

RESEARCH ON THE RATIONALE AND REASONABLENESS OF THE REQUIREMENT FOR SHAREHOLDING BY LOCAL PREVIOUSLY DISADVANTAGED INDIVIDUAL'S (PDI)

1. INTRODUCTION AND BACKGROUND

- 1.1 The Eastern Cape Gambling and Betting Board ("the Board") is a statutory body established by the Eastern Gambling and Betting Act, 1997 (Act No.5 of 1997) (as amended) ("the Act").
- 1.2 The mandate of the Board is to regulate or control all gambling activities within the Eastern Cape Province ("the Province"). This includes the issuing and revocation of gambling licenses, exclusion of problem gamblers, and protection of the public against unscrupulous gambling practices and control of illegal gambling activities in the Province.
- 1.3 The Board has authorised the investigation of the rationale and reasonableness of the requirement that a percentage of the shareholding of an applicant or a holder of a gambling licence must be held by previously disadvantaged individuals ("PDIs") who are inhabitants of the Province ("the local PDI requirement").

2. RATIONALE FOR UNDERTAKING THIS RESEARCH

- 2.1 The rationale to conduct this research or survey assignment is informed by the following:-
 - 2.1.1 The Board is empowered in terms of the National Gambling Act, No. 7 of 2004 to impose reasonable and justifiable conditions on a licence to inter alia address black economic empowerment ("BEE") and that it may apply the Codes of Good Practise ("the Codes") to determine qualification criteria for the issuing of a licence;
 - 2.1.2 The Broad-Based Black Economic Empowerment Act, No. 53 of 2003 ("the B-BBEE Act") and the Codes only prescribe the minimum qualification requirements and not the maximum to address BEE. They also do not outlaw the imposition of reasonable and justifiable conditions to address BEE;
 - 2.1.3 The Board is accordingly empowered to require that a percentage of the shareholding of an applicant for a gambling licence must be held by PDIs who are all local inhabitants as a reasonable and justifiable condition to meaningfully empower PDIs who are local inhabitants.
- 2.2 The Board has also considered the following pillars of economic development, transformation and empowerment for Province to strengthen BEE:
 - 2.2.1 the participation of local PDIs in the ownership structure of gambling operations in the Province.
 - 2.2.2 the participation of local PDIs in the management control of gambling operations in the Province.
 - 2.2.3 the training and development of local PDIs to partake in gambling operations in the Province.

Board Members: V. Fredericks; Adv N Mayosi (Chairperson); A Mfenyana; N Mlenzana; O Mtati (Deputy Chairperson); M Vena; Dr P Voges; P White; RM Zwane (Chief Executive Officer)

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- 2.3 The Board does not have a codified policy on the imposition of requirements to promote BEE that informs its position on the local PDI requirement. The Board has accordingly been advised to investigate the rationale and reasonableness of the imposition of the local PDI requirement and thereafter to take a decision on its requirements for BEE and codify them accordingly.
- 2.4 The Board's decision must be underpinned by an objective rationale that would support the legitimate purpose that the local PDI requirement seek to serve. This will obviously have to be transformation and the potential social-economic impact on the community in the Province. The measures to achieve this purpose must be reasonable and justifiable. The measures must also be viable. The Board will have to carefully balance the adverse and beneficial effects of the local PDI requirement. It will also have to consider the potential impact that the local PDI requirement would have on PDIs that will be excluded from its application.
- 2.5 The outcome of this research will be utilised by the Board to develop and adopt a codified policy on the imposition of requirements to promote BEE.

3. DELIVERABLES

- 3.1 **The Board is looking for a service provider / company / organisation or an institution of higher learning to research, investigate and provide a comprehensive report on the following:**
 - 3.1.1 The assessment of the impact of the local PDI requirements by considering the past (prior to the imposition of the BEE requirement) with the current practice and the future practice.
 - 3.1.2 Details of the imposition of similar local PDI requirements in other provinces Gambling PLA and in other sectors of the economy.
 - 3.1.3 The impact of the local PDI requirement on licensees who are JSE listed entities and who have no control over their shareholding and measures to address the 3.1.1 & 3.1.2 above.
 - 3.1.4 A comparison between the wide application (current definition of local) and the narrow application of the requirement (former definition of local).
 - 3.1.5 A comparative analysis between areas in the Province where the local PDI requirement applies and where it does not apply.
 - 3.1.6 The motivation of the differentiation between the percentage shareholding of local PDI's for various licenses in the Province.
 - 3.1.7 The assessment of the monetary value of the local PDI requirements on shareholders in the Province;
 - 3.1.8 The socio-economic impact of the local PDI requirements, e.g. the local community in Mbizana; and
 - 3.1.9 The preparation of case studies of selected PDIs to showcase and consider the impact of the local PDI requirements. The case study should comprise of at least one example in the Province and another outside the Province as a measure to compare the effect of a local PDI requirement (the selection of the candidates for the aforesaid study is subject to the approval of the Board)
- 3.2 The appointed service provider will be provided with more detailed information, including, but not limited to, the legal opinions obtained by the Board. The appointed service provider will be guided by the Board's Legal services Manager in respect of the deliverables.
- 3.3 The service provider will be required to conclude a confidentiality agreement with the Board.

4 RESEARCH METHODOLOGY AND RESEARCH INSTRUMENTS

- 4.1 The appointed service provider will be required to detail a clear research methodology and project plan that will be utilised to conduct the research assignment.
- 4.2 All the necessary instruments that will be utilised to conduct this research assignment based on the accepted research protocols will be also considered.
- 4.3 The methodology will form part of the deliverables that will be used to measure the suitability of a preferred Service Provider to conduct this work.

5 TIMELINES FOR THE PROJECT

- 5.1 A service provider / company / organisation or an institution of higher learning that is appointed to conduct this assignment is expected to complete this work within a period of three (03) months from the date of appointment.

6 BID EVALUATION PROCEDURES

The following are key criteria that will be used in appointing the successful service provider:

- a. **THRESHOLD:** Bids will be evaluated on **80/20** principle as prescribed in the Preferential Procurement Policy Framework Act Regulations 6 of 2017.
- b. Bids will be considered and evaluated in a two staged approach.
- c. During the first stage, bidders will only be evaluated on functionality, and only qualifying service providers who meet the minimum requirements for functionality will be allowed to proceed to the second stage where scoring will be done on 80 points for price and 20 points for B-BBEE Status Level of Contribution.
- d. Bidders are required to submit their bids in two envelopes with the first envelope outlining the functionality. The first envelope must be clearly marked Stage 1; Functionality.
- e. Furthermore, bidders are required to include their pricing in a second sealed envelope marked Stage 2; Price, which must also include their B-BBEE status level of contribution.
- f. Only bidders who meet the minimum of **75 points** on functionality during the evaluation of Stage 1 will proceed for scoring in Stage 2.

STAGE 1: FUNCTIONALITY EVALUATION

FUNCTIONALITY	MAXIMUM POINTS
<p>A. Company's experience on research projects/contracts</p> <ul style="list-style-type: none"> • 6 or more Projects/Contracts = 20 points • 5 or more Projects/Contracts = 15 points • 4 or more Projects/Contracts = 10 points • 3 or more Projects/Contracts = 05 points <p><i>Bidders are required to submit letters of reference from previous contracts to substantiate all projects/contracts claimed with contactable references and nature of service.</i></p>	20
<p>B. Team members (Senior Researcher; Researcher; Data Analyst; Data Collector & Research Report Validator) experience on research projects/ contracts</p> <p>Senior Researcher / Project Manager</p> <ul style="list-style-type: none"> • 5+ research projects/contracts = 20 points • 4 research projects/contracts = 15 points • 3 research projects/contracts = 10 points • 2 research projects/contracts = 05 points <p>Researcher</p> <ul style="list-style-type: none"> • 5+ research projects/contracts = 20 points • 4 research projects/contracts = 15 points • 3 research projects/contracts = 10 points • 2 research projects/contracts = 05 points <p>Data Analyst</p> <ul style="list-style-type: none"> • 5+ research projects/contracts = 15 points • 4 research projects/contracts = 10 points • 3 research projects/contracts = 05 points • 2 research projects/contracts = 03 points <p>Data Collector</p> <ul style="list-style-type: none"> • 5+ research projects/contracts = 10 points • 4 research projects/contracts = 07 points • 3 research projects/contracts = 04 points • 2 research projects/contracts = 02 points <p>Detailed CVs of team members who will be directly involved in providing the required service must be submitted in order to confirm the above</p>	65
<p>C. Methodology</p> <p>Bidders are required to provide and submit with their bid documents:</p> <p>A detailed Methodology</p> <ul style="list-style-type: none"> • Planning = 3 • Analysing = 3 • Quality control = 3 • Feedback = 3 • Deliverables and regular liaison/communication with ECGB) = 3 <p>The more likely the bidder is to be able to execute the contract successfully, the more points will be allocated.</p>	15
TOTAL POINTS	100

STAGE 2

PREFERENTIAL PROCUREMENT REGULATIONS OF 2017 WILL APPLY:

Price and B-BBEE Status points will be calculated as described in the Preferential Procurement Regulation 2017. SBD 6.1 Form must be used to claim B-BBEE Status level of the company.

NB: Certified copy or original B-BBEE Status Level Verification Certificate must be submitted to substantiate B-BBEE Status Claimed. When such certificate is not provided as proof the company will automatically score zero.

Table 2: Points available per criteria in Stage 2

CRITERIA		POINTS
BID PRICE		80
B-BBEE CONTRIBUTION LEVEL		20
1	20	
2	18	
3	14	
4	12	
5	8	
6	6	
7	4	
8	2	
Non-compliant contributor	0	
TOTAL		100

7 Special Conditions

Your written proposal must contain the following information:

- The completed Tender Submission forms attached to these terms of reference. Please ensure the full completion of these original forms. **Failure to complete these forms will result in the non-acceptance of your proposal.**
- An original or certified copy of BBBEE status if applicable is required in order to qualify for preference points
- An original and current/valid South African Revenue Services (SARS) Tax Clearance Certificate or unique security Personal Identification Number (PIN) from SARS must be submitted. **If the bidder does not meet this requirement, it will be automatically disqualified.**
- CVs of designated personnel who will be working on the assignment.
- Letters of References where such services have been previously conducted.

8 Briefing Session

Compulsory Briefing session will be held on _____ at 10:00 in the ECGBB's offices.

NB: Bidders who do not attend the compulsory briefing session will not be considered.

9 Contact Details

Enquiries concerning SCM and completion of SBD forms:

Name: Thandi Malotana
E-mail: thandazwam@ecgbb.co.za
Tel no.: 043 – 702 8307

Enquiries concerning Terms of reference:

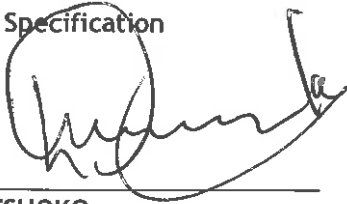
Name: Mr. Bonga Jaxa
E-mail: bongaj@ecgbb.co.za
Tel no.: 043 – 702 8300

Bid Specification

Recommended

/

~~Not Recommended~~



L. TSHOKO
CHAIRPERSON: BID SPECIFICATION COMMITTEE

DATE: 28 / 06 / 2017

Bid Specification

Supported

/

Not Supported



R.P. HILL
CHIEF FINANCIAL OFFICER

DATE: 29 / 6 / 2017

Bid Specification

Approved

/

~~Not Approved~~



R.M. ZWANE
CHIEF EXECUTIVE OFFICER

DATE: 20 / 07 / 2017