



TERMS OF REFERENCE (TORs)

FOR

THE APPOINTMENT OF A TECHNICAL EXPERT TO DRAFT THE RECORDAL OF LAND RIGHTS PROJECT EXECUTION PLAN TO SUPPORT THE RESEARCH AND DEVELOPMENT OF ENABLING TENURE REFORM POLICY AND LEGISLATION

Application Deadline:	22nd September 2020
Category:	Local Consultant
Type of Contract:	Expert Company / Research Institute
Languages Required:	English
Starting Date:	Immediately
Assignment Duration:	30 days

I. INTRODUCTION

Section 25 (6) of the Constitution prescribe that “A person or community whose tenure is legally insecure as a result of past racially discriminatory laws or practices is entitled to the extent provided by the Act of Parliament, either to tenure which is legally secure or to comparable redress”. The 1997 White Paper on Land Reform provides for the recordal of rights and unitary land tenure system. Furthermore, the Presidential Advisory Panel Report on Land Reform and Agriculture recommended that an enabling legislative regime be established to allow for a system of land recordal and land rights adjudication particularly customary rights. The panel further recommends that Land Administration be the fourth pillar of Land Reform to usher in a revitalized and uniform land administration system that provides a legal and institutional infrastructure for all land-related management and rights.

The Minister in responding to these recommendations, mandated the Department of Agriculture, Land Reform and Rural Development to fast track the development of the enabling policy environment for the realization of the 20-year vision for land administration based on evaluation findings from pilots / commissioned studies.

2. BACKGROUND AND CONTEXTUAL PROBLEM STATEMENT

2.1 Rationale for the Recordal of Land Rights Project

The root of the land question today arises out of the pervasive process of land alienation that dispossessed the majority of South Africans of their land over the past few centuries. The 1913 Natives Land Act was the first of a number of discriminatory laws that reinforced the massive dispossession of land from black South Africans. The intentions of Government to review all land reform policies and legislation as enunciated in the 2011 Green Paper on Land Reform aimed at addressing issues relating to historical exclusion, equitable access to land, and participation in the optimal utilisation of land; as well as to address challenges relating to access to food at both household and national level to bring about household food security and national food self-sufficiency.

2.2 Problem Statement and Context

The recordal of land rights in South Africa should be informed by reality in the ground, we have those that are already on land, those on land needing more land and the millions that are landless living on farms, urban informal settlements / backyards and communal areas. The project is aimed at assisting the Department to address the following key tenure reforms in South Africa:

- 2.2.1 How do we confer legally secure tenure on land where people already reside – Traditional Communal Areas, on Commercial Farms, in informal settlements on state land etc.;
- 2.2.2 Define appropriate property rights as guided by the continuum of rights for various pieces of land. Further affirm appropriate rights in instances where land has been acquired and leased to the beneficiaries (i.e. *One household One hectares allotments*), what property rights will be recorded?
- 2.2.3 Consider South Africa's socio-economic situation in the process of affirming / recordal of tenure rights. *The 2012 World Bank Report on Agricultural Land Redistribution*, argued that economic efficiency is served best if the property right is of infinite duration and fully tradable. In that way, the productivity of the resource can be exploited to the fullest extent.
- 2.2.4 Consider empowerment of the State in understanding its role in land administration matters. There often is a lot of confusion about "private" and "common" property. Under private property, it is imagined that a person can do as he or she pleases with the property. For instance, we think of private property as a tradable right that can be sold by the individual to anyone, without asking anybody else for permission to do so. When we think of common property, on the other hand, we imagine non-tradability: either very restricted, permissible use of the asset or the tragedy of a complete free-for-all.
- 2.2.5 Consider the realities on the ground both in urban and rural areas in addressing the recordal of land rights.

3. PROJECT PURPOSE

To appoint a team of technical experts to support the DALRRD with the planning and execution of the Recordal of Land Rights project. The team should develop planning tools (*qualitative and quantitative*) that will assist the Provincial Teams to use in determining the following:

- 3.1 Appropriate three Districts / sites to be selected as pilots for the recordal of land rights covering both urban and rural land tenure dynamics,
- 3.2 Consider Case Law in Tenure to identify the gaps to be addressed by the newly configured policy and legislative environment,

- 3.3 Detailing the project execution approach with scenario planning for the various project stages, i.e. undertaking the detailed Land Rights enquiry process when the team gets onsite [step by step],
- 3.4 Develop project tools for data collection, analytical framework and archiving of the project outcomes for learning and future referencing purposes.
- 3.5 Consider detailing other key policy concerns that will necessitate the Department to respond to during the execution of the project.
- 3.6 The project execution plan should be considerate of the COVID 19 implications for the project,

4. PROJECT SCOPE

The Recordal of Land Rights project will get its guidance from the 1997 White Paper, which aims “to bring all people occupying land under a unitary, legally validated system of landholding” so as to secure different forms of land tenure, resolve tenure disputes and provide alternatives for people who are displaced in the process. The principles of tenure reform are:

- 4.1 Tenure reform must move towards rights and away from permits;
- 4.2 Tenure reform must build a unitary non-racial system of land rights for all South Africans;
- 4.3 Tenure reform must allow people to choose the tenure system which is appropriate to their circumstances;
- 4.4 All tenure systems must be consistent with the Constitution’s commitment to basic human rights and equality;
- 4.5 A rights-based approach and adjudicatory principles have to be adopted which recognise and accommodate de facto vested rights (i.e., those which exist on the ground); and,
- 4.6 New tenure systems and laws should be brought in line with the situation as it exists on the ground and in practice.

The legislative and policy framework to confer tenure rights should incorporate these principles as envisaged by Sections 25 (6) and 25 (9) of the Constitution. This enable the Department to confer various forms of legally secure tenure that respond to the needs of individuals in both rural and urban spaces.

5. KEY DELIVERABLES

The following project deliverables will be achieved through a consensus by way of presentations to and agreement by the Recordal of Land Rights Project Steering Committee chaired by the Chief Registrar of Deeds:

- 5.1 Inception report including the proposed methodology and project execution approach;
- 5.2 A systematic and pragmatic project execution plan,
- 5.3 Develop a selection criteria and scenario planning for the appropriate site for the pilot,
- 5.4 Develop project execution tools for the project teams,
- 5.5 A close out report documenting lessons learned from the project.

Take **note** of the level of effort required and tentative time frames below:

Project Outputs	Proposed Timeframe
a) Provision of the inception report including the proposed methodology and project execution approach.	1 – 3 October 2020
b) A systematic and pragmatic project execution plan.	3 October 2020
c) Develop a selection criteria and scenario planning for the appropriate site for the pilot with interim / proposed districts.	4 -14 October 2020
d) Develop the project execution tools and orientation of the provincial project teams,	15-23 October 2020
e) An exit report documenting lessons learned from the consultative process	26-30 October 2020
f) Presentation and approvals of final report	30 October 2020

6. SENIOR EXPERT PROFILES AND REQUIREMENTS

6.1 **Team Leader / Expert:** A relevant Master's or Doctorate in social or human sciences, planning, public policy or development studies, law, land or development economics, finance, business, accounting. Additional qualifications in agriculture and rural development will be considered an advantage. - Minimum of 10 years' experience in consulting.

Team Members: Experts with minimum of 4-year university qualification in Law, Planning, Public Policy or Development Studies, Agricultural/ Development Economics or any other equivalent and relevant qualification and minimum of 5 years' experience in consulting.

6.2 General Qualification and Skills

- Relevant University Degree based on profiles below, preferably Master's or Doctorate in social or human sciences, planning, law, land or development economics, finance, business, accounting, public policy or development studies. Additional qualifications in agriculture and rural development will be considered an advantage. - all team members;
- Excellent research skills;
- A minimum of 10 years research experience and work in either the public, private or development sectors;
- Good facilitation skills;
- Excellent analytical, interpersonal and communication skills;
- Excellent oral and written communication and drafting skills in English are essential;
- Ability to work with minimal supervision and under pressure;
- Strong computer literacy.

6.3 Expert's Profiles

Key Expertise:

- An in-depth understanding of the land administration, land tenure and agricultural laws.
- Understanding of legal policies and regulations governing public entities.
- Experience as team leader will be considered an advantage
- Knowledge and understanding of public policy and planning.
- Knowledge and understanding of research approaches and methodologies.
- Experience and knowledge of public and development sectors programme and project management.
- Excellent writing, editing, and oral communication skills in English.
- Experience of work in multifaceted environment and with multidisciplinary teams that require combining and formulating reports and crystalizing them into a final product.

7. PROJECT DURATION

The assignment will be for a period of 30 days from September 2020 to October 2020. The briefing and Project Inception Report will detail the realistic delivery schedule.

8. PAYMENT SCHEDULES

Payments will be closely linked to deliverables as proposed herein below:

Deliverables	Payment Schedule	Time Frame
1. Provision of Inception report including the proposed methodology and project execution approach.	25%	Within 3 days after signing of contract.
2. A systematic and pragmatic project execution plan. <ul style="list-style-type: none">◦ A systematic and comprehensive Literature Review on urban and rural/communal land tenure challenges,	40%	Within 10 days after signing of contract and upon approval of submitted reports.
3. Develop a selection criteria and scenario planning for the appropriate site for the pilot with interim / proposed districts. <ul style="list-style-type: none">◦ Interim proposed districts as pilot sites representing the dynamics on land tenure in South Africa.	15%	Within 15 days after signing of contract and upon approval of submitted reports.
4. Develop the project execution tools and orientation of the provincial project teams,	20%	Within 20 days after signing of contract and upon approval of submitted reports.
5. An exit report documenting lessons learned from the consultative process	10%	Within 27 days after signing of contract and upon approval of submitted reports.

9. PROJECT IMPLEMENTATION REPORTING

- 9.1 The expert team will be required to attend and present at meetings at the Department of Agriculture, Land Reform and Rural Development offices in Pretoria physically or through a virtual platform.
- 9.2 The team will be contracted by UNDP and reports directly to a Technical Task Team & Project Steering Committee consisting of representatives from the DALRRD and UNDP, the UNDP will also be responsible for the day to day liaison on implementation of the assignment,
- 9.3 The team will engage with the DARDLR and where necessary, with UNDP for technical guidance and support during the data collection and research.
- 9.4 The DALRRD will closely provide the technical supervision to the assignment and facilitate information for and access to all necessary documentation, working in collaboration with and technical and administrative support of the UNDP.
- 9.5 The team must have access to their own ICT facilities to undertake the assignment.
- 9.6 The consultants shall submit draft and final reports which clearly present work undertaken outlining activities and outputs thereof. Any proposed deviations from the original project implementation plan shall be explained to the UNDP in writing and be approved by the UNDP Senior Management.
- 9.7 The project report (s) must be submitted in electronic formats. All such materials shall become the property of the UNDP and the DALRRD and no document may be reproduced, copied or distributed without prior written consent from UNDP.
- 9.8 From time to time, the team will be required to report to the DALRRD Chief Directorate: Policy Research and Development or his/her delegated official and there will be direct line of communication.
- 9.9 The submission and the approval of the final reports as well as presentation of the findings to stakeholder will define the actual end date of the assignment.

10. APPLICATION REQUIREMENTS

Minimum requirements of the proposal should include the following:

- 10.1 Cover letter stating the ability and suitability of the expert company/research institute to undertake this assignment
- 10.2 Personal CVs, indicating all past experience from similar projects, as well as the contact details (email and telephone number) of the Candidates and at least three (2) professional references;
- 10.3 Technical proposal/methodology, on how they will approach and complete the assignment, including preliminary work plan with timelines and deliverables
- 10.4 Financial Proposal that indicates the all-inclusive fixed total contract price, supported by a breakdown of costs, as per template provided.
- 10.5 If an Offeror is employed by an organization/company/institution, and he/she expects his/her employer to charge a management fee in the process of releasing him/her to UNDP under Reimbursable Loan Agreement (RLA), the Offeror must indicate at this point, and ensure that all such costs are duly incorporated in the financial proposal submitted to UNDP. This mainly applies to individual contractors.

11. CONFIDENTIALITY

All information, discussions, documents and reports that arise from this assignment must be regarded as confidential. Only UNDP, or its development partner, shall have the right to make public the findings of this assignment.

12. SELECTION CRITERIA

Selection criteria will be based on functionality, knowledge and experience. Technical proposal will be weighted at a maximum 100 points with 70% pass rate. The selection of the successful team of experts will be aimed at maximising the overall qualities in required areas of competence. This will be broken down in the following:

Criteria for Selection			Points Allocated
(As per RFQ or RFP)			Per Criteria
1		Technical Proposal	40
	a	Expertise and reputation of institution/Company submitting Proposal demonstrating relevance of: <ul style="list-style-type: none"> - Specialized Knowledge - Experience on Similar Programme / Projects - Experience on related Projects in the Country/Region 	20
	b	Proposed Work Plan and Approach: <ul style="list-style-type: none"> - Is the scope of task well defined and does it respond to the TORs? - Is the presentation clear and is the sequence of activities and the planning logical, realistic and promise efficient implementation to the project? 	20
2		Education Background, Knowledge and Experience	60
	a.	Team Leader / Expert: A relevant Master's or Doctorate in social or human sciences, planning, public policy or development studies, law, land or development economics, finance, business, accounting. Additional qualifications in agriculture and rural development will be considered an advantage. - Minimum of 10 years' experience in consulting.	30
	b.	Team Members: Experts with minimum of 4-year university qualification in Law, Planning, Public Policy or Development Studies, Agricultural/ Development Economics or any other equivalent and relevant qualification and minimum of 5 years' experience in consulting.	30
TOTAL TECHNICAL SCORE (Passing Rate = 70%)			100 pts.

13. TERMS AND CONDITIONS

- 13.1 Awarding of the contract will be subject to the institution/company's acceptance of UNDP Terms and Conditions, and that has proposed the least costly technically qualified proposal.
- 13.2 UNDP reserves the right to terminate the contract in the event that there is clear evidence of non-performance, by the service provider.
- 13.3 The information contained in these TORs has been prepared to guide interested parties in making their own evaluation and does not purport to contain all the information that an expert may require. An expert must make every effort to adequately respond to the terms.

14. CONTACT PERSON AND DETAILS

For any questions regarding the contents of these TORs and all other inquiries, please send them to procurement.enquiries.za@undp.org.