

RFP 01/2019: PROVISION OF A PRODUCTION MANAGEMENT AND TRACK AND TRACE SOLUTION FOR CIGARETTE PRODUCTS

GUIDELINES ON TRUSTS, JOINT VENTURES, SUBCONTRACTING AND OTHER ARRANGEMENTS

1.1 Proof of existence of a trust, joint venture and subcontracting arrangements

1.1.1 Where for the purposes of this RFP the bidder's proposal is in the form of a trust, the bidder must submit concrete proof of the existence of a trust. SARS will accept a registered trust deed as acceptable proof of the existence of a trust. The trust deed must include amongst others:

1.1.1.1 Details of the trustees of the trust; and

1.1.1.2 Details of the beneficiaries of the trust. In instances where the beneficiary is a trust, the trust deed of that specific trust is required.

1.1.2 Where for the purposes of this RFP the bidder's proposal is in the form of a joint venture (incorporated or unincorporated), the bidder must submit the joint venture agreement, which sets forth the following details:

1.1.2.1 identification of each party to the agreement in full;

1.1.2.2 the percentage ownership of each party to the agreement (if applicable);

1.1.2.3 the precise functions and responsibilities which each party will fulfil in terms of the agreement. This should include details of the delimitations of scope within the goods and services to be assigned to such a party(ies);

1.1.2.4 the anticipated percentage of the revenue that the party(ies) would receive (anticipated revenue that the party(ies) would receive as a percentage of the total revenue the bidder would anticipate receiving over the term of the agreement with SARS), if the bidder is successful; and

1.1.2.5 clearly set out the roles and responsibilities of the Lead Partner and the remainder joint venture party(ies). The agreement must also clearly identify the Lead Partner, who shall be given the power of attorney to bind the other party(ies) in respect of matters pertaining to the joint venture.

1.1.3 Joint venture members should be advised that each member will be held jointly and severally liable for the performance of the joint venture.

1.1.4 Although SARS may permit bidders to subcontract areas of scope of the goods and services, bidders must note the following:

- 1.1.4.1 the successful bidder must, at all times, be solely and entirely accountable to SARS for the performance of its contractual obligations in terms of the agreement;
- 1.1.4.2 it is the responsibility of the bidder to select competent subcontractors that meet all requirements of the RFP so that their tender is not jeopardized by the subcontractor when evaluated. Bidders are responsible for all due diligence on their subcontractors;
- 1.1.4.3 SARS reserves the right to refuse the bidder the right to appoint any subcontractor in respect of whom the bidder has not fully complied with the provisions of the tender documents;
- 1.1.4.4 SARS may disqualify a bidder's proposal in which the bidder proposes to appoint a subcontractor which does not comply with the provisions of the tender documents; and
- 1.1.4.5 Without diminishing the service provider's accountability in any way for the delivery of the services, including the performance standards, SARS may require: access to and transparency in the subcontracting agreements; the full details of the functions which the subcontractor will fulfil in terms of the agreement including details of the delimitations of scope within the services to be assigned to such a subcontractor; monitoring and reporting of subcontractor's participation and performance to SARS; direct participation of subcontractor's in the account and project planning activities; and subcontractor's representation in account governance structures and committees. SARS will, at all times, demand fair dealing in the relationship between the bidder and subcontractor.

1.1.5 The parties participating in a trust, joint venture and/or subcontracting arrangement are disqualified from providing goods, works and services to any eventual project that may result, directly or indirectly from the goods and services requested in this RFP.

1.2 Prequalification documentation required for a trust, joint venture, subcontracting arrangement, tertiary institution and public entity

1.2.1 The following prequalification documentation is required for a trust, joint venture, subcontracting arrangement, tertiary institution and public entity:

Table 12: Guidelines for prequalification documentation

	Prequalification document	Submission requirement
1.	SBD 1 invitation to bid form	The SBD 1 form should be completed in the name of bidding entity. If the bidder is submitting a proposal in the form of a joint venture (incorporated or unincorporated), the SBD 1 form should be completed and submitted in the name of the joint venture.
2.	SBD 4 declaration of interest form	The SBD 4 form should be completed in the name of the bidding entity. If the bidder is submitting a proposal in the form of an unincorporated

	Prequalification document	Submission requirement
		joint venture, this form should be completed by each party of the joint venture agreement.
3.	SBD 5: National Industrial Participation Programme form	The SBD 5 form should be completed in the name of bidding entity.
4.	SBD 6.1 preference point claim form	<p>The SBD 6.1 form should be completed in the name of the bidding entity.</p> <p>If the bidder intends subcontracting, the bidder must complete the relevant paragraph in the SBD 6.1 form relating to subcontracting. If the bidder intends subcontracting to more than one subcontractor, the bidder must include all the relevant information in the SBD 6.1 form, or alternatively submit a separate attachment with the information required as per SBD 6.1 and reference must be made to the attachment in the SBD 6.1 form.</p>
5.	SBD 8 declaration of bidder's past supply chain management practices form	<p>The SBD 8 form should be completed in the name of the bidding entity.</p> <p>If the bidder is submitting a proposal in the form of an unincorporated joint venture, this form should be completed by each party of the joint venture agreement.</p>
6.	SBD 9 certificate of independent bid determination form	The SBD 9 form should be completed in the name of bidding entity.
7.	Supplier cost and risk assessment questionnaire	<p>The questionnaire should be completed in the name of the bidding entity.</p> <p>If the bidder is submitting a proposal in the form of an unincorporated joint venture, this questionnaire should be completed by each party of the joint venture agreement.</p>
8.	Pricing schedule	The pricing schedule should be completed in the name of the bidding entity.
9.	Central Supplier Database (CSD) registration	A CSD registration number and the Tax Compliance System pin (optional) should be provided for the bidding entity, for all South African parties participating in a joint venture (incorporated or unincorporated) for this RFP, and for all South African parties to be subcontracted to for this RFP. Please refer to paragraph 5.2 of the Main RFP document for more detail on the CSD requirements.

	Prequalification document	Submission requirement
10.	B-BBEE certificate or sworn affidavit	<p>The B-BBEE certificate or sworn affidavit should be submitted in the name of the bidding entity.</p> <p>In the event that the proposal is in the form of an incorporated joint venture, the incorporated joint venture must submit their B-BBEE status level verification certificate or sworn affidavit.</p> <p>In the event that the proposal is in the form of an unincorporated joint venture arrangement, the unincorporated joint venture must submit a consolidated B-BBEE certificate or sworn affidavit as if they were a group structure, and that such consolidated B-BBEE certificate or sworn affidavit is prepared for every separate proposal.</p> <p>Tertiary institutions and public entities will be required to submit their B-BBEE certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.</p>
11.	Financial statements	<p>The financial statements should be submitted in the name of the bidding entity.</p> <p>In the event that the proposal is in the form of an incorporated joint venture, the incorporated joint venture is required to submit annual financial statements of the joint venture.</p> <p>In the event that the proposal is in the form of an unincorporated joint venture arrangement, the unincorporated joint venture is required to submit annual financial statements of each of the parties to the arrangement.</p>

1.3 Claiming preference points under subcontracting arrangements

1.3.1 Bidders that submit proposals and intend subcontracting a portion of the goods and services, will have to fully comply with the Preferential Procurement Regulations 2017 with regard to subcontracting which states that:

“6(5) and 7(5) A tenderer may not be awarded points for B-BBEE status level of contributor if the tender documents indicate that the tenderer intends subcontracting more than 25% of the value of the contract to any other person not qualifying for at least the points that the tenderer qualifies for, unless the intended subcontractor is an EME that has capability to execute the subcontract.

12(1) *A person awarded a contract may only enter into a subcontracting arrangement with the approval of the organ of state.*

12(2) *A person awarded a contract in relation to a designated sector, may not subcontract in such a manner that the local production and content of the*

overall value of the contract is reduced to below the stipulated minimum threshold.

12(3) *A person awarded a contract may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level of contributor than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.”*

1.3.2 The bidder must take cognisance of these provisions in negotiating and concluding subcontractor agreements including the provisions of the proposed agreement which requires compliance by the subcontractors.