



SPECIFIC PROCUREMENT NOTICE

PROCUREMENT OF A FIRM TO DEVELOP AN EFFECTIVE MECHANISM TO ENSURE COMPLIANCE TO SADC PROTOCOLS AND OTHER LEGAL INSTRUMENTS AND COMMITMENTS

REQUEST FOR PROPOSALS

Reference Number: SADC/3/5/1/4

Procurement entity: SADC SECRETARIAT

Number and titles of lots: 1

Location: SADC Secretariat, Western Commercial Road (near Lobatse and Siboni Roads), CBD Plot 54385, Private Bag 0095, Gaborone, BOTSWANA.

1. The Southern African Community (SADC) Secretariat has set aside funds for the operation of the Secretariat during the financial year 2018/19. It is intended that part of the proceeds of the fund will be used to cover eligible payments under the Consultancy contract to Develop an effective compliance, monitoring and quality assurance mechanism for the SADC Secretariat.
2. The SADC Secretariat now invites sealed proposals from eligible and reputable firms interested to bid for the Assignment

3. The selection method used for this contract is Quality and Cost Based Selection under the Negotiated Procedure as defined in the revised **SADC Secretariat Procurement Policy and Guidelines** available at the following website: www.sadc.int
4. The RFP with Terms of reference and supporting Annexes can be obtained from the following website: <http://www.sadc.int/opportunities/procurement/open-procurement-opportunities/>
5. The closing time and date for submission of the proposals at the address indicated in the RFP document is **Monday, 19th November 2018 at 16:00hrs local time**. Proposals received after this time and date, or submitted otherwise than indicated in the RFP Document shall not be considered and shall be returned unopened.
6. The procurement opportunity is open to all firms which satisfy the eligibility and qualification requirements stated in the RFP
7. All notifications concerning this procurement process, including: or cancellation notices, Requests for clarification and the respective responses will be published on the following website: www.sadc.int.
8. Interested companies/firms may seek clarification or/and additional information concerning this Request for proposal, only in writing (or by email) and by latest **Monday, 5th November 2018 at 16:00 hours local time** from the following contact points:

Head of Procurement

Southern African Development Community (SADC) Secretariat

CBD Plot 54385

Room DGP11 on Ground Floor

City: **Gaborone**

Country: **Botswana**

Phone: +2673951863

Fax: +2673972848/3181070

Email: ggwaza@sadc.int

Attention: Mr. Gift Mike Gwaza

Copy to Mr. Dennis Rweyemamu

Email : drweyemamu@sadc.int

REQUEST FOR PROPOSAL

FOR THE PROCUREMENT OF A CONSULTING FIRM TO DEVELOP AN EFFECTIVE COMPLIANCE, MONITORING AND QUALITY ASSURANCE MECHANISMS FOR SADC

CONTRACT NUMBER: SADC/3/5/1/4

PROCURING ENTITY: SADC Secretariat

Issued on: 19 OCTOBER 2018

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Section 1. Letter of Invitation

SADC Secretariat,
Western Commercial Road (near Lobatse and Siboni Roads)
CBD Plot 54385
Gaborone
Botswana

19 NOVEMBER 2018

Dear Sir/Madam

1. SADC Secretariat now invites proposals to provide the following services:

“DEVELOPING AN EFFECTIVE MECHANISM TO MONITOR AND ENSURE COMPLIANCE TO SADC PROTOCOLS AND OTHER LEGAL INSTRUMENTS AND COMMITMENT”

More details on the services are provided in the attached Terms of Reference.

2. A contractor will be selected under the Open Bidding method and procedures described in this Bidding Documents.

3. The Bidding Documents includes the following documents:

Section 1 - Letter of Invitation

Section 2 - Information to Bidders

Section 3 - Technical Proposal - Standard Forms

Section 4 - Financial Proposal - Standard Forms

Section 5 - Terms of Reference

Section 6 - Standard Forms of Contract.

Yours sincerely,



**Gift Mike Gwaza,
Head, Procurement Unit.**

Section 2. Information to Bidders¹

Definitions

- (a) “BD” means the Bidding Documents to be prepared by the Procuring Entity for the selection of Contractor, based on the SADC Secretariat Standard Template.
- (b) “Procuring Entity” means the procurement entity in charge of the procurement procedure.
- (c) “Contractor” means any entity or person that may provide or provides the Services to the Client under the Contract.
- (d) “Contract” means the Contract signed by the Parties and all the attached documents that are the General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (e) “Contracting Authority” means the entity with which the selected Consultant signs the Contract for the Services.
- (f) “Data Sheet” means such part of the Instructions to Bidders used to reflect specific country and assignment conditions.
- (g) “Day” means calendar day.
- (h) “Evaluation Committee” it is a panel of experts appointed by the Procuring Entity and assigned to evaluate the bids. The Evaluation Committee consists in a Chairperson and a Secretary, with no voting rights and an odd number of voting members.
- (i) “Instructions to Bidders” (Section 2 of the BD) means the document which provides shortlisted Bidders with all information needed to prepare their Proposals.
- (j) “LOI” (Section 1 of the BD) means the Letter of Invitation being sent by the Procuring Entity to the shortlisted Bidders.
- (k) “Negotiated procedure” means a procurement method for acquisition of goods, works and services in which one or several economic operators are invited to submit a technical and financial proposal and negotiate the technical, financial and commercial conditions of a contract.
- (l) “Personnel” means professionals and support staff provided by the Bidders or by any Sub-Contractors and assigned to perform the Services or any part thereof; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside the Procuring Entity’s country; “Local Personnel” means such professionals and support staff who at the time of being so provided had their domicile inside the Procuring Entity’s country.
- (m) “Proposal” means the Technical Proposal and the Financial

¹ This Information to Bidders section shall not be modified. Any necessary changes to address specific country and project issues, shall be introduced only through the Data Sheet (e.g., by adding new clauses). Likewise, modifications to the standard Form of Contract should be made only by including clauses outlining the special conditions and not by introducing changes in the wording of the general conditions.

- Proposal.
- (n) “Services” means the consulting services or the work to be performed by the Contractor pursuant to the Contract.
 - (o) “Subcontractor” means any person or entity with whom the Bidder or Contractors intends to subcontracts any part of the Services.
 - (p) “Terms of Reference” (TOR) means the document included in the BD as Section 5 which explains the objectives, scope of work, activities, tasks to be performed, respective responsibilities of the Procuring Entity and the Contractor, and expected results and deliverables of the assignment.

1. Introduction

- 1.1 The Procuring Entity named in **the Data Sheet** will select a firm/eligible institution among those listed in the Letter of Invitation, in accordance with the procurement method indicated in **the Data Sheet**, method detailed in the edition of the Guidelines indicated in **the Data Sheet**.
- 1.2 The shortlisted Bidders are invited to submit a Technical Proposal and a Financial Proposal for fee based services required for the assignment named in **the Data Sheet** and presented in details in the Terms of Reference attached as Section 5 of this Bidding Documents. The proposal and the Terms of Reference will be the basis for contract for a signed contract with the successful firm.
- 1.3 The assignment shall be implemented in accordance with the phasing indicated in **the Data Sheet**. When the assignment includes several phases, the performance of the Bidder under each phase must be to the Procuring Entity's satisfaction before work begins on the next phase.
- 1.4 The Bidders must familiarize themselves with local conditions and take them into account in preparing their proposals. To obtain firsthand information on the assignment and on the local conditions, Bidders are encouraged to request the Procuring Entity to provide further information before submitting a proposal and to attend a pre-bid conference if one is specified in **the Data Sheet**. Attending the pre-proposal conference is optional. The Bidders' representative should contact the Procuring Entity at the address stated in **the Data Sheet** or to obtain additional information on the pre-bid conference.
- 1.5 The Procuring Entity will provide the inputs specified in **the Data Sheet**, assist the firm in obtaining licenses and permits needed to

carry out the services, and make available relevant project data and reports.

- 1.6 Please note that (i) the costs of preparing the proposal, including a visit to the Procuring Entity, are not reimbursable as a direct cost of the assignment; and (ii) the Procuring Entity is not bound to accept any of the proposals submitted.
- 1.7 SADC Secretariat policy requires that Bidders provide professional, objective, and impartial advice and at all times hold the Procuring Entity's interests paramount, without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests. Bidders shall not be hired for any assignment that would be in conflict with their prior or current obligations to other clients, or that may place them in a position of not being able to carry out the assignment in the best interest of the Procuring Entity.
 - 1.7.1 Bidders will be excluded from the bidding process if it will be in a conflict of interest situation as described below:
 - (a) Conflict between consulting activities and procurement of goods, works or services. A bidder or a contractor that has been engaged by the SADC Secretariat or the Procuring Entity to provide goods, works, or services for the organization, and each of its affiliates, shall be disqualified from providing consulting services related to those goods, works or services. Conversely, a bidder or a contractor hired to provide services for the preparation or implementation of a project, and each of its affiliates shall be disqualified from subsequently providing goods, works or services resulting from or directly related to the contractor's consulting services for such preparation or implementation.
 - (b) Conflict among consulting assignments: Neither, bidders or contractors (including their personnel and sub-Bidders) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the bidder or contractor. For instance, a contractor assisting SADC Secretariat or the Procuring Entity to implement a project shall not be engaged to prepare an independent assessment for the implementation of the same project, or contractors hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.
 - (c) Relationship with SADC Secretariat's or the Procuring Entity's staff: bidders or contractors (including their personnel

and sub-contractors) having business or family relationship with a member of the SADC Secretariat's or the Procuring Entity's staff directly or indirectly involved in any part of: (i) the preparation of the TOR or Technical Specification of a contract, (ii) the selection process for such contract, or (iii) the supervision of the contract, may not be awarded the contract, unless the conflict stemming from this relationship has been resolved in a manner acceptable to the SADC Secretariat throughout the selection process and the execution of the contract.

- 1.7.2 Since previous or ongoing participation in relation to the assignment by the Bidder, its professional staff, or its affiliates or associates under a contract with the SADC Secretariat and Procuring Entity may result in rejection of the proposal, the bidders should clarify their situation in that respect with the Procuring Entity before preparing the proposal.
- 1.7.3 Bidders may be hired for downstream work, when continuity is essential, in which case this possibility shall be indicated in **the Data Sheet** and the factors used for the selection of the Bidder should take the likelihood of continuation into account. It will be the exclusive decision of the Procuring Entity whether or not to have the downstream assignment carried out, and if it is carried out, which Bidder will be hired for the purpose.
- 1.8 It is the SADC Secretariat's policy to require that Procuring Entity's staff as well as Bidders under SADC Secretariat-financed contracts, observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, the SADC Secretariat:
 - (a) defines for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - (ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefits or to avoid an obligation;
 - (iii) "collusive practices" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another

- party;
- (iv) “coercive practices” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - (v) “obstructive practice”
 - (aa) deliberately destroying, falsifying, altering or concealing material evidence to the investigation or making false statements to investigators in order to materially impede a SADC Secretariat, or a governmental or independent investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - (bb) acts intended to materially impede the exercise of the SADC Secretariat or governmental or inspection and audit rights.
- (b) It will take the following measures against the bidder recommended for award who has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- (i) will reject the bid for award;
 - (ii) will declare the bidder/the contractor, including its affiliates, ineligible, either indefinitely or for a stated period of time, to become a SADC Secretariat contractor;
 - (iii) will cancel or terminate any ongoing contract with the bidder /the contractor;
 - (iv) will request a the relevant national authorities to conduct a joint investigation with SADC Secretariat to inspect or carry out audits of the bidder /the contractor’ accounting records and financial statements in connection with the contract in question for which it was found guilty of engaging in corrupt, fraudulent, collusive, coercive, or obstructive practices;
 - (v) will forfeit the bid or performance securities of the bidder /the contractor;
 - (vi) will suspend any payments due to the bidder/ contractor, under the contract in question or any other contract the bidder/contractor might have with the organization, until

the extent of damage caused by the its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the SADC Secretariat's contract are determined and recovered, and

(vii) will sue the bidder /contractor to recover the damages caused by its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, if they are not fully recovered by the securities and the payments otherwise due to the bidder/contractor.

- 1.9 Neither the shortlisted Bidders nor their personnel or subcontractor shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by the SADC Secretariat in accordance with the above sub para. 1.8 (d).
- 1.10 Bidders shall furnish information as described in the Financial Proposal submission form (Section 4A) on commissions and gratuities, if any, paid or to be paid to agents relating to this proposal, and to execute the work if the firm is awarded the contract.
- 1.11 Without limitation on the generality of this rule, Bidders, and their subcontractors and personnel shall not be hired under the circumstances set forth below:
 - (a) They are bankrupt;
 - (b) Payments to them have been suspended in accordance with the judgment of a court of law other than a judgment declaring bankruptcy and resulting, in accordance with their national laws in the total or partial loss of the right to administer and dispose of their property;
 - (c) Legal proceedings have been instituted against them involving an order suspending payments and which may result, in accordance with their national laws, in a declaration of bankruptcy or in any other situation entailing the total or partial loss of the right to administer and dispose of their property;
 - (d) They have been convicted, by a final judgment, of any crime or offence concerning their professional conduct;
 - (e) They are guilty of serious misrepresentation with regard to information required for participation in an invitation to tender;
 - (f) They have been sanctioned by SADC Secretariat according to

the SADC Secretariat Policy for Procurement and Grants.

- 1.11 Only shortlisted Bidders are allowed to participate in this bidding process. If a Bidders is shortlisted as Joint Venture or Consortium, the composition of Joint Venture or Consortium can be changed with prior approval of the Procuring Entity and only if :(i) is supported by solid and objective arguments, (ii) does not alter the competition, (iii) is not generating a conflict of interest, and (iv) is not invalidating the criteria and conditions in place when the joint venture or consortium was prequalified.

2. Clarification and Amendment of Bidding Documents

- 2.1 Bidders may request a clarification of any of the Bidding Documents up to the number of days indicated in **the Data Sheet** before the proposal submission date. Any request for clarification must be sent in writing by papermail, cable, telex, facsimile, or electronic mail to the Procuring Entity's address indicated in **the Data Sheet**. The Procuring Entity will respond by cable, telex, facsimile, or electronic mail to such requests and will send written copies of the response (including an explanation of the query but without identifying the source of inquiry) to all invited Bidders who intend to submit proposals.

- 2.2 At any time before the submission of proposals, the Procuring Entity may, for any reason, whether at its own initiative or in response to a clarification requested by an invited firm, amend the BD. Any amendment shall be issued in writing through addenda. Addenda shall be sent by mail, cable, telex, facsimile, or electronic mail to all invited Bidders and will be binding on them. The Procuring Entity may at its discretion extend the deadline for the submission of proposals.

3. Preparation of Proposal

- 3.1 Bidders are requested to submit a proposal written in the language indicated in the **Bid Data Sheet**. All correspondence between the Bidder and Contracting Authority shall be in this language.

Technical Proposal

- 3.2 In preparing the Technical Proposal, Bidders are expected to examine the documents constituting this BD in detail. Material deficiencies in providing the information requested may result in rejection of a proposal.

- 3.3 While preparing the Technical Proposal, Bidders must give particular attention to the following:

- (i) If a Bidder considers that it does not have all the expertise for the assignment, it may obtain a full range of expertise

by associating with individual Bidder(s) and/or subcontract part of the services to other consulting firms, as appropriate. In case of subcontracting this shall be in the limit stated in **the Data Sheet** but under no circumstances shall exceed forty percent (40%) of the total staff-days input. The Bidders are encouraged to seek the participation of regional Bidders when subcontracting part of the assignment. Under no circumstances, the Bidders shall associate with the other short listed Bidders, or their affiliates, invited for this assignment. Affiliates are the group of companies, firms, associations, etc. where the Bidder or any of the major shareholders owns a minimum of twenty percent (20%) of shares of the share capital. For the same purpose, major shareholder is any legal or physical person who owns no less than twenty percent (20%) of the shares of the Bidder.

- (ii) For assignments on a fee-based basis, the estimated number of professional working days is given in **the Data Sheet**. The proposal shall, however, be based on the number of professional working days estimated by the Bidders.
- (iv) Proposed professional staff must, at a minimum, have the experience indicated in the Terms of Reference, preferably working under conditions similar to those prevailing in the country(ies) of the assignment.
- (v) Alternative professional staff shall not be proposed, and **only one curriculum vitae (CV)** must be submitted for each position.
- (vi) Reports to be issued by the Bidders as part of this assignment must be in the language(s) specified in **the Data Sheet**. It is desirable that the firm's personnel have a working knowledge of the official languages of the country (ies) of the assignment.

3.4 The Technical Proposal shall provide the following information using the attached Standard Forms (Section 3):

- (i) Any comments or suggestions on the Terms of Reference on facilities to provided by the Procuring Entity and on Standard Form of Contract (Form Tech 2).

- (ii) A description of the methodology and work plan for performing the assignment (Form Tech 3).
- (iii) The list of the proposed staff team by specialty, the tasks that would be assigned to each staff team member, and their timing (Form Tech 4).
- (iv) CVs recently signed by the proposed professional staff (Form Tech 5). Key information should include number of years working and positions and responsibilities held in various assignments during the last ten (10) years. To be considered during the evaluation, **the CV shall be accompanied by proof of all stated qualifications and working experience.** The proof 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 contracts signed with them. If the language of these documents is not the official language of the tender, they shall be accompanied by a certified translation into it.
- (v) Estimates of the total staff input (professional and support staff; staff time) needed to carry out the assignment, supported by bar chart diagrams showing the time proposed for each professional staff team member (Form Tech 6 and 7).
- (vi) A detailed description of the proposed methodology, staffing, and monitoring of training, if **the Data Sheet** specifies training as a major component of the assignment.
- (vii) Any additional information requested in **the Data Sheet**.

3.5 The Technical Proposal shall not include any financial information. If financial information is included in the technical proposal this will be automatically disqualified.

Financial Proposal

3.6 In preparing the Financial Proposal, Bidders are expected to take into account the requirements and conditions outlined in the BD documents. The Financial Proposal should follow Standard Forms (Section 4). It lists all costs associated with the assignment, including (a) remuneration for staff (foreign and local, in the field and at headquarters), and (b) reimbursable

expenses such as subsistence (per diem, housing), transportation (international and local, for mobilization and demobilization), services and equipment (vehicles, office equipment, furniture, and supplies), office rent, insurance, printing of documents, surveys, and training, if it is a major component of the assignment. The Reimbursable expense shall cover **only** the cost indicated in **the Data Sheet**. All other cost estimated by the bidders for the execution of the assignment shall be included in the daily fees of the experts.

- 3.7 The Financial Proposal **shall not** include the local taxes (including social security), duties, fees, levies, and other charges imposed under the applicable law in the Procuring Entity's country or in the countries of assignment, on the Bidders, the subcontractors, and their personnel (other than nationals or permanent residents of the Procuring Entity's country), unless **the Data Sheet** specifies otherwise. For this purpose, the bidders', the subcontractors' and their personnel' home countries shall not be considered as countries of assignment.
- 3.8 If so specified in **the Data Sheet**, the Financial Proposal **must** include, without any modification, the amount indicated as fixed reimbursable expenses, to cover for the expenditures already priced by the Procuring Entity (i.e, cost of trainings, cost of study tours, cost of financial audits, cost of equipments, etc).
- 3.9 The total budget available for this assignment, including the taxes indicated at para. 3.7 and the reimbursable expenses indicated at paragraph 3.8, is indicated in **the Data Sheet**.
- 3.10 Bidders **must** express the price of their services in the US Dollars. The payment will be made in **US Dollars**, and the Bidder shall bear all the cost and risks implied by the currency exchange. **Financial Proposals expressed in other currencies than the US Dollars will be automatically disqualified.**
- 3.11 Commissions and gratuities, if any, paid or to be paid by Bidders and related to the assignment will be listed in the Financial Proposal submission form (Section 4A).
- 3.12 **The Data Sheet** indicates how long the proposals must remain valid after the submission date. During this period, the Bidder is expected to keep available the professional staff proposed for the assignment. The Procuring Entity will make its best effort to complete evaluation within this period. If the Procuring Entity wishes to extend the validity period of the proposals, the Bidders

who do not agree have the right not to extend the validity of their proposals.

4. Submission, Receipt, and Opening of Proposals

- 4.1 The original proposal (Technical and Financial Proposal) shall be prepared in indelible ink. It shall contain no interlineation or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be initialed by the persons or person who sign(s) the proposals.
- 4.2 **An authorized representative of the firm initials all pages of the proposal. The representative's authorization is confirmed by a written power of attorney accompanying the proposal.**
- 4.3 For each proposal, the Bidders shall prepare the number of copies indicated in the **Data Sheet**. Each Technical Proposal and Financial Proposal shall be marked "ORIGINAL" or "COPY" as appropriate. If there are any discrepancies between the original and the copies of the proposal, the original governs.
- 4.4 The original and all copies of the Technical Proposal shall be placed in a sealed envelope clearly marked "Technical Proposal," and the original and all copies of the Financial Proposal in a sealed envelope clearly marked "FINANCIAL PROPOSAL" and warning: "DO NOT OPEN WITH THE TECHNICAL PROPOSAL." Both envelopes shall be placed into an outer envelope and sealed. This outer envelope shall bear the submission address and other information indicated in the Data Sheet and be clearly marked, "DO NOT OPEN, EXCEPT IN PRESENCE OF THE EVALUATION COMMITTEE." **Information on the outer and inner envelopes should also include the name of the Bidder and the contract name and reference number.**
- 4.5 The completed Technical and Financial Proposals must be delivered at the submission address on or before the time and date stated in **the Data Sheet**. Any proposal received after the closing time for submission of proposals shall automatically be rejected and shall be returned unopened to the Bidder.

5. Proposal Evaluation

General

- 5.1 From the time the bids are opened to the time the contract is awarded, if any Bidder wishes to contact the Procuring Entity on any matter related to its proposal, it should do so in writing at the address indicated in **the Data Sheet**. Any effort by the firm to

influence the Procuring Entity in the Procuring Entity's proposal evaluation, proposal comparison or contract award decisions may result in the rejection of the Bidder's proposal.

**Public
Opening and
Evaluation
of Technical
Proposals:
Scoring**

- 5.2 Evaluators of Technical Proposals shall have no access to the Financial Proposals until the technical evaluation, including any SADC Secretariat reviews, is concluded.
- 5.3 The Procuring Entity shall conduct the bid opening in public at the address, date and time specified in **the Data Sheet**. Only the representatives of the bidders and the Evaluation Committee members are allowed to participate in public opening sessions. Any other interested person shall request, in writing, the SADC Secretariat's permission to participate in a specific bid opening session.
- 5.4 The bid opening shall commence with the Chairperson the Evaluation Committee reading out the Bidders' names and the time of arrival of the proposal. A registration number will be given to each proposal. All envelopes shall be opened one at a time, by the Chairperson of the Evaluation Committee, in order of their arrival.
- 5.5 At the opening, only the Technical Proposal envelope shall be opened immediately and checked for compliance with formal submission requirements by the evaluation committee. The Financial Proposal shall remain sealed and deposited in a safe place until all submitted proposals, of technically responsive bids, are opened publicly. In case the envelopes are not submitted separately the Bidder will be excluded.
- 5.6 No Bid shall be rejected at Bid opening except for late bids, in accordance with ITB Sub-Clause 4.5 and the other listed in the template for opening checklist (see in Annex to Services to SADC Guidelines for Procurement and Grants). Only envelopes that are opened and read out at Bid opening shall be considered further.
- 5.7 The Procuring Entity shall prepare the minutes of the Bid opening that shall include a brief description of the bid opening procedures and its finding as. The Bidders' representatives who are present shall be requested to sign the attendance sheet. A copy of the minute shall be distributed to all Bidders who submitted bids in time.
- 5.8 Once the Bid opening is concluded, the Evaluation Committee, as a whole, and each of its voting members individually, evaluates the

proposals on the basis of their responsiveness to the Terms of Reference, applying the evaluation criteria, sub criteria (typically not more than three per criteria), and point system specified in **the Data Sheet**. Each responsive proposal will be given a technical score (St). A proposal shall be rejected at this stage if it does not respond to important aspects of the Terms of Reference or if it fails to achieve the minimum technical score indicated in **the Data Sheet**.

**Public
Opening and
Evaluation
of Financial
Proposals:
Ranking**

- 5.9 After the evaluation of quality is completed, the Procuring Entity shall notify those Bidders whose proposals did not meet the minimum qualifying mark or were considered nonresponsive to the BD and Terms of Reference, indicating that their Financial Proposals will be returned unopened after completing the selection process. The Procuring Entity shall simultaneously notify the Bidders that have secured the minimum qualifying mark, indicating the date and time set for opening the Financial Proposals. The opening date shall not be sooner than two weeks after the notification date. The notification may be sent by registered letter, cable, telex, facsimile, or electronic mail.
- 5.10 The Financial Proposals shall be opened publicly in the presence of the Bidders' representatives who choose to attend. The name of the Bidder, the technical scores, and the proposed prices shall be read aloud and recorded when the Financial Proposals are opened. The Procuring Entity shall prepare minutes of the public opening.
- 5.11 The evaluation committee will determine whether the Financial Proposals are complete (i.e., whether they have costed all items of the corresponding Technical Proposals; if not, the Procuring Entity will cost them and add their cost to the initial price), correct any computational errors, and determine if the total price is within the maximum budget available. The evaluation shall exclude those taxes, duties, fees, levies, and other charges imposed under the applicable law; and to be applied to foreign and non-permanent resident Bidders (and to be paid under the contract, unless the Bidder is exempted), and estimated as per para. 3.7.
- 5.12 **Once corrections or adjustments have been applied, the Financial Proposal shall be adjusted with the Regional Preference. This implies that a bid offering fifty percent (50)% or more expertise (experts) from the SADC Region will be discounted, for the purpose of evaluation only, will fifteen percent (15%).**

For the purpose of calculation of the of the percentage of regional expertise, the basis shall be the total number of key staff days allocated to regional experts in the overall allocation of key staff resources proposed by the bidder.

- 5.13 The lowest Financial Proposal (Fm) will be given a financial score (Sf) of 100 points. The financial scores (Sf) of the other Financial Proposals will be computed as indicated in the Data Sheet. Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) indicated in **the Data Sheet**: $S = St \times T\% + Sf \times P\%$. The firm achieving the highest combined technical and financial score will be awarded the contract.

6. Negotiations of Contract

- 6.1 The Contracting Authority, prior to award the contract, may enter into negotiation with the successful bidder in order to confirm the availability of proposed Professional staff, incorporation in the methodology of the aspects for which clarifications were requested during the evaluation and the modification of the schedule of mobilization of the team and submission of deliverables under the contract.
- 6.2 No negotiation on the: (i) composition of the proposed professional staff team, (ii) individual or overall professional staff inputs, (iii) unit or total price, and/or (iv) proposed methodology is allowed.
- 6.3 As far as possible, the negotiation shall be conducted in writing. Only on exceptional circumstances, the Contracting Authority and the successful shall meet for negotiations. In such case the meeting shall take place at the address indicated in the **Bid Data Sheet**.
- 6.4 Having selected the Consultant on the basis of, among other things, an evaluation of proposed Professional staff, the Contracting Authority will require assurances that the Professional staff will be actually available. The Contracting Authority will not consider substitutions during contract negotiations unless both parties agree that undue delay in the selection process makes such substitution unavoidable or for reasons such as death or medical incapacity. If this is not the case and if it is established that Professional staff were offered in the proposal without confirming their availability, the Bidder may be

disqualified. Any proposed substitute shall have equivalent or better qualifications and experience than the original candidate and be submitted by the Bidder within the period of time specified in the letter of invitation to negotiate.

6.5 The negotiations shall be recorded in a minute of the negotiations and be attached as annex to the contract.

7. Award of Contract

7.1 The Bidder who submitted a technical and financial responsive proposal and received the highest combined score, calculated as per formula given in para 5.13 and the Data Sheet, will be awarded the contract.

7.2 After the approval of the Evaluation Report, the Procuring Entity will promptly notify other both the success and the unsuccessful bidders about the outcome of the evaluation of the bids.

7.3 In case of the successful Bidder, following the notification of award the validity of its offer shall be automatically extended with sixty (60) days.

7.4 No later than thirty (30) days from that date of notification of the recommendation for the award of the contract, the Procuring Entity shall submit to the applicant the contract for the services. The successful Bidder shall be given fifteen (15) days to sign the contract to the Contracting Authority. If it fails to do so, the Procuring Entity may consider cancelling the award of the contract.

7.5 The Contractor is expected to commence the assignment on the date and at the location specified in **the Data Sheet**.

8. Confidentiality

8.1 Information relating to evaluation of proposals and recommendations concerning awards shall not be disclosed to the Bidders who submitted the proposals or to other persons not officially concerned with the process, until the winning firm has been notified that it has been awarded the contract.

9. Appeals

9.1 Short listed Bidders may appeal any of the Procuring Entity's decision taken during the evaluation process by following the procedures described on the SADC Secretariat Guidelines at the article specified in **the Data Sheet**.

Information to Bidders

DATA SHEET

Clause Reference	Clarifications and/or Amendment to Reference Clause
1.1	<p>Procuring Entity is represented by: SADC Secretariat</p> <p>The name of the Contracting Authority is: SADC Secretariat The procurement method is: Negotiated Procedure</p> <p>The Edition of the Guidelines is: January 2017</p>
1.2	<p>The name, objectives, and description of the assignment are: DEVELOPING AN EFFECTIVE MECHANISM TO MONITOR AND ENSURE COMPLIANCE TO SADC PROTOCOLS AND OTHER LEGAL INSTRUMENTS AND COMMITMENT</p>
1.3	<p>The assignment is phased: No</p>
1.4	<p>A pre-bid conference will be held: NO</p>
1.5	<p>The Procuring Entity will provide the following inputs: Meeting rooms as needed.</p> <p>The experts will use their own laptop</p>
1.7.3	<p>The Procuring Entity envisages the need for continuity for downstream work: Yes</p>
2.1	<p>Clarifications may be requested 15 days' days before the submission date.</p> <p>The address for requesting clarifications is: SADC Secretariat Head of the Procurement Unit Address: Plot 54385, Central Business District Ground Floor, Room 21 City: Gaborone ZIP Code: N/A Country: Botswana Telephone: +267-3951863 Facsimile number: +267-3972848 / +267-3181070 Electronic mail address: ggwaza@sadc.int</p> <p>With copy to mmkumba@sadc.int and drweyemamu@sadc.int</p> <p>The correspondence shall bear the following reference: SADC/3/5/1/4 "DEVELOPING AN EFFECTIVE MECHANISM TO</p>

	MONITOR AND ENSURE COMPLIANCE TO SADC PROTOCOLS AND OTHER LEGAL INSTRUMENTS AND COMMITMENT AND QUALITY ASSURANCE MECHANISMS FOR SADC”
3.1	<p>The language of the bidding process is: English</p> <p>However any supporting documents that are part of the bid shall be issued in any SADC Secretariat official languages (i.e: English, French and Portuguese). If the original documents are written in a language other than SADC Secretariat official languages, they shall be accompanied by an original certified translation into any of the SADC Secretariat official languages. The cost of the translation shall be borne by the bidders.</p> <p>In case of discrepancies between the original language and the language of translation, the language of translation shall prevail.</p>
3.3	<p>(i) The Bidder may subcontract any portion of the assignment. Maximum 30% of the staff days allocated to the assignment may be subcontracted.</p> <p>(ii) Reports that are part of the assignment must be written in the following language(s): English</p>
3.9	The maximum available budget for this contract is <u>EUR 95,000.</u>
3.12	Proposals must remain valid 120 days after the submission date, i.e., until: 15th February 2019
4.3	Bidders must submit 1 original and 2 additional copies of each proposal, in hard copy and 1 electronic version on USB flash disk (written in a Microsoft Office application for the Technical proposal only).
4.4	<p>The proposal submission address is:</p> <p>SADC Secretariat Plot 54385, Central Business District Address: Plot 54385, Central Business District Ground Floor, Room 21 City: Gaborone ZIP Code: P/Bag 0095 Country: Botswana Telephone: +267-3951863 / +267-3641842 Facsimile number: +267-3972848 / +267-3181070</p>
4.5	Proposals must be submitted no later than the following date and time: Monday, 19th November 2018 at 16:00hrs local time .
5.1	<p>The address to send information to the Procuring Entity is:</p> <p>SADC Secretariat Attention: Head of Procurement Unit, Plot 54385, Central Business District Ground Floor, Meeting room DGP26</p>

	<p>Gaborone P/Bag 0095 Botswana Telephone: +267-3951863 / +267-3641842 Facsimile number: +267-3972848 / +267-3181070 Electronic mail address: ggwaza@sadc.int</p>										
5.3	<p>The Bid public opening will be held: SADC Secretariat Attention: Head of Procurement Unit, Plot 54385, Central Business District Ground Floor, Meeting room DGP26 Gaborone P/Bag 0095 Botswana Telephone: +267-3951863 / +267-3641842 Facsimile number: +267-3972848 / +267-3181070 Electronic mail address: ggwaza@sadc.int</p> <p>on Monday, 19th November 2019 at 16:00hrs local time .</p> <p>The bidder's must notify the Procuring Entity, in writing, with at least two day prior to the bid opening, the names of their representatives attending the bid opening.</p>										
5.8	<p>The number of points to be given under each of the evaluation criteria are:</p> <p>(i) Adequacy of the proposed work plan and methodology in responding to the Terms of Reference : [40 points]</p> <p>[Understanding of the ToRs[10%] [Methodology][70%] [Workplan]..... [20%]</p> <p>(ii) Qualifications and competence of the key staff for the Assignment [60 points]</p> <p>[Key Expert 1] [50%] [Key Expert2] [50%]</p> <p>The number of points to be given under each evaluation sub-criteria for qualifications of key staff, expressed in percentage from the number points allocated to each key staff, are:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;"></th> <th style="text-align: right;"><u>Percentage</u></th> </tr> </thead> <tbody> <tr> <td style="padding-left: 40px;">(i) General experience</td> <td style="text-align: right;">[20%]</td> </tr> <tr> <td style="padding-left: 40px;">(ii) Specific experience relevant to the assignment</td> <td style="text-align: right;">[60%]</td> </tr> <tr> <td style="padding-left: 40px;">(iii) Experience in region & language</td> <td style="text-align: right;">[20%]</td> </tr> <tr> <td style="padding-left: 80px;">Total Percent:</td> <td style="text-align: right;">100%</td> </tr> </tbody> </table> <p>The minimum technical score required to pass is 75 points</p>		<u>Percentage</u>	(i) General experience	[20%]	(ii) Specific experience relevant to the assignment	[60%]	(iii) Experience in region & language	[20%]	Total Percent:	100%
	<u>Percentage</u>										
(i) General experience	[20%]										
(ii) Specific experience relevant to the assignment	[60%]										
(iii) Experience in region & language	[20%]										
Total Percent:	100%										

5.13	<p>The formula for determining the financial scores is the following: Sf = 100 x Fm/F in which Sf is the financial score, Fm is the lowest price and F the price of the proposal under consideration.</p> <p>The weights given to the technical and Financial Proposals are: T=0.8 P=0.2</p>
6.2	<p>Negotiations will include: (i) composition of the proposed professional staff team, (ii) individual or overall professional staff inputs, (iii) unit or total price, and (iv) proposed methodology.</p>
6.3	<p>The address where the negotiations of the contract will be held is SADC Secretariat Address: Plot 54385, Central Business District Ground Floor, Room 26 City: Gaborone ZIP Code: P/Bag 0095 Country: Botswana Telephone: +267-3951863 / +267-3641842 Facsimile number: +267-3972848 / +267-3181070 Electronic mail address: ggwaza@sadc.int</p>
7.5	<p>The expected date to commence the assignment is 15th January 2019 but under no circumstances shall be earlier than one (1) weeks after the contract signature by the both parties.</p>
9.1	<p>The procedures to be followed to appeal a Procuring Entity decision in the procurement process are described in Section 7 of the SADC Secretariat Procurement Guidelines January 2017</p>

Section 3. Technical Proposal Submission Form

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FORM TECH-1 TECHNICAL PROPOSAL SUBMISSION FORM

[Location, Date]

To: [Name and address of Procuring Entity]

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for **[insert the title and reference number of service contract]** in accordance with your Bidding Documents dated **[insert the date]** and our Proposal. We are hereby submitting our Proposal, which includes this Technical Proposal, and a Financial Proposal sealed under a separate envelope.

Our Proposal is binding upon us and subject to the modifications resulting from correction and clarification made during the evaluation process, for a period of **[insert the number of days]** from the deadline for submission of the bid, as indicated in the Data Sheet reference to clauses 3.12 and 4.5.

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

We remain,

Yours sincerely,

Name and Title of Signatory:

Name of Firm:

Address:

Phone:

Facsimile:

e-mail:

**FORM TECH- 2 COMMENTS AND SUGGESTIONS ON THE TERMS OF
REFERENCE , ON COUNTERPART STAFF AND FACILITIES TO BE PROVIDED
BY THE PROCURING ENTITY AND ON STANDARD CONTRACT FORM**

A – On the Terms of Reference

[Present and justify here any modifications or improvement to the Terms of Reference you are proposing to improve performance in carrying out the assignment (such as deleting some activity you consider unnecessary, or adding another, or proposing a different phasing of the activities). Such suggestions should be concise and to the point, and incorporated in your Proposal.]

B – On Counterpart Staff and Facilities

[Comment here on counterpart staff and facilities to be provided by the Contracting Authority as indicated in the TORs or include your own requirements of: administrative support, office space, local transportation, equipment, data, etc.]

C – On Standard Form of Contract

[Please recommend any change in the Standard Form of Contract's clauses you would like to see incorporated in the final Contract. Please indicate which of the proposed changes, if not accepted by the Procuring Entity could determine you to reject the Contract for this assignment. Use maximum 2 pages]

FORM TECH-3 DESCRIPTION OF APPROACH, METHODOLOGY AND WORK PLAN FOR PERFORMING THE ASSIGNMENT

[Technical approach, methodology and work plan are key components of the Technical Proposal. You are suggested to present your Technical Proposal (**max. 30 pages, inclusive of charts and diagrams**) divided into the following three chapters:

- a) Technical Approach and Methodology,
- b) Work Plan, and
- c) Organization and Staffing,

a) Technical Approach and Methodology. In this chapter you should explain your understanding of the objectives of the assignment, approach to the services, methodology for carrying out the activities and obtaining the expected output, and the degree of detail of such output. You should highlight the problems being addressed and their importance, and explain the technical approach you would adopt to address them. You should also explain the methodologies you propose to adopt and highlight the compatibility of those methodologies with the proposed approach.

b) Work Plan. In this chapter you should propose the main activities of the assignment, their content and duration, phasing and interrelations, milestones (including interim approvals by the Purchaser), and delivery dates of the reports. The proposed work plan should be consistent with the technical approach and methodology, showing understanding of the TOR and ability to translate them into a feasible working plan. A list of the final documents, including reports, drawings, and tables to be delivered as final output, should be included here. The work plan should be consistent with the Work Schedule of Form TECH-7.

c) Organization and Staffing. In this chapter you should propose the structure and composition of your team. You should list the main disciplines of the assignment, the key expert responsible, and proposed technical and support staff.]

FORM TECH - 5 CURRICULUM VITAE (CV) FOR PROPOSED PROFESSIONAL STAFF¹

Proposed role in the project: [insert the name of the position and indicate the key position]

1. **Family name:** [insert the name]
2. **First names:** [insert the names in full]
3. **Date of birth:** [insert the date]
4. **Nationality:** [insert the country or countries of citizenship]
5. **Civil status:** [insert: married/ divorced/single/ widower]
6. **Contract details:** **Address:**[insert the physical address]
Phone :[insert the phone and mobile no.]
E-mail: [insert the email]
8. **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]

7. **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.]
[insert the no.]	[insert the no.]	[insert the no.]	[insert the no.]

8. **Membership of professional bodies:** [indicate the name of the professional body]
9. **Other skills:** [insert the skills]
10. **Present position:** [insert the name]
11. **Years of experience:** [insert the no]
12. **Key qualifications:** (Relevant to the assignment)
[insert the key qualifications]
13. **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]
[insert the country]	[indicate the month and the year]

¹ The CV must not exceed eight (8) pages

14. Professional experience ²:

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 contract: Beneficiary of the contract: Brief description of the contract: 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 contract: Beneficiary of the contract: Brief description of the contract: 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 contract: Beneficiary of the contract: Brief description of the contract: Responsibilities:

² Only key information about the positions and the responsibilities held in various assignments during the last ten (10) years should be included. Experience older than 10 years will be rendered irrelevant.

15. **Other relevant information:** (e.g. Publications)
[insert the details]

16. 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 request, I will provide certified copies of all documents to prove that I have the qualifications and the professional experience and indicated at points 8 and 14 above³, documents which are attached to this CV as photocopies.

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

Date: 19 October 2018

ATTACHMENTS: 1) **Proof of qualifications indicated at point 8**
 2) **Proof of working experience indicated at point 14**

³ *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 contract signed with them.*

FORM TECH-6 STAFFING SCHEDULE

N °	Name of Staff ¹	Staff input (in the form of a bar chart) ²														Total staff-days input ³		
		1	2	3	4	5	6	7	8	9	10	11	12	n	Home	Field ⁴	Total	
Key Experts																		
1		[Home]																
		[Field]																
2																		
n																		
														Subtotal				
Non key experts																		
1		[Home]																
		[Field]																
2																		
n																		
														Subtotal				
														Total				

Full time input
 Part time input

¹ Position held in the Contract must be indicated as well.

² Months/ weeks are counted from the start of the assignment. For each staff indicate separately staff input for home and field work.

³ Select months or weeks as needed.

⁴ Field work means work carried out at a place other than the Contractor's home office.

FORM TECH-7 WORK SCHEDULE

N°	Activity ¹	Months ²												
		1	2	3	4	5	6	7	8	9	10	11	12	n
1														
2														
3														
4														
5														
n														

¹ Indicate all main activities of the assignment, including delivery of reports (e.g.: inception, interim, and final reports), and other benchmarks such as Procuring Entity's approvals. For phased assignments indicate activities, delivery of reports, and benchmarks separately for each phase.

² Duration of activities shall be indicated in the form of a bar chart

Section 4. Financial Proposal Submission Forms

[Comments in brackets [] provide guidance to the Service Providers for the preparation of their Financial Proposals; they should not appear on the Financial Proposals to be submitted.]

FORM FIN-1 FINANCIAL PROPOSAL SUBMISSION FORM.....	40
FORM FIN-2 SUMMARY OF COSTS	41
FORM FIN-3 BREAKDOWN OF REMUNERATION ¹	42
FORM FIN-4 BREAKDOWN OF REIMBURSABLE EXPENSES.....	43

FORM FIN-1 FINANCIAL PROPOSAL SUBMISSION FORM

[Location, Date]

To: **[Name and address of Procuring Entity]**

Ladies/Gentlemen:

We, the undersigned, offer to provide the consulting services for **[insert the title and the reference number of consulting services]** in accordance with your Bidding Documents dated [insert the date] and our Proposal (Technical and Financial Proposals). Our attached Financial Proposal is for the sum of US\$ **[insert the amount in words and figures]**. This amount is exclusive of the taxes (including social security), duties, fees, levies, and other charges imposed under the applicable law in the Procuring Entity's country or in the countries of assignment, on the our firm(s), subcontractors, and personnel (other than nationals or permanent residents of the Procuring Entity's country). However, the Financial Proposal includes the reimbursable expenses indicated in the Data Sheet reference to the clause 3.8, amounting US\$ **[insert the amount(s) in words and figures]**, as well as the taxes indicated in the Data Sheet reference to clause 3.7, which we have estimated at **[insert the amount(s) in words and figures]**.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from correction and clarification made during the evaluation process, up to expiration of the validity period of the Proposal.

Commissions and gratuities, if any, paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below:

Name and Address of Agents	Amount and Currency	Purpose of Commission or Gratuity
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

We remain,

Yours sincerely,

Name and Title of Signatory:

Name of Firm:

Address:

Phone:

Facsimile:

E-mail:

FORM FIN-2 SUMMARY OF COSTS

Cost component	Costs
	(US\$)
Remuneration	
Reimbursable Expenses¹	
Taxes ²	
Total	

¹ as per the Data Sheet reference to clause 3.8

² as per Data Sheet reference to clause 3.7 *[delete if not applicable]*

FORM FIN-3 BREAKDOWN OF REMUNERATION¹

Name ²	Position ³	Input (in staff days)	Staff-daily Rate ⁴ (in US\$)	Total (in US\$)
		(a)	(b)	(c)= (a) X (b)
Key experts				
[name]	[position in the contract]	[Home] [number]	[Home] [amount]	[Home] [amount]
		[Field] [number]	[Field] [amount]	[Field] [amount]
[name]	[position in the contract]	[Home] [number]	[Home] [amount]	[Home] [amount]
		[Field] [number]	[Field] [amount]	[Field] [amount]
[name]	[position in the contract]	[Home] [number]	[Home] [amount]	[Home] [amount]
		[Field] [number]	[Field] [amount]	[Field] [amount]
Etc.		[Home] [number]	[Home] [amount]	[Home] [amount]
		[Field] [number]	[Field] [amount]	[Field] [amount]
Non Key staff				
[name]	[position in the contract]	[Home] [number]	[Home] [amount]	[Home] [amount]
		[Field] [number]	[Field] [amount]	[Field] [amount]
[name]	[position in the contract]	[Home] [number]	[Home] [amount]	[Home] [amount]
		[Field] [number]	[Field] [amount]	[Field] [amount]
[name]	[position in the contract]	[Home] [number]	[Home] [amount]	[Home] [amount]
		[Field] [number]	[Field] [amount]	[Field] [amount]
Etc.		[Home] [number]	[Home] [amount]	[Home] [amount]
		[Field] [number]	[Field] [amount]	[Field] [amount]
TOTAL RENUNERATION				

¹ Form FIN-3 shall be filled in for the same Professional and Support Staff listed in Form TECH-6.

² Professional Staff should be indicated individually; Support Staff should be indicated per category (e.g.: draftsmen, clerical staff).

³ Positions of the Professional Staff shall coincide with the ones indicated in Form TECH-4.

⁴ Indicate separately staff-daily rate for home and field work.

FORM FIN-4 BREAKDOWN OF REIMBURSABLE EXPENSES

N°	Description ¹	Unit ²	No. of Units	Unit Cost (in US\$)	Total (in US\$)
1	Per diem allowances	Day			
2	Flights ³	Trip			
3	Miscellaneous travel expenses ⁴	Trip			
4	Communication costs	Months			
5	Drafting, reproduction of reports	Lump sum			
6	Equipment, instruments, materials, supplies, etc. (if needed) ⁴				
7	Local transportation costs	month			
8	Office rent	month			
9	Insurances cost, out of which:	Lump sum			
	i) Life insurance (including repatriation)	Lump sum			
	ii) Health insurance	Lump sum			
	iii) Third party liability insurance	Lump sum			
	iv) Professional liability insurance	Lump sum			
10	Other ⁴	Lump sum			
11	Fixed Reimbursable Expenses⁵	Lump sum			
TOTAL REIMBUSABLES EXPENSES					

¹ Delete items that are not applicable or add other items as the case may be.

² Indicate unit cost.

³ Indicate route of each flight, and if the trip is one- or two-ways.

⁴ Provide clear description of what is their exact nature

⁵ The amount has to be indicated by the Procuring Entity and shall be included, without modifications, in the Financial Proposal. It shall cover costs already identified and priced by the Procuring Entity.

Section 5. Terms of Reference



TERMS OF REFERENCE

COMPLIANCE TO SADC PROTOCOLS AND OTHER LEGAL INSTRUMENTS AND COMMITMENTS

CONTRACT REFERENCE NUMBER: SADC/3/5/1/4

1. BACKGROUND INFORMATION

1.1. PARTNER

The Southern African Development Community (SADC) Secretariat (SADC) is an inter-governmental organization of 16 Member States headquartered in Gaborone, Botswana. It was founded on 1 April 1980, initially as the Southern African Coordinating Conference (SADCC), then transformed on 17 August 1992 to SADC following the signing of a Declaration and Treaty in Windhoek, Namibia at a Summit of Heads of State and Government.

1.2. CONTRACTING AUTHORITY

The SADC Secretariat, based in Gaborone, Botswana.

1.3. BACKGROUND

As the executive arm of SADC, the SADC Secretariat seeks to achieve development, peace and security, economic growth, alleviate poverty, enhance the standard and quality of lives of the peoples of Southern Africa, and support the socially disadvantaged through regional integration, built on democratic principles and equitable and sustainable development.

The Community's sixteen member countries are Angola, Botswana, Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Union of Comoros, Zambia and Zimbabwe.

The SADC Programme of Action is outlined in the Organisation's long-term Regional Indicative Strategic Development Plan (RISDP), which was approved in 2003 and subsequently revised in 2015. The Strategic Indicative Plan for the Organ on Politics, Defence and Security Cooperation (SIPO), the Regional Infrastructure Development Master Plan (RIDMP), the SADC Regional Agricultural Policy (RAP), the Industrialisation Strategy and the Roadmap, among many other policies and strategies of SADC, also provide guiding frameworks for achieving the regional agenda for deeper cooperation and integration. SADC has also developed various Protocols and other legal instruments in order to achieve its goals and objectives.

The mandate of the SADC Secretariat, as outlined in the SADC Treaty, includes the following:

- Strategic planning and management of the programmes of SADC;
- Coordination and harmonization of the policies and strategies of Member States;
- Mobilization of resources, co-ordination and harmonization of programmes and projects with cooperating partners;
- Devising appropriate strategies for self-financing and income generating activities and investment;
- Undertaking research on Community building and the integration process; and
- Monitoring and evaluating the implementation of regional policies and programmes.

1.4. STRATEGIC MINISTERIAL RETREAT

In March 2016, Council noted the need for a special strategic session, at Ministerial level, to examine the current state of affairs in SADC, the pace and level of the integration agenda, constraints and challenges, prospects and how to fast-track the SADC integration agenda. The SADC Strategic Ministerial Retreat, on the theme: "The SADC We Want", was held on 12-14 March 2017 in the margins of the Extraordinary Summit in March 2017 in Ezulwini, Swaziland. The overall objective of the Strategic Ministerial Retreat was to take stock of what SADC has achieved since its establishment in 1980, the challenges it is facing, and what needs to be done to accelerate the pace and level of the SADC integration agenda.

The specific objectives of the Strategic Ministerial Retreat were to:

- a. assess the current situation on implementation of the SADC integration agenda and reflect on whether SADC is realizing its objectives and satisfying

the expectations of Member States and to determine what needs to be done to create “THE SADC WE WANT”;

- b. interrogate existing institutional arrangements to drive regional integration at both regional and national levels, including assessment of the relevant capacities;
- c. elaborate the best options and possibilities for promoting regional development in Southern Africa and making SADC and its achievements more visible to the peoples of the region; and
- d. explore alternative options of financial resources for implementation of sustainable SADC programmes/projects

In line with the above objectives, the Ministerial Retreat discussed key topics, which were informed by five (5) lead statements from Ministers and five (5) concept papers prepared by identified institutions. The key topics were:

- (i) SADC Vision, Progress, Challenges and Prospects;
- (ii) SADC Institutional Capacity to Deliver on its Mandate; and
- (iii) Sustainable Financing for Regional Integration.

A report on the Conclusions of the Ministerial Retreat was approved by the SADC Extra-Ordinary Summit of March 2017, and the SADC Secretariat was directed to:

- 1) Propose how to ensure an effective compliance monitoring and assurance mechanisms, to track progress in implementation of SADC programmes and compliance to Protocols and legal instruments, including drawing lessons from the African Peer Review Mechanism (APRM);
- 2) prioritise SADC programmes by focusing on infrastructure development, industrialization and market integration, with peace and security as a prerequisite for economic development. In so doing, observe the principles of subsidiarity, additionality and equitable distribution of benefits of regional integration among Member States. The prioritization should, among others, be informed by the approved strategies and plans (Revised RISDP 2015-2020, RIDMP, SADC Industrialization Strategy and Roadmap 2015-2063, Regional Agricultural Investment Plan (RAIP));
- 3) develop an engagement mechanism to strengthen participation of the private sector at all levels;

- 4) undertake a comprehensive review of SADC organs, including the Organ on Politics, Defence and Security Cooperation, in order to rationalize, streamline decision-making and enhance effectiveness and efficiency. The review should also propose delegation of decision-making to lower levels;
- 5) submit recommendations on sustainable financing for regional integration to Ministers of Finance to be considered during the finalisation of the ongoing work on the SADC Regional Resource Mobilisation Framework;
- 6) work with AfDB to develop the necessary instruments and frameworks, such as Infrastructure Bonds, Partial Risk Guarantees, Insurance Guarantees and Partial Credit Guarantees, for use in Member States; and on how to leverage on the AfDB Industrialization Strategy;
- 7) review the SADC Infrastructure Project Portfolio in the RIDMP to determine priorities that need to be focused at regional level vis a vis Member States level;
- 8) develop an implementation plan and roadmap of the Conclusions of the Strategic Ministerial Retreat for consideration by Council in August 2017; and
- 9) in collaboration with Member States, facilitate the implementation of the Conclusions of the Strategic Ministerial Retreat.

The SADC Secretariat is collaborating with various Partners to unpack the decisions of the Extra-Ordinary Summit, and in August 2017, Council noted progress on the development of the implementation plan and roadmap of the Conclusions of the Strategic Ministerial Retreat.

The development and operationalisation of the implementation plan and roadmap of the Conclusions of the Strategic Ministerial Retreat is being supported by the European Union, the African Development Bank and GIZ.

2. OBJECTIVE, PURPOSE & EXPECTED RESULTS

2.1. OVERALL OBJECTIVE

The overall objective of this assignment is recommend an effective mechanism to ensure compliance to SADC Protocols and other legal instruments and regional commitments at Member State level.

2.2. PURPOSE

The purpose of this assignment is to review existing mechanisms employed by SADC to ensure compliance to Protocols and other legal instruments and regional

commitments on cooperation and draw lessons from other Regional Economic Communities (RECs) with the view to developing an effective mechanism.

Compliance can be defined as *'the fulfilment by Member States of their obligations under an Agreement and any amendments to the agreement'*. Compliance mechanisms are in turn defined as *'the system adopted to promote compliance'*. Since the compliance mechanism is specifically formed by the obligations that it is to promote compliance with, examining its features, structure and design will include identifying and analysing the relevant substantive and procedural obligations arising from the different Agreements. It will also include identifying and analysing the composition and mandate of the entity that is to carry out the mechanism's operation, how the procedures can be triggered and what remedies and sanctions that are to its disposal

The results of this assignment will contribute to the development of the implementation plan and roadmap of the Conclusions of the Strategic Ministerial Retreat. It is essential to note that running parallel to this study will be other studies including that on institutional arrangements for SADC. That study and this assignment are closely linked and therefore concerted effort at collaboration between the two will be most important.

2.3. RESULTS TO BE ACHIEVED BY THE CONTRACTOR

The main expected results to be achieved by the Contractor under this assignment are:

- a. A review of existing mechanisms/approaches employed by SADC to ensure compliance and their effectiveness or lack thereof;
- b. Lessons learnt from relevant and effective compliance mechanisms employed in other Regional Economic Communities (RECs); and
- c. Propose how to ensure compliance to SADC Protocols and other legal instruments and regional commitments on cooperation at Member State level.

3. ASSUMPTIONS & RISKS

3.1. ASSUMPTIONS

During this assignment, it expected that:

- a. the SADC Secretariat will support the Contractor in obtaining all the relevant information internally in a timely manner in order to perform the work and deliver on the tasks described below under Scope of Work; and
- b. the Contractor will participate in relevant meetings to be held to finalise the implementation plan and roadmap with other stakeholders contributing to this exercise and submit the expected deliverables on time.

3.2. RISKS

Some of the foreseen risks for this assignment include:

- a. Tight deadlines that may not allow for broad consultations to develop the implementation plan and roadmap for approval;
- b. Level of ownership in the development and approval of the implementation plan and roadmap processes by the Secretariat, Member States and other stakeholders; and

The probability of occurrence of risks (a) and (b) is Low to Medium.

4. SCOPE OF THE WORK

4.1. TASKS

The Contractor will mobilize experts with the qualifications described under section 6 of these Terms of Reference develop effective mechanisms to ensure compliance to SADC Protocols and other legal instruments and regional commitments on cooperation at Member State level. This will contribute to the Implementation plan and Roadmap on the Conclusions of the Strategic Ministerial Retreat. More specifically, the following tasks are envisaged:

- i. Review relevant Protocols and other legal instruments and regional commitments on cooperation, with the view to understanding the causes for the lack of compliance by Member States in implementing their regional obligations. This analysis should outline historical procedures and practices in relation to how they fostered compliance in the past and how such compliance can be brought back; and
- ii. Analysing variables that can contribute to compliance at Member State level. These would include:
 - Legal enforcement and accountability - legal aspects, legal status of regional agreements, application of regional agreements, role of institutions;

- Champions of change and harnessing political will - champions of implementation, and ensuring political will is harnessed and not frustrated;
 - Monitoring - framework for monitoring compliance, including transparency, quality of information, role for peer review;
 - Practical and technical challenges of compliance - technical capacity to transpose regional law at national level, resources and institutional challenges;
 - Political and economic challenges of compliance - managing regional integration to address resistance from vested interests resulting from political concerns.
- iii. Review compliance mechanisms of other Regional Economic Communities in Africa, Asia, and Europe (including the EAC, COMESA, EU, ASEA, and ECOWAS) to draw lessons on their strengths and weaknesses;
- iv. Undertake consultations with the APRM Secretariat on the possible application of the APRM review methodology where relevant;
- v. Propose how to ensure compliance to SADC Protocols and other legal instruments and regional commitments.

4.2. DELIVERABLES

In line with the tasks outlined above, the Contractor is expected to deliver the following:

- a. A detailed **gap analysis review document** on existing mechanisms/approaches employed by SADC to ensure compliance;
- b. A detailed review **dossier of practices** in other Regional Economic Communities in relation to compliance mechanisms;
- c. A **draft SADC compliance mechanism**.

4.3. GEOGRAPHICAL AREA TO BE COVERED

The SADC Secretariat in Gaborone, Botswana and selected SADC Member States.

4.4. TARGET GROUPS FOR CONSULTATIONS

Key target groups for consultations with will include the staff from the SADC Secretariat, officials from SADC Member States and other Regional Economic Communities (RECs) in and outside Africa including the African Union, COMESA,

EAC, the European Union and the ASEAN, private sector and civil society organisations, farming organisations and development partners working in the Region.

4.5. METHODOLOGY

The Contractor is required to:

- a. Submit an inception report outlining their understanding of the terms of reference, the methodological approach in undertaking the assignment, and the level of effort required to undertake the tasks;
- b. Undertake desk reviews and consultations with the SADC Secretariat Management and relevant key stakeholders including those in SADC Member States, Think-tanks, Private Sector, RECs (in and outside of Africa) and International Cooperating Partners, and the Contractors that will be engaged by SADC to undertake the institutional arrangement study;
- c. Submit interim report outlining at that stage general findings and a framework of the envisaged compliance mechanism;
- d. Participate in stakeholder workshops to gather further input towards framing the envisaged compliance mechanism.
- e. Submit draft compliance mechanism for review and consideration by key stakeholders including the SADC Secretariat and Member States;
- f. Submit final draft of the proposed compliance mechanism for SADC which includes an implementation plan.

5. PROJECT MANAGEMENT

5.1. RESPONSIBLE BODY

The overall supervision in the development of the implementation plan and roadmap of the Conclusions of the Strategic Ministerial Retreat and its execution at the Secretariat will be the responsibility of the Executive Secretary.

5.2. MANAGEMENT STRUCTURE

The Contractor will report to the Deputy Executive Secretary for Regional Integration through the Director of Policy, Planning and Resource Mobilisation.

5.3. FACILITIES TO BE PROVIDED BY THE CONTRACTING AUTHORITY AND/OR OTHER PARTIES

Office space at the SADC Secretariat with internet connection will be provided to the Contractor when carrying out their work whilst in Gaborone, Botswana.

6. LOGISTICS AND TIMING

6.1. LOCATION

The location of the assignment is home-based with travel to the SADC Secretariat, SADC Member States and RECs in and outside Africa.

6.2. START DATE & PERIOD OF IMPLEMENTATION

This assignment is planned for a total of 2 months lapse time. The actual level of effort will be agreed to between the Contractor and the SADC Secretariat at the time of contract negotiation and award. The intended start date is November 2018.

7. REQUIREMENTS

7.1. SADC SECRETARIAT STAFF

Staff of the SADC Secretariat shall not be engaged as experts under this assignment. Specific staff members will be identified to provide support to the Contractor during the course of the assignment.

7.2. KEY EXPERTS

The minimum number of key experts required of the Contractor is two with additional non-key experts as well as other associate / support staff to undertake the above work. The Contractor shall specify the number of experts and their level of effort in their bid for this proposal.

Below is a guide of the general requirements for this assignment.

7.2.1. KEY EXPERT 1: SENIOR EXPERT IN COMPLIANCE TO INTERNATIONAL TREATIES, PROTOCOLS AND OTHER LEGAL INSTRUMENTS

The assignment requires an expert with knowledge and experience in international treaties, protocols, and other legal instruments as they relate to regional integration arrangements and obligations.

Qualification

- a. *Minimum requirement:* An advanced University Degree (Master's Degree or equivalent) in Law, Public Policy, International Relation or Political Science.

General Professional Experience

- a. At least 10 years of practical experience in the field of international law, and practical implementation of international treaties in government agencies;
- b. At least 10 years of experience in conducting analytical work related to implementation of international treaties for international organizations, government agencies.

Specific Professional Experience

- a. Knowledge in multilateral treaties and protocols.

Other requirements:

- a. Excellent analytical and communication skills;
- b. Fluency in both written and oral English (knowledge of French or Portuguese an added advantage);
- c. Excellent drafting and presentation skills as well as thorough knowledge of working with standard MS Office suite
- d. The expert must be independent and free from conflicts of interest in the responsibilities they take on.

7.2.2. KEY EXPERT 2: SENIOR EXPERT IN REGIONAL INTEGRATION

The assignment requires an expert with general knowledge and experience in key areas of regional integration. This expert would augment Key Expert 1 and will focus on broader implementation issues of SADC's integration and development programmes (including in the areas of trade, investments, infrastructure development; agricultural and industrialization). The Key Expert 2 shall possess the following qualifications and experience:

Qualification and Skills

-
- a. *Minimum requirement:* An advanced University Degree (Master's Degree or equivalent) in Economics or related fields.

General Professional Experience

- a. At least 10 years of practical experience working with inter-governmental organisations in a regional and global settings.
- b. A minimum of 10 years of practical experience in the areas of regional integration.

Specific Professional Experience

- a. At least 10 years of conducting analytical work related to regional integration.

Other requirements:

- a. Excellent analytical and communication skills;
- b. Fluency in both written and oral English (knowledge of French or Portuguese an added advantage);
- c. Excellent drafting and presentation skills as well as thorough knowledge of working with standard MS Office suite
- d. The expert must be independent and free from conflicts of interest in the responsibilities they take on.

7.2.3. NON-KEY EXPERTS

[None]

7.2.4. SUPPORT STAFF & BACKSTOPPING

The Contractor will provide technical and administrative support (back-stopping) to the Experts during the implementation of the contract. Backstopping and support staff costs must be included in the fee rates.

7.2.5. OFFICE ACCOMMODATION

Office accommodation of a reasonable standard will be provided to each key expert by the Contracting Authority where necessary.

7.2.6. FACILITIES TO BE PROVIDED BY THE CONTRACTOR

The Contractor must ensure that the expert is adequately supported and equipped. In particular, it must ensure that there is sufficient administrative, secretarial and

interpreting provision to enable the expert to concentrate on their primary responsibilities. It must also transfer funds as necessary to support their work under the contract and to ensure that its employees are paid regularly and in a timely fashion.

7.2.7. EQUIPMENT

No equipment is to be purchased on behalf of the Contracting Authority as part of this service contract or transferred to the Contracting Authority at the end of this contract. Any equipment related to this contract that is to be acquired by the partner country must be purchased by means of a separate supply tender procedure.

7.2.8. INCIDENTAL EXPENDITURE

The provision for incidental expenditure must be included in the Budget breakdown. Prior authorisation by the Contracting Authority for the use of the incidental expenditure is not needed.

7.2.9. LUMP SUMS

No lump sums are foreseen in this contract.

8. MONITORING AND EVALUATION

8.1. DEFINITION OF INDICATORS

The key performance indicators for this assignment will include:

- a) An Inception report which clearly unpacks the methodological approach to be followed by the consultants;
- b) An interim report outlining general findings and a framework of the envisaged mechanism to ensure compliance to SADC protocols and other legal instruments and commitments;
- c) A draft final report on mechanisms to ensure compliance to SADC protocols and other legal instruments and commitments is submitted for approval;

8.2. SPECIAL REQUIREMENTS

N/A

**STANDARD CONTRACT FOR
CONSULTING SERVICES**

**CONSULTING FIRM TO DEVELOP AN EFFECTIVE
COMPLIANCE, MONITORING AND QUALITY
ASSURANCE MECHANISMS FOR SADC**

CONTRACT NUMBER: SADC/3/5/1/4

BETWEEN SADC Secretariat (“the Contracting Authority”)

AND

[insert the name] (“the Contractor”)

DATE: [insert the month and the year]

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I. Form of Contract

(Text in brackets [] is optional; all notes should be deleted in final text)

This CONTRACT (hereinafter called the “Contract”) is made this the [day] day of the month of [month], [year], between, on the one hand, [name of Contracting Authority] (hereinafter called the “Contracting Authority”) and, on the other hand, [name of Contractor] (hereinafter called the “Contractor”).

[**Note:** If the Contractor consist of more than one entity, the above should be partially amended to read as follows: “...(hereinafter called the “Contracting Authority”) and, on the other hand, a joint venture/consortium/association consisting of the following entities, each of which will be jointly and severally liable to the Contracting Authority for all the Contractor’s obligations under this Contract, namely, [name of Contractor] and [name of Contractor] (hereinafter called the “Contractor”).]

WHEREAS

- (a) the Contracting Authority has requested the Contractor to provide certain consulting services as defined in this Contract (hereinafter called the “Services”);
- (b) the Contractor, having demonstrated to the Contracting Authority that he has the required professional skills, personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

- (a) The General Conditions of Contract;
- (b) The Special Conditions of Contract;
- (c) The following Appendices:

- Appendix A: Terms of Reference
- Appendix B: Technical Proposal
- Appendix C: Financial Proposal
- Appendix D: Form of Advance Payments Guarantee

2. The mutual rights and obligations of the Contracting Authority and the Contractor shall be as set forth in the Contract, in particular:

- (a) the Contractor shall carry out the Services in accordance with the provisions of the Contract; and
- (b) the Contracting Authority shall make payments to the Contractor in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of [name of Contracting Authority]

[Authorized Representative]

For and on behalf of [name of Contractor]

[Authorized Representative]

[Note: If the Contractor consists of more than one entity, all these entities should appear as signatories, e.g., in the following manner:]

For and on behalf of each of the Members of the Contractor

[name of member]

[Authorized Representative]

[name of member]

[Authorized Representative]

II. General Conditions of Contract

1. GENERAL PROVISIONS

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Contracting Authority’s country, or in such other country as may be specified in the Special Conditions of Contract (SC), as they may be issued and in force from time to time.
- (b) “Contracting Authority” means legal entity named in the SC who procures the Services described in Appendix A hereto from the Contractor.
- (c) “Contractor” means any private or public entity named in the SC that will provide the Services to the Contracting Authority under the Contract.
- (d) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is these General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (e) “Day” means calendar day.
- (f) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.
- (h) “GC” means these General Conditions of Contract.
- (k) “Member” means any of the entities that make up the joint venture/consortium/association; and “Members” means all these entities.
- (l) “Party” means the Contracting Authority or the Contractor, as the case may be, and “Parties” means both of them.
- (m) “Personnel” means professionals and support staff provided by the Contractor or by any Sub-Contractor and assigned to perform the Services or any part thereof; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside the Contracting

Authority's country; "Local Personnel" means such professionals and support staff who at the time of being so provided had their domicile inside the Contracting Authority's country; and "Key Personnel" means the Personnel referred to in Clause GC 4.2(a).

- (n) "Reimbursable expenses" means all assignment-related costs other than Contractor's remuneration.
- (o) "Special Conditions of Contract" or "SC" means the Conditions of the Contract that are peculiar to the Contract between the Contracting Authority by which the GC may be amended or supplemented.
- (p) "Services" means the work to be performed by the Contractor pursuant to this Contract, as described in Appendix A hereto.
- (q) "Sub-Contractors" means any person or entity to whom/which the Contractor subcontracts any part of the Services.
- (r) "Third Party" means any person or entity other than the Contracting Authority, the Contractor or a Sub-Contractor.
- (s) "In writing" means communicated in written form with proof of receipt.

1.2 Relationship Between the Parties

Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Contracting Authority and the Contractor. The Contractor, subject to this Contract, has complete charge of his/her Personnel and Sub-Contractors, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Law Governing Contract

This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.

1.4 Language

This Contract has been executed in the English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.5 Headings

The headings shall not limit, alter or affect the meaning of this Contract.

1.6 Notices

1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized

representative of the Party to whom the communication is addressed, or when sent to such Party at the address **specified in the SC**.

1.6.2 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address **specified in the SC**.

1.7 Location

The Services shall be performed at such locations as are specified in Appendix A hereto and, where the location of a particular task is not so specified, at such locations, whether in the Contracting Authority's country or elsewhere, as the Contracting Authority may approve.

1.8 Authority of Member in Charge

In case the Contractor consists of a joint venture/consortium/association of more than one entity, the Members hereby authorize the entity **specified in the SC** to act on their behalf in exercising all the Contractor's rights and obligations towards the Contracting Authority under this Contract, including without limitation the receiving of instructions and payments from the Contracting Authority.

1.9 Authorized Representatives

1.9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Contracting Authority or the Contractor may be taken or executed by the officials **specified in the SC**.

1.9.2. The Contracting Authority's authorized representative shall be called Task Manager. The Task Manager may exercise the authority attributable to him/her **as specified in the SC**.

1.9.3. The Task Manager shall have no authority to amend the Contract.

1.9.4. The Contractor's authorized representative shall be called Project Director and he/she may exercise the authority attributable to him/her **as specified in the SC**.

1.9.5. Either Party shall promptly inform the other of any change of their authorized representative or of any change to the authority attributed to their authorized representative.

1.10 Taxes and Duties

The Contractor, its Sub-Contractors and Personnel shall pay such indirect taxes, duties, fees and other impositions levied under the Applicable Law **as specified in the SC**.

1.11 Fraud and

If the Contracting Authority determines that the Contractor and/or its Sub-Contractors have engaged in corrupt, fraudulent, collusive,

Corruption

coercive, or obstructive practices, in competing for or in executing the Contract, then the Contracting Authority may, after giving 14 days' notice to the Contractor, terminate the Contractor's employment under the Contract, and the provisions of Clause 2 shall apply as if such expulsion had been made under Sub-Clause 2.9.1(d).

Should any personnel of the Contractor be determined to have engaged in corrupt, fraudulent, collusive, coercive, or obstructive practice during the execution of the Contract, then that personnel shall be removed in accordance with Sub-Clause 4.5

1.11.1 Definitions

For the purposes of this Sub-Clause, the terms set-forth below are defined as follows:

- (i) "corrupt practice"²³ is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "fraudulent practice"²⁴ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "collusive practice"²⁵ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) "coercive practice"²⁶ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of that party;
- (v) "obstructive practice" is
 - (aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a SADC Secretariat investigation into allegations of a

²³ "Another party" refers to a public official acting in relation to the selection process or contract execution. In this context, "public official" includes SADC Secretariat staff and employees of other organizations taking or reviewing procurement decisions.

²⁴ A "party" refers to a public official; the terms "benefit" and "obligation" relate to the selection process or contract execution; and the "act or omission" is intended to influence the selection process or contract execution.

²⁵ "Parties" refers to participants in the selection process (including public officials) attempting to establish bid prices at artificial, non-competitive levels.

²⁶ A "party" refers to a participant in the selection process or contract execution.

corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- (bb) acts intended to materially impede the exercise of the SADC Secretariat's inspection and audit rights provided for under Clause 3.6.

1.11.2 Commissions and Fees

The Contracting Authority will require the successful Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents, representatives, or commission agents with respect to the selection process or execution of the contract. The information disclosed must include at least the name and address of the agent, representative, or commission agent, the amount and currency, and the purpose of the commission or fee.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 2.1 Effectiveness of Contract** This Contract shall come into force and effect on the date (the "Effective Date") the Contracting Authority specifies in the notice to the Contractor instructing the Contractor to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, **listed in the SC** have been met.
- 2.2 Termination of Contract for Failure to Become Effective** If this Contract has not become effective within such time period after the date of the Contract signed by the Parties as specified in the SC, either Party may, by not less than twenty one (21) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.
- 2.3 Commencement of Services** The Contractor shall begin carrying out the Services not later than the number of days after the Effective Date **specified in the SC**.
- 2.4 Expiration of Contract** Unless terminated earlier pursuant to Clause GC 2.9 hereof, this Contract shall expire at the end of such time period after the Effective Date as **specified in the SC**.
- 2.5 Entire Agreement** This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
- 2.6 Modifications, or Variations** 2.6.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written

agreement between the Parties. Pursuant to Clause GC 7.2 here of, however, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

- 2.6.2. Substantial modifications to the contract, including modifications of the General or Special Conditions of the contract, changes in the scope or the duration of the contract, to the total contract amount and replacement of Key Experts, must be made by means of an addendum. If the request for an amendment comes from the Contractor, the latter must submit such a request to the Contracting Authority at least 30 days before the amendment is intended to enter into force, except in cases which are duly substantiated by the Contractor and accepted by the Contracting Authority.
- 2.6.3. However, where the amendment does not affect the basic purpose of the contract and, for a time based contract, the financial impact is limited to a transfer within the remuneration or between the remuneration and the provision for reimbursable expenses involving a variation of less than 15% of the original amount (or as modified by addendum) for the categories of expense where the money was taken from, the Task Manager shall have the power to order any variation to any part of the services necessary for the proper implementation of the tasks, without changing the object or scope of the contract. Such variations may include additions, omissions, substitutions, changes in quality, quantity, specified sequence, method or timing of performance of the services, changes in contact details and reporting requirements.
- 2.6.4. Prior to any administrative order for variation, the Task Manager shall notify the Contractor of the nature and form of such variation. As soon as possible, after receiving such notice, the Contractor shall submit to the Task Manager a written proposal containing:
 - (a) a description of the service to be performed or the measures to be taken and a programme for implementation of the tasks; and
 - (b) any necessary modifications to the programme of implementation of the tasks or to any of the Contractor's obligations under the contract; and
 - (c) for a time based contract, any adjustment to the contract

value in accordance with the following principles:

- (i) where the task is of similar character and executed under similar conditions to an item priced in the budget breakdown, the equivalent numbers of working days shall be valued at the fee rates contained therein;
 - (ii) where the task is not of a similar character or is not executed under similar conditions, the fee rates in the contract shall be applied to the estimated numbers of working days so far as is reasonable, failing which, a fair estimation shall be made by the Task Manager;
 - (3) where a variation is necessitated by a default or breach of contract by the Contractor, any additional cost attributable to such variation shall be borne by the Contractor.
- 2.6.5. Following the receipt of the Contractor's proposal, the Task Manager shall decide as soon as possible whether or not the variation shall be carried out. If the Task Manager decides that the variation shall be carried out he/she shall issue the administrative order stating that the variation shall be carried out under the conditions given in the Contractor's proposal or as modified by the Task Manager in accordance with or pursuant to Clause GC 2.6.4.
- 2.6.6. On receipt of the administrative order requesting the variation, the Contractor shall proceed to carry out the variation and be bound by these General Conditions in so doing as if such variation were stated in the contract.
- 2.6.7. No amendment shall be made retroactively except in cases which are duly substantiated by the Contractor and accepted by the Contracting Authority.
- 2.6.8. Any change to the contract which has not been made in the form of an administrative order or an addendum or in accordance with this Clause shall be considered null and void.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party's performance of its obligations hereunder impossible or so

impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Contracting Authority agencies.

- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Sub-Contractors or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No Breach of Contract

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or a default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

2.7.3 Measures to be Taken

- (a) A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.
- (c) Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.
- (d) During the period of their inability to perform the Services as a result of an event of Force Majeure, the Contractor, upon

instructions by the Contracting Authority, shall either:

- (i) demobilize, in which case the Contractor shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Contracting Authority, in reactivating the Services; or
 - (ii) continue with the Services to the extent possible, in which case the Contractor shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- (e) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled in accordance with Clause GC 8.

2.8 Suspension

The Contracting Authority may, by written notice of suspension to the Contractor, suspend all payments to the Contractor hereunder if the Contractor fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Contractor to remedy such failure within a period not exceeding thirty (30) days after receipt by the Contractor of such notice of suspension.

2.9 Termination

2.9.1 By the Contracting Authority

The Contracting Authority may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (g) of this Clause GC 2.9.1. In such an occurrence the Contracting Authority shall give a not less than thirty (30) days' written notice of termination to the Contractor, and sixty (60) days' in case of the event referred to in (g).

- (a) If the Contractor fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GC 2.8 above herein, within thirty (30) days of receipt of such notice of suspension or within such further period as the Contracting Authority may have subsequently approved in writing.
- (b) If the Contractor becomes (or, if the Contractor consists of more than one entity, if any of its Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary.

- (c) If the Contractor fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 8 hereof.
- (d) If the Contractor, in the judgment of the Contracting Authority, has engaged in corrupt or fraudulent practices in competing for or in executing this Contract.
- (e) If the Contractor submits to the Contracting Authority a false statement which has a material effect on the rights, obligations or interests of the Contracting Authority.
- (f) If, as the result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (g) If the Contracting Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

2.9.2 By the Contractor

The Contractor may terminate this Contract, by not less than thirty (30) days' written notice to the Contracting Authority, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause GC 2.9.2.

- (a) If the Contracting Authority fails to pay any money due to the Contractor pursuant to this Contract and not subject to dispute pursuant to Clause GC 8 hereof within forty-five (45) days after receiving written notice from the Contractor that such payment is overdue.
- (b) If, as the result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the Contracting Authority fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 8 hereof.
- (d) If the Contracting Authority is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Contractor may have subsequently approved in writing) following the receipt by the Contracting Authority of the Contractor's notice specifying such breach.

- 2.9.3 Cessation of Rights and Obligations** Upon termination of this Contract pursuant to Clauses GC 2.2 or GC 2.9 hereof, or upon expiration of this Contract pursuant to Clause GC 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GC 3.3 hereof, (iii) the Contractor's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GC 3.6 hereof, and (iv) any right which a Party may have under the Applicable Law.
- 2.9.4 Cessation of Services** Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Contractor shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Contractor and equipment and materials furnished by the Contracting Authority, the Contractor shall proceed as provided, respectively, by Clauses GC 3.9 or GC 3.10 hereof.
- 2.9.5 Payment upon Termination** Upon termination of this Contract pursuant to Clauses GC 2.9.1 or GC 2.9.2 hereof, the Contracting Authority shall make the following payments to the Contractor:
- (a) remuneration pursuant to Clause GC 6 hereof for Services satisfactorily performed prior to the effective date of termination, and reimbursable expenditures pursuant to Clause GC 6 hereof for expenditures actually incurred prior to the effective date of termination; and
 - (b) except in the case of termination pursuant to paragraphs (a) through (e) of Clause GC 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract including the cost of travel of the Personnel.
- 2.9.6 Disputes about Events of Termination** If either Party disputes whether an event specified in paragraphs (a) through (f) of Clause GC 2.9.1 or in Clause GC 2.9.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to Clause GC 8 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3. OBLIGATIONS OF THE CONTRACTOR

3.1 General

3.1.1 Standard of Performance

The Contractor shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Contractor shall always act, in respect of any matter relating to this Contract or to the Services, as faithful adviser to the Contracting Authority, and shall at all times support and safeguard the Contracting Authority's legitimate interests in any dealings with Sub-Contractors or Third Parties.

3.1.2 Law Governing Services

The Contractor shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-Contractor, as well as the Personnel of the Contractor and Sub-Contractor, comply with the Applicable Law. The Contracting Authority shall notify the Contractor in writing of relevant local customs, and the Contractor shall, after such notification, respect such customs.

3.2 Conflict of Interests

The Contractor shall hold the Contracting Authority's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

3.2.1 Contractor Not to Benefit from Commissions, Discounts, etc.

- (a) The payment of the Contractor pursuant to Clause GC 6 hereof shall constitute the Contractor's only payment in connection with this Contract and, subject to Clause GC 3.2.2 hereof, the Contractor shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Contractor shall use its best efforts to ensure that any Sub-Contractors, as well as the Personnel and agents of either of them, similarly shall not receive any such additional payment.
- (b) Furthermore, if the Contractor, as part of the Services, has the responsibility of advising the Contracting Authority on the procurement of goods, works or services, the Contractor shall comply with the SADC Secretariat's applicable procurement guidelines, and shall at all times exercise such responsibility in the best interest of the Contracting Authority. Any discounts or commissions obtained by the Contractor in the exercise of such procurement responsibility shall be for the account of the

Contracting Authority.

- 3.2.2 Contractor and Affiliates Not to Engage in Certain Activities** The Contractor agrees that, during the term of this Contract and after its termination, the Contractor and any entity affiliated with the Contractor, as well as any Sub-Contractor and any entity affiliated with such Sub-Contractors, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Contractor's Services for the preparation or implementation of the project.
- 3.2.3 Prohibition of Conflicting Activities** The Contractor shall not engage, and shall cause their Personnel as well as their Sub-Contractors and their Personnel not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
- 3.3 Confidentiality** Except with the prior written consent of the Contracting Authority, the Contractor and their Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of providing the Services, nor shall the Contractor and their Personnel make public the recommendations formulated in the course of, or as a result of, the provision of the Services.
- 3.4 Liability of the Contractor** Subject to additional provisions, if any, set forth in the SC, the Contractors' liability under this Contract shall be provided by the Applicable Law.
- 3.5 Insurance to be Taken out by the Contractor** The Contractor (i) shall take out and maintain, and shall cause any Sub-Contractor to take out and maintain, at their (or the Sub-Contractors', as the case may be) own cost but on terms and conditions approved by the Contracting Authority, insurance against the risks, and for the coverages specified in the SC, and (ii) at the Contracting Authority's request, shall provide evidence to the Contracting Authority showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.
- 3.6 Accounting, Inspection and Auditing** The Contractor shall permit the SADC Secretariat and/or persons appointed by the SADC Secretariat to inspect its accounts and records as well as those of its Sub-Contractors relating to the performance of the Contract, and to have such accounts and records audited by auditors appointed by the SADC Secretariat if required by the SADC Secretariat. The Contractor's attention is drawn to Clause 1.11.1 which provides, inter alia, that acts intended to materially impede the exercise of the SADC Secretariat's inspection and audit rights provided for under Clause 3.6 constitute a prohibited

practice subject to contract termination (as well as to a determination of ineligibility under the Contractor Guidelines).

3.7 Contractor's Actions Requiring Contracting Authority's Prior Approval

The Contractor shall obtain the Contracting Authority's prior approval in writing before taking any of the following actions:

- (a) Any change or addition to the Personnel listed in Appendix B
- (b) Subcontracts: the Contractor may subcontract work relating to the Services to an extent and with such experts and entities as may be approved in advance by the Contracting Authority. Notwithstanding such approval, the Contractor shall retain full responsibility for the Services. In the event that any Sub-Contractors are found by the Contracting Authority to be incompetent or incapable in discharging assigned duties, the Contracting Authority may request the Contractor to provide a replacement, with qualifications and experience acceptable to the Contracting Authority, or to resume the performance of the Services itself.
- (c) Any other action that may be specified **in the SC**.

3.8 Reporting Obligations

The Contractor shall submit to the Contracting Authority the reports and documents specified in Appendix A hereto, in the form, in the numbers and within the time periods set forth in the said Appendix. Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

3.9 Documents Prepared by the Contractor to be the Property of the Contracting Authority

All plans, drawings, specifications, designs, reports, other documents and software prepared by the Contractor for the Contracting Authority under this Contract shall become and remain the property of the Contracting Authority, and the Contractor shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Contracting Authority, together with a detailed inventory thereof. The Contractor may retain a copy of such documents and software, and use such software for their own use with prior written approval of the Contracting Authority. If license agreements are necessary or appropriate between the Contractor and third parties for purposes of development of any such computer programs, the Contractor shall obtain the Contracting Authority's prior written approval to such agreements, and the Contracting Authority shall be entitled, at its discretion, to require recovery of its expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, **shall be specified in the SC**.

3.10 Equipment,

Equipment, vehicles and materials made available to the Contractor

**Vehicles and
Materials
Furnished by the
Contracting
Authority**

by the Contracting Authority, or purchased by the Contractor wholly or partly with funds provided by the Contracting Authority, shall be the property of the Contracting Authority and shall be marked accordingly. Upon termination or expiration of this Contract, the Contractor shall make available to the Contracting Authority an inventory of such equipment, vehicles and materials and shall dispose of such equipment and materials in accordance with the Contracting Authority's instructions. While in possession of such equipment, vehicles and materials, the Contractor, unless otherwise instructed by the Contracting Authority in writing, shall insure them at the expense of the Contracting Authority in an amount equal to their full replacement value.

**3.11 Equipment and
Materials
Provided by the
Contractors**

Equipment or materials brought into the Contracting Authority's country by the Contractor and the Personnel and used either for the Project or personal use shall remain the property of the Contractor or the Personnel concerned, as applicable, on the condition that it is not bought with funds provided by the Contracting Authority (see 3.10 above).

4. CONTRACTORS' PERSONNEL AND SUB-CONTRACTORS

4.1 General

The Contractor shall employ and provide such qualified and experienced Personnel and Sub-Contractors as are required to carry out the Services.

**4.2 Description of
Personnel**

- (a) The title, agreed job description, minimum qualification and estimated period of engagement for carrying out the Services by each of the Contractor's Key Personnel are described in Appendix B. If any of the Key Personnel has already been approved by the Contracting Authority, his/her name is listed as well.
- (b) If required to comply with the provisions of Clause GC 3.1.1 hereof, adjustments with respect to the estimated periods of engagement of Key Personnel set forth in Appendix B may be made by the Contractor by written notice to the Contracting Authority, provided: (i) that such adjustments shall not alter the originally estimated period of engagement of any individual by more than 10% or one week, whichever is larger, and (ii) that the aggregate of such adjustments shall not cause payments under this Contract to exceed the ceilings set forth in Clause GC 6.1(b) of this Contract. Any other such adjustments shall only be made with the Contracting Authority's written approval.
- (c) If additional work is required beyond the scope of the Services

specified in Appendix A, the estimated periods of engagement of Key Personnel set forth in Appendix B may be increased by agreement in writing between the Contracting Authority and the Contractor. In case where payments under this Contract exceed the ceilings set forth in Clause GC 6.1(b) of this Contract, this will be explicitly mentioned in the agreement.

4.3 Approval of Personnel

The Key Personnel and Sub-Contractors listed by title as well as by name in Appendix B are hereby approved by the Contracting Authority. In respect of other Personnel which the Contractor proposes to use in the carrying out of the Services, the Contractor shall submit to the Contracting Authority for review and approval copies of their Curricula Vitae (CVs). If the Contracting Authority does not object in writing (stating the reasons for the objection) within twenty-one (21) days from the date of receipt of such CVs, such Personnel shall be deemed to have been approved by the Contracting Authority.

4.4 Working Hours, Overtime, Leave, etc.

(a) Working hours and holidays for Key Personnel are set forth in Appendix A hereto. To account for travel time, Foreign Personnel carrying out Services inside the Contracting Authority's country shall be deemed to have commenced, or finished work in respect of the Services such number of days before their arrival in, or after their departure from the Contracting Authority's country as is specified in Appendix A hereto.

(b) The Key Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in Appendix A hereto, and except as specified in such Appendix, the Contractor's remuneration shall be deemed to cover these items. All leave to be allowed to the Personnel is included in the staff-months of service set forth in Appendix A. Any taking of leave by Personnel shall be subject to the prior approval by the Contractor who shall ensure that absence for leave purposes will not delay the progress and adequate supervision of the Services.

4.5 Removal and/or Replacement of Personnel

(a) Except as the Contracting Authority may otherwise agree, no changes shall be made in the Personnel. If, for any reason beyond the reasonable control of the Contractor, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Personnel, the Contractor shall forthwith provide as a replacement a person of equivalent or better qualifications.

(b) If the Contracting Authority: (i) finds that any of the

Personnel has committed serious misconduct or has been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Contractor shall, at the Contracting Authority's written request specifying the grounds therefore, forthwith provide as a replacement a person with qualifications and experience acceptable to the Contracting Authority.

- (c) Any of the Personnel provided as a replacement under Clauses (a) and (b) above, as well as any reimbursable expenditure the Contractors may wish to claim as a result of such replacement, shall be subject to the prior written approval by the Contracting Authority. The rate of remuneration applicable to a replacement person will be obtained by multiplying the rate of remuneration applicable to the replaced person by the ratio between the monthly salary to be effectively paid to the replacement person and the average salary effectively paid to the replaced person in the period of six months prior to the date of replacement. Except as the Contracting Authority may otherwise agree:, (i) the Contractor shall bear all additional travel and other costs arising out of or incidental to any removal and/or replacement, and (ii) the remuneration to be paid for any of the Personnel provided as a replacement shall not exceed the remuneration which would have been payable to the Personnel replaced.

4.6 Resident Project Director

If required by the SC, the Contractor shall ensure that at all times during the Contractor's performance of the Services in the Contracting Authority's country a resident Project Director, acceptable to the Contracting Authority, shall take charge of the performance of such Services.

5. OBLIGATIONS OF THE CONTRACTING AUTHORITY

5.1 Assistance and Exemptions

Unless otherwise specified in the SC, the Contracting Authority shall use its best efforts to

- (a) provide the Contractor, Sub-Contractors and Personnel with work permits and such other documents as shall be necessary to enable the Contractor, Sub-Contractors or Personnel to perform the Services.
- (b) arrange for the Personnel and, if appropriate, their eligible dependents to be provided promptly with all necessary entry and exit visas, residence permits, exchange permits and any

other documents required for their stay in the Contracting Authority's country.

- (c) facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Personnel and their eligible dependents.
- (d) issue to officials, agents and representatives of the Contracting Authority all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.
- (e) exempt the Contractor's Personnel and any Sub-Contractors employed by the Contractor for the Services from any requirement to register or obtain any permit to practice their profession
- (f) grant to the Contractor, any Sub-Contractors and the Personnel of either of them the privilege, pursuant to the Applicable Law, of bringing into the Contracting Authority's country reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Personnel and their dependents and of withdrawing any such amounts as may be earned therein by the Personnel in the execution of the Services.
- (g) provide to the Contractor, Sub-Contractors and Personnel any such other assistance as may be **specified in the SC**.

5.2 Access to Land

The Contracting Authority warrants that the Contractor shall have, free of charge, unimpeded access to all land in the Contracting Authority's country in respect of which access is required for the performance of the Services. The Contracting Authority will be responsible for any damage to such land or any property thereon resulting from such access and will indemnify the Contractor and each of the Personnel in respect of liability for any such damage, unless such damage is caused by the default or negligence of the Contractor or any Sub-Contractors or the Personnel of either of them.

5.3 Change in the Applicable Law Related to Taxes and Duties

If, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties which increases or decreases the cost incurred by the Contractor in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Contractor under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the

ceiling amounts specified in Clause GC 6.1(b).

5.4 Services, Facilities and Property of the Contracting Authority

- (a) The Contracting Authority shall make available to the Contractor and its Personnel, for the purposes of the Services and free of any charge, the services, facilities and property described in Appendix A at the times and in the manner specified in said Appendix A.
- (b) In case that such services, facilities and property shall not be made available to the Contractor as and when specified in Appendix A, the Parties shall agree on: (i) any time extension that it may be appropriate to grant to the Contractor for the performance of the Services, (ii) the manner in which the Contractor shall procure any such services, facilities and property from other sources, and (iii) the additional payments, if any, to be made to the Contractor as a result thereof pursuant to Clause GC 6.1(c) hereinafter.

5.5 Payment

In consideration of the Services performed by the Contractor under this Contract, the Contracting Authority shall make to the Contractor such payments and in such manner as is provided by Clause GC 6 of this Contract.

5.6 Counterpart Personnel

- (a) The Contracting Authority shall make available to the Contractor free of charge such professional and support counterpart personnel, to be nominated by the Contracting Authority with the Contractor's advice, if specified in Appendix A.
- (b) If counterpart personnel are not provided by the Contracting Authority to the Contractor as and when specified in Appendix A, the Contracting Authority and the Contractor shall agree on: (i) how the affected part of the Services shall be carried out, and (ii) the additional payments, if any, to be made by the Contracting Authority to the Contractor as a result thereof pursuant to Clause GC 6.1(c) hereof.
- (c) Professional and support counterpart personnel, excluding Contracting Authority's liaison personnel, shall work under the exclusive direction of the Contractor. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Contractor that is consistent with the position occupied by such member, the Contractor may request the replacement of such member, and the Contracting Authority shall not unreasonably refuse to act upon such request.

6. PAYMENTS TO THE CONTRACTOR

6.1 Cost Estimates; Ceiling Amount

- (a) An estimate of the cost of the Services payable in **United States Dollars** is set forth in Appendix C.
- (b) Except as may be otherwise agreed under Clause GC 2.6 and subject to Clause GC 6.1(c), payments under this Contract shall not exceed the ceiling **specified in the SC**.
- (c) Notwithstanding Clause GC 6.1(b) hereof, if pursuant to any of the Clauses GC 5.3, 5.4 or 5.6 hereof, the Parties shall agree that additional payments shall be made to the Contractor in order to cover any necessary additional expenditures not envisaged in the cost estimates referred to in Clause GC 6.1(a) above, the ceiling or ceilings, as the case may be, set forth in Clause GC 6.1(b) above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

6.2 Remuneration and Reimbursable Expenses

Time Based Contracts

- (a) Subject to the ceilings specified in Clause GC 6.1(b) hereof, the Contracting Authority shall pay to the Contractor (i) remuneration as set forth in Clause GC 6.2(b) hereunder, and (ii) reimbursable expenses as set forth in Clause GC 6.2(c) hereunder. Unless otherwise specified in the SC, said remuneration shall be fixed for the duration of the Contract.
- (b) Payment for the Personnel shall be determined on the basis of time actually spent by such Personnel in the performance of the Services after the date determined in accordance with Clause GC 2.3 and Clause SC 2.3 (or such other date as the Parties shall agree in writing), at the rates referred to in Appendix C to this Contract, and subject to price adjustment, if any, specified in SC.
- (c) Reimbursable expenses actually and reasonably incurred by the Contractor in the performance of the Services and identified in Appendix C of this Contract, shall not exceed the ceiling specified in SC.
- (d) The remuneration rates referred to under paragraph (b) here above shall cover: (i) such salaries and allowances as the Contractor shall have agreed to pay to the Personnel as well as factors for social charges and overhead (bonuses or other means of profit-sharing shall not be allowed as an element

of overhead), (ii) the cost of backstopping by home office staff not included in the Personnel listed in Appendix B, and (iii) the Contractor's fee.

- (e) Any rates specified for Personnel not yet appointed shall be provisional and shall be subject to revision, with the written approval of the Contracting Authority, once the applicable salaries and allowances are known.
- (f) Payments for periods of less than one month shall be calculated on an hourly basis for actual time spent in the Contractor's home office and directly attributable to the Services (one hour being equivalent to 1/176th of a month) and on a calendar-day basis for time spent away from home office (one day being equivalent to 1/30th of a month).

6.3 Currency of Payment

All payments shall be made in **United States Dollars**.

6.4 Mode of Billing and Payment

Billings and payments in respect of the Services shall be made as follows:

Time Based Contracts

- (a) all payments under this Contract shall be made to the account of the Contractor **specified in the SC**.
- (b) within the number of days after the Effective Date **specified in the SC**, the Contracting Authority shall cause to be paid to the Contractor advance payments as **specified in the SC**. Where the SC **provides for an** advance payment, this will be due after provision by the Contractor to the Contracting Authority of an advance payment guarantee acceptable to the Contracting Authority in an amount (or amounts) and in a currency **specified in the SC**. Such guarantee shall: (i) remain effective until the advance payment has been fully set off, and (ii) be in the form set forth in Appendix D hereto, or in such other form as the Contracting Authority shall have approved in writing. The advance payments will be set off by the Contracting Authority in equal installments against the payments for a number of months of the Services **specified in the SC** until such advance payments have been fully set off.
- (c) as soon as practicable and not later than fifteen (15) days after the end of each calendar month during the period of the

Services, or after the end of each time intervals **otherwise indicated in the SC**, the Contractor shall submit to the Contracting Authority, in duplicate, itemized statements, accompanied by copies of invoices, vouchers and other appropriate supporting materials, of the amounts payable pursuant to Clauses GC 6.3 and GC 6.4 for such month, or any other period indicated in the SC. Separate statements shall be submitted in respect of amounts payable in foreign currency and in local currency. Each statement shall distinguish that portion of the total eligible costs which pertains to remuneration from that portion which pertains to reimbursable expenses.

- (d) the Contracting Authority shall pay the Contractor's invoices within sixty (60) days after the receipt by the Contracting Authority of such invoices with supporting documents. Only such portion of an invoice that is not satisfactorily supported may be withheld from payment. Should any discrepancy be found to exist between actual payment and costs authorized to be incurred by the Contractor, the Contracting Authority may add or subtract the difference from any subsequent payments. Interest at the annual rate **specified in the SC** shall become payable as from the above due date on any amount due by, but not paid on, such due date.
- (e) the final payment under this Contract shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Contractor and approved as satisfactory by the Contracting Authority. The Services shall be deemed completed and finally accepted by the Contracting Authority and the final report and final statement shall be deemed approved by the Contracting Authority as satisfactory ninety (90) calendar days after receipt of the final report and final statement by the Contracting Authority unless the Contracting Authority, within such ninety (90) day period, gives written notice to the Contractor specifying in detail deficiencies in the Services, the final report or final statement. In the event of the latter, the Contractor shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. Any amount, which the Contracting Authority has paid or caused to be paid in accordance with this Contract in excess of the amounts actually payable in accordance with the provisions of this Contract, shall be reimbursed by the Contractor to the Contracting Authority within thirty (30) days after receipt

by the Contractor of notice thereof. Any such claim by the Contracting Authority for reimbursement must be made within twelve (12) calendar months after receipt by the Contracting Authority of a final report and a final statement approved by the Contracting Authority in accordance with the above.

- (f) payments in respect of remuneration or reimbursable expenses, which exceed the cost estimates for these items as set forth in Appendices D may be charged to the respective contingencies only if such expenditures were approved by the Contracting Authority prior to being incurred.
- (g) with the exception of the final payment under (d) above, payments do not constitute acceptance of the Services nor relieve the Contractor of any obligations hereunder.

7. FAIRNESS AND GOOD FAITH

7.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

7.2 Operation of the Contract

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but no failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with Clause GC 8 hereof.

8. SETTLEMENT OF DISPUTES

8.1 Amicable Settlement

If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within 14 days after receipt. If that Party fails to respond within 14 days, or the dispute cannot be amicably settled within 14 days following the response of that Party, Clause GC 8.2 shall

apply.

**8.2 Dispute
Resolution**

Any dispute between the Parties as to matters arising pursuant to this Contract that cannot be settled amicably according to Clause GC 8.1 may be submitted by either Party for settlement in accordance with the provisions **specified in the SC**.

III. Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(a)	The Contracting Authority's country is Botswana .
1.1 (b)	The Contracting Authority is: The SADC Secretariat
1.1 (c)	The Contractor is:
1.6	<p>The addresses are:</p> <p>Contracting Authority The SADC Secretariat, Western Commercial Road (near Lobatse and Siboni Roads) CBD Plot 54385 City: Gaborone Country: Botswana</p> <p>Attention : The Director, PPRM Facsimile : +2673972848/3181070</p> <p>Contractor Attention : Facsimile :</p>
1.8	The Member-in-charge authorized to act on behalf of the Joint Venture / Consortium / Association is: [Insert name of the Lead Partner]
1.9.1	<p>The Authorized Representatives are:</p> <p>For the Contracting Authority: The Task Manager is :</p> <p>The Director, PPRM</p> <p>For the Contractor:</p> <p>The Project Director is [insert the name, title, department organization]</p>
1.9.2	The Contracting Authority delegates to the Task Manager the following authority under this Contract:

III Special Conditions of Contract

	The Task manager shall be the first point of contact for operational implementation and shall oversee operational implementation on a day to day basis. The Task Manger will approve reports submitted by the Contractor
1.10	Taxes and Duties: It is the responsibility of the bidders to ensure that they familiarize themselves with the relevant tax regulations in their home country and in Botswana. Firms and their personnel will be liable for all applicable taxes.
2.1	The effectiveness conditions are the following: The contract becomes effective from the date both parties have signed the contract.
2.2	The time period shall be 90 days
2.3	The time period shall be 15 days
2.4	The contract will expire 30 days from the effective date of the contract
3.1.2	The applicable laws shall be the Laws of the Republic of Botswana
3.7.b	Subcontracting is not allowed.
3.9	The Contractor shall not use these documents and software for purposes unrelated to this Contract without the prior written approval of the SADC Secretariat.
3.10	The Contracting Authority shall provide office space.
4.4 (a)	The article in the General Conditions is replaced by: Working hours shall be the SADC Secretariat standard working hours (07:30-1630). Weekends, public holidays and periods when the SADC Secretariat offices are officially closed cannot be counted as working days unless prior written approval is obtained from the task manager. Travel for purposes of mobilization and demobilization of Experts cannot be counted as working days. Travel on official duty (if any) will be considered as working days provided the prior written approval of the contracting authority/task manager is obtained.

III Special Conditions of Contract

4.6	Preferably the Team Leader specified in Form Tech4 should be designated as resident Project Director
5.1(g)	The SADC Secretariat will provide the consultant with relevant data and reports available in the SADC Secretariat.
6.1 (b)	The contract ceiling: USD (insert from financial proposal). A Lump sum contract and the value is fixed for the duration of the contract.
6.2	This is a lump sum contract (see 6.4 below)
6.2 (b)	There are no price adjustments; the rates are fixed for the duration of the contract.
6.2 (c)	<p>The following expenses shall be considered reimbursable expenses:</p> <ul style="list-style-type: none"> • Flights for mobilization and demobilization of experts using the most direct route (economy class). • Per diems and Regional flights for experts when undertaking approved assignments related to this contract outside Gaborone as well as per diems for nights spent in Gaborone. • Translation of project related documents as approved by the Procuring Entity if any <p>The per-diems paid under the reimbursable expenses shall not exceed the SADC Secretariat's standard per-diems which equate to UN per diem rates.</p> <p>Airfares are reimbursable at economy and most direct route</p>
6.2(d)	All backstopping costs if any must be included in the fee rate
6.2 (e)	Fees for the Experts are fixed for the duration of the contract and not subject to revision.
6.2.(f)	<p>The article in the General Conditions is replaced by:</p> <p>Fees will only be paid for full days worked. There will be no payment for part of a day. This applies to services provided in the SADC Region and in the home base (as approved by the Contracting Authority).</p>
6.3	Non USD expenses shall be invoiced in USD. The exchange rate

III Special Conditions of Contract

	applicable will be the buying rate on the date the invoice is submitted to the Contracting Authority
6.4(a)	This is a lump sum contract and Payment shall be made to the account of the Contractor : [Insert Account details]
6.4(b)	No advance payment shall be made under this contract
6.4(c)	<p>The Contractor shall submit to the Contracting Authority invoice for each deliverable achieved for payment</p> <p>Invoices for reimbursable expenses should be submitted separately to fee invoices. Original supporting documents are required for all invoices.</p> <p>Invoices should be submitted in one original and two copies. Invoices will only be paid on approval of required reports for the respective deliverable. .</p>
6.4(d)	The interest rate is: the deposit rate established by the Bank of Botswana on the first day of the month in which the claim is made.
6.4(f)	There is no contingency provision in the contract
8.2	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. <u>Selection of Arbitrators.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three arbitrators, in accordance with the following provisions:</p> <p>(a) Where the Parties agree that the dispute concerns a technical matter, they may agree to appoint a sole arbitrator or, failing agreement on the identity of such sole arbitrator within thirty (30) days after receipt by the other Party of the proposal of a name for such an appointment by the Party who initiated the proceedings, either Party may apply to the International Court of Arbitration for a list of not less than five nominees and, on receipt of such list, the Parties shall alternately strike names there from, and the last remaining nominee on the list shall be the sole arbitrator for the matter in dispute. If the last remaining nominee has not been determined in this manner within sixty (60) days of the date of the list, the International Court of Arbitration shall appoint, upon the request of either Party and from such list</p>

	<p>or otherwise, a sole arbitrator for the matter in dispute.</p> <p>(b) Where the Parties do not agree that the dispute concerns a technical matter, the Contracting Authority and the Contractor shall each appoint one arbitrator, and these two arbitrators shall jointly appoint a third arbitrator, who shall chair the arbitration panel. If the arbitrators named by the Parties do not succeed in appointing a third arbitrator within thirty (30) days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall, at the request of either Party, be appointed by the International Chamber of Commerce, Paris.</p> <p>(c) If, in a dispute subject to Clause SC 8.2 1.(b), one Party fails to appoint its arbitrator within thirty (30) days after the other Party has appointed its arbitrator, the Party which has named an arbitrator may apply to the the International Chamber of Commerce, Paris to appoint a sole arbitrator for the matter in dispute, and the arbitrator appointed pursuant to such application shall be the sole arbitrator for that dispute.</p> <p>2. <u>Rules of Procedure.</u> Except as stated herein, arbitration proceedings shall be conducted in accordance with the rules of procedure for arbitration of the United Nations Commission on International Trade Law (UNCITRAL) as in force on the date of this Contract.</p> <p>3. <u>Substitute Arbitrators.</u> If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator.</p> <p>4. <u>Nationality and Qualifications of Arbitrators.</u> The sole arbitrator or the third arbitrator appointed pursuant to paragraphs (a) through (c) of Clause SC 8.2 1 hereof shall be an internationally recognized legal or technical expert with extensive experience in relation to the matter in dispute and shall not be a national of the Contractor's home country [Note: If the Contractor consists of more than one entity, add: or of the home country of any of their Members or Parties] or of the Contracting Authority's country. For the purposes of this Clause, "home country" means any of:</p> <p>(a) the country of incorporation of the Contractor [Note: If the Contractor consists of more than one entity, add: or of any of their Members or Parties]; or</p>
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	<ul style="list-style-type: none">(b) the country in which the Contractor's [or any of their Members' or Parties'] principal place of business is located; or(c) the country of nationality of a majority of the Contractor's [or of any Members' or Parties'] shareholders; or(d) the country of nationality of the Sub-Contractors concerned, where the dispute involves a subcontract. <p>5. Miscellaneous. In any arbitration proceeding hereunder:</p> <ul style="list-style-type: none">(a) proceedings shall, unless otherwise agreed by the Parties, be held in a country which is neither the Contracting Authority's country nor the Contractor's country;(b) the English language shall be the official language for all purposes; and(c) the decision of the sole arbitrator or of a majority of the arbitrators (or of the third arbitrator if there is no such majority) shall be final and binding and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.
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IV. Appendices

APPENDIX A – TERMS OF REFERENCE

Note: This Appendix will include the final Terms of Reference worked out by the Contracting Authority and the Contractors during technical negotiations, dates for completion of various tasks, place of performance for different tasks, specific tasks to be approved by Contracting Authority, etc.

APPENDIX B – TECHNICAL PROPOSAL

Note: List format, frequency, and contents of reports; persons to receive them; dates of submission; etc. If no reports are to be submitted, state here “Not applicable.”

APPENDIX C – FINANCIAL PROPOSAL

III Special Conditions of Contract

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