



**environment, forestry
& fisheries**

Department: Environment, Forestry
and Fisheries
REPUBLIC OF SOUTH AFRICA

INVITATION TO BID

BID REFERENCE NUMBER: MLRF: 4.4.12.4 / MLRF 165/20

TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF LAW FIRMS TO PROVIDE LEGAL ASSISTANCE AND SUPPORT TO THE MARINE LIVING RESOURCES FUND, THE DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES ("THE DEPARTMENT" / "DEFF") AND THE MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT ("THE MINISTER") ON THE 2020/21 FISHING RIGHT ALLOCATION PROCESS ("FRAP2020/21").

Contact person:

Name: Mr Saasa Pheeha and Mr Msimelelo Mdledle

E-Mail: SaasaP@daff.gov.za and MsimeleloM@daff.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: 23 NOVEMBER 2020 AT 11H00

COMPULSORY BRIEFING: 12 NOVEMBER 2020 @ 14H00

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE MARINE LIVING RESOURCES FUND					
BID NUMBER:	4.4.12.4 / MLRF 165/20	CLOSING DATE:	23 November 2020	CLOSING TIME:	11:00
DESCRIPTION	APPOINTMENT OF A PANEL OF LAW FIRMS TO PROVIDE LEGAL ASSISTANCE AND SUPPORT TO THE MARINE LIVING RESOURCES FUND, THE DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES ("THE DEPARTMENT" / "DEFF") AND THE MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT ("THE MINISTER") ON THE 2020/21 FISHING RIGHT ALLOCATION PROCESS ("FRAP2020/21").				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Department of Environment, Forestry and Fisheries, Foretrust Building, Ground Floor, Martin Hammerschlag Way, Foreshore, Cape Town, 8001					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Mr Saasa Pheeha		CONTACT PERSON	Mr Msimelelo Mdledle	
TELEPHONE NUMBER			TELEPHONE NUMBER		
FACSIMILE NUMBER	N/A		FACSIMILE NUMBER	N/A	
E-MAIL ADDRESS	SaasaP@daff.gov.za		E-MAIL ADDRESS	MsimeleloM@daff.gov.za	
SUPPLIER INFORMATION					
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	
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					
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]	
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS					
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"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?				<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS 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**

1. BID SUBMISSION:
1.1. BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
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.
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.
1.4. THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
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.
2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
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."

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.: 4.4.12.4/MLRF 165/20
CLOSING TIME 11:00	CLOSING DATE.....

OFFER TO BE VALID FOR 120 DAYS FROM THE CLOSING DATE OF BID.

ITEM NO	DESCRIPTION	BID PRICE IN RSA CURRENCY **(ALL APPLICABLE TAXES INCLUDED)
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THE APPOINTMENT OF A PANEL OF LAW FIRMS TO PROVIDE LEGAL ASSISTANCE AND SUPPORT TO THE MARINE LIVING RESOURCES FUND, THE DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES ("THE DEPARTMENT" / "DEFF") AND THE MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT ("THE MINISTER") ON THE 2020/21 FISHING RIGHT ALLOCATION PROCESS ("FRAP2020/21").

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.....

Name of Bidder:

** "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 –

Ncumisa Matwane
Tel: 021 402 3632

Or for technical information –
Mr. Saasa Pheeha and Mr. Msimelelo Mdledle
Tel: 021 402 3574 / 021 402 3422

SBD 4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, 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, shareholder², 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.

¹"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.

²"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:

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

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 last 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		
OR		
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.

<p>WITNESSES</p> <p>1.</p> <p>2.</p>

<p>.....</p> <p>SIGNATURE(S) OF BIDDERS(S)</p> <p>DATE:</p> <p>ADDRESS</p> <p>.....</p> <p>.....</p>

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? (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).</p> <p>The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) 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)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</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:
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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 bids¹ 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).² 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:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² 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

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 consortium³ 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.

³ 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.

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

Js914w 2



environment, forestry & fisheries

Department: Environment, Forestry
and Fisheries
REPUBLIC OF SOUTH AFRICA

THE MARINE LIVING RESOURCES FUND A SCHEDULE 3A PUBLIC ENTITY ESTABLISHED IN TERMS OF THE PUBLIC FINANCE MANAGEMENT ACT, 1999 (ACT NO 1 of 1999) AND THE DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES ("DEFF") (IN ITS COMMITMENT TO THE PRINCIPLES ENSHRINED IN THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996) ADHERES TO THE PROVISIONS OF THE BROAD BASED BLACK ECONOMIC EMPOWERMENT ACT, 53 OF 2003 (BBBEE), THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 5 OF 2000 ("PPPF") AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

TERMS OF REFERENCE

TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF LAW FIRMS TO PROVIDE LEGAL ASSISTANCE AND SUPPORT TO THE MARINE LIVING RESOURCES FUND, THE DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES ("THE DEPARTMENT"/ "DEFF") AND THE MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT ("THE MINISTER") ON THE 2020/21 FISHING RIGHTS ALLOCATION PROCESS ("FRAP2020/21").

COMPULSORY BRIEFING SESSION:

A compulsory briefing session will be held on Thursday, 12 November 2020 at 14:00 at the Main Boardroom of the Department/MLRF, 6th floor, Foretrust Building, Martin Hammerschlag Way, Foreshore, Cape Town. Bidders are required to register for attendance to the Bid office one week before the compulsory briefing session via email: Ndaniels@environment.gov.za. Attendance will be limited to two (2) representatives for each bidder under the current COVID19 restrictions. However, if restrictions change, a Virtual Session will be conducted through Microsoft TEAMS.

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1. PURPOSE

- 1.1. The Marine Living Resources Fund a Schedule 3A Public Entity established in terms of the Public Finance Management Act, 1999 (Act No 1 of 1999) (hereafter referred to as the MLRF) under the auspices of the Department of Environment, Forestry and Fisheries ("Department"/ "DEFF") and the Minister of Forestry, Fisheries and the Environment ("Minister") in the exercise of their mandate and functions under the provisions of the Marine Living Resources Act, 18 of 1998 ("MLRA") will embark on the 2020/21 Fishing Rights Allocation Process ("FRAP2020/21") for the allocation of fishing rights in terms of section 18 of the MLRA within the various fishing sectors identified herein below.
- 1.2. The Department/MLRF requires the services of various law firms comprising of suitably qualified legal practitioners to provide legal support to them for the purpose of ensuring that the Fishing Rights Allocation Process 2020 ("FRAP2020") follows a transparent and legally defensible process and procedure.
- 1.3. Law firms registered in terms of the Legal Practice Act, 28 of 2014, with the Legal Practice Council and its Provincial Councils, are invited to submit proposals to the Department for their appointment to a panel of law firms up to a maximum of 10 firms per stage consisting of the 10 top ranked on Functionality, Price and B-BBEE that will provide legal support to the Minister and Department/MLRF on the 2020/21 Fishing Rights Allocation Process ("FRAP2020/21"). The Department/MLRF reserves the right **not to** consider bid application(s) received from Law Firms that the Department/MLRF has registered a complaint against such Law Firms with Law Society of South Africa. Successful bidder(s) in stages 1 and 2, will not be permitted to provide legal assistance to the Fishing Industry in relation to FRAP2020/21.
- 1.4. The final number of firms appointed to the panel will be dependent on the quality of tenders submitted, the resultant scores achieved and the rates (prices) submitted by the respective law firms.
- 1.5. The Law firms will be required to render legal support during the various stages of FRAP2020/21 process as outlined below.

2. INTRODUCTION AND BACKGROUND

- 2.1. Sections 18 (1) and (2) of the MLRA provide as follows:

"(1) No person shall undertake commercial fishing or small-scale fishing, engage in mariculture or operate a fish processing establishment unless a right to undertake or engage in such an activity or to operate such an establishment has been granted to such a person by the Minister.

(2) An application for any right referred to in subsection (1) shall be submitted to the Minister in the manner that the Minister may determine."

- 2.2. In accordance with the provisions set out in section 18(1) of the MLRA, the Minister (or her delegated authorities) will undertake the process of allocating fishing rights in the following twelve (12) fishing sectors:
 - 2.2.1. KZN Prawn Trawl;
 - 2.2.2. Demersal Shark;
 - 2.2.3. Tuna-Pole Line;
 - 2.2.4. Hake Handline;

- 2.2.5. Traditional Linefish;
 - 2.2.6. White Mussels;
 - 2.2.7. Oysters;
 - 2.2.8. Squid;
 - 2.2.9. Small Pelagics (Pilchard and Anchovy);
 - 2.2.10. Hake Deep-sea Trawl;
 - 2.2.11. Hake Longline; and
 - 2.2.12. South Coast Rock Lobster.
- 2.3. The Minister (or her delegated authorities) will in the FRAP2020/21 determine the manner in which she (or her delegated authorities) allocate fishing rights in the above-mentioned twelve (12) fishing sectors.
 - 2.4. It should be noted that some of the fishing sectors may be allocated in full to the Small-Scale fishing sector and therefore will not form part of the FRAP2020/21 process.
 - 2.5. The FRAP2020/21 requires strict adherence to the legal requirements, as set out in various pieces of legislation including but not limited to the provisions and principles of Constitution of the Republic of South Africa, 1996; the Marine Living Resources Act, 1998 (Act No. 18 of 1998) ("MLRA"); the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("PAJA"), and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) ("PAIA") (collectively referred to as the "legislative framework").
 - 2.6. It is against this background that DEFF/MLRF require the services of a panel of law firms to assist with *ad-hoc* legal services as and when required.

3. OBJECTIVES OF THE FRAP LAW FIRMS

To ensure a legally compliant rights allocation process for FRAP2020/21 in terms of:

- 3.1 administrative procedures and processes;
- 3.2 interpretation of relevant legislative provisions and policies;
- 3.3 decision-making processes and procedures;
- 3.4 appeals and legal challenges;

in accordance with the relevant legislative framework and in accordance with the policy provisions and standards.

4. SCOPE AND EXTENT OF WORK

STAGE 1

- 4.1 Process design; assist in development and finalisation of policies; notices; application forms and participate in public participation process in compliance with all relevant legislative prescripts.
- 4.2 Vet communication plan to ensure proper and effective communication on an ongoing basis to all stakeholders regarding the allocation and appeal process.
- 4.3 Approve and sign-off on queries and responses.

STAGE 2

- 4.4 Assist in the evaluation and assessment process.
- 4.5 Vet final allocation decisions.
- 4.6 Provide assistance in respect of requests for access to information.
- 4.7 Vet the General Published Reasons (GPR) for Allocation decisions including decision letters, for Delegated Authorities consideration.

STAGE 3

- 4.8 Vet Regulation 5(3) Reports drafted in terms of the MLRA.
- 4.9 Evaluate and assess appeals received including queries following the appeals process.
- 4.10 Compile the Appeals GPR and Appeal allocation decisions, including decision letters for Minister's consideration.
- 4.11 The law firms will indicate their relevant competency to render support for the respective stages indicated below. The law firms are required to clearly indicate their expertise in their technical proposal in respect of the stages for which the bid is submitted. Therefore, it is necessary for the firms to indicate in the table below as to which stage they are willing participate for this tender by indicating **YES/NO**.

STAGES	ACTIVITIES	PROPOSAL SUBMITTED PER STAGE	
		YES	NO
Stage 1	Process design; assist in development and finalisation of policies; notices; application forms and participate in public participation process in compliance with all relevant legislative prescripts.		
	Vet communication plan to ensure proper and effective communication on an ongoing basis to all stakeholders regarding the allocation and appeal process.		
	Approve and sign-off on queries and responses.		
Stage 2	Assist in the evaluation and assessment process.		
	Vet final allocation decisions.		
	Provide assistance in respect of requests for access to information.		
	Vet the General Published Reasons (GPR) for Allocation decisions including decision letters, for Delegated Authorities consideration.		
Stage 3	Vet Regulation 5(3) Reports drafted in terms of the MLRA.		
	Evaluate and assess appeals received including queries following the appeals process.		
	Compile the Appeals GPR and Appeal allocation decisions, including decision letters for Minister's consideration.		

- 4.12 In terms of any legal challenges in respect of the stages mentioned above, legal support may be required.

5. EXPECTED DELIVERABLES / OUTCOMES

- 5.1. The Department/MLRF will appoint different law firms to provide legal support in respect of stage 1, 2 and 3 or potentially the same law firms for stage 1 and 2 only and different law firms for stage 3. Law firms need to

consider their participation and preference for the relevant stage(s) that they are bidding for and clearly indicate their expertise in that regard.

- 5.2. While there is no limit (stage 1 and 2 or stage 3) as to the number of practices areas for which a bid may be submitted, firms are advised to bid only for those areas in respect of which they possess the required skills and expertise.

6. PERIOD / DURATION OF APPOINTMENT

- 6.1. The contract with the appointed law firm(s) will run for a period of twenty-four (24) months from date of signature of the Memorandum of Agreement (MoA).
- 6.2. The law firms will be subjected to a quarterly performance assessment and the continuation of the contract will be dependent on a favourable assessment.

7. COSTING / COMPREHENSIVE BUDGET

- 7.1 A comprehensive costing must be submitted all inclusive price in a separate envelope indicating unit prices per resource inclusive of VAT (SBD 3.3 for detailed costing and Annexure A – Price Schedule Guidance). The law firm should quote in South African currency for all the resources.
- 7.2 DEFF/MLRF reserves the right to consider the guidelines on consultancy rates as set out in the National Treasury Instruction 03 of 2017/2018: Cost Containment Measures, where relevant. The bidding law firm must indicate if their proposed rates are in line with the provision of the referenced National Treasury Instruction.
- 7.3 The pricing model should cover the rates per hour of the following resources:
- 7.3.1. Senior Director or Partner
 - 7.3.2. Junior Director or Partner
 - 7.3.3. Senior Associate
 - 7.3.4. Junior Associate
 - 7.3.5. Candidate Attorney/Trainee Graduate
- 7.4 The rates obtained are fixed with CPI annual escalation allowed in the 2nd year and will only be applied once a task has been identified and the terms of reference (ToR) are drafted for the specific requirement. The law firms on the panel will then be approached per stages for quotations on an "as and when" required basis.
- 7.5 DEFF/MLRF reserves the right to negotiate with the preferred law firm(s) identified in the evaluation process, regarding any terms and conditions, including rationalisation of the fees to ensure cost containment measures in terms of National Treasury guidelines prior to the awarding of the bid.

8. EVALUATION METHOD

- 8.1 The evaluation for this bid will be carried out in four (4) phases:
- Phase 1: Pre-compliance and Pre-Qualification

- Phase 2: Mandatory requirements
- Phase 3: Functional Evaluation Criteria,
- Phase 4: Price and B-BBEE.

8.2 PHASE 1 (A): Pre-compliance or Initial Screening

8.2.1 During this phase bid documents will be reviewed to determine compliance with SCM returnable, tax matters and whether the Central Supplier Database (CSD) report has been submitted with the bid documents at the closing date and time of the bid. Bids which do not satisfy the compliance criteria will not be evaluated further. Those who fulfil the requirements or have submitted the required documents will be further evaluated on the functionality criteria.

8.2.2 The bid proposal will be screened for compliance with administrative requirements as indicated below:

Item No.	Administrative Requirements	Check/Compliance	Non-submission may result in disqualification
1	Master Bid Document	provided and bound	*YES
2	5 Copies of Bid Documents	provided and bound	*YES
Included in the Bid Document			
3	SCM - SBD 1 - Invitation to Bid	Completed and signed	*YES
4	SCM - SBD 2 - Tax Clearance Certificate Requirements	CSD registration number/SARS PIN and CSD summary report	*NO
5	SCM - SBD 4 - Declaration of Interest	Completed and signed	*YES
6	SCM - SBD 6.1 - Preference Points Claim Form in terms of the Preferential Procurement Regulations 2017	Completed and signed, supported by B-BBEE Certificate if applicable or Affidavit if applicable	**NO
7	SCM - SBD 8 – Declaration of Bidder's Past Supply Chain Management Practices	Completed and signed, supported	*YES
8	SCM - SBD 9 - Certificate of Independent Bid Determination	Completed and signed	*YES
9	In case of bids where Consortia / Joint Ventures, Consortia/Joint Venture agreement signed by both parties must be submitted with bid proposal	JV agreement completed and signed, if applicable	*YES

*YES – DEFF/MLRF reserves the right to reject proposals that are not submitted in the prescribed format or where information presented is illegible or incomplete and will not be further evaluated for Pre-qualification Criteria (Phase 2).

****NO** – DEFF/MLRF reserve the right to request such information during the evaluation process of the proposal and such information must be presented within short notice.

8.3 **PHASE 1 (B): Pre-Qualification Criteria:** The section below must be completed by the law firm by answering YES or NO and attach proof.

Pre-qualification criteria:	Requirement	Comply: Yes or No
	Only law firms who are Exempted Micro Enterprises (EME) or Qualifying Small Enterprise (QSE), which are, at least 51% owned by black people will be considered for this bid as per Preferential Procurement Regulations 2017. The law firm(s) are required to submit an original certified copy of the EME or QSE B-BBEE Status Level of contributor issued by SANAS only or original or certified copy of DTI sworn affidavit in terms of Codes of good practice indicating that the law firm is an EME/QSE. Failure to submit a valid B-BBEE level of contributor or a certified copy of sworn affidavit will result in a bid being considered as non-responsive and disqualified.	

8.4 **PHASE 2: MANDATORY REQUIREMENTS**

8.4.1. Only bid proposals that meets pre-compliance and pre-qualification requirements will be considered to be evaluated on mandatory requirements. The Law Firm must complete the section below by answering YES or NO. If, Yes, please attach proof and/or letter of commitment.

NO.	REQUIREMENT	COMPLY: YES OR NO
1	Professional registration with the Legal Practitioners Council. The law firm must submit documentary proof of their current registration with the Legal Practice Council. NOTE: Registration with the Law Society or any other voluntary statutory bodies will not be considered.	
2	The law firm must be in good standing with the Legal Practice Council. The law firm must provide a letter of good standing from the Legal Practice Council.	
3	The law firm must provide copies of the Right of appearance in Court for their team that will be rendering support for this project.	

NOTE: Failure to meet all the mandatory requirements will lead in the law firm being disqualified and not further evaluated for functionality (Phase 3).

8.5 **PHASE 3: Functionality Criteria**

8.5.1. Only bid proposals that meets mandatory requirements will be considered to be evaluated on functionality criteria,

8.5.2. The law firm must score a minimum of 75% during Phase 3 (functionality / technical) of the evaluation to qualify for Phase 4 of the evaluation where only points for Price and B-BBEE will be considered.

8.5.3. The following values/ indicators will be applicable when evaluating functionality:

0 = Non-compliance, 1 = Poor; 2 = Fair; 3 = Average; 4 = Good; 5 = Excellent.

PHASE 3		
GUIDELINES FOR CATEGORY CRITERIA	FUNCTIONALITY (GUIDELINES FOR CRITERIA APPLICATION)	WEIGHT
Law Firm's or company's experience in the field of Administrative and Constitutional Law. Law Firms must attach contactable written references on successfully completed projects or current projects.	Law Firms years of experience in the field of Administrative and Constitutional Law as reflected in the completed or current projects.	Indicator
	Law Firms must attach proof of reference letters or appointment letters confirming the required experience in the field of Law (Administrative and Constitutional)	
	Less than one year experience	0
	1 and less than 3 years experience	1
	3 and less than 5 years experience	2
	5 and less than 7 years experience	3
	7 and less than 9 years experience	4
	9 and more years of experience	5
The leading Director's or Partner experience in the field of Law (attach profile/CV of the Leading Director or Partner assigned to the project)	The leading Director or Partner must demonstrate relevant post admission experience	Indicator
	Less than one year experience	0
	1 and less than 3 years experience	1
	3 and less than 4 years experience	2
	4 and less than 5 years experience	3
	5 and less than 6 years experience	4
	6 and more years of experience	5
The Law Firm's or company's experience in Policy Drafting and Advising on Administrative Decisions as reflected	Key staff with proven years of experience in Policy Drafting and Advising on Administrative Decisions as reflected in the completed projects.	Indicator
	Less than one year experience	0
	1 and less than 3 years experience	1
	3 and less than 5 years experience	2

PHASE 3			
GUIDELINES FOR CATEGORY CRITERIA	FUNCTIONALITY (GUIDELINES FOR CRITERIA APPLICATION)		WEIGHT
in the completed projects	5 and less than 7 years experience	3	
	7 and less than 9 years experience	4	
	9 and more years of experience	5	
A proposed project plan, Methodology and Management with deliverables, timeframe and milestones for the respective stages and law firms capacity to deliver on the project (attach profiles/ CVs of key staff and persons to be assigned to the project)	Methodology and Approach for Legal Services The Law Firm must provide a clear statement (methodology) on how a typical legal instruction related to stages listed will be carried out, including the resources to be allocated and how such resources will be utilised, applicable timelines for each stage they are bidding for.	Indicator	30
	NOTE" The requirements as stipulated under "methodology, and approach for legal services" are not limited to the above requirements. The law firms can expand by demonstrating their understanding in terms of each stage requirements.		
	No information provided	0	
	Task not well understood	1	
	Limited information provided on a project plan, methodology and management with no clear deliverables, timeframes/ milestones provided for areas or stages bidded for.	2	
	Limited information provided on deliverables, timeframes/ milestones for areas or stages bidded for.	3	
	Project plan with clear deliverables, timeframes/ milestones for areas or stages bidding for.	4	
	Project plan and methodology action well broken down with details of deliverables, timeframes/ milestones for areas or stages bidding for.	5	
Total points on functionality			100

8.6. PHASE 4: Preference Point System 80/20

8.6.1. The *fourth phase* is to perform an evaluation of Price and BBEE on the The law firms, that successfully qualified on phase 3 (functional evaluation).

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

8.7. Calculating of points for B-BBEE status level of contribution

8.7.1. Points will be awarded to the law firm(s) 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:

Phase 3: The following table must be used to calculate the B-BBEE scores (80/20)	
PRICE	
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 BID SUBMISSION REQUIREMENTS

9.1. The law firms should ensure that the following submission requirements, which will be needed for evaluation purposes are included in their bid proposal and are as follows:

9.1.1. The service provider must draft a table of content which will indicate where each document is located in the proposal.

9.1.2. The proposal shall consist of two parts, namely the technical bid and the pricing bid (master and copy).

9.1.3. A certified copy of the relevant tertiary qualification or equivalent from a member from a recognised institution. The law firms are expected to ensure that nominated Team Members with foreign qualifications submit South African Qualifications Authority (SAQA) Certificate with the bid submission for evaluation. **Failure to do so will render the resource nominated not being allocated points and scoring zero (0).**

- 9.1.4. The information in the CV of the proposed Lead Director or Partner and Team Members (as listed in SECTION 7.3 above) should include relevant experience and qualifications in the chosen area of expertise demonstrating the required competency.
- 9.1.5. Project reference specifying the role played by the service provider in the listed projects or assignments, project value and the duration of the project (start and end date).
- 9.1.6. A detailed Project Plan with clear indication of who will be responsible for the management of the assignment as well as its execution. The allocation of team members on the assignments should be based on the experience in delivering the scope of work as listed.
- 9.1.7. Standard bidding documents (SBD1, 2, 3.3, 4, 6.1, 8 and 9).
- 9.1.8. Tax compliance status requirements and/or Central Supplier Database (CSD) number or report.
- 9.1.9. Certified copies of identity documents of directors and shareholders of the Law firm(s). Entity registration Certificate (CK1).
- 9.1.10 Letter of Authority to sign documents on behalf of the Law firm(s).

10. SPECIAL CONDITIONS OF CONTRACT

- 10.1. On appointment, the performance measures for the delivery of the agreed services will be closely monitored by DEFF/MLRF.
- 10.2. DEFF/MLRF will not be held responsible for any costs incurred by the service providers in the preparation, presentation and submission of the proposal.
- 10.3. The Programme Manager will be responsible for ongoing management of the Service Level Agreement (SLA).
- 10.4. The Law firm(s) must submit soft copies of the report monthly and quarterly progress reports to the Programme 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.
- 10.5. The Law firm(s) must guarantee the presence of the Lead Director/Partner in charge of the programme throughout the duration of the contract. Prior to the appointment of a replacement, the Project Manager from DEFF/MLRF must approve such appointment. If the Lead Director/Partner has to leave the project, a period of at least one month is required in which the senior consultant must work parallel with the next person (senior consultant with similar expertise and equal years of experience) appointed to be able to transfer skills and knowledge.
- 10.6. 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.
- 10.7. The proposals should be submitted with all required information containing technical information.
- 10.8. Travelling costs and time spent or incurred between home and office of the service provider and DEFF/MLRF office will not be for the account of DEFF/MLRF.

- 10.9. Travelling costs and time spent or incurred between the office of the Law Firm and venue identified by the Department/MLRF will be for the account of DEFF/MLRF. The Law Firms are expected to adhere to the subsistence and travelling allowance: domestic rates as prescribed by DEFF/MLRF. Disbursements costs of Law Firms will be managed through the Departmental/MLRF policies.
- 10.10. The law firms failing to meet all the mandatory requirements will automatically be disqualified.
- 10.11. Suppliers/Service Providers are requested to submit the original and valid B-BBEE Status Level Verification Certificate or certified copies thereof issued by verification agencies accredited 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.
- 10.12. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.
- 10.13. A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate proposal.
- 10.14. In the event that the application is made by a Joint Venture or Partnership, the accreditation credentials in name of joined entity should be submitted. Both members in the joint venture must meet the requirement of the proposal.
- 10.15. Poor or non-performance by the law firms will result in cancellation of the bid and the SLA.
- 10.16. Should the law firm(s) fail to perform, DEFF/MLRF reserves the right to cancel the appointment of such law firm immediately with at least seven (7) days notice.

11. SUB-CONTRACTING CONDITIONS/ REQUIREMENTS

- 11.1. In a case whereby sub-contracting is not set as a pre-qualification criterion, however the tenderer is intending to sub-contract portion of work, such tenderer awarded a contract may only enter into sub-contracting arrangements with the approval of the Department/MLRF.
- 11.2. In relation to a designated sector, a contractor will not be allowed to subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.
- 11.3. 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 The law firm 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 The law firm qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 11.4. 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.

12. PAYMENT TERMS

- 12.1. DEFF/MLRF 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.

13. TECHNICAL ENQUIRIES

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

Name: Mr Saasa Pheeha and Mr Msimelelo Mledle

E-Mail: SaasaP@daff.gov.za and MsimeleloM@daff.gov.za



environment, forestry
& fisheries

Department:
Environment, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

ANNEXURE A – PRICE GUIDELINE: TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF LEGAL PRACTITIONERS (LAW FIRMS) TO PROVIDE LEGAL ASSISTANCE AND SUPPORT TO THE DEPARTMENT OF ENVIRONMENT, FORESTRY AND FISHERIES (“THE DEPARTMENT”/ “DEFF”) AND THE MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT (“THE MINISTER”) ON THE 2020/21 FISHING RIGHT ALLOCATION PROCESS (“FRAP2020/21”).

POSITION TITLE CATEGORY (WHERE APPLICABLE)	NAME OF THE PROPOSED EXPERT	RATE/HOUR YEAR 1 (EXCL. VAT)	RATE/HOUR YEAR 2 (EXCL. VAT)	TYPICAL PERCENTAGE OF TOTAL HOURS ON PROJECT
Senior Director or Partner		R	R	%
Junior Director or Partner		R	R	%
Senior Associate		R	R	%
Junior Associate		R	R	%
Candidate Attorney/Trainee Graduate		R	R	%
Total sum of rates excl. of VAT		R	R	
VAT @ 15%		R	R	
Total sum of rates incl. of VAT		R	R	
Total Sum of rates incl. of VAT for the 2 years				R

NOTE: The legal costs/services will be based on hourly rates and that budgets are compiled once the appointed auditor has assessed the likely extent of the work. Financial proposals will be compared on the basis of average hourly rates.

THE NATIONAL TREASURY

Republic of South Africa



**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.

TABLE OF CLAUSES

1. Definitions
2. Application
3. General
4. Standards
5. Use of contract documents and information; inspection
6. Patent rights
7. Performance security
8. Inspections, tests and analysis
9. Packing
10. Delivery and documents
11. Insurance
12. Transportation
13. Incidental services
14. Spare parts
15. Warranty
16. Payment
17. Prices
18. Contract amendments
19. Assignment
20. Subcontracts
21. Delays in the supplier's performance
22. Penalties
23. Termination for default
24. Dumping and countervailing duties
25. Force Majeure
26. Termination for insolvency
27. Settlement of disputes
28. Limitation of liability
29. Governing language
30. Applicable law
31. Notices
32. Taxes and duties
33. National Industrial Participation Programme (NIPP)
34. Prohibition of restrictive practices

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

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 (NIP) Programme** 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.

Js General Conditions of Contract (revised July 2010)



environment, forestry & fisheries

Department:
Environment, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Attention: Supplier

Subject: Documentation that should be attached to database registration form handed in to the department.

- ORIGINAL TAX CLEARANCE CERTIFICATE
- COPIES OF COMPANY REGISTRATION DOCUMENTATION IF APPLICABLE
- COPIES OF GREEN BARCODED ID DOCUMENT OF OWNER(S) OF THE REGISTERED COMPANY
- BANK STAMP OR CANCELLED CHEQUE OR BANK LETTER
- ORIGINAL BBBEE VERIFICATION CERTIFICATE
- CSD FULL REPORT

17. ANNUAL TURNOVER per annum

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INSTRUCTIONS AND DEFINITIONS

2. GENERAL DEFINITIONS

- 2.1 **“Acceptable bid”** means any bid which, in all respects, complies with the specifications and conditions of bid as set out in the bid document.
- 2.2 **“Bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods, works or services.
- 2.3 **“Comparative price”** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration.
- 2.4 **“Consortium or joint venture”** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skills and knowledge in an activity for the execution of a contract.
- 2.5 **“Contract”** means the agreement that results from the acceptance of bid by an organ of state.
- 2.6 **“Specific contract participation goals”** means the goals as stipulated in the Preferential Procurement Regulations 2001.
- 2.6.1 In addition to above-mentioned goals, the Regulations [12.(1)] also make provision for organs of state to give particular consideration to procuring locally manufactured products.
- 2.7 **“Control”** means the possession and exercise of legal authority and power to manage the assets, goodwill and daily operations of a business and the active and continuous exercise of appropriate managerial authority and power in determining the policies and directing the operations of the business.
- 2.8 **“Disability”** means, in respect of a person, a permanent impairment of a physical, intellectual, or sensory function, which results in restricted, or lack of, ability to perform an activity in the manner, or within the range, considered normal for a human being.
- 2.9 **“Equity Ownership”** means the percentage ownership and control, exercised by individuals within an enterprise.
- 2.10 **“Historically Disadvantaged Individual (HDI)”** means a South African citizen
- (1) who, due to the apartheid policy that had been in place, had no franchise in national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No 110 of 1983) or the Constitution of the Republic of South Africa, 1993, (Act No 200 of 1993) (“the interim Constitution); and/or
 - (2) who is a female; and/or
 - (3) who has a disability;

EQUITY OWNERSHIP CLAIMED IN TERMS OF THE ABOVE:

Equity Ownership by persons who had no franchise in the national elections prior to 1994: _____ % owned

Equity Ownership by white women: _____ %

Equity Ownership by african women: _____ %

Equity Ownership by disabled persons: _____ %

- Is the company 50.1% or more black owned? (Black enterprise, which means the majority of shares, is owned by blacks)
 - Or is the company 25.1% or more black owned? (Black empowered, which means the traditionally white owned company has empowered blacks in terms of shares in their company)
- Please indicate the number of employees _____

*Indicate YES or NO

4. SMME STATUS / BUSINESS ACTIVITIES

- Office stationery, computer consumables and cleaning material
- Printing, layout, design, publications, portfolios and banners
- Office furniture, audiovisual equipment, office equipment and labour saving devices
- Communication specialist (writing and producing of information)
- TV, radio and exhibits production
- Entertainers i.e. dancers, musicians, poets, craftsperson etc
- Building maintenance: electrical, plumbing, office partitioning, painting, replacement of carpets, pest control etc
- Cleaning service (e.g steam cleaning of carpets, curtains etc)
- Tracing
- Panel beating
- Lab Machinery, Water Treatment, Microscopes.
- Mobile Tool Unit
- Marine Electronics
- Lab Machinery, Water Treatment ;Microscopes
- Catering Service
- Boat hire
- Buoys
- Ballistic Spray
- Cable tie and Metal Seals
- Cash Management/In transit
- Compilation of fact sheet
- Protective Clothing
- Personal Protective Equipment
- Catering Service

- Stage, Podium and Sound System/Public Address System
- Divers and Cameras Normal Including (Underwater Camera)
- Fish Tank
- Fertilizer Bags
- Signage and Flags
- SAMSA Accredited Medical Practitioners
- Supply of Sanitary Bins and Toilets
- Perth Care Service
- Lock Smith
- Corporate Clothing
- Vessels and Small Boats Repair
- Trawl nets, Trawl Wrap ,Door net
- Gun Smoothing Kalgarding
- Furniture Removals
- Supply of Research Equipment
- Security Service and Access Control System
- Light and Heavy Vehicle Mechanicals
- Hazardous Waste Removal
- Health and Safety
- Travel Agencies and Shuttle Service
- Event organizers: Conferences and accommodation
- Training and workshops (Project management, customer service, computer training, finance & budgeting, performance management, strategic planning, organizational development and team building, change management, competency test, management development programme, Negotiation skills, presentation skills, professional coaching services)
- Suppliers of aircraft and Helicopters
- Professional services specializing in the following categories:**
- Financial auditing, Forensic Auditing,
- Feasibility studies, project implementation, determination of norms and standard for the Expanded Public Works Programme (EPWP), development of training programme related to the marine environment.
- Service providers who specializes in Waste Management, cleaner production and air quality, geotechnical investigation, archaeological survey, land survey, flood line investigation, environmental impact assessment, quantity survey, environmental engineering,
- Environmental reporting, geographic information systems and environmental journalists, research compilation and publication of various environmental impact management related to guidelines and public information material, integrated environmental planning, alternative dispute resolution, environmental law, legislation drafting, facilitation, integrated environmental management, sustainable development indicators and research,
- Environmental impact inspectors for Antarctica and Islands, environmental compliance, monitoring and auditing systems and software development, environmental crime risk and impact assessors, environmental crime liability assessors, environmental management authorization (e.g landfill permitting),
- Project management and community participation management skills related to community base Natural Resources and land degradation\desertification, researchers related to listing of species and ecosystems researchers in cultural heritage researchers, institutional and legal expert on Biodiversity and Heritage,
- Economic impact assessment, Human Resource analysis of needs in Environmental Marine sector,
- Environmental education specialist, researchers in environmental education, environmental law, environmental management, skills development, needs analysis, providers in capacity building, training

and education facilitators, project managers, developers of resource material, designers of posters and promotional plastics

5. In making a submission the following information is requested

- Range of service offered by your company and track record in the similar field of competence.
- Profile of your organization including ownership, shareholding, directors, staffing and BBBEE strategy.
- Registration with appropriate regulatory and professional bodies, SARS original tax clearance certificate. Certified copy of Partnership agreement, Certified copy certificate of Registration for Co-operative(CR10), Certified copy of certificate of incorporation(CM1) and Certified copy of CK1/CK2
- Proper Bank details of business and in case of the supplier using a cheque account a cancelled cheque must be attached if the supplier does not have a cheque book a original letter from the bank must be attached including certified copy of Identity Document
- In case of the supplier using savings or transmission account a letter from the bank is compulsory and the bank stamp must be endorsed(**Please note that account must be in the name of the supplier as no 3rd party payments are allowed**)
- Certified copy of trust Certificate/Trust Deeds. Share Certificates or BEE rating Certificate.
- Copy of certificate of acceptability for food safety (Catering companies only).

NB: IF THE ABOVEMENTIONED DOCUMENTS ARE NOT ATTACHED, THE COMPANY WILL NOT BE REGISTERED ON MARINE LIVING RESOURCE FUND SUPPLIER DATABASE

6. GENERAL

Payment of suppliers through electronic banking transfer is compulsory (banking details will be requested for payment). The person/company should be able to deliver to the Marine Living Resource Fund street address.

7 ENQUIRIES

Department Agriculture, Forestry & Fisheries
Fisheries Management
The Supply Chain Management Directorate
Private Bag X2
Vlaeberg, 8018.

Or Hand delivered / Deposited in the Bid Box situated at: Ground Floor,
Foretrust Building,
Martin Hammerschlag way
Foreshore.
Cape Town, 8001

ASD: Procurement
Ms Ncumisa Matiwane
Tel (021) 402- 3632
ncumisam@daff.gov.za

Database Admin
Ms Praba Naidoo
Tel (021) 402 -3435
praban@daff.gov.za

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICE

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	Is the bidder or any of its directors listed on the National Treasury's database as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	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)? To access this Register enter the National Treasury's website, www.treasury.gov.za click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 326 5445.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	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?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	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?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

SBD 8

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

DETAILS OF PERSON (S) AUTHORIZED TO ACT ON BEHALF OF THE SUPPLIER (Mandatory)

RESOLUTION OF OWNERS/DIRECTORS/MEMBERS/PARTNERS

RESOLUTION of a meeting of the Board of * Directors/Members /Partner/Owners of:

.....

.....
(Legally correct full name and registration number of the Enterprise, if applicable)

Held at (Place)

On..... (Date)

RESOLVED that:

1. The firm submits an application to the Marine Living Resource Fund for the registration on MLRF's Supplier Database Register.

2.*Mr/Mrs./Ms.....

in * his/her Capacity as :(Position in the Enterprise)

and who will sign as follows:.....

be, and is hereby ,authorized to sign any documents and/or correspondence in connection with and relating to the Application Form as well as to sign any contract including all documentation on behalf of the supplier.

No	Name	Capacity	Signature

Note:
1. Delete which is not applicable
2.NB.This resolution must be signed by all the Directors/Members/Partners and Owners of the Bidder Enterprise
3. Should the number of Director/Members/Partner and Owners exceed the space available above ,additional names and signatures must be supplied on a separate page

Enterprise Stamp

DECLARATION

By completing this application form, the Supplier declares that:

- 1 All the information supplied in this application is true and correct.
2. The Supplier will, without protest submit itself to the procedures instituted by the Marine Living Resource Fund
- 3 The Supplier will, if requested to do so supply further information and documentary evidence for scrutiny.
- 4 The Supplier will update their registration particular whenever a significant change in their details occurs.
5. The Supplier acknowledges that any false information provided can lead to disqualification from the Supplier Database Register and being listed on the Marine Living Resource Fund non-preferred supplier list.
6. The Supplier acknowledges that it can be penalized for poor performance as the Marine Living Resource Fund deems necessary.

Is there any relationship between your organization and any Marine Living Resource Fund employees?		Yes	No
If yes ,please specify nature of relationship and of person			
Family	Friend	Business Partner	
Full Name	Full Name	Full Name	

7. RETURNABLE DOCUMENTS (Certified copies are acceptable) (Compulsory)

General:	Yes	No	N/A
Documentary Proof of Firm's Registration			
Vat Registration Certificate			
Tax Clearance Certificate (Original and valid for a minimum of 12 months)			
PISRA(Applicable to suppliers the security industry)			
Certificate of Acceptability from Municipality(Applicable to suppliers providing Food and Catering Services)			
Medical Certificate (For Disability Status)			
Accreditation Certificate(Applicable to suppliers providing computer			
List of Towns where Goods and Services can be Supplied			
Commodity Categories			
Business Profile			
Suppliers Maintenance: Banking Information Detail			
Certified copies of green barcoded identity documents of owner(s) of company			
Bank Stamp (original) or cancelled cheque			
Copies of BEE or BBBEE Verification Certificate			

Duly authorized to sign on behalf of :.....(Name of Supplier)

The undersigned who warrants that he/she is duly authorized to do so on behalf of the supplier, confirms that the contents of the application are within my personal knowledge and are to the best of my belief both true and correct

Signature	Full Name	Capacity	Date

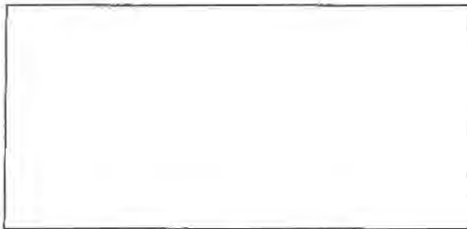
COMMISSIONER OF OATHS:

Signed and sworn to before me at(Place) on this theday ofby the Deponent, who has acknowledged that he/she knows and understands the contents of this Affidavit, that it is true and correct to the best of his /her knowledge and that he/she has no objection to taking the prescribed oath, and that the prescribed oath will be binding on his/her conscience.

Commissioner of Oaths.....

Name:.....

Stamp



Signature:.....

Note: All pages of this Affidavit must be initialed by both the Deponent and the Commissioner of Oaths.