
TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO CONDUCT AN AUDIT AND EVALUATE THE STATE OF TRANSFORMATION AT THE WHOLESALE LEVEL OF THE LIQUEFIED PETROLEUM GAS (LPG) INDUSTRY IN LINE WITH THE BROAD-BASED BLACK ECONOMIC EMPOWERMENT ACT, 2003 (ACT NO. 53 OF 2003) AS AMENDED (“B-BBEE ACT”) AND, CODES OF GOOD PRACTICE (“COGP”) AND THE PETROLEUM AND LIQUID FUELS CHARTER 2000 (“LFC”)

1 BACKGROUND

1.1 The key policy objectives stated in the Energy Policy White Paper of 1998 (“EPWP 1998”) regarding the Petroleum and Liquid Fuels Industry (“PLFI”) is to achieve sustainable presence, ownership and control of a quarter of *all facets* of the industry by Historically Disadvantaged South Africans (“HDSA”). The (“EPWP”) identified some of the following interventions as necessary to overcome challenges in the liquid fuels industry:

- *The meaningful inclusion of those interests which have been historically disadvantaged;*
- *The restructuring of the state’s involvement in the industry to one more appropriate to South Africa’s changed political and economic circumstances; **(Emphasis);** and*
- *An industry supportive of government’s broader social and economic goals.*

1.2 The reflection of B-BBEE Act in the composition of the industry at all levels and significant domestic black ownership or control in all facets of the industry is outlined in the EPWP 1998 as the cornerstone of the future economic policy framework.

1.3 The EPWP 1998, amongst other, enabled the enactment of pieces of legislation such as the Petroleum Products Act, 1977 (Act No. 120 of 1977) (“the PPA”) as amended which introduced the PLFC 2000 through Section 2C of the PPA. Section 2C in a nutshell, states thus:

(1) In considering licence applications in terms of this Act, the Controller of Petroleum Products shall –

- (a) promote the advancement of historically disadvantaged South Africans;*
- (b) give effect to the Charter; (**Emphasis**) and*
- (c) The Controller of Petroleum Products may require any category of licence holder to furnish information, as prescribed, in respect of the implementation of the Charter.*

- 1.4 Amongst key elements of the PLFC, it aimed to ensure that 25% ownership and control of all facets of the industry that are parties to this Charter are seeking to bring about over a ten-year period means HDSA's owning in total, by the end of that period, not less than 25% of the aggregate value of the equity of the various entities that hold the operating assets of the South Africa oil industry. The parties to the Charter agreed that the measure to the extent of achievement of this target of 25% of the aggregate value of the equity will be based on the asset values per the audited accounts of the entities concerned.
- 1.5 In pursuit of the aspirations of the EPWP 1998, the PPA and LFC, the then Department of Energy (currently known as the Department of Mineral Resources and Energy or the "DMRE") in collaboration with the PLFI developed and signed the Charter in 2000 in order to address transformation in the industry.
- 1.6 The LFC was one of the first empowerment Charters to be developed and signed in 2000, this was long before the B-BBEE Act and COGP were Gazetted, in during February 2007.
- 1.7 The above mentioned policy interventions were followed by the commissioning of the Petroleum and Liquid Fuels Charter Audit in 2011 ("PLFCA"), and the outcomes of the aforementioned audit indicated that transformation in the PLFI has been moving at a snail's pace and in other instances, not transformed all together.

- 1.8 Primarily, the audit indicated that the LFC was materially misaligned to the B-BBEE Act, (e.g. LFC did not have targets, weights and was more biased towards management and ownership as opposed to promoting all elements identified therein) Albeit there is some, yet minimal progress achieved by the industry to date in pursuit of transformation agenda in the industry.
- 1.9 This PLFCA made recommendations for the DMRE to, amongst other, align the LFC to the amended B-BBEE Act. To this end, the DMRE commenced with the PLFC alignment to the B-BBEE Act and COGP in 2016. The DMRE published Public Proclamation 41110 of 13 September 2017 informing industry stakeholders and the public about the process of alignment. In 2016, another PLFCA was commissioned by the DMRE to check the status of transformation in the petroleum retail industry post PLFCA conducted in 2000. The DMRE is currently awaiting publication of the foregoing which may potentially guide/ input alignment process currently underway.
- 1.10 In addition to the above, and to fully effect meaningful transformation, it was decided that the DMRE needs to conduct a further audit and evaluate the state of transformation in the LPG wholesale level in line with the B-BBEE and COGP, and incorporate aspects of the LFC arising from the EPWP 1998.
- 1.11 The above decision to conduct audit on the LPG at wholesale level was also to address the 2014 Competition Commission's market inquiry into availability, supply and distribution of LPG in South Africa. The above study discovered that at a wholesale level, the market is highly concentrated with four large wholesalers accounting for a significant market share of more than 90 percent of the wholesale market. In addition to the high levels of concentration, new entrants and small existing firms must overcome high barriers to entry in the wholesale markets. These four major wholesalers are all foreign owned companies with limited black ownership.
- 1.12 The study further noted that refineries prefer long-term agreements with seasoned as 82 percent of LPG is sold through long-term contracts for which some are renewed with the same wholesaler for over 25 years. Smaller wholesalers are unable to attain economies of scale due to the existence of the

long-term contractual agreements in place. Smaller wholesalers rely on the spot market to access LPG and not even able to make return on investment.

1.13 The audit will measure and evaluate the state of transformation at the wholesale level of the LPG industry focusing on the five elements of the B-BBEE Act, COGP and in conjunction with the elements of the LFC, which are as follows:

BBEEE	Liquid Fuels Charter
<ul style="list-style-type: none"> • Ownership • Management Control • Skills Development • Enterprise and Supplier Development Socio Economic Development 	<ul style="list-style-type: none"> • Ownership • Management Control • Supportive Culture • Capacity Building • Employment Equity • Private Sector Procurement • Public Sector Procurement • Access and Ownership of Joint Facilities • Refining Capacity • Retailing • Wholesaling • Financing • Terms of Credit Synfuels Supply

1.14 The audit at the wholesale level of the LPG industry forms the fundamental characteristic of the LFC Consultation, Monitoring, Evaluation and Reporting on the state of transformation in the industry. The above is a legislative requirement in terms of the LFC expressed under paragraph tagged, (Consultation, Monitoring, Evaluation and Reporting), mainly aimed at annual surveys of the industry to evaluate progress in achieving the objectives of the EPWP imperatives. To date, the licenced LPG wholesalers that are identified in paragraph 5.2 below will participate in the audit process to ensure that the audit outcomes reflect the accurate picture of the extent of B-BBEE Act in the wholesale level of the LPG industry.

2. PROJECT STRATEGIC OBJECTIVES

2.1 To determine the level of transformation in the LPG wholesale industry in order to effect transformation in terms of the B-BBEE Act, COGP and the LFC.

3. ALIGNMENT OF OBJECTIVES TO DMRE MANDATE

3.1 To manage the regulation of petroleum and petroleum products to ensure optimum and orderly functioning of the petroleum industry to achieve Government's developmental goals.

4. FUNCTIONAL OBJECTIVES

4.1 To conduct an audit in order to establish the extent of transformation at the wholesale level of the LPG industry;

4.2 To evaluate the state of transformation according to the five elements of the B-BBEE Act and COGP;

4.3 To demonstrate the progress made in achieving the targets set out amongst the five elements as identified of the B-BBEE Act and COGP in conjunction with the elements of the LFC;

4.4 To provide analysis of the extent of B-BBEE Act in the LPG industry; and

4.5 To provide recommendations on the implementation of the B-BBEE Act going forward with regards to improving ongoing monitoring, evaluation and reporting of compliance framework. Consolidated description of how identified problems/ impediments / bottlenecks will be addressed.

5. SCOPE OF WORK

5.1 To achieve the above objectives, a competent service provider is required to provide the following: 5.1.1 undertake a comprehensive audit on the state of transformation at the

wholesale level of the LPG industry;

5.1.2 present detailed reports that evaluate the state of transformation according to the five elements of the B-BEE Act and COGP;

5.1.3 present detailed audit results from fifteen licenced LPG wholesalers that are listed in paragraph 5.2 below;

5.1.4 provide thorough analysis of the extent of B-BBEE Act and COGP in the Industry and

5.1.4 make recommendations on the practical steps the DMRE can take to ensure implementation of the ongoing annual monitoring, evaluation and reporting of compliance to B-BBEE Act

5.2 The service provider will audit the following licenced LPG wholesalers and if possible, any other wholesalers who may be licenced and operational during the course of the audit process:

- (a) Easigas (Pty) Ltd
- (b) Reatile Gaz
- (c) Oryx Oil South Africa (Proprietary) Limited
- (d) TotalGaz
- (e) KayaGas (Pty) Ltd
- (f) Kulani Africa Gas
- (g) Sims Gas
- (h) Wasaa
- (j) Sizanani Gas
- (k) Vaal Gas
- (l) African Oxygen Limited
- (m) Laboh Gas
- (o) Sunrise Energy
- (p) Avedia Energy
- (q) Camel Fuels (Pty) Ltd

6. DELIVERABLES

- 6.1 A detailed and comprehensive report, which amongst other covers audited results of registered LPG wholesalers and other licenced and operational LPG wholesalers
- 6.2 Recommendations on the implementation of the B-BEE Act providing practical tools for licence applications processing and the ongoing monitoring, evaluation and reporting in line with section 13G of the B-BBEE Act.
- 6.3 Conduct workshops to enhance the DMRE's internal capacity on the implementation, evaluation and monitoring of B-BBEE Act.
- 6.4 Consolidated description of how identified problems/ impediments / bottlenecks will be addressed.
- 6.5 Draft framework outlining key short (6months); Medium (12 Months) and long term interventions.
- 6.6. Process map on revised B-BBEE Act empowerment framework, infusing aspects of transformation as identified in the LFC.
- 6.7 Feedback mechanism to interested and affected stakeholders.

7. PAYMENTS

The DMRE will not make any upfront payment to a successful service provider. Payment will only be made in accordance to the delivery of service that will be agreed upon by both parties and receipt of an original invoice.

8. REPORTING REQUIREMENT AND PROGRESS MEETINGS

- 8.1 It is envisaged that the DMRE will require an initial meeting with the successful bidder to agree on the project process and options to be investigated.
- 8.2 Progress meeting feedback shall be held as and when necessary, but at least once a month. The venue for these meetings will be a selected venue in Johannesburg or Pretoria. Representatives from the advisors' organisation shall be obliged to

attend. Where applicable, conference calls shall be held to facilitate such meetings.

9. COMPLETION DATE

9.1 The duration of the project is twelve (12) months after signing of the contract and with the successful service provider.

10. COMPULSORY BRIEFING SESSION WILL BE CONDUCTED.

10.1. Briefing session will be held on **23 October 2020** at the Department of Mineral Resources and Energy, at 192 Corner Paul Kruger and Visagie Streets at 10H00.

11. TAX CLEARANCE CERTIFICATE

11.1 The potential service provider/s must ensure compliance with their tax obligations.

11.2 The potential service provider is required to submit their unique personal identification number (pin) issued by SARS to enable the organ of state to view the taxpayer's profile and tax status.

11.3 Application for tax compliance status (TCS) or pin may also be made via e-filing. In order to use this provision, taxpayers will need to register with SARS as e-filers through the website www.sars.gov.za.

11.4 The potential service provider may also submit a printed TCS together with the proposal.

11.5 In proposals where consortia / joint ventures / sub-contractors are involved, each party must submit a separate proof of TCS / pin / CSD number.

11.6 Where no TCS is available but the potential service provider/s is registered on the central supplier database (CSD), a CSD number must be provided

12. CONFIDENTIALITY OF INFORMATION (please indicate if this is applicable)

12.1 The names of all the members of the team must be disclosed to DMRE for approval. Any changes, replacements and/or additions should be submitted for prior approval of DMRE.

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

13. EVALUATION METHODOLOGY

13.1. Cost

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

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

13.1.3 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.

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

- (i) Hotel Accommodation – R1500 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.

13.2. Broad-Based Black Economic Empowerment

13.2.1. Provisions of the Preferential Procurement Policy Framework Act (PPPFA 2017 and its regulation will apply in terms of awarding points.

13.2.2. 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.

13.2.3. 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.

13.2.4 In case of Exempted Micro Enterprises, the following document must be submitted:

- (a) Verification agencies accredited by SANAS.

13.2.5 Bidders who qualify as EMS's:

Sworn affidavit signed by EME representative and attested by a Commissioner of oaths.

13.3 Company Experience

13.3.1 Companies (with SANAS accreditation) should at least have ten (10) years' experience in the professional B-BBEE Audit, verifications, monitoring, evaluation and reporting, and most importantly knowledge of the South African petroleum and liquid fuels industry legislation and policies. Auditing experience should be supported by proof from three contactable referees indicating that similar project was executed, (Audited companies in the petroleum and liquid fuels industry).

13.4 Team leader and team members' experience

13.4.1 Team Leader must have at least ten (10) years' B-BBEE Act professional auditing experience and individual team members must have at least five (5) years' experience in B-BBEE Act audit and verifications. Six team members are required. CV's of the team leader and team members must attached (written) contactable references as proof of experience.

13.5 Qualification

13.5.1 Team leader and team members must possess a minimum of a Bachelor's degree in e.g. Auditing or Finance or Economics or B-Com law and Advanced Project Management. Registration of a team leader and team members with a Professional Body will be an added advantage. CV's of the team leader and team members must be attached to the technical proposal as proof.

13.6 Project Plan

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

13.6.2 Proposed Methodology.

13.6.3 Management of the project.

13.6.4 The successful service provider will be required to present their Project Execution Plan.

14. EVALUATION CRITERIA

The proposals will be evaluated in four 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 not be evaluated further for price and preference point system.

Please note that the below table will be informed by 12.3- 12.6

No	Criteria	Scoring	Weights
1	<p>Company Experience:</p> <p>a) Companies (with SANAS accreditation) should at least have ten (10) years' professional auditing experience in verification of B-BBEE and COGP and;</p> <p>b) Knowledge of the South African petroleum and liquid fuels industry legislation and policies. Auditing experience should be supported by proof (testimonial letter) 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.</p>	<p>16 years or more = 5 points 11-15 years = 4 points 10 years = 3 points 7- 9 years = 2 points 0-6years =1 point</p> <p>5 letters or more = 5points 4 letters = 4 points 3 letters = 3 points 2 letters = 2 points 1 letter = 1 point</p>	<p>20</p> <p>10</p> <p>10</p>
2	Team leader and team members:		20

	<p>(a) Team Leader must have at least ten (10) years professional auditing experience and;</p> <p>(b) Individual team members must have at least five (5) years experience in the following areas: Auditing or Economics Research and/or Analysis or Commerce 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.</p>	<p>16 years or more = 5 points 11-15 years = 4 points 10 years = 3 points 7- 9 years = 2 points 0-6years =1 point</p> <p>10 years, 10 verifications or more = 5 points 6-9 years and 6-9 verifications = 4 points 5 years, 5 verification = 3points 3-4 years, 3-4 verification = 2 points 1-2 years, 51-2verification = 1 point</p>	<p>10</p> <p>10</p>
3.	<p>Qualifications:</p> <p>a) Team Leader Qualifications: Auditing or Finance or Economics or B-com law and audit experience in B-BBEE Act auditing in the petroleum and liquid fuels industry.</p> <p>b) Team members must possess a minimum of a Bachelor's degree in (e.g. Auditing or Finance or Economics and B-Com degree and Advanced Project Management).</p> <p>c) Team leader registered with a Professional Body. CV's of the team leader and team members must be attached to the technical proposal as proof.</p> <p>d) Team members registered with a Professional Body. CV's of the team</p>	<p>Masters and above = 5 points Honours degree = 4 points Degree = 3 points Diploma = 2 points No Degree = 1 point</p> <p>Masters and above = 5 points Honours degree = 4 points Degree = 3 points Diploma = 2 points No Degree = 1 point</p> <p>Membership Certificate = 5 points No membership proof = 1 point</p> <p>Membership Certificate = 5 points No membership proof = 1 point</p>	<p>20</p> <p>7</p> <p>7</p> <p>3</p> <p>3</p>

	members must be attached to the technical proposal as proof		
4	<p>Project Plan:</p> <p>(a) Detailed Project/ Execution Plan and Management should be attached.</p> <p>(b) Intermediate and final outputs and identified timeframes / milestones.</p> <p>(c) 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.</p>	<p>Detailed project plan with project deliverables, milestones, scope, schedule, cost, resources & clear audit research methodology=5points</p> <p>Detailed project plan with project deliverables, milestones, scope, schedule, cost, resources & unclear audit research methodology = 4 points</p> <p>Project plan with project deliverables, milestones, scope, schedule, cost, resources & without any audit research methodology =3 points</p> <p>Project plan with project milestones, scope, schedule, cost, resources =2 points</p> <p>Project plan without project deliverables, milestones, scope, schedule, cost, resources =1 point</p>	40
Total			100

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

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

Phase 2:

The second phase of evaluation will be based on 80/20 preference point system as outlined in the Preferential Procurement Regulations of 2017 because the budget will be above R30 000 but not exceed R50 million.

The following formula will be used to calculate the points out of 80 for price, inclusive of all applicable taxes:

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

Where:

P_s = Points scored for price;

P_t = Price of tender; and

P_{min} = Price of lowest acceptable tender.

The following table will be used to calculate the score out of 20 for B-BBEE:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-Compliant Contributor	0

15. FORMAT AND SUBMISSION OF THE PROPOSAL

15.1 All the official standard bidding forms (SBD) must be completed in all respects by bidders. Failure to comply will invalidate a bid.

15.2 Bidders are requested to submit two (3) copies: 1 original plus copy of the proposal and bid documents.

16 CLOSING DATE

16.1 Proposals must be submitted on or before **12 November 2020** at Department of Mineral Resources and Energy, 192 Corner Visagie and Paul Kruger Streets, Pretoria in the bid box marked Department of Energy **at 11H00 .No late bids will be accepted.**

17. ENQUIRIES

17.1 All technical enquiries to be directed in writing to:

Mr Modisane Motiang

Tel: 012- 406 7545

Email: modisane.motiang@dmre.gov.za

17.2 All bid enquiries to be directed to:

Ms Nonhlanhla Zingwevu /Samuel Msiza

Tel: (012) 444 3055 / (012) 406 7742/7910

Email: Nonhlanhla.zingwevu@dmre.gov.za/samuel.msiza@dmre.gov.za