

TERMS OF REFERENCE

1. INTRODUCTION

- 1.1 The Housing Development Agency (HDA) is a national public sector development agency that inter alia has the mandate to identify, acquire, prepare and develop suitable land for human settlements. The HDA also undertakes the programme and project management for development of housing and human settlements. The HDA carries out its functions in partnership with a range of stakeholders including national, provincial and local government and municipalities, as well as with communities, developers and financiers. Established in 2009, the HDA was established by an Act of Parliament in 2008 and is accountable through its Board to the Minister of Human Settlements. For more information about the HDA, please visit our website: www.thehda.co.za.

Follow us on Twitter @The_HDA and on Facebook: TheHDA.

2. BACKGROUND INFORMATION

a. STATUS QUO

The HDA procures construction related services and/or work and it is therefore, imperative that its employees who deal with and/or administer such contracts are conversant with such contracts and the terms and conditions that regulate the same.

b. PROBLEM STATEMENT

The legal department has identified that the root cause of the many litigation cases against the HDA is the result of poor contracts management.

c. PICTORIALS (if applicable)

N/A

3. OBJECTIVE OF THE PROPOSED PROJECT

The objectives of the proposed project are outlined in detail from the following sections:

a. DESIRED OUTCOMES FOR CARRYING OUT THE PROPOSED PROJECT

It is desired that the trainees: Project Managers, Development Managers, Financial Managers/employees, Corporate Legal Service Employees and the Supply Chain Management (SCM) Employees who will be undertaking this training, will be able to better equipped to understand the context and/or parameters and/or risks of the various Engineering and Construction Contracts (*FIDIC, NEC3, JBCC, PROCSA and GCC*) and/or will be able to adequately work within the ambit of the various Engineering and Construction Contracts. It is also hoped that better contracts management will be undertaken as a result of the said training.

b. PROJECT BENEFITS TO THE HDA

The project benefits will be:

- Minimising audit findings;
- Better contracts management; and
- Reduced litigation.

c. CURRENT MECHANISMS IN PLACE TO ADDRESS THE PROBLEM

None

4. SCOPE OF WORK AND AREAS OF FOCUS

a. SCOPE OF THE DESIRED SOLUTION

For training on the various Construction and Engineering Contracts namely: FIDIC, NEC3, JBCC, PROCSA and GCC to be administered to fifty-two(52) employees: twenty- six (26) Project Managers, six (6) Development Managers, seven (7) Financial Managers/Project Finance, four (4) members

of Corporate Legal Services and eight (9) members of Supply Chain Management (SCM).

The scope of work for this project shall entail the following activities:

b. DETAILS ON THE PREFERRED SOLUTION

As above

c. TARGETED AREA BY THIS PROJECT

- The HDA requires the services of a Training Service Provider (Service Provider) who will provide twenty- six (26) Project Managers, six (6) Development Managers, seven (7) Financial Managers/Project Finance, four (4) members of Corporate Legal Services and eight (9) members of SCM with training on Construction and Engineering Contracts. The total number of attendees being fifty-two (52).
- The aforesaid Construction and Engineering Contracts referred to are: *FIDIC, NEC3, JBCC, PROCSA and GCC*. The latter two (2) contracts being widely used in the South African built environment sphere.
- The training programme must be designed to ensure that the outcomes listed below (The Training Outcomes) are achieved and/or that the trainee/attendee is able to:
 - Identify the roles and responsibilities of the various participants and/or role players under: *FIDIC , NEC3, JBCC, PROCSA and GCC* contracts (The Contracts);
 - Explore the differences and similarities between The Contracts;
 - Make effective procurement choices from amongst The Contracts that are available for selection;
 - Gain a better understanding of the structure of The Contracts;
 - Obtain practical tips on the procurement and administration of The Contracts;
 - Gain an understanding of the processes applicable to The Contract variations, compensation events or claims for an extension of time and additional payment and the manner in which to prepare, to administer and to assess The Contracts;
 - Gain an overview of the dispute resolution mechanisms applicable

- under The Contracts;
- Provide an independent and critical overview of the key provisions of The Contracts;
- Focus on the provisions that might contain difficulties and may require amendment or supplementation;
- Highlight the similarities and/or differences between the Contracts;
- Critically analyse key contract administration provisions and the content of key contractual notices and correspondences;
- Highlight compliance and relevant governance requirements; and
- the potential risks and costs of non-compliance with contract provisions.

d. EXTENT AND COVERAGE OF THE PROPOSED PROJECT

The project will cover the following areas:

| DAY | TOPIC | ELEMENTS TO BE COVERED |
|-------|---|---|
| DAY 1 | The Legal Framework underpinning Engineering Contracts | <ul style="list-style-type: none"> • The general and particular provisions applicable to engineering and construction Contracts and their interpretation; • Engineering contracts and the law of property, delict and Occupational, Health and Safety; and • Contracts as projects and business management and governance tools. |
| DAY 1 | FIDIC Introduction to the FIDIC “family of contracts | <ul style="list-style-type: none"> • The FIDIC ‘Rainbow’ and which contracts are applicable to which projects; • Distinguishing the features of each contract; • Selection of the appropriate contract for particular project and its needs; and • Role players and/or participants |

| | | |
|-------|---|---|
| | | under FIDC and contracts. |
| Day 1 | Preparation of FIDIC Contracts | <ul style="list-style-type: none"> • Structure of contracts; • Contents to the Appendix to Tender; • Amendments and supplementary provisions in the Particular Conditions of Contract and other contract documents; and • Specifications, drawings, employers requirements and contractors proposals. |
| Day 1 | FIDIC and change control: Time, Scope and Costs & Profits | <ul style="list-style-type: none"> • Communication types and contents; • Establishing commencement, access and completion dates; • Instructions and variations; • Claims for extension of time; • Claims for additional costs and profit; • Procedures and grounds for claiming extension of time and/or additional payment; • How to properly prepare and quantify claims; and • Assessment of claims. |
| Day 1 | Disputes & Termination | <ul style="list-style-type: none"> • The dispute resolution process under FIDIC contracts and its termination provisions. |
| Day 1 | The modern contracts – Introduction to the NEC “family of contracts” | <ul style="list-style-type: none"> • NEC3 and Achieving Excellence in Construction (AEC) principles; • Flexibility, clarity and project management; • The “Toolkit” Core + main options and secondary options; • Preparation and use of the NEC contract data (Part 1 and 2); |

| | | |
|-------|---|--|
| | | <ul style="list-style-type: none"> • Preparing and use of the works information; and • The Risk Register. |
| Day 1 | Payment, Time and Change Management | <ul style="list-style-type: none"> • The accepted program and its contractual relevance; • Early warnings and the consequence of failing to give early warnings; • Instructions, certificates and other required communications; • Compensation events, their notification, content and assessment; • Use and applicability of the Schedule of Cost; and • Components. |
| Day 1 | Disputes & Termination | <ul style="list-style-type: none"> • The dispute resolution and termination processes under NEC contracts. |
| Day 1 | Differences between the GCC 2010 (second Edition) and the new third edition GCC 2015 | <ul style="list-style-type: none"> • GCC 2015 documentations and SANS tenders; • Overview and structure of the GCC; and • Completing contract data and the form of offer and acceptance. |
| Day 1 | Payment Time and Change Management | <ul style="list-style-type: none"> • Communication and notices; • Scope change, variation orders, deemed variation orders and supplementary agreements; • Physical conditions, technical & site information; • Resolving ambiguity and 'dissatisfaction claims' - disputes relating to interpretation; • Time and money claims; |

| | | |
|-------|---|---|
| | | <ul style="list-style-type: none"> • Payment, security and performance guarantees; and • Vesting of plant and materials. |
| Day 1 | Disputes and Termination | <ul style="list-style-type: none"> • Disputes and 'dissatisfaction claims'; and • Settlement, adjudication, arbitration and litigation. |
| Day 1 | Overview and use of the JBCC Principal Building Agreement (Edition 5.0 July 2007) Comparisons with JBCC 6.1 PROCSA | <ul style="list-style-type: none"> • Overview of changes brought about by the new JBCC Principal Building Agreement; • Preparation of the various contract documents (including the Contract Data); • Obligations of the employer; and • Obligations of the contractor. |
| Day 1 | Administration of the Contract | <ul style="list-style-type: none"> • Role of the Principal Agent; • Contract instructions; and • Use of the programme. |
| Day 1 | Time and Change Management | <ul style="list-style-type: none"> • Claims for an extension of the date for practical completion; • Claims for changes to the contract value and time; • Claims for contract value - grounds, procedures, compilation and assessment thereof; and • Other claims. |
| Day 1 | Disputes | <ul style="list-style-type: none"> • The dispute resolution and termination process under the JBCC PBA; and • The dispute resolution process under FIDIC contracts & termination provisions |
| DAY 2 | The Legal Framework underpinning Engineering Contracts | <ul style="list-style-type: none"> • The general and particular provisions applicable to engineering and construction Contracts and their |

| | | |
|-------|--|---|
| | | <p>interpretation;</p> <ul style="list-style-type: none"> • Engineering contracts and the law of property, delict and Occupational, Health and Safety; and • Contracts as projects and business management and governance tools. |
| DAY 2 | FIDIC Introduction to the FIDIC “family of contracts | <ul style="list-style-type: none"> • The FIDIC ‘Rainbow” and which contracts are applicable to which projects; • Distinguishing the features of each contract; • Selection of the appropriate contract for particular project and its needs; and • Role players and/or participants under FIDC and contracts. |
| Day 2 | Preparation of FIDIC Contracts | <ul style="list-style-type: none"> • Structure of contracts; • Contents to the Appendix to Tender; • Amendments and supplementary provisions in the Particular Conditions of Contract and other contract documents; and • Specifications, drawings, employers requirements and contractors proposals. |
| Day 2 | FIDIC and change control: Time, Scope and Costs & Profits | <ul style="list-style-type: none"> • Communication types and contents; • Establishing commencement, access and completion dates; • Instructions and variations; • Claims for extension of time; • Claims for additional costs and profit; |

| | | |
|-------|---|--|
| | | <ul style="list-style-type: none"> • Procedures and grounds for claiming extension of time and/or additional payment; • How to properly prepare and quantify claims; and • Assessment of claims. |
| Day 2 | Disputes & Termination | <ul style="list-style-type: none"> • The dispute resolution process under FIDIC contracts and its termination provisions. |
| Day 2 | The modern contracts – Introduction to the NEC “family of contracts” | <ul style="list-style-type: none"> • NEC3 and Achieving Excellence in Construction (AEC) principles; • Flexibility, clarity and project management; • The “Toolkit” Core + main options and secondary options; • Preparation and use of the NEC contract data (Part 1 and 2); • Preparing and use of the works information; and • The Risk Register. |
| Day 2 | Payment, Time and Change Management | <ul style="list-style-type: none"> • The accepted program and its contractual relevance; • Early warnings and the consequence of failing to give early warnings; • Instructions, certificates and other required communications; • Compensation events, their notification, content and assessment; • Use and applicability of the Schedule of Cost; and • Components. |

| | | |
|-------|--|--|
| Day 2 | Disputes & Termination | <ul style="list-style-type: none"> • The dispute resolution and termination processes under NEC contracts. |
| Day 2 | Differences between the GCC 2010 (second Edition) and the new third edition GCC 2015 | <ul style="list-style-type: none"> • GCC 2015 documentations and SANS tenders; • Overview and structure of the GCC; and • Completing contract data and the form of offer and acceptance. |
| Day 2 | Payment Time and Change Management | <ul style="list-style-type: none"> • Communication and notices; • Scope change, variation orders, deemed variation orders and supplementary agreements; • Physical conditions, technical & site information; • Resolving ambiguity and 'dissatisfaction claims' - disputes relating to interpretation; • Time and money claims; • Payment, security and performance guarantees; and • Vesting of plant and materials. |
| Day 2 | Disputes and Termination | <ul style="list-style-type: none"> • Disputes and 'dissatisfaction claims'; and • Settlement, adjudication, arbitration and litigation. |
| Day 2 | Overview and use of the JBCC Principal Building Agreement (Edition 5.0 July 2007) Comparisons with JBCC 6.1 PROCSA | <ul style="list-style-type: none"> • Overview of changes brought about by the new JBCC Principal Building Agreement; • Preparation of the various contract documents (including the Contract Data); • Obligations of the employer; and • Obligations of the contractor. |

| | | |
|-------|---------------------------------------|--|
| Day 2 | Administration of the Contract | <ul style="list-style-type: none"> • Role of the Principal Agent; • Contract instructions; and • Use of the programme. |
| Day 2 | Time and Change Management | <ul style="list-style-type: none"> • Claims for an extension of the date for practical completion; • Claims for changes to the contract value and time; • Claims for contract value - grounds, procedures, compilation and assessment thereof; and • Other claims. |
| Day 2 | Disputes | <ul style="list-style-type: none"> • The dispute resolution and termination process under the JBCC PBA; and • The dispute resolution process under FIDIC contracts & termination provisions |

- Please note that the Service Provider is not limited to the above training aspects and the Service Provider may expand on the aforesaid topics, provided that The Outcomes of the Training are achieved.
- The Service Provider must further be able to provide the following:
 - Accredited training (NQF accredited training based on South African Qualifications Authority (SAQA));
 - training/course material per attendee;
 - a certificate to confirm attendance; and
 - a recording of the training session at the conclusion of the programme.
- **Please note should the training not be accredited with SAQA than same will be a disqualifying criterion.**
- It will be advantageous if the course will afford the employees CPD points.

- The Service Provider must also be able to provide an external venue and should ensure that a virtual link is created to ensure that project managers in other provinces are able to attend as well.

e. **OTHER RELATED PROJECTS**

The following projects have been identified as related to this proposed project:

N/A

5. SPECIFICATION OF THE WORK OR PRODUCTS OR SERVICES REQUIRED

The Scope of Work is as indicated under the Targeted Area of the Project and the Extent and Coverage of the Proposed Project.

| ITEM | DESCRIPTION | QUANTITY | LUMP SUM |
|-----------------------------------|--|-------------|----------|
| 1 | DAY 1 | 40% | |
| | <ul style="list-style-type: none"> • Covering topics listed under Day 1 | | |
| 2 | DAY 2 | 40% | |
| | <ul style="list-style-type: none"> • Covering topics listed under Day 2 | | |
| 4 | Certificate to confirm attendance | 10% | |
| | Sub –Total | 100% | |
| Grand Total (Incl 15% Vat) | | | |

6. TIME FRAMES / PROGRAMS

The Service Provider is expected to undertake the training in two sessions of two (2) days each on separate dates and split into groups of twenty-five (25) and twenty-six (26) employees in October 2023.

7. EVALUATION METHODOLOGY

7.1. TRANSFORMATION PROCUREMENT

- a. THE HDA may transform its procurement spend by utilising the specific Goals

7.2 EVALUATION PROCESS

Interested bidders for this project shall be evaluated in terms for their administrative responsiveness, substantive responsiveness, technical/functional (capacity testing) evaluation and preference points. The evaluation committee shall use the following Evaluation Criteria depicted in table 2 below for the selection of the preferred bidder that shall render / deliver the required works, goods and / or services.

| EVALUATION PROCESS | |
|-------------------------------|---|
| Stage 1 | |
| Compliance | Administrative Responsiveness |
| | Substantive responsiveness (mandatory) |
| Stage 2 | |
| Technical/Functional Criteria | Testing of capacity – meet minimum threshold of 70% |
| Stage 3 | |
| Preference Points | |
| Price | 80 |
| Specific Goals | 20 |
| TOTAL | 100 |

Table 2 – evaluation process

7.2.1 STAGE 1 - Administrative and Substantive Responsiveness (BEC to determine the If a supplier / bidder do not submit the following documents the Proposal will be disqualified automatically: (this list is not exhaustive).

Mandatory Requirements

Stage 1A- Mandatory Requirements

If you do not submit the following documents your tender will be

automatically disqualified:

If you do not submit the following documents your Proposal will be disqualified automatically:

| No. | DESCRIPTION OF REQUIREMENT | |
|-----|--|--|
| a) | Signed Joint Venture , Consortium Agreement or Partnering Agreement (whichever is applicable – if applicable) | |
| b) | Proof of Training accredited by South African Qualifications Authority (SAQA) | |

Stage 1B Basic Compliance

If you do not submit the following basic compliance documents and should an award be made, these basic compliance documents must be made available within seven (7) days, failing which the award will be recalled.

| No. | Description of requirement | |
|-----|--|--|
| a) | Letter of Good Standing: COID | |
| b) | CSD Report | |
| C) | Completion of ALL RFP documentation (includes ALL declarations required) | |

Table 3 – Administrative Compliance

Table 3 – Administrative Compliance

7.2.2 STAGE 2 - Technical / Functionality Requirements

Qualifying bidders shall be evaluated on technicality / functionality after meeting all compliance requirements outlined above. The minimum threshold for the technical/functionality requirements is 70%. Bidders who score below

the minimum requirement shall not be considered for further evaluation in stage 3.

Summary of the technical/functional requirements are presented in the table 4 below.

| ITEM | CRITERIA | WEIGHT |
|------|------------------------------|------------|
| 1 | Methodology | 30 |
| 2 | Project Plan/Lesson Plan | 25 |
| 3 | Company Experience | 10 |
| 4 | Experience of the Presenters | 15 |
| 5 | Portfolio of Evidence | 20 |
| | TOTAL | 100 |

Table 4: Technical Evaluation Criteria

Details of the scoring methodology presented above are outlined below :

0 = no information submitted/no relevant information submitted, 1 = Poor information submitted, 2 = Fair/average, 3 = Good, 4 = acceptable or very good and 5 = Excellent.

| CRITERIA | SUB CRITERIA | WEIGHT | SCORES |
|--------------------|---|------------------|-----------|
| Methodology | Two presenters (15 points) | 15 points | 30 |
| | One presenter (05 points) | | |
| | Ability to concisely indicate the methods aimed to design and implement training on the subject matter (with reference as to how the Training Outcomes in 4c will be achieved). (5 points) | 5 points | |
| | Ability to include: blended learning and a combination of theory and practical's | | |

| CRITERIA | SUB CRITERIA | WEIGHT | SCORES |
|-------------------------------------|--|---|---------------|
| | together with a component of group work which is able to be administered online (through meeting rooms) and at the venue. (10 points) | 10 points | |
| Project Plan/Lesson Plan | The project plan/lesson plan and programme must include the timelines that will cover the topics in 4d above | 20 points | 20 |
| | Further relevant topics suggested by Service Provider. | 5 points | 5 |
| Company Experience | Company Profile of which the bidder demonstrating experience in conducting training on relevant engineering and Construction Contracts. | 10 points – 10 years' (Bidder) 07 points – 5 -7 years' experience (Bidder) 06 points More than 7 years' experience and less than 10 years 05 points less than 05 years' experience | 10 |
| Experience of the Presenters | CV's of the Presenters demonstrating relevant Experience. An attorney with BProc or LLB with a minimum of 5 years' experience as a training facilitator is required. Presenter must be registered with ECSA as a Professional Engineer (Pr. Eng.). | 15 points – 10 years' experience (Presenter) 10 points – 7 - 9 years' experience (Presenter) 5 points - 0 - 6 years' experience (Presenter) | 15 |

| CRITERIA | SUB CRITERIA | WEIGHT | SCORES |
|------------------------------|---|---|------------|
| | (Certified copies of the qualifications to be Attached) | | |
| Portfolio of Evidence | Proven track record of training being previously carried out on same or similar topics. Bidders to attach copies of letters of appointment and corresponding reference letters. | <p>20 points – 05 Letters of Appointment and corresponding reference letters.</p> <p>15 points – 04 Letters of Appointment and corresponding reference letters.</p> <p>10 points - 03 Letters of Appointment and corresponding reference letters.</p> <p>07 points - 02 Letters of appointment and corresponding reference letters.</p> <p>05 points - 01 Letter of appointment and corresponding reference letters.</p> | 20 |
| Total | | | 100 |

Table 5: Detailed scoring methodology

7.2.3 STAGE 3 - PRICING AND SPECIFIC GOALS

Include or attach detailed pricing schedule

The following formula shall be used by the Bid Evaluation Committee to score potential bidders on pricing:

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

Where:

Ps = Points scored for the price of tender under consideration;

Pt. = Rand value of the tender under consideration;

Pin = Rand value of the lowest acceptable tender.

The minimum qualifying criteria for pricing is 80 points as per the standard Evaluation Criteria presented in table 2 above.

Specific Goals component of the evaluation process is weighted at 20 points in table 2 of the standard Evaluation Criteria outlined above. Bidders will be awarded points based on the points claimed for specific goals presented in the SBD 6.1 issued with the tender. Details of the allocation of points by the Evaluation Committee are presented in table4 above.

| The Specific Goals allocated points in terms of this tender | Number of Points | Proof / Documentation required to Claim Points for Specific Goals |
|--|------------------|---|
| Size of Company (Maximum points = 7 points) | | |
| • EME | 7 | CSD and Sworn Affidavit |
| • QSE | 5 | CSD and Sworn Affidavit |
| • GE or others | 3 | Letter from Auditors or Authorised person confirming annual turn over |
| Black Women Owned (Maximum points = 5 points) | | |
| 75% - 100% | 5 | CSD and Sworn Affidavit |
| 51% - 74.99 - | 3 | CSD and Sworn Affidavit |
| Below 51% | 1 | CSD and Sworn Affidavit |
| Historically Disadvantaged South Africans* (maximum Points 2) | 2 | CSD |
| Youth (Maximum points 3) | 3 | CSD and Sworn Affidavit |
| Disabled People | 3 | CSD and Sworn Affidavit |

Table 6: Specific Goals Evaluation (80/20)

| The Specific Goals allocated points in terms of this tender | Number of Points | Proof / Documentation required to Claim Points for Specific Goals |
|---|------------------|---|
| Black Women Owned (Maximum points = 4 points) | | |
| 75% - 100% | 4 | CSD and Sworn Affidavit |
| 51% - 74.99 - | 2 | CSD and Sworn Affidavit |
| Below 51% | 1 | CSD and Sworn Affidavit |

| The Specific Goals allocated points in terms of this tender | Number of Points | Proof / Documentation required to Claim Points for Specific Goals |
|--|------------------|---|
| <i>Historically Disadvantaged South Africans* (maximum Points 2)</i> | 3 | CSD |
| <i>Youth (Maximum points 3)</i> | 2 | CSD and Sworn Affidavit |
| <i>Disabled People</i> | 1 | CSD and Sworn Affidavit |

Table 7: Specific Goals Evaluation (90/10)

***Historically disadvantaged South Africans refers to any person, category of persons, or communities disadvantaged by unfair discrimination before the constitution of the Republic of SA, 1993 (ACT No. 2000 of 1993 come into operations.**