
TERMS OF REFERENCE FOR APPOINTMENT OF A SERVICE PROVIDER TO AUDIT AND MEASURE THE EXTENT OF BROAD-BASED BLACK ECONOMIC EMPOWERMENT (B-BBEE) AT PETROLEUM RETAIL LEVEL, FOR DEPARTMENT OF ENERGY (DOE) FOR A PERIOD OF SIX (6) MONTHS

1 BACKGROUND

1.1 The Petroleum Products Amendment Act, (Act No 58 of 2003) (PPAA) requires the operationalisation of Section 2B and that the Petroleum Controller must give effect to Section 2C. Section 12C authorises the Minister of the Department of Energy to make specific regulations and also prescribe a system for site and retail allocation to effect economic transformation as provided for by Section 2E or the PPAA.

1.2 The Liquid Fuels Charter (LFC) as promulgated with the Petroleum Products Act of 2003 calls for the Department of Energy to conduct annual surveys of the petroleum industry in order to evaluate progress in achieving the economic transformation imperatives of the Energy White Paper of 1999. These surveys would require data from the industry in order to determine, amongst others:

1.2.1 Ownership,

1.2.2 Management Control,

1.2.3 Employment Equity,

1.2.4 Enterprise Development;

1.2.5 Procurement;

1.2.6 Skills Development.

- 1.3 Such surveys have been successfully conducted during early 2000s and once again in 2010, with the results published in 2012 – " *Petroleum and Liquid Fuels Charter Final Audit Report - 5th August 2011*", available on http://www.energy.gov.za/files/media/Pub/PetroleumAndLiquidFuelsCharter_AuditReport.pdf
- 1.4 This report found that 78% of national volumes on transient are pumped by White retailers and 22 % by Indian retailers. One of the shortcomings of this audit was that the data was based only 4 (four) Oil Major Companies in the downstream except for Sasol and Shell were unable to provide information with regards to the prescribed format. Another shortcoming was that the audit was based only on signatories to the Liquid Fuel Charter and not measuring the extent of B-BBEE in retail in Companies Owned Dealer Operated (CODO), retail owned, retailer operated and only focused on aggregated volumes pumped by different racial groups.
- 1.5 The Department recognises that there are challenges or impediments to meaningful economic transformation as most of the site and retail license applications are changing ownership and in most cases, from either black to white or Indians. Against this backdrop, progress made in addressing inequalities in the petroleum sector when compared with the previous audit conducted in 2010 could have been reversed significantly. In addition there has been a spike in requests for equity transfer which has significant implications on the changes made on ownership structures of already approved license applications.
- 1.6 Following this, there is a dire need for a baseline survey of the current state of B-BEEE in the Petroleum Retail part of the value chain. It is critical for the department to establish a baseline to inform the revised economic empowerment framework through an audit of all oil companies, retailing petroleum products, to deliver on its mandate in expediting radical economic transformation.

- 1.7 Realising the national need for transformation and the slow progress thereto, the Minister of Energy in her Budget Vote Speech 2015 committed to conduct an audit of retail ownership by each oil company to establish a baseline to inform the new empowerment framework that will effect radical economic transformation in the petroleum sector.
- 1.8 The Minister also highlighted that the Codes of Good Practice (CoGP) for Broad-Based Black Economic Empowerment (B-BBEE) must be supported by all and be given a chance for implementation for 2015/16 financial year. The Minister emphasised the need to work together with the Department of Trade and Industry, as well as Industry Stakeholders, so as to identify areas that require a sector specific dispensation once the codes have been allowed at least 12 (twelve) months of implementation.
- 1.9 To be in a position to mitigate the slow pace of economic transformation in petroleum retail of the value chain, an updated audit must be conducted. The audit will enable DoE, industry interest groups, policy makers and a country as whole to track the nature and the extent of B-BBEE over time. All individual SAPIA member companies in the petroleum retail chain; Independent suppliers to non-branded sites; Petroleum Retailing Agricultural Cooperatives and Petroleum Retail Associations must play a critical role during the audit process to ensure that at least more than 95 % of petroleum retailers operating in South Africa are audited.
- 1.10 This is critical to provide a baseline data to inform retail empowerment framework and will also make it possible for the system for allocation of licenses in terms of Section 2E of the PPAA.

2E. (1) *The Minister must prescribe a system for the allocation of site and their corresponding retail licences and the supply of prescribed petroleum products to such licensees, by which the Controller of Petroleum Products shall be bound, Provided that the Controller of Petroleum Products shall only be bound by the provisions of such a system for the period set out in that regulation or any amendment thereto or any substitution thereof which period may not exceed 10 years from the date of commencement of that regulation.*

(2) *The Minister shall prior to promulgating a system contemplated in subsection (1) invite public comment thereon by publishing it in the Gazette and duly considering such comments.*

(3) *A system contemplated in subsection (1)-*

- (a) *must intent to transform the retail sector into one that has the optimum number of efficient sites;*
- (b) *must intend to achieve an equilibrium amongst all participants in the petroleum products industry within the constraints of the Act;*
- (c) *must be based on the objectives referred to in section 2B(2) and 2C;*
- (d) *must promote efficient investment in the retail sector and the productive use of retail facilities-*
 - (i) *by limiting the total number of site and corresponding retail licences in any period;*
 - (ii) *by linking the total number of site and corresponding retail licences in any period, to the total mass or volume of prescribed petroleum products sold by licensed retailers;*
and
 - (iii) *By other appropriate means;*
- (e) *must allow licensed wholesalers to trade with each other any contractual rights and obligations they may have, to supply licensed retailers with prescribed petroleum products;*
- (f) *may specify that petroleum products which-*
 - (i) *are manufactured from coal, natural gas or vegetable matter, when available in the Republic;*
 - (ii) *meet prescribed specifications and standards, where applicable. must be supplied to a licensed retailer before the supply of prescribed petroleum products manufactured from other raw materials may be supplied.*
- (g) *may link the issuing of a new site licence and the corresponding retail licence to the termination or transfer of ownership of one or more existing site licences and the corresponding retail licences;*
- (h) *may link the issuing of a new retail licence to the transfer from a licensed wholesaler of contractual rights enjoyed by the wholesaler in respect of one or more licensed retailers, to another licensed wholesaler.*

(4) *The Minister shall from time to time review the efficacy of the system contemplated in subsection (1) against the objectives of this Act and may amend the system in an appropriate manner and the provisions of subsection (2) shall mutatis mutandis apply.*

(5) *Nothing contained in subsections (1), (2) or (3) absolves any person from the obligation to apply for and hold a licence in terms of this Act.”*

2 OBJECTIVES

- 2.1 To have an independently audited comprehensive baseline study on the extent of B-BBEE in petroleum retail chain.
- 2.2 To identify causes of the high rate of change of ownership and equity transfers from black Africans to other race groups with regards to site and retail petroleum licenses.
- 2.3 To identify what are causes of the high failure rate of Black Africans in site and / or retail license holders for different oil companies?
- 2.4 To identify if this high failure rate and change of ownership are prevalent across all companies, provinces and gender specific?
- 2.5 To develop standardised criteria to benchmark, monitor, review, evaluate and report compliance to B-BBEE Act, Codes of Good Practice (COGP) and PPAA imperatives.
- 2.6 To have baseline information to benchmark for system allocation in terms of section 2E.
- 2.7 To have baseline data report with recommendations to inform for the revised Sectoral Empowerment Framework.

3 SCOPE OF WORK

To achieve the above objectives, a competent service provider is required to provide the following:

- 3.1 Undertake a comprehensive audit on the extent of B-BBEE in petroleum retail chain and compile an aggregated report with all data and supporting documentation collected from oil companies.
- 3.2 Compile individual reports for the top ten (10) oil companies in the industry on the extent of B-BBEE.
- 3.3 Conduct a root cause analysis for the high rate of change of ownership and equity transfers from black Africans to other race groups with regards to site and retail petroleum licenses.
- 3.4 Conduct socio-economic impact assessment of all interventions by oil companies and identify causes of the high rate of change of ownership, equity transfers, and high failure of black Africans petroleum site and / or retail operators.
- 3.5 Develop an empowerment measurement framework to benchmark to monitor, review, evaluate and report compliance to B-BBEE Act, Codes of Good Practice (COGP) and PPAA imperatives.
- 3.6 Make recommendations for system allocation for site and retail in terms of section 2E of the PPAA.
- 3.7 Conduct workshops to enhance the Department's internal capacity on the implementation of the evaluation and monitoring of B-BBEE.
- 3.8 The service provider would be required to audit all service stations as outlined in Table 1 below. The data below can be used as a guide for the targeted auditees.

Table 1: National Network – Service Stations

Provinces	No. of Sites	Percentage
Gauteng	1,582	30.95
Kwa-Zulu Natal	989	19.35
Western Cape	810	15.85
Eastern Cape	451	8.82
Free State	332	6.49
Mpumalanga	305	5.97
North West	302	5.91
Limpopo	206	4.03
Northern Cape	135	2.64
Republic of South Africa	5.112	100.00

Source: Small Business Advisory Bureau – SBAB (2002) SAPIA (2007)

4 Deliverables

- 4.1 A comprehensive aggregated audit report on the extent of B-BBEE in petroleum retail chain within six (6) months after contract has been signed.
- 4.2 An individual oil company audit reports for the top ten (10) players in the industry.
- 4.3 An empowerment measurement framework to benchmark to monitor, review, evaluate and report compliance to B-BBEE Act, Codes of Good Practice (COGP) and PPAA imperatives.
- 4.4 Recommendations for system allocation for site and retail in terms of section 2E of the PPAA.
- 4.5 A feedback report with reference to the workshop to enhance the department's internal capacity on the implementation of the evaluation and monitoring of B-BBEE based on findings.

5 REPORTING REQUIREMENT AND PROGRESS MEETINGS

- 5.1 The appointed service provider will report progress made or any other matter relating to the Petroleum Retail Audit project team.
- 5.2 Meetings and reporting by the service provider to the project team will be held bi-monthly from the signing of the contract.
- 5.3 The nomination and appointment of the project team shall be ratified by the Head of the Petroleum & Petroleum Products Regulation Branch.

6 PAYMENTS

- 6.1 The Department will not make an upfront payment to a successful service provider. Payment will only be made in accordance to the delivery of service and aligned with the Service Level Agreement that will be agreed upon by both parties after signing of the contract and upon receipt of an original invoice.

7 COMPLETION DATE

- 7.1 The duration of the project will be six (6) months after signing of the contract and Service Level Agreement with the successful service provider.

8 COMPULSORY INFORMATION SESSION

- 8.1 Briefing session will be held on **21 June 2016** at the Department of Energy, at 192 Visagie Street, Corner Paul Kruger and Visagie Streets at **10H00**.

9 TAX CLEARANCE CERTIFICATE

- 9.1 The bidder is required to submit an original and valid Tax Clearance Certificate issued by the South African Revenue Services together with the bid documents before/on the closing date and time of the bid. **Failure to comply with this condition will invalidate the bid.**

10 CONFIDENTIALITY OF INFORMATION (please indicate if this is applicable)

10.1 The names of all the members of the team must be disclosed prior approval by the Department of Energy. Any changes, replacements and / or additions should be submitted for prior approval of Department of Energy.

10.1.1 A bidder is affiliated with a firm or entity that has been hired (or is proposed to be hired) by Department of Energy or the lender.

12. EVALUATION METHODOLOGY

12.1. Cost

12.1.1 The service provider will be requested to provide a quote regarding the work to be undertaken for this project.

12.1.2 The total cost must be VAT inclusive and should be quoted in South African currency (i.e. rands).

12.1.3 The service provider should provide the hourly rates as prescribed by the Department of Public Service and Administration (DPSA) and or the body regulating the profession of the consultants.

12.1.4 The service Provider should provide (S&T) rates that are aligned to the National Treasury instruction note as follows:

- (i) Hotel Accommodation – R1300 per night per person, including breakfast, dinner and parking
- (ii) Air travel must be restricted to economy class
- (iii) Claims for kilometres may not exceed the rates approved by the Automobile Association of SA.

12.2. Broad-Based Black Economic Empowerment

12.2.1. Provisions of the Preferential Procurement Policy Framework Act (PPPFA) 2011 and its regulation will apply in terms of awarding points.

12.2.2. Bidders are required to submit original and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their bids, to substantiate their B-BBEE rating claims.

12.2.3. Bidders who do not submit their B-BBEE status level verification certificates or are non-compliant contributors to B-BBEE will not qualify for preference points for B-BBEE.

12.3. The table below depicts the B-BBEE status level of contribution:

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

12.4 Company Experience

12.4.1 Service providers should provide proof of at least five (5) years experience in professional audit or verification of B-BBEE COGP and understanding of the South African petroleum industry legislation and policies. This needs to be supported by proof from 3 contactable referees indicating that similar project(s) was / were executed successfully. Failure to submit the recommended the reference will result in disqualification of bidders.

12.5 Team leader and team members experience

12.5.1 Team Leader must have at least eight (8) years experience and individual team members must have at least five (5) years experience in the following areas: Auditing, research, compliance, corporate law and professional B-BBEE audit and verifications. CV's of the team leader and team members must be attached to the technical proposal as proof.

12.6 Qualification

12.6.1 Project team members' Qualifications: Chartered Accountant, Post Graduate qualification in Corporate or Company Law, Post Graduate degree in Business Administration, petroleum industry audit related qualification.

12.6.2 Team leader and team members must possess a minimum of a bachelor's degree in the relevant discipline (e.g. Auditing, Economics and Project Management). CV's of the team leader and team members must be attached to the technical proposal as proof.

12.7 Project Plan

12.7.1 Project plan with intermediate and final outputs and identified timeframes / milestones.

12.7.2 Proposed Methodology.

12.7.3 Management of the project.

12.7.4 The successful service provider will be required to present their Project Execution Plan by the selected bidders.

13. EVALUATION CRITERIA

13.1. Bids will be evaluated on **90/10 principle** point system as outlined in the PPPFA of 2011 because the budget will exceed R1m

The proposals will be evaluated in two phases:

PHASE 1: Bidders will be evaluated based on functionality. The minimum threshold for functionality is **70 out of 100 points**. Bidders who fail to meet minimum threshold will be disqualified and will not be evaluated further for price points.

Please note that the below table will be informed by 12.4-12.6

No	Criteria	Weights
1	Company Experience <ul style="list-style-type: none">• Service providers should provide proof of at least five (5) years experience in professional audit or verification of BBEE COGP and understanding of the South African petroleum industry legislation and policies. This needs to be supported by proof from 3 contactable referees indicating that similar project(s) was / were executed successfully. Failure to submit the recommended the reference will result in disqualification of bidders.	10 10
2	Team Leader and Team Members <ul style="list-style-type: none">• Team Leader must have at least eight (8) years experience and individual team members must have at least five (5) years experience in the following areas: Auditing, research, compliance, corporate law and professional B-BBEE audit and verifications. CV's of the team leader and team members must be attached to the technical proposal as proof.	20 20

3	Qualifications	20
	<ul style="list-style-type: none"> Project team members Qualifications: Chartered Accountant, Post Graduate qualification in Corporate or Company Law, Post Graduate degree in Business Administration, petroleum industry audit related qualification. Team leader and team members must possess a minimum of a bachelor's degree in the relevant discipline (e.g. Auditing, Economics and Project Management). CV's of the team leader and team members must be attached to the technical proposal as proof. 	10 10
4	Project Plan:	50
	<ul style="list-style-type: none"> Management of the project: Detailed Project / Execution Plan and Management should be attached. 	15
	<ul style="list-style-type: none"> Intermediate and final outputs and identified timeframes / milestones. 	10
	<ul style="list-style-type: none"> A clear research and audit methodology must be indicated to the proposal. The methodology must outline how the planned work will be carried out and should be according to each phase or deliverable of compiling the technical reports. 	25
Total		100

For purpose of evaluating functionality, the following values will be applicable:

Value Scale (1-5)

1=	Very Poor	Will not be able to fulfil the requirements
2=	Poor	Will partially fulfil the requirements
3=	Average	Will be able to fulfil the requirements
4=	Good	Will be able to fulfil better in terms of the requirements adequately
5=	Excellent	Will fulfil the requirements exceptionally

PHASE 2:

Price	90
B-BBEE	10

PHASE 3: Interviews will be conducted with the three (03) shortlisted advisors

PHASE 4: A brief presentation of the Project Execution Plan

14. FORMAT AND SUBMISSION OF THE PROPOSAL

- 14.1 All the official standard bidding forms (SBD) must be completed in all respects by bidders. Failure to comply will invalidate a bid.
- 14.2 Bidders are requested to submit three (3) copies: 1 original of proposal plus two copies of the proposals and same with bid documents.

15. CLOSING DATE

- 15.1 Proposals must be submitted on or before **28 June 2016 at 11H00**, the Department of Energy, 192 Corner Visagie and Paul Kruger Streets, Pretoria in the bid box marked Department of Energy **.No late bids will be accepted.**

16 ENQUIRIES

- 16.1 All technical enquiries to be directed in writing to:

Ms Gosetseone Leketi

Tel: 012- 406 7779

Email: Gosetseone.Leketi@energy.gov.za

- 16.2 All bid enquiries to be directed to:

Ms Rachel Moerane / Ms Daisy Maraba

Tel: 012- 406 7742 / 7748

Email: Rachel.Moerane@energy.gov.za / Daisy.Maraba@energy.gov.za