

TERMS OF REFERENCE (TOR)

APPOINTMENT OF A SERVICE PROVIDER TO DEVELOP INFORMATION TECHNOLOGY CONTRACT TEMPLATES FOR THE PROCUREMENT INFRASTRUCTURE AND KNOWLEDGE MANAGEMENT (PINK) CAPACITY DEVELOPMENT PROGRAMME.

1. BACKGROUND INFORMATION

The National Treasury fulfils a pivotal role in the implementation and management of the Public Finance Management Act (PFMA) No 1 of 1999 as well as the Municipal Finance Management Act (MFMA) No 56 of 2003. The essence of both these Acts is to regulate financial management in the public sector at national and provincial levels and municipal level respectively. The PFMA as well as the MFMA are intended to ensure that all revenue, assets, liabilities and expenditures are managed effectively and efficiently and that the responsible officials are equipped with appropriate and necessary knowledge to adhere in a compliant manner to the intentions stipulated in the respective Acts.

It is widely accepted that reforms in South Africa at the legislative and policy levels have provided a framework conducive for improving financial management in the national, provincial and local spheres of government.

At the same time, it is evident that huge skills gaps exist within financial management cadres of the public service to implement the applicable legislation, policies and procedures to an acceptable level. A crucial element on government's financial management reform agenda would be to strengthen the individual and organisational capacity of government entities.

Accordingly, the National Treasury developed a comprehensive Capacity Development Strategy (CDS)¹ for Public Financial Management. The strategy provides a national perspective to address financial management capacity constraints in the public sector. These challenges include scarce skills; high levels of vacancies and staff turnover; a lack of suitable education, training and development programmes; limited knowledge management; inadequate monitoring and evaluation; ineffective performance management; non-adherence to legislation; poor audit results; and an absence of effective partnerships. Moreover, the strategy sets out four strategic objectives to address these challenges:

- Support the development of an enabling environment
- Enhance organisational capacity
- Develop and empower a corps of competent and committed high-performance employees
- Create an environment that enables and sustains mutually beneficial stakeholder relationships

1.1 The PINK CD Programme

The overall objective of the **Procurement Infrastructure and Knowledge Management Capacity Development Programme (PINK)** CD programme is 'increased cost effective, socially inclusive and sustainable service delivery at provincial and local government level'. To achieve this objective, the programme is aligned with the priorities of the National Treasury and aims to address two of the main causes of irregular, fruitless and wasteful expenditure within municipalities that impact significantly on their ability to provide basic services to all – weak procurement practices and poor infrastructure management. In addition, the programme is mindful of the low capacity within many municipalities (and

¹ More information can be obtained at <http://oag.treasury.gov.za/Pages/CapacityBuilding.aspx>.

some PTs) to make sense of and fully comply with all of the legislation, policies and guidelines already covering procurement and infrastructure management.

The overall objective of the PINK Programme will be achieved through three key result areas (KRA):

- **KRA 1 – More effective supply chain management (procurement) at local government level.**
- **KRA 2 – Enhanced infrastructure management (budgeting, planning and asset management) at local government level.**
- **KRA 3 - Crosscutting Activities – Knowledge Management and Peer Learning**

While the focus of the PINK Programme will be at local government level, all KRA's include support to National Treasury and some Provincial Treasuries to strengthen them in their (constitutional and legal) role to provide support to the municipalities. **To obtain the full benefits of the first two KRAs, Dynamic Knowledge Transfer and Peer learning plays a prominent role** which, together with the support to be provided to National Treasury in this regard, are included as **cross-cutting activities** for both KRA's.

SUMMARY OF THE ASSIGNMENT	
NAME OF PROJECT	Development of Information Technology Contract Templates
PROJECT NUMBER	1.7
PINK COMPONENT / KRA	KRA 1
INTERNAL CLIENT	OCPO
PROJECT LEAD	Galaletsang Matseliso
PROJECT TIMELINE	Eight Months

2. OBJECTIVE OF THE PROJECT

The National Treasury has developed Contract Management Framework (the Framework) to assist organs of state in managing their contracting process, protect state organs' interests as well as to get value or money from their contracts. The Framework further aims to assist organs of state to be able to conduct proper contract performance management. Commodity specific contracts enable the parties to ensure that there are systems in place for performance management tailor made for those specific commodities. The objective of the project is to develop standardised contract templates for **Software Development and its Support and Maintenance** for use by State Institutions.

3. SCOPE OF WORK

3.1 General scope of work

The service provider will be required to develop a template for a software development contract and its support and maintenance contract. The purpose is to address the following challenges that have been identified:

1. Lack of understanding of the intellectual property rights of state organs when service providers develop software solutions for them;
2. Inability to draft measurable service levels in IT contracts to enable proper management of service performance.
3. Roles and responsibilities of the contracting parties with regards to maintenance and support for solutions developed for the state; and
4. Payment milestones for services rendered.

3.2 Key Focus areas are:

The service provider is expected to undertake the following tasks:

- Develop an inception report that contains the methodology and a detailed project plan.
- Conduct consultations with all relevant stakeholders. The consultant in consultation with the Office of the Chief Procurement Officer (OCPO) will conduct thorough consultations with all relevant stakeholders including State Information and Technology Agency (SITA), Council for

Scientific and Industrial Research (CSIR) and the Companies and Intellectual Property Commission (CIPC).

- Research and benchmarking on local and international best practices. The consultant shall conduct research for best practices locally and internationally within the IT environment for the development of required contracts.
- Development of contract templates for IT environment for software development and its support and maintenance contract;
- Develop training toolkits including guidelines and tools to guide the use of contracts templates by municipalities;
- Train the one municipality and representatives from Provincial Treasury on the template and toolkits with OCPO and the 4 SCM advisors in municipality;
- For the other 7 pilot municipalities, the OCPO in conjunction with the SCM Experts placed at the pilot municipalities will do the roll out of the training of toolkits to the municipalities.
- Develop reports at the end of each stage of the process.
- Provide legal opinions to the OCPO on the contract development process and content as and when required by the OCPO relating to any related issues that may arise.
- Develop a close out report.

4. EXPECTED PROJECT OUTPUTS / DELIVERABLES

The expected outputs and deliverables for this project are as follows:

- Inception report with methodology and detailed Project Plan.
- Report on consultations with relevant stakeholders.
- Research and benchmarking on local and international best practices report.
- Contract templates for IT environment for software development and its support and maintenance contract
- Developed training toolkit including guidelines and tools (toolkit) on how to use the contract templates.
- Training of one Municipality together with representatives from the Provincial Treasury on the toolkits (including the template).
- Revision of template and toolkits and training material after the pilot if required.
- Interim reports at each stage of the project.
- Skills transfer to the OCPO on contract development process and content.
- Close out report.

5. ASSUMPTIONS, RISKS, MITIGATION STRATEGIES AND OPPORTUNITIES

Based on situational analysis, the following Risks, Assumptions and Mitigation measures were made:

Risks	Assumptions	Mitigation
Unavailability of key stakeholders: - State Information and Technology Agency (SITA), - Council for Scientific and Industrial Research; and - Companies and Intellectual Property Commission	Key stakeholders shall cooperate and support the project.	Include stakeholders as part of the project team. Each stakeholder to nominate a project champion.
Project will not be completed on time.	Key stakeholders will support the process. Project owners will sign off on completed deliverables within the timeframes.	Obtain buy-in from the key stakeholders Establish performance measurement metrics including among others, quality, timeliness to facilitate approvals of deliverables.

Risks	Assumptions	Mitigation
Deliverables do not meet the expected quality standards of National Treasury.	Service providers will work closely with the project owners to ensure that the expected deliverables are clear and meet the expected standards.	Proper monitoring of the project by the project owners and the project team. Establish a project management mechanism to monitor progress throughout the project cycle.
Budget overruns, scope creep	Service provider to agree on the budget and scope of work at the inception meeting.	Contract to be based on deliverables rather than days worked. Scope of work to be clarified and agreed upon by the service provider during inception phase of the project.

6. COORDINATION WITH OTHER ACTIVITIES / OTHER PROGRAMMES

PINK programme will work closely with the following programmes:

- MFIP III (NT funded programme), EU funded FMIP IV, GIZ GSP II;
- National Treasury's funded programme MFIP III the programme provides support to Local Government. The programme's focus is on the six game changers: Audit outcomes, Budgeting and Reporting, Asset Management, SCM, Revenue Management and MSCOA;
- The EU funded FMIP IV upcoming PFM Capacity Development Programme for Improved Service Delivery will include broad-scale education, training and development (ETD) solutions for PTs and municipalities on SCM;
- GIZ's Governance Support Programme (GSP) II programme only focused on selected municipalities in Mpumalanga and the Eastern Cape Provinces. GSP II conducted a comprehensive review of the SCM value chain per municipality;
- SECO funded project in iLembe District; and
- The British High Commission.

7. PROJECT LOCATION AND REPORTING

The appointed team is expected to work normal working hours at the National Treasury Offices situated at No 240 Madiba Street. It must be noted that the team proposed in the bid proposal must be the team that will render the services. The appointed team may be required to travel and all travel related expenses will be reimbursed at cost subject to the threshold outlined in the PINK project implementation manual document.

8. TIMEFRAME

The duration of this assignment shall be for the period of eight (8) months.

9. QUALIFICATIONS

The bidder **MUST** offer resources with a minimum of the following requirement:

- Law degree; and
- 10 (ten) years' experience in drafting and negotiations of commercial contracts with at least 5 (five) years proven experience in the negotiation and drafting of Information Technology contract.

10. PROFESSIONAL KNOWLEDGE, EXPERIENCE, SKILLS and QUALIFICATIONS

The service provider should have experience, expertise and knowledge in the following areas:

11. MINIMUM REQUIREMENTS OF THE KEY RESOURCE

The Key Expert should have at least the following:	Each member of the team should be in possession of one or more of the following qualifications. The collective team should possess all the required qualifications	Experience of the Tenderer (Lead Tenderer and Entities in JV, Consortium, Association, company.):
<ul style="list-style-type: none"> • Research capabilities; • Strong working experience in stakeholder consultations • 10 (ten) years' experience in drafting and negotiations of commercial contracts • At least 5 (five) years proven experience in the negotiation and drafting of Information Technology contract. 	<ul style="list-style-type: none"> • Law degree 	Tenderer's experience and track record in providing professional services related to the negotiation and drafting of information Technology contracts

12. The bidder MUST submit the CV's of the proposed resources on the templated provided herein and failure therein may result in disqualification of the bid. All CVs must be signed by the resources.

13. LANGUAGE SKILLS OF THE TEAM

- The experts are expected to be fluent in written and spoken English.

14. OFFICE EQUIPMENT AND LOGISTICAL ARRANGEMENT

The service provider will be responsible for the provisioning of their own computer equipment (portable computers etc.).

15. CONTRACTUAL ARRANGEMENTS

The appointed service provider will be contracted by the appointed implementing agent which is Ecorys. The service provider will not be allowed to replace any of the appointed expert/s during the course of the assignment without prior written approval from the implementing agent. The appointed service provider shall ensure that all suggested replacements meet the minimum requirements as stated in these ToRs.

16. MONITORING AND REPORTING

Monthly Progress reports against the approved work/project plan and specified key performance indicators will be compiled and submitted to the Supply Chain Management Long-term Expert (SCM LTE), the OCPO and the Programme Coordinator.

