural Development Local Government	> 50
<b>Agricultural Development</b> (concentration of animals, aquaculture)	<i>GNR 544</i> 3, 4, 5, 8, 23 <i>GNR 545</i> 12	Land Bank Department of Rural Development Department of Forestry and Fisheries	< 50
<b>'Working for' Programmes</b>	<i>GNR 544</i> 18, 24	Department of Environmental and Water Affairs	< 20
<b>Small scale energy generation</b>	<i>GNR 544</i> 1, 23	Department of Minerals and Energy	< 10

## Section 3: Special Needs Criteria

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Based on the content of sections 1 and 2 we are able to design criteria to be used to determine the special needs status of applicants. As basis for the criteria we refer to the following three pronged definition of special needs cases (designed against Regulation 70), as defined in section 1 and summarized in Box 6 below:

**Box 6:** Definition of a special needs case

- i. An illiterate person who is unable to read and write or do basic numerical calculations in a functional way that hinder their chance of success with or effective participation in the EIA process, whether they be applicants or I&APs.
- ii. A disabled person who is constrained by a long-term or recurring physical, sensory, communication, intellectual or mental impairment that hinder their chance of success with or effective participation in the EIA process, whether they be applicants or I&APs.
- iii. A disadvantaged person who is constrained by circumstances or condition that hinder their chance of success with or effective participation in the EIA process, whether they be applicants or I&APs.

The first qualifying theme relates to 'illiteracy' in keeping with sub-regulation 70(a). Designing criteria to test the literacy status of an applicant seems straight forward. Evidence of schooling and educational status is relatively easy to obtain. However, we suspect that this theme will not be a major special needs focus and would in most cases be related to rural development and waste management developments. Also, illiteracy might be a reality for certain I&APs especially in isolated rural or immigrant communities.

Designing criteria in relation to disabled people as the second special needs theme also seems relatively straight forward. In most cases medical proof of disability could be sought if not blatantly obvious in the case of physical disability. It is also worth considering that financial status is in some cases linked to a form of disability and therefor overlaps with the third theme on being 'disadvantaged'. Again purely 'disability' related cases are not expected to form a major part of special needs applications.

The third theme of the definition which is expected to serve as the qualifying criteria for the large majority of special needs cases is related to so-called 'disadvantaged' individuals. Because the definition of disadvantaged is potentially extremely broad as argued in section 1.1 is recommended that the same approach is followed as for the housing, education and legal aid sectors in designing criteria, which is to focus on financial status. Determining financial status is also referred to as a

'means assessment'. The proof of individual financial status is relatively easy to obtain in the form of pay slips, sworn statements, etc. for which examples are provided in section 1.2. However, in the case of Regulation 70 which refers to people in relation to EIA authorizations we are not in all cases referring to individual monthly income or financial status but rather the cost of the EIA in relation to the overall project. From the above we are now able in the following sections to recommend specific guiding principles and criteria to be used in evaluating special needs applications. We do not present the criteria in a specific application form format since that would be up to the Department to design in line with the set departmental policy. We distinguish between primary and secondary criteria in sections 3.1 and 3.2.

### 3.1 Guiding Principles and Primary Criteria

Primary criteria are derived from two so-called 'guiding principles' described in Box 7. The primary consideration reflected by the two principles is the financial status of the special needs candidate in relation to the cost of the EIA relative to the total project cost. With this interpretation we support the views of the legal aid fraternity in that strong financial status could serve to overcome most other limitations related for example to literacy, disability, access to knowledge and capacity, etc.

**Box 7:** Guiding Principles for selection of special needs cases

Principle 1: The cost of the EIA should not jeopardize the financial viability of the proposed project/development.

or

Principle 2: The cost of the EIA should not significantly erode available funding designated for social upliftment and/or job creation. Such projects would typically not have a profit motive.

The above two guiding principles can now be translated into criteria by merely rephrasing the principle into a prompting question described in Box 8. It must be stressed that either principle could serve to qualify for special needs and that applicants needs not comply to both.

**Box 8:** Primary Criteria for selection of special needs cases

Criterion 1: Will the cost of the EIA jeopardize the financial viability of the proposed project/development?

Criterion 2: Will the cost of the EIA significantly erode available funding designated for social upliftment and/or job creation?

### 3.2 Secondary Criteria

Secondary criteria relate for example to illiteracy, disability, financial viability of the project, contribution to sustainability of the project, etc. and could serve to support or strengthen an application but not qualify in itself for special needs assistance. Therefore the decision on whether an applicant qualify for special needs assistance would rest with the primary criteria and supplemented where relevant by certain secondary criteria. The secondary criteria should be applied on a case by case basis with a high level of discretion allowed. Based on the content of sections 1 and 2 as well as the workshop held between DEA, SCIR and NWU on 3th May 2014 the following broad themes were identified for secondary criteria – summarized in Table 2

**Table 2:** Summary of special needs qualifying criteria

NEMA Sub-regulation	Theme	Criteria	Proof of the following (could be in combination)
<b>Primary Criteria</b>			
70(c)	Financial status of applicant	<b>Will the cost of the EIA jeopardize the financial viability of the proposed project/development?</b>	<ul style="list-style-type: none"> <li>• Available project funding</li> <li>• Total development cost</li> <li>• Sworn Statements / to support case</li> <li>• Individual monthly income</li> <li>• Bank statements</li> <li>• Tax assessments</li> <li>• Business plans</li> </ul>
	Financial benefits of the project	<b>Will the cost of the EIA significantly erode available funding designated for social upliftment and/or job creation?</b>	
<b>Secondary Criteria</b>			
70(a)	Illiteracy of applicants	Inability to read or write	<ul style="list-style-type: none"> <li>• Educational records (or lack thereof)</li> </ul>
		Inability to do calculations	
70(b)	Disability of applicants	Physical disability	<ul style="list-style-type: none"> <li>• Medical confirmation</li> </ul>
		Sensory, communication, intellectual or mental impairment	
Not directly related to Regulation 70	Financial feasibility	Financial feasibility of the project	<ul style="list-style-type: none"> <li>• Similar to proof used for primary criteria</li> <li>• Business plan</li> <li>• Need and desirability considerations</li> <li>• Job creation</li> <li>• Contribution to the conservation estate</li> </ul>
	Sustainability	Contribution of project to sustainability / need and desirability	



## DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
  - a. abused the institution's supply chain management system;
  - b. committed fraud or any other improper conduct in relation to such system; or
  - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	<p>Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector?</p> <p><b>(Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied).</b></p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)?</p> <p><b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	<p>Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>

4.4.1	If so, furnish particulars:
-------	-----------------------------

**SBD 8**

**CERTIFICATION**

**I, THE UNDERSIGNED (FULL NAME).....  
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION  
FORM IS TRUE AND CORRECT.**

**I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT,  
ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION  
PROVE TO BE FALSE.**

.....  
**Signature**

.....  
**Date**

.....  
**Position**

.....  
**Name of Bidder**

Js365bW

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

- 1 This Standard Bidding Document (SBD) must form part of all bids<sup>1</sup> invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).<sup>2</sup> Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
  - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
  - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

<sup>1</sup> Includes price quotations, advertised competitive bids, limited bids and proposals.

<sup>2</sup> Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

**CERTIFICATE OF INDEPENDENT BID DETERMINATION**

I, the undersigned, in submitting the accompanying bid:

\_\_\_\_\_  
(Bid Number and Description)

in response to the invitation for the bid made by:

\_\_\_\_\_  
(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: \_\_\_\_\_ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
  - (a) has been requested to submit a bid in response to this bid invitation;
  - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
  - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

**SBD 9**

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium<sup>3</sup> will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - (a) prices;
  - (b) geographical area where product or service will be rendered (market allocation)
  - (c) methods, factors or formulas used to calculate prices;
  - (d) the intention or decision to submit or not to submit, a bid;
  - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
  - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

<sup>3</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

**SBD 9**

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of Bidder

# THE NATIONAL TREASURY

Republic of South Africa



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## GOVERNMENT PROCUREMENT: GENERAL CONDITIONS OF CONTRACT

July 2010

**GOVERNMENT PROCUREMENT**  
**GENERAL CONDITIONS OF CONTRACT**  
**July 2010**

**NOTES**

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.



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## General Conditions of Contract

### 1. Definitions

1. The following terms shall be interpreted as indicated:
  - 1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.
  - 1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
  - 1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
  - 1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
  - 1.5 "Countervailing duties" are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
  - 1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
  - 1.7 “Day” means calendar day.
  - 1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.
  - 1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.
  - 1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
  - 1.11 "Dumping" occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the

RSA.

- 1.12 "Force majeure" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.13 "Fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.14 "GCC" means the General Conditions of Contract.
- 1.15 "Goods" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.
- 1.16 "Imported content" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.17 "Local content" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.18 "Manufacture" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.19 "Order" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.20 "Project site," where applicable, means the place indicated in bidding documents.
- 1.21 "Purchaser" means the organization purchasing the goods.
- 1.22 "Republic" means the Republic of South Africa.
- 1.23 "SCC" means the Special Conditions of Contract.
- 1.24 "Services" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such

obligations of the supplier covered under the contract.

1.25 “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.

## **2. Application**

2.1 These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

## **3. General**

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from [www.treasury.gov.za](http://www.treasury.gov.za)

## **4. Standards**

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

## **5. Use of contract documents and information; inspection.**

5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

## **6. Patent rights**

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.

**7. Performance security**

- 7.1 Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.
- 7.2 The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 7.3 The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:
- (a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or
  - (b) a cashier's or certified cheque
- 7.4 The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

**8. Inspections, tests and analyses**

- 8.1 All pre-bidding testing will be for the account of the bidder.
- 8.2 If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.
- 8.3 If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
- 8.4 If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.
- 8.5 Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
- 8.6 Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.
- 8.7 Any contract supplies may on or after delivery be inspected, tested or

analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

### **9. Packing**

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

### **10. Delivery and documents**

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

### **11. Insurance**

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

### **12. Transportation**

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

### **13. Incidental services**

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;

- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

13.2 Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

#### **14. Spare parts**

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

- (a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and
- (b) in the event of termination of production of the spare parts:
  - (i) Advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
  - (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

#### **15. Warranty**

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take

such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

- 16. Payment**
- 16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.
- 16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 16.4 Payment will be made in Rand unless otherwise stipulated in SCC.
- 17. Prices**
- 17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser's request for bid validity extension, as the case may be.
- 18. Contract amendments**
- 18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 19. Assignment**
- 19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser's prior written consent.
- 20. Subcontracts**
- 20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.
- 21. Delays in the supplier's performance**
- 21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.
- 21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the



supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

## **22. Penalties**

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

## **23. Termination for default**

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

- (a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;
- (b) if the Supplier fails to perform any other obligation(s) under the contract; or
- (c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

- 23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.
- 23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- (i) the name and address of the supplier and / or person restricted by the purchaser;
  - (ii) the date of commencement of the restriction
  - (iii) the period of restriction; and
  - (iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

#### **24. Anti-dumping and countervailing duties and rights**

- 24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which

may be due to him

**25. Force Majeure**

- 25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

**26. Termination for insolvency**

- 26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

**27. Settlement of Disputes**

- 27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.
- 27.5 Notwithstanding any reference to mediation and/or court proceedings herein,
- (a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
  - (b) the purchaser shall pay the supplier any monies due the supplier.

**28. Limitation of liability**

- 28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;
- (a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and

- (b) the aggregate liability of the supplier to the purchaser, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.
- 29. Governing language** 29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.
- 30. Applicable law** 30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.
- 31. Notices** 31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice
- 31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.
- 32. Taxes and duties** 32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser's country.
- 32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.
- 32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.
- 33. National Industrial Participation Programme (NIP)** 33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.
- 34 Prohibition of Restrictive practices** 34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).
- 34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.

- 34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.



# DEPARTMENT OF ENVIRONMENTAL AFFAIRS

## BAS ENTITY MAINTENANCE FORM

Head Office Only	
Date Received	_____
Safetynet Capture	_____
Safetynet Verified:	_____
BAS/LOGIS Capt	_____
BAS/LOGIS Auth	_____
Supplier No.	_____

### The Director General

I/We hereby request and authorise you to pay any amounts, which may accrue to me/us to the credit of my/our account with the mentioned bank.

I/we understand that the credit transfers hereby authorised will be processed by computer through a system known as "ACB - Electronic Fund Transfer Service", and I/we understand that no additional advice of payment will be provided by my/our bank, but that the details of each payment will be printed on my/our bank statement or any accompanying voucher. (This does not apply where it is not customary for banks to furnish bank statements).

I/we understand that the Department will supply a payment advice in the normal way, and that it will indicate the date on which the funds will be made available on my/our account.

This authority may be cancelled by me/us by giving thirty days notice by prepaid registered post.

**Please ensure information is validate as per required bank screens .**

I/We understand that bank details provided should be exactly as per record held by the banks.

**I/We understand that the Department will not held liable for any delayed payments as a result of incorrect information supplied.**

Company / Personal Details		
Registered Name	_____	
Trading Name	_____	
Tax Number	_____	
VAT Number	_____	
Title:	_____	
Initials:	_____	
Full Names	_____	
Surname	_____	
Persal Number	_____	
Address Detail		
Address ( Compulsory if Supplier )	Physical	Postal
	_____	_____
	_____	_____
Postal Code	_____	_____
New Detail		
<input type="checkbox"/> New Supplier information <input type="checkbox"/> Update Supplier information		
Supplier Type:	<input type="checkbox"/> Individual <input type="checkbox"/> Department <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Trust <input type="checkbox"/> CC <input type="checkbox"/> Other ( Specify )	
Department Number	_____	

**Supplier Account Details (To be Verified by the bank, please attach bank letter or 3 months bank statement)**

(Please note that this account MUST be in the name of the supplier. No 3rd party payments allowed).

Account Name

Account Number

Branch Name

Branch Number

**Bank screen info**

**ABSA-CIF screen**  
**FNB-Hogans system on the CIS4/CUPR**  
**STD Bank-Look-up-screen**  
**Nedbank- Banking Platform under the Client Details Tab**

Account Type

Cheque Account  
 Savings Account  
 Transmission Account  
 Bond Account  
 Other (Please Specify)

ID Number

Passport Number

Company Registration Number

\*CC Registration

**\*Please include CC/CK where applicable**

Bank Stamp

**Supplier Contact Details**

Business

Area Code Telephone Number Extension

Home

Area Code Telephone Number Extension

Fax

Area Code Fax Number

Cell

Cell Code Cell Number

Email Address

Contact Person:

Supplier Signature

Print Name

Date (dd/mm/yyyy)

**NB: All relevant fields must be completed**