 ** **

**REQUEST FOR EXPRESSION OF INTEREST**

 **SELECTION OF INDIVIDUAL CONSULTANTS**

**REFERENCE NUMBER: SADC/TRF/2017/2/05**

**REQUEST FOR THE FORMULATION OF THE NATIONAL TOURISM BILL**

1. **Ministry of Commerce, Industry and Trade**is inviting Individual Consultants to submit their CV and Financial Proposal for the following services:

**FORMULATION OF THE NATIONAL TOURISM BILL FOR SWAZILAND**

The Terms of Reference defining the minimum technical requirements for these services are attached as Annex 1 to this Request for Expression of Interest.

**2. Only Individual Consultants are eligible for this assignment provided that they fulfil the following eligibility criteria:**

*a) they are not bankrupt or being wound up, are having their affairs administered by the courts, have entered into arrangements with creditors, have suspended business activities, are being subject of proceedings concerning those matters, or are being in any similar situations arising from similar procedures provided for in the national legislation or regulations of the SADC member states;*

*b) they have not been convicted of offences concerning their professional conduct by a judgment which has the force of res judicata; (i.e. against which no appeal is possible);*

*c) they have not been declared guilty of grave professional misconduct proven by any means which Ministry can justify;*

*d) they have fulfilled obligations related to the payments of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those countries where the contract is to be performed;*

*e) they have not been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Ministry’s financial interests; or*

*f) they are not being currently subject to an administrative penalty.*

**3.** The maximum budget for this contract is **€17,595.00 (Seventeen Thousand, Five Hundred and Ninety-five Euros) for expert service/consultants fees only.** Proposals exceeding this budget will not be accepted.

**4**. Your Expression of Interest must be presented as per Standard Expression of Interest Forms attached as Annex 2 to this REOI, in the English language and be accompanied by copies of all the indicated supporting documents. If the supporting documents are not in English, these shall be accompanied by a certified translation into English.

**5.** Your proposal clearly marked **“REFERENCE NUMBER:SADC/TRF/2017/2/05 *–* FORMULATION OF THE NATIONAL TOURISM BILL”** in a sealed envelope, should be submitted in our tender box located at the following address:

**Secretary to the Tender Committee**

 **Ministry of Commerce, Industry and Trade**

 **International Trade Department**

 **Between DPMs Office and Swazi Bank**

 **P. O. Box 451**

 **Mbabane, Eswatini**

 **Tel: +268 2404 5794**

 **Fax: +268 2404 3833**

**Attn: Mr. Muntu M. Almeida**

**Email:** **muntualmeida@gmail.com** **or muntua.itd@realnet.co.sz**

**Copy: Mrs. Nonhlanhla Ndlangamandla**

 **Email:** **mnguni2014@gmail.com**

6. The deadline for submission of your proposal, to the address indicated in Paragraph 5 above, is:

**3rd July, 2018 at 1600 hrs CAT**

7. Proposals submitted by Fax or E-mail ***are*** acceptable.

**8.** Your CV will be evaluated against the following criteria.

|  |  |  |
| --- | --- | --- |
|  | **Criteria**  | **Maximum points allocated**  |
| **1** | Education and Training | **20** |
| 2 | Specific Experience | **70** |
| 3 | General Experience | **10** |
|  | **Total** | **100** |

**9.** You proposal should be submitted as per the following instructions and in accordance with the Terms and Conditions of the Standard Contract attached as Annex 3 to this REOI:

(i) PRICES:

The financial proposal shall be inclusive of all expenses deemed necessary by the Individual Consultant for the performance of the contract.

(ii) EVALUATION AND AWARD OF THE CONTRACT:

Expressions of Interest determined to be formally compliant to the requirements will be further evaluated technically.

An Expression of Interest is considered compliant to the requirements if:

* It fulfils the formal requirements (see Paragraphs 2,3,4,5,6 and 7 above),
* The financial proposal does not exceed the maximum available budget for the contract.

The award will be made to the applicant who obtained the highest technical score. Expressions of Interest not obtaining a minimum score of 70% will be rejected.

(iii) VALIDITY OF THE EXPRESSION OF INTEREST:

Your Expression of Interest should be valid for a period of 90 days from the date of deadline for submission indicated in Paragraph 6 above.

10. The assignment is expected to commence within two (2) weeks from the signature of the contract.

11. Additional requests for information and clarifications can be made until 10 working days prior to deadline indicated in the paragraph 6 above, from:

The Procuring entity: **Ministry of Commerce, Industry and Trade**

 Contact person: **Mr. Muntu M. Almeida**

 Telephone:**+268 2040 5794**

 Fax: **+268 2404 3833**

 ***E-mail:*** ***muntualmeida@gmail.com*** ***or muntua.itd@realnet.co.sz***

 ***Copy:*** ***mnguni2014@gmail.com******;*** ***motsahe@gmail.com***

The answer on the questions received will be sent to the Consultant and all questions received as well as the answer(s) to them will be posted on the SADC Secretariat’s website, International Trade Department website, Swaziland Tourism Authority website and the Swaziland Government website alongside the procurement notice at the latest 7 working days before the deadline for submission of the proposals.

**ANNEXES:**

ANNEX 1: **Terms of Reference**

ANNEX 2**: Expression of Interest Forms**

ANNEX 3: **Standard Contract for Individual Consultants**

**Sincerely,**

*\_\_\_\_\_\_\_\_\_\_(signature)\_\_\_\_\_\_\_\_\_\_\_\_*

**Name: Mr. Muntu M. Almeida**

**Title: TRF Project Manager**

**Date: 06 June, 2017**

**ANNEX 1: TERMS OF REFERENCE (TORs) FOR THE FORMULATION OF THE NATIONAL TOURISM BILL**

**1. BACKGROUND INFORMATION**

* 1. **Procuring Entity**

The Ministry of Commerce, Industry and Trade - Kingdom of Eswatini

* 1. **Name of end Beneficiary**

The Ministry of Tourism and Environmental Affairs

* 1. **Assignment Location**

The Kingdom of Eswatini

* 1. **Background**

In 1996, the then Ministry of Tourism, Environment and Communications was created to better focus national attention on tourism development and management of the country’s environment. The vision behind this development was to recognize the importance of the tourism industry as a leading contributor to the national economy and to support its potential to promote social and environmentally sustainable development in Eswatini.

Tourism is amongst other portfolios under the Ministry of Tourism and Environmental Affairs as per the Legal Notice 189 of 2015. It is responsible for the development, regulation and policy formulation as well monitoring the implementation of the policy. The effectiveness and efficiency in carrying out such a task is being hindered by the absence of an Act of Parliament that clearly outlines the regulatory responsibilities of the Tourism Department.

Recently, the Ministry has successfully completed the review of the National Tourism Policy, 2018 which seeks to enhance the formulation and adherence to regulations for the tourism sector in order to provide an enabling environment. This is viewed a positive step towards eliminating some bottlenecks in the tourism regulatory landscape.

Notwithstanding the above, the absence of the legislation, the industry is not realizing its full potential. Financing and investment in the sector remain low making the successful implementation of strategies and plans to be a challenge. The resultant legislation will amongst other issues assist in the following:

1. Establish the tourism department/directorate as a legal entity.
2. Regulating infrastructure development such as tourists’-friendly malls, ablutions and security.
3. Address transportation issues and events management issues to protect the sector’s image and ensuring visitor’s safety.
4. Ensure that all the regulatory aspects of the sector are performed by the Government.
5. The collection of all revenue/levy from tourism enterprises with a view to effectively fund the tourism sector and further establish other regulatory resource mobilization efforts.
6. Protection of the environment/wildlife and related facilities in support for tourism development and promotion.
7. Registration of all tourism facilities including but not limited to; accommodation establishments, transportation, catering (restaurants), tour operating and tour guiding, events operational facilities and other leisure activities
8. Tourism investment incentives.
9. The role of the Ministry, the Swaziland Tourism Authority as well as the private sector.
10. The regulatory role of tourism in trade in services, in particular, the influence in regional and global trade.
11. Government regulatory influence of the tourism sector towards the other sectors of the economy including issues of ethics.
12. Other tourism related regulatory functions.

Through financial assistance of the SADC Trade Related Facility (TRF) the Ministry now wishes to develop a National Tourism Bill to enable the Department to regulate the industry and be able to incorporate some of the obligations and standards of the international organizations.

**2. OBJECTIVES AND EXPECTED RESULTS**

**2.1. Overall Objective**

The objective(s) of the assignment are as follows;

(i) To prepare a Report which supports an appropriate model for the establishment of the Department of Tourism, Gaming and Wildlife; given the prevailing tourism industry and legislative landscape;

 (ii) To produce the Bill and any supportive legislative/legal documents to fully establish the Department; having regard to the wider agenda of legislative reform of the tourism industry, related legislation as well as the priorities of the tourism sector.

**2.2. Results to be achieved by the Contractor**

* Result 1 – Development of a Tourism Bill that will be compatible with the present tourism regulatory environment.
* Result 2 - A detailed plan for the law enforcement.

**3. SCOPE OF THE WORK**

**3.1. The scope of work includes but not limited to the following:**

**3.1.1** The Consultant will collaborate with the Ministry of Tourism, the Swaziland Tourism Authority as well as other key Stakeholders within the tourism sector as specifically identified by the Ministry of Tourism, to prepare the Report along with the Bill and any and other supportive legislative/legal documents to establish the Department.

**3.1.2** The Consultant shall also undertake the following activities towards executing the Objectives identified above:

(a) Review the existing legislative framework relative to the tourism sector, including but not limited to the Swaziland Tourism Authority Act of 2001.

b) The Consultant shall take into consideration the recently reviewed National Tourism Policy 2018 which requires that the government should consider undertaking the formulation of new legislation and review of existing legislation in order to effectively regulate the sector.

(c) Identify, critically consider/examine and provide resolutions for key issues to be addressed towards legislatively establishing an effective Department, including, but not limited to:

* + Legal, Regulatory Approvals and related considerations – statutory (this would also include any and all related legislation to be drafted and/or amended), common law and case law implications and country planning requirements;
	+ Economic – investment, feasibility, cost factors and sustainability considerations;
	+ Health and Safety – public health, consumer safety, Occupational Health and Safety considerations in tourism facilities;
	+ Administrative –approval processes and related timeframes as well as any and all available policy documents, strategic plans and related reports;
	+ Environmental factors –Environmental Management Authority (EMA) requirements; and
	+ Any other relevant factor or issue specifically identified as necessary to the effective execution of the objectives of the Consultancy and/or specifically identified by the Ministry of Tourism, the STA, or any key Stakeholder[s].

**3.1.3** Research and analyze prevailing tourism regulatory models, both regionally and internationally. The Consultant will therefore be expected to evaluate the experiences of countries within the SADC region and internationally, which can be used as benchmarks to ensure that the Department’s regime is robust, dynamic and effective. The Consultant, in this regard, must also consider and factor the impact of the on-going realignment of the structures and functions of Government agencies with responsibility for tourism including but not limited to the Swaziland Tourism Authority.

**3.1.4** The Consultant will be expected to strategically analyze, research and use technical expertise to develop the Bill. In consideration of best practice both regionally and internationally, the results of Stakeholder engagement and Ministry of Tourism recommendations; the Consultant will prepare the Bill to establish a recommended and appropriate structure for the Department.

The Bill should speak to the establishment of a regulatory and monitoring Department which will ensure the highest level of standards, quality and performance within the tourism industry.

**3.2. Project management**

**3.2.1. Responsible body**

The Ministry of Tourism will be responsible for managing this contract. For purposes of this assignment, the Contract Manager is the Director of Tourism.

**3.2.2. Management Structure**

The Contracting Authority is the Ministry of Trade. The TRF Project has a Project Management Unit (PMU) based at Ministry of Trade. The PMU will be assisting with all project coordination work. The Ministry of Tourism is the beneficiary of this contract and therefore will be managing the implementation of this assignment. The consultant will report directly to the Ministry of Tourism. The Ministry of Tourism will be responsible for receiving and accepting deliverables under this contract. The Ministry of Trade will be responsible for authorizing all payments under this contract.

**3.2.3. Facilities to be provided by the Contracting Authority and/or other parties**

The Ministry of Tourism and Environmental Affairs will only provide supporting materials where necessary.

**4. LOGISTICS AND TIMING**

**4.1. Location**

The contract will be implemented in the Kingdom of Eswatini.

4.2. **Start date and period of implementation**

The intended start date is 6th August 2018 and the period of implementation of the contract will be 60 working days over a period of four (4) months from this date.

**5. REQUIREMENTS**

**5.1. Candidate Profile**

**Education and Training (20 points)**

The individual Consultant shall possess the following minimum qualifications and skills:

* Minimum Bachelor of Laws Degree or a related area.
* Master of Laws Degree or a related area will be an added advantage.

**Specific professional experience: (70 points)**

* Practicing Attorney-at-Law in the SADC region.
* Review and Drafting of Legislations with 5 years minimum experience.
* Minimum 5 years proven experience in the development of legislations, specifically relating to tourism and related areas.
* Proven experience in the development of legislations, specifically relating to tourism and related areas.
* Formal Training in Legislative Drafting.
* Extensive knowledge of the rules of statutory interpretation

**General skills (10 points)**

* High level research, analytical and report writing skills.
* Able to manage and coordinate the work of a small team.
* Experience in working with and facilitating diverse stakeholder groups, including government.
* Proven record of successful completion of at least 2 projects of similar nature.

**6.2. Facilities to be provided by the Contractor**

The contracting authority shall provide office space for work purposes.

Consultant should provide his/her own secretarial services and have his/her own laptops computer, projection equipment and mobile phone.

**6. Reports**

**6.1. Reporting requirements**

To summarize, in addition to any documents, reports and output specified above, the Contractor shall provide the following reports:

|  |  |  |
| --- | --- | --- |
| **Name of report** | **Content** | **Time of submission** |
| Inception Report | Analysis of existing situation, work plan for the project and present situational and legal assessment | No later than 10 working days after the start of implementation |
| Draft National Tourism Bill  | Short description of achievements including problems encountered and recommendations. | No later than 1 month before the end of the implementation period.  |
| Final National Tourism Bill  | Description of achievements including problems encountered and recommendations; a final invoice | Within 5 working days after receiving comments on the draft final report from the Project Manager identified in the contract. |

**6.2. Submission and Approval of Reports**

Copies of the reports referred to above must be submitted to the Contract Manager [Director of Tourism] identified in the contract. The reports must be written in English. The Contractor will submit one (1) soft copy and five (5) neatly bound hard copies of the above reports in English.

The Contract Manager is responsible for approving the reports.

The documents referred to above must be submitted electronically via email as draft reports to the Contract Manager. Comments and Approval of final drafts will be provided via e-mail within 30 days. After which two (2) hard copies of the final reports must be formally submitted to the Imprest administrator within five (5) working days after receipt of comments on the draft final documents. Contractor should present the final draft of the Act to the Head of Department.

**6.3. Budget**

The available budget for this contract is €17,595.00 (Seventeen Thousand, Five Hundred and Ninety Five Only). There is no budget for reimbursable expenses*.*

**6.4. Evaluation Criteria**

The following evaluation criteria will be used to assess the applications. An Application that scores above 70% will be considered technically responsive.

|  |  |
| --- | --- |
| Category | Points |
| Education and Training | 20 |
| Specific Experience  | 70 |
| General Skills | 10 |
| Total  | 100 |

**Award criteria:** Quality *(i.e.: The award will be made to the applicant who obtained the highest technical score and is within budget. Expressions of Interest not obtaining a minimum score of 70% will be rejected.)*

**\*\*\*\*\*\***

**ANNEX 2: Expression of Interest Forms**

[A. COVER LETTER FOR THE EXPESSION OF INTEREST FOR THE PROJECT 11](#_Toc267927845)

[B. CURRICULUM VITAE 13](#_Toc267927846)

[C. FINANCIAL PROPOSAL 17](#_Toc267927847)

# A. COVER LETTER FOR THE EXPRESSION OF INTEREST FOR THE PROJECT

REFERENCE NUMBER: SADC/TRF/2017/2/05

REQUEST FOR SERVICES TITLE: **FORMULATION OF THE NATIONAL TOURISM BILL**

[*Location, Date*]

To: SADC Secretariat

Dear Sirs:

I, the undersigned, offer to provide the consulting services for the *FORMULATION OF THE NATIONAL TOURISM BILL* in accordance with your Request for Expression of Interests number *[Reference number],* dated [*insert date*] for the sum of [*Insert amount(s) in words and figures*1[[1]](#footnote-1)]. This amount is inclusive of all expenses deemed necessary for the performance of the contract in accordance with the Terms of Reference requirements, and *[“does” or “does not” delete as applicable]* includeany of the following taxes in Procuring Entity’s country: value added tax and social charges or/and income taxes on fees and benefits.

I hereby declare that all the information and statements made in my CV are true and accept that any misinterpretation contained in it may lead to my disqualification.

I take note that under the provisions of the SADC Procurement Policy applicable to this Request for Expression of Interest, a contract cannot be awarded to applicants who are in any of the following situations:

*a) they are being bankrupt or wound up, are having their affairs administered by the courts, have entered into arrangements with creditors, have suspended business activities, are being subject of proceedings concerning those matters, or are being in any similar situations arising from a similar procedures provided for in the national legislation or regulations of the SADC member states;*

*b) they have been convicted of offences concerning their professional conduct by a judgment which haves the force of res judicata; (i.e. against which no appeal is possible);*

*c) they have been declared guilty of grave professional misconduct proven by any means which SADC Secretariat can justify;*

*d) they have not fulfilled obligations related to the payments of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those countries where the contract is to be performed;*

*e) they have been the subject of a judgment which has the force of res judicata for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the SADC Secretariat' financial interests; or*

*f) they are being currently subject to an administrative penalty.*

I confirm that I am not in any of the situations described above, and I hereby declare that at any point in time, at the Ministry of Trade’s request, I will provide certified copies of documents to prove so.

I am aware that the penalties set out in the Procurement Policy may be applied in the case of a false declaration, should the contract be awarded to me.

My proposal is binding upon me for the period indicated in Paragraph 9(iii) of this Request for Expression of Interest.

I undertake, if my Proposal is accepted, to initiate the consulting services related to the assignment not later than the date indicated in Paragraph 10 of the Request for Expression of Interest, and to be available for the entire duration of the contract as specified in the Terms of Reference.

I understand you are not bound to accept any Proposal you receive.

Yours sincerely,

Signature [*In full and initials*]:

Name and Title of Signatory:

B. CURRICULUM VITAE

***[insert full name]***

|  |  |
| --- | --- |
| 1. **Family name:**
 | *[insert the name]* |
| 1. **First names:**
 | *[insert the names in full]* |
| 1. **Date of birth:**
 | *[insert the date]* |
| 1. **Nationality:**
 | *[insert the country or countries of citizenship]* |
|  |  |
| 1. **Physical address:**
2. **Postal address**
3. **Phone:**
4. **E-mail:**
 | *[insert the physical address]**[Insert Postal Address]**[insert the phone and mobile no.]**[Insert E-mail address(es)* |
| 1. **Education:**
 |  |
|  |  |
| **Institution:****[Date from – Date to]** | **Degree(s) or Diploma(s) obtained:** |
| *[indicate the month and the year]* | *[insert the name of the diploma and the specialty/major]* |
| *[indicate the month and the year]* | *[insert the name of the diploma and the specialty/major]* |

**10. Language skills:** (Indicate competence on a scale of 1 to 5) (1 – excellent; 5 – basic)

|  |  |  |  |
| --- | --- | --- | --- |
| **Language** | **Reading** | **Speaking** | **Writing** |
| *[insert the language]* | *[insert the no.]* | *[insert the no.]* | *[insert the no.]* |
| *[insert the no.]* | *[insert the no.]* | *[insert the no.]* | *[insert the no.]* |

|  |  |
| --- | --- |
| **11. Membership of professional bodies:**  | *[indicate the name of the professional body]* |
| **12. Other skills:** | *[insert the skills]* |
| **13. Present position:** | *[insert the name]* |
| **14. Years of experience:** | *[insert the no]* |
| **15. Key qualifications:** (Relevant to the assignment)*[insert the key qualifications]* |

**16. Specific experience in the region:**

|  |  |
| --- | --- |
| **Country** | **Date from - Date to** |
| *[insert the country]* | *[indicate the month and the year]* |
| *................* | *......................* |
| *[insert the country]* | *[indicate the month and the year]* |

 **17. Professional experience:**

| **Date from – Date to** | **Location of the assignment** | **Company& reference person (name & contact details)** | **Position** | **Description** |
| --- | --- | --- | --- | --- |
| *[indicate the month and the year]* | *[indicate the country and the city]* | ***Name of the Company:******Address of the company:******Phone:******Fax:******Email:*** ***Name and title of the reference person from the company:*** | *[indicate the exact name and title and if it was a short term or a long term position]* | ***Name of the Assignment:*** ***Beneficiary of the Assignment:******Brief description of the Assignment:*** ***Responsibilities:*** |
| *[indicate the month and the year]* | *[indicate the country and the city]* | ***Name of the Company:******Address of the company:******Phone:******Fax:******Email:*** ***Name and title of the reference person from the company:*** | *[indicate the exact name and title and if it was a short term or a long term position]* | ***Name of the Assignment:*** ***Beneficiary of the Assignment:******Brief description of the Assignment:*** ***Responsibilities:*** |
| *[indicate the month and the year]* | *[indicate the country and the city]* | ***Name of the Company:******Address of the company:******Phone:******Fax:******Email:*** ***Name and title of the reference person from the company:*** | *[indicate the exact name and title and if it was a short term or a long term position]* | ***Name of the Assignment:*** ***Beneficiary of the Assignment:******Brief description of the Assignment:*** ***Responsibilities:*** |
| ................ | …………….. | ……………………. | …………… | ………………………………………………………………………….. |
| *[indicate the month and the year]* | *[indicate the country and the city]* | ***Name of the Company:******Address of the company:******Phone:******Fax:******Email:*** ***Name and title of the reference person from the company:*** | *[indicate the exact name and title and if it was a short term or a long term position]* | ***Name of the Assignment:*** ***Beneficiary of the Assignment:******Brief description of the Assignment:*** ***Responsibilities:*** |

1. **Other relevant information:** (e.g. Publications)

***[insert the details]***

***19. Statement:***

I, the undersigned, certify that to the best of my knowledge and belief, this CV correctly describes myself, my qualifications, and my experience. I understand that any wilful misstatement described herein may lead to my disqualification or dismissal, if engaged.

I hereby declare that at any point in time, at the SADC Secretariat’s request, I will provide certified copies of all documents to prove that I have the qualifications and the professional experience as indicated in points 8 and 14 above**[[2]](#footnote-2),** documents which are attached to this CV as photocopies.

By signing this statement, I also authorize the Ministry of Trade to contact my previous or current employers indicated at point 14 above, to obtain directly reference about my professional conduct and achievements.

|  |  |  |
| --- | --- | --- |
|  | Date: |  |

**ATTACHMENTS:** ***1) Proof of qualifications indicated at point 9***
 ***2) Proof of working experience indicated at point 15***

# C. FINANCIAL PROPOSAL

**REFERENCE NUMBER:** SADC/TRF/2017/2/05– FORMULATION OF THE NATIONAL TOURISM BILL

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **N°** | **Description[[3]](#footnote-3)** | **Unit[[4]](#footnote-4)** | **No. of Units** | **Unit Cost****(in US$)** | **Total****(in Euro)** |
| **Fees** | Day |  |  |  |
| **Reimbursable expenses, out of which**  | ***Total*** |  |  |  |
| 1 | Per diem allowances | Day | N/A |  |  |
| 2 | Flights[[5]](#footnote-5) | Trip | N/A |  |  |
| 3 | Miscellaneous travel expenses[[6]](#footnote-6) | Trip |  |  |  |
| 4 | Insurances cost, out of which: | Lump sum  |  |  |  |
|  | i) | Life insurance (including repatriation) | Lump sum | N/A |  |  |
|  | ii) | Heath insurance  | Lump sum | N/A |  |  |
|  | iii) | Third party liability insurance | Lump sum |  |  |  |
|  | iv) | Professional liability insurance | Lump sum | N/A |  |  |
| 5 | Drafting, reproduction of reports | Lump sum |  |  |  |
| 6 | Office rent | Per month | N/A |  |  |
| 7 | Others**4** | TBD |  |  |  |
| **TOTAL FINANCIAL OFFER (Fees)**  |  |

Signature [*In full and initials*]:

Name and Title of Signatory:

**ANNEX 3: STANDARD CONTRACT FOR INDIVIDUAL CONSULTANTS**

STANDARD TERMS OF CONTRACT

(Individual Consultant)

Reference Number*:* **SADC/TRF/2017/2/05 – FORMULATION OF THE NATIONAL TOURISM BILL**

THIS Contract (“Contract”) is made on *[day]* day of the month of *[month]*, *[year]*, between, **on the one hand**,

***The Ministry of Commerce, Industry and Trade*** (hereinafter called the “Procuring Entity”) with the registered business in: Inter-ministerial Building, Mhlambanyatsi Road, P. O. Box 451, Mbabane, H100, Eswatini

**and, on the other hand,**

***[Insert the full name of the individual]***(Hereinafter called the “Individual Consultant”), with residence in***[insert the Individual Consultant’ address, phone, fax, email],*** citizen of ***[insert the Individual Consultant’s citizenship]*** owner of the ID/Passport Number ***[insert the number]*** issued on ***[insert the date]* by*****[insert the name of the issuance authority],***

WHEREAS, the Procuring Entity wishes to have the Individual Consultant perform the services hereinafter referred to, and WHEREAS, the Individual Consultant is willing to perform these services,

NOW THEREFORE THE PARTIES hereby agree as follows:

1. **Definitions**

For the purpose of this contract the following definitions shall be used:

* 1. **Procuring Entity** means the legally entity, namely ***the SADC Secretariat*** who purchase theServices described in Annex 1 to this contract.
	2. **Contract** means the agreement covered by these Terms including the Annexes and documents incorporated and/or referred to therein, and attachments thereto.
	3. **Contract value** means the total price of the Financial Proposal included in the Individual Consultant’s Expression of Interests dated ***[insert the date]*** for the project “FORMULATION OF THE NATIONAL TOURISM BILL**”**
	4. ” andreflected as such in the Annex 2 of this contract**.**
	5. **Individual Consultant** means the individual to whom the Procuring Entity has awarded this contract following the Request for Expression of Interest “SADC/TRF/2017/2/0 – FORMULATION OF THE NATIONAL TOURISM BILL”
	6. **Services** means the Services to be performed by the Individual Consultant as more particularly described in Annex 1; for the avoidance of doubt, the Services to be performed include all obligations referred to in this Contract (as defined above).
1. **The Services**

The Individual Consultant will undertake the performance of the Services in accordance with the provisions of the Annex 1 of this Contract and shall, in the performance of the Services, exercise all the reasonable skill, care and diligence to be expected of an Individual Consultant carrying out such services.

1. **Payment**
	1. The Individual Consultant shall be paid for the Services at the rates and upon the terms set out in Annex 2.
	2. Payment shall be made to the Individual Consultant in Euros unless otherwise provided by this contract and where applicable, VAT shall be payable on such sums at the applicable rate. The Individual Consultant must, in all cases, provide their VAT registration number on all invoices.
	3. Unless otherwise provided in this Contract, invoices shall be delivered to and made out to Procuring Entity and shall be paid within 30 days of receipt by the Project Director, subject to the Individual Consultant having complied with his/her obligations hereunder in full as stated in the Annex II to this Contract. The Procuring Entity reserves the right to delay and/or withhold, fully or partially, payments that have not been supported by full and appropriate supporting evidence that the services provided were delivered and accepted by the Procuring Entity.
2. **Status of the Individual Consultant**
	1. For the duration of the Contract, the Individual Consultant will have a status similar to the Procuring Entity’scontractor with regards to their legal obligations, privileges and indemnities in the Procuring Entity’s country.
	2. The Procuring Entity will be responsible for ensuring all visas, work permits and other legal requirements to enable The Individual Consultant to live and work in the countries of the assignment as per the duties under the contract.
	3. The Individual Consultant shall be responsible for paying any tax and social security contributions in his/her country of residence, for any activity deriving from this contract. Such costs shall be assumed included in the Individual Consultant’s fees.
	4. The Procuring Entity shall be responsible for paying any taxes resulting from the activities performed under this contract imposed to the Individual in the country (ies) of the assignment with the exception of the ones set out in paragraph 4.3 above.
3. **Supervision of the Services**

The Individual Consultant undertakes to deliver the Services in compliance with a system of quality assurance acceptable to the Procuring Entity which shall include any steps to comply with the standards operated by the Procuring Entity. The Individual Consultant shall be informed of the specific requirements in relation to this, and at the request of the Procuring Entity (s) he shall allow access to information, records and other materials during normal office working hours as the Procuring Entitymay require in order to confirm that the work in progress is in accordance with these quality procedures.

1. **Compliance with this contract**

The Procuring Entitywill be entitled to seek confirmation from the Individual Consultant, at any time during the delivery of this contract, and for a period of 1 year after its completion, that the Individual Consultant has complied with the terms of this contract. Itmay also request the provision of reasonable documentary evidence to support this. As stated in article 2.3 of this Contract, the Procuring Entity may delay or withhold payments in the event of non-compliance.

1. **Assignment and Subcontracting**
	1. The Individual Consultant shall under no circumstances sub-contract, sublet, assign or transfer the Contract or any part share or interest in it. Where the Individual Consultant considers it necessary to use the services of a third party, (s)he shall inform the Procuring Entity’s Project Director in writing, and only once written approval is provided can the Consultant proceed to use a third party.
	2. When the Project Director agrees that the activities under the contract can be performed by a third party, the third party involved in the delivery of services in this contract, will be under the direct control of the Individual Consultant. The Procuring Entity will not be responsible for the third party’s performance of duties or Services assigned to it, and neither for ensuring that conditions of employment are met nor for any other employment obligations relating to that person including, but not restricted to, taxation and insurance including professional indemnity insurance, employer’s liability insurance and public liability insurance.
2. **Breach of the Terms**

In the event of a breach of any Terms of the Contract, the party not in breach may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice, not normally being longer than 30 days. If the breach has not been remedied before the expiry of the specified period, the party not in breach may then terminate the Contract in writing and may take appropriate steps to remedy the breach.

1. **Liability of the Individual Consultant**
	1. The Procuring Entity will be relying on the Individual Consultant’s skills, expertise and experience in relation to the performance of the Services in accordance with this contract and also upon the accuracy of all representations and statements made and the advice given in connection with the provision of the Services.
	2. In view of the reliance by the Procuring Entity set out in 9.1 above, the Individual Consultant agrees to indemnify at its own expense, protect and defend the Procuring Entity, its agents and employees, from and against all actions, claims, losses or damages arising out of the Individual Consultant's performance of this contract provided that:
2. the Individual Consultant is notified of such actions, claims, losses or damages not later than 30 days after the Procuring Entitybecomes aware of them;
3. the ceiling on the Individual Consultant's liability to the Procuring Entity shall be limited to an amount equal to the contract value but such ceiling shall not apply to any losses or damages caused to third parties by the Individual Consultant's willful misconduct; and
4. the Individual Consultant's liability shall be limited to actions, claims, losses or damages directly caused by such failure to perform its obligations under the contract and shall not include liability arising from unforeseeable occurrences incidental or indirectly consequential to such failure.
	1. At its own expense, the Individual Consultant shall, upon request of the Procuring Entity, remedy any defect in the performance of the services in the event of the Individual Consultant's failure to perform its obligations under the contract.
	2. The Individual Consultant shall have no liability whatsoever for actions, claims, losses or damages occasioned by the Procuring Entity omitting to act on any recommendation, or overriding any act or decision of the Individual Consultant, or requiring the Individual Consultant to implement a decision or recommendation with which the Individual Consultant disagrees or on which (s) he expresses a serious reservation.
5. **Insurance**
	1. The Individual Consultant must ensure that full and appropriate professional indemnity insurance and third party liability insurance, is in place for all Services provided.
	2. The cost of such insurances will be covered from reimbursable expenses of the contract.
	3. Where national requirements or practices provide for different regulations/practices concerning insurance, the Individual Consultant may provide written confirmation of all insurances held and a signed declaration that these are in line with regulations/practices in their country of operation. Only if such confirmation has been provided, and written confirmation of its acceptance provided to the Individual Consultant by the Procuring Entity, will this remove the obligation to meet the requirements of clause 11.1 of this Contract in full.
	4. All insurances effected by the Individual Consultant shall be effected with an insurer of good repute and the Individual Consultant agrees to maintain such insurances for a period of 1 year from the completion of the Services under this Contract so long as such insurance continues to be available upon reasonable terms at reasonable commercial rates failing which Procuring Entityshall be entitled to take out insurance itself to cover any potential liability to its own Procuring Entity in relation to the performance of the Services under this contract. The cost of such insurance shall be a debt immediately due from the Individual Consultant.
	5. The provisions of this clause shall remain in full force and effect notwithstanding the completion of the performance of the Services hereunder and the satisfaction of all other provisions of this contract.
6. **Copyright**
	1. Unless otherwise specified in the Contract, the title of the copyright and any other intellectual property rights arising out of the performance of this Contract shall be vested in the Procuring Entity which shall have the unfettered right to assign and grant sub-licenses in respect of the same. Except as permitted by the Terms of this Contract, the said materials shall not be reproduced or disseminated without proper consultation with, and written permission from, the Procuring Entity. This provision shall apply to the title to rights arising from the performance under this contract but shall not apply to the internal systems or rights in relation to the Individual Consultant’s own systems not created specifically for this purpose and where the same are an important part of the Services. The Individual Consultant shall grant a free and irrevocable license to the Procuring Entity and its assigns for the use of the same in that connection.

The Individual Consultant warrants that it is free of any duties or obligations to third parties which may conflict with this contract and, without prejudice to the generality of Term 9 above, agrees to indemnify the Procuring Entity against any and all actions, costs damages, direct, indirect or consequential, and other expenses of any nature whatsoever which the Procuring Entitymay incur or suffer as a result of the breach by the Individual Consultant of this warranty.

1. **Non-Disclosure & Confidentiality**
	1. The Individual Consultant will treat all information and results obtained in discharging the Services under this Contract as confidential and will not disclose by any means whatsoever such results or material to any third party without the prior written consent of the Procuring Entity and will only use such information for the purposes of this Contract. In addition, the Individual Consultant shall not make any communication to the press or any broadcast (including, but not limited to, inclusion of information on a website) about the Services without the prior written agreement of the Project Director.
	2. If the Individual Consultant violates clause 12.1, then (s) he will automatically and legally be held to pay the amount estimated as the minimum reasonable damages resulting from a breach of confidentiality. This is without prejudice to the right of the Procuring Entity to demonstrate that a higher amount of loss has or may be incurred as a result of liabilities held by the Consultantin relation to the Procuring Entity.
2. **Suspension or Termination**
	1. In response to any factors out of the control of Procuring Entityand/or to breaches of contract by the Consultant, the Procuring Entity may at any time, by giving 30 days’ notice in writing, terminate in whole or in part or suspend the Individual Consultant’s performance of the Services. In such event, the Individual Consultant shall be entitled to payment pursuant to sub-clause 13.4 below. If such suspension continues for a period in excess of twelve months, then either party may terminate this contract forthwith by written notice to the other.
	2. The Individual Consultant may also terminate the contract unilaterally, without providing any reasons for such decision, if (s) he gives a 30 days prior written notice to the Project Director.
	3. In the event of early termination of the Contractunder sub-clauses 13.1, 13.2 and 13.3 of this clause, the Individual Consultant shall be entitled to a fair and reasonable proportion of the fees payable for that part of the Services carried out up to the date of such termination or suspension but this shall not include any loss of profit or contracts or any other expenses, losses or claims arising out of such termination or suspension or consequential thereupon.
3. **No Waiver**

No forbearance shown or granted to the Individual Consultant, unless in writing by an authorized officer of the Procuring Entity,shall in any way affect or prejudice the rights of the Procuring Entityor be taken as a waiver of any of these Terms.

1. **Variations**

Any variation to these terms or the provisions of the Annexes shall be subject to a written Addendum and be signed by duly authorized signatories on behalf of the Individual Consultant and the Procuring Entity respectively.

1. **Jurisdiction**

This contract shall be governed by, and shall be construed in accordance with Botswana law and each party agrees to submit to the exclusive jurisdiction of the Botswana courts in regard to any claim or matter arising under this contract.

**The following Annexes are integral part of this Contract:**

***Annex 1: Terms of Reference***

***Annex 2: Payment Schedule and Requirements***

Signed today ***[insert the date]*** in four (4) originals in the English language by:

|  |  |
| --- | --- |
| **For the Procuring Entity** | **For the Individual Consultant** |
| **Name :** |  | **Name :** |  |
| **Position :** |  |  |  |
| **Place :** |  | **Place :** |  |
| **Date:**  |  | **Date :** |  |
| **Signature:** |  | **Signature :** |  |

***Annex 1: Terms of Reference***

***Annex 2: Payment Schedule and Requirements***

* 1. For Services rendered pursuant to Annex 1, the Procuring Entity shall pay the Individual Consultant an amount not to exceed the ceiling of Euros ***[insert ceiling amount],*** which shall be considered the contract value. This amount has been established based on the understanding that it includes all of the Consultant’s costs and profits as well as any tax obligation that may be imposed on the Individual Consultant in his/her country of residence.
	2. The breakdown of prices is:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **N°** | **Description[[7]](#footnote-7)** | **Unit** | **No. of Units** | **Unit Cost[[8]](#footnote-8)****(in US$)** | **Total****(in US$)** |
| **Fees** | Day |  |  |  |
| **Reimbursable expenses, out of which**  | ***Total*** |  |  |  |
| 1 | Per diem allowances | Day |  |  |  |
| 2 | Flights[[9]](#footnote-9) | Trip |  |  |  |
| 3 | Miscellaneous travel expenses[[10]](#footnote-10) | Trip |  |  |  |
| 4 | Insurances cost, out of which: | Lump sum  |  |  |  |
|  | i) | Life insurance (including repatriation) | Lump sum |  |  |  |
|  | ii) | Heath insurance  | Lump sum |  |  |  |
|  | iii) | Third party liability insurance | Lump sum |  |  |  |
|  | iv) | Professional liability insurance | Lump sum |  |  |  |
| 5 | Drafting, reproduction of reports | Lump sum |  |  |  |
| 6 | Office rent | Per month |  |  |  |
| 7 | Others**4** | TBD |  |  |  |
| **TOTAL FINANCIAL OFFER (Fees)**  |  |

3. The payment shall be made in accordance with the following schedule:

***30%***upon the Procuring Entity’s receipt of the ***Inception Report*** acceptable to the Procuring Entity;

***70%***upon the Purchaser’s receipt of the final report, acceptable to the Procuring Entity.

4. **Payment Conditions:** Payment shall be made in Euros not later than 30 days following submission of original invoice by the Individual Consultant, in duplicate, accompanied by the requested supporting documents. All payments under the contract shall be made by bank transfer into the bank account indicated by the Individual Consultant in her/his invoices.

1. Amounts must coincide with the ones indicated under Total Cost of Financial proposal in Form FIN-2. [↑](#footnote-ref-1)
2. ***The proof of stated qualifications shall be in the form of the copies of the degrees and diploma obtained, while for the professional experience the proof shall be either acknowledgement letters from the previous employers or copies of the Purchase Order/ Contract signed with them.***  [↑](#footnote-ref-2)
3. Delete items that are not applicable or add other items as the case may be. [↑](#footnote-ref-3)
4. Indicate unit cost.. [↑](#footnote-ref-4)
5. Indicate route of each flight, and if the trip is one- or two-ways [↑](#footnote-ref-5)
6. Provide clear description of what is their exact nature [↑](#footnote-ref-6)
7. Delete items that are not applicable or add other items as the case may be. [↑](#footnote-ref-7)
8. Indicate route of each flight, and if the trip is one- or two-ways. [↑](#footnote-ref-8)
9. Indicate unit cost. [↑](#footnote-ref-9)
10. Provide clear description of what is their exact nature [↑](#footnote-ref-10)