

## Terms of Reference

### Request For Proposal

**National/International Consultant to conduct a 5-day Access and Benefit Sharing Contract Law training (for representatives of government, community and industry/researchers); to develop model benefit sharing agreements for the bioprospecting and biotrade sectors and to draft a training manual**

**Type of Contract:** Individual Contract (IC) or RLA  
**Languages:** English  
**Duration:** 2 months (5-day training session including preparations; report writing and preparing a training manual)  
**Location:** South Africa  
**Starting date:** End September 2019 for training session in October 2019

## 1. Background

### 1.1. Introduction:

South Africa, through the Department of Environment, Forestry and Fisheries, is part of the UNDP-GEF Global ABS Project titled: "Strengthening human resources, legal framework and institutional capacities to implement the Nagoya Protocol" which aims to facilitate the implementation of the Nagoya Protocol on Access and Benefit Sharing (ABS). Under Component 1 of the project, *Strengthening the legal, policy and institutional capacity to develop national ABS frameworks*, a 5-day training session on ABS Contracting, specifically ABS Contract Law, with government, communities and industry representatives, is envisaged.

South Africa is actively engaged in bioprospecting activities which involve the exploration of biodiversity for valuable genetic resources that may be used for commercial purposes. The bioprospecting/biotrade sector has demonstrated the potential for significant development and growth, contributing to job creation, rural development, and the conservation of our natural resources. According to the Convention on Biological Diversity, "Access and benefit-sharing (ABS) refers to the way in which biological or genetic resources may be accessed, and how the benefits that result from their use are shared between the people or countries using the resources (users) and the people or countries that provide them (providers)."

There are many institutional frameworks, international and national, which play a critical role in assisting governments in developing their national policies, legislations and programs to ensure that access to genetic resources and associated traditional knowledge, and the sharing of benefits thereof, happen in a fair and equitable way. Chapter 6 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); and the Bioprospecting, Access and Benefit-Sharing Amendment Regulations (BABS Regulations) are a few examples of the foundational and compulsory frameworks and legislation that is administered by the Department. In South Africa, the principles of the Nagoya Protocol are implemented through these pieces of legislations. The BABS Regulations prescribes the notification process for the discovery phase of bioprospecting involving any indigenous genetic and biological resources and further prescribes the permit system that applies to bioprospecting activities. In addition, the BABS Regulations set out the form and content of, and requirements and criteria for benefit-sharing and material transfer agreements and the administration process of the Bioprospecting Trust Fund.

Benefit Sharing Agreements (BSA) are entered into by a permit applicant and a relevant stakeholder (eg. Resource provider, TK holder), for access to any indigenous genetic and biological resources (IGBR) and/or Traditional Knowledge associated with the aforementioned resource. The BSA is a legally binding contract that requires information about the IGBR to be accessed, information on Traditional Knowledge and related communities and the mechanisms of benefit sharing (monetary and non-monetary). Due to the complex and dynamic nature of the ABS environment in South Africa, the negotiations involved in, and the drafting of BSAs need to be a systematic process that follows due diligence. It is critical to ensure that the key stakeholders and role players in the bioprospecting/biotrade sector are sufficiently capacitated to facilitate the fair and equitable sharing of benefits that arise from the use of IGBR as well as to ensure a level of standardization on the understanding of benefit sharing and an enhanced knowledge around benefit sharing issues.

As per the approved Annual Work Plan for the year 2019 for South Africa, the body of work will require a national or international consultant to design and conduct a training session tailored to government, community and industry stakeholders, focusing on Contract Law related to Access and Benefit Sharing.

### 1.2. Objectives of the assignment

The scope of work of the Consultant(s) is to design and conduct a training session tailored to government, community and industry stakeholders, focusing on Contract Law related to Access and Benefit Sharing. The training should focus on negotiation of benefit sharing agreements (BSA); developing a model BSA for bioprospecting and biotrade sectors and drafting a training manual as specified below.

## 2. Description of Responsibilities

The consultant will be responsible for the provision of the following services:

- A. Design a training session/plan, for all stakeholders, that covers:
    - a) Negotiations on Benefit Sharing Agreements
    - b) Contract drafting
  - B. Training sessions, to occur in October 2019, to be structured as follows:
    - a) Government:
      - 1 day
      - 20 officials
    - b) Community:
      - 2 days
      - 20 members
    - c) Industry:
      - 2 days
      - 10 participants
  - C. Model Benefit Sharing Agreement:
    - Design a model BSA for the bioprospecting and biotrade sectors
    - Based on access and traditional knowledge
    - Draft explanatory notes based on the different sections of the BSA
  - D. Draft a training manual based on:
    - key elements of contracts that need to be considered
    - aspects of negotiations of BSAs
    - articles of the Nagoya Protocol relevant to BSAs
    - South African legislation related to contracts
  - E. Briefing session with the DEFF and UNDP teams prior to the signing off the contract
3. **Reporting:** The DEFF is responsible for overseeing the technical content, quality assurance and approval of the ABS Contract Law training plan. The focal point in DEFF is the Global ABS Project Manager. To this end, the Consultant shall work in close coordination with the Global ABS Project Manager and the DEFF team who may in turn, be supported by the UNDP Global ABS Technical Advisor on technical content as and when requested. The UNDP South Africa Country Office is responsible for contract administration and payment will be rendered after written approval from DEFF.
4. **Duration:** The duration of the consultancy is for the period of 2 months (end-September 2019 to end-November 2019)
5. **Duty Station:**
- The consultant must be based in South Africa, and be able to attend meetings at the DEFF Offices in Pretoria, as required.
  - If based out of South Africa, the consultant must be available in person for the project inception meeting and electronically for the duration of the contract and must also be present in person for the training session.

## 6. Deliverables:

The **specific deliverables** and **payment schedule** are provided in the table below:

Deliverables	Time	Payment term
<b>Deliverable 1:</b> Inception meeting/workshop with the DEFF and UNDP teams	1 day	10 %
<b>Deliverable 2:</b> 5 day training plan detailing the schedule and activities for, 1. Government, 2. Communities, 3. Industry/researchers	TBD	15 %
<b>Deliverable 3:</b> ➤ 5-day training session: <ul style="list-style-type: none"> <li>• 1-day training with government officials</li> <li>• 2-day training with community members</li> <li>• 2-day training with industry/research representatives</li> </ul> ➤ Draft a post training/workshop report	TBD	50 %

<b>Deliverable 4:</b> Model Benefit Sharing Agreement (BSA) for the bioprospecting and biotrade sectors including explanatory notes on the different sections of the BSA as in point 2C above	TBD	10 %
<b>Deliverable 5:</b> Training Manual as described in point 2D above, including lessons learned and key messages from the training	TBD	15 %

## 7. Competencies:

- Knowledge of the South African Bioprospecting sector; ABS related legislation, regulations and policies (eg. National Environmental Management: Biodiversity Act and Bioprospecting, Access and Benefit Sharing regulations)
- Knowledge and experience in the Nagoya Protocol and Access and Benefit Sharing in a national and global context
- Understanding of the diversity and dynamics of the various ABS stakeholder groups
- Knowledge and experience in Contract Law
- Experience in training and development
- Project management
- Stakeholder engagement

## 8. Qualifications

### 8.1 Academic Qualifications/Education:

- Minimum Master's Degree in Environmental Law/ Contract Law

### 8.2 Experience:

The selection of the consultancy will be aimed at conducting a training session on ABS Contract Law for government, community and industry stakeholders.

- Team Members – technical skills necessary for the activity
  - 5+ years of experience in practicing Contract Law
  - 5+ years of experience in the Access and Benefit Sharing environment
- Expertise of Institution / Organisation submitting the proposal – Number of projects/instances where you have provided services of a comparable nature (provide exact details). Provide at least 3 relevant verifiable project references
- Previous work experience with UNDP and/or other government departments on similar projects will serve as an advantage

### 8.3 Language skills:

Excellent writing, editing, and oral communication skills in English;

## 9. Evaluation of Applicants

Applications will be evaluated based on a cumulative analysis **taking into consideration the combination of the applicants' qualifications and financial proposal.**

Those candidates who obtained at least 70% of points in each of the steps of the process will be considered for financial proposal evaluation.

Technical Criteria - 70% of total evaluation – max. 70 points:

- **Criteria A** – Relevant education background (10)
- **Criteria B** – Knowledge in and experience of the South African ABS regulatory environment (15)
- **Criteria C** – Experience in practicing Contract Law related to ABS (15)
- **Criteria D** – Experience in conducting similar training sessions with various stakeholders (15)
- **Criteria E** – Project Management (10)
- **Criteria F** – Previous work experience with UNDP and/or other government departments or other related organizations and familiarity with their websites and knowledge management requirements (5)

Financial Criteria - 30% of total evaluation – max. 30 points

## 10. Application procedures

To facilitate the analysis of responses, all interested parties are required to prepare their response in accordance with the instructions outlined in this section. All proposals should be electronically generated. The consultancy will be hired on a UNDP contract.

Applicants are required to submit the following:

- A Technical Proposal: Letter of Interest, stating why you consider your service suitable for the assignment and a methodology on the approach and implementation of the assignment;
- Evidence and examples of similar projects that have been successfully completed;

- Personal CVs highlighting qualifications and experience in similar projects;
- Minimum of three references - contact details (e-mail addresses) of referees (organisation for whom you've produced similar assignments);
- All-inclusive financial proposal indicating consultancy fee and a breakdown of expenses (unit price together with any other expenses) related to the assignment.

Applicants are required to submit the following documents to [bid.pretoria@undp.org](mailto:bid.pretoria@undp.org) on or before the \_\_\_\_\_ with the subject line: **Job Code, Title and Reference Number.**