

CODES OF GOOD PRACTICE FOR FORESTRY CONTRACTING IN SOUTH AFRICA ("THE CODES")

1. INTRODUCTION

- 1.1 Item 12.2.1(a) of the Forest Sector Charter¹ ("the Charter") requires that Codes for Forestry Contracting be developed and operational within a period of one year of the date of signature of the Charter. The Charter stipulates that the Codes will:
- “...control and direct the relationship between contracting companies and contractors, and contractors and sub-contractors. The Codes will provide for larger and longer-term contracts enabling contractors to improve margins and invest in their business and staff. It will also provide for transparent and accessible tendering systems and fair pricing that will support good governance and fair labour practices.”
- 1.2 The Forestry Sector has diverse operating environments and requirements. This means that it is impossible and impractical to apply a single standard form contract to all contracts within the Sector. These Codes are drawn up to inform the negotiation and content of contracts entered into between contracting companies and contractors and between contractors and sub-contractors (collectively "Parties"), so as to meet the requirements of the Charter.
- 1.3 The Parties must apply the principles set out in these Codes when concluding contracts.

2. PRINCIPLES

2.1 Procurement

- 2.1.1 Contracting companies and contractors may choose the manner in which contractors and subcontractors are identified, selected and appointed.
- 2.1.2 Contracting companies and contractors must ensure that the procurement systems which they use are open, transparent, equitable and accessible.

¹ Gazetted as a Sector Code on 12 June 2009, in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act No. 53 of 2003, as amended.

2.1.3 If the procurement system used by a contracting company or contractor is a tender system, it must clearly state whether the tender is open to the public or closed to invitees only and it must ensure that the tender documents include clear selection and appraisal criteria.

2.2 **B-BBEE**

2.2.1 Contractors and subcontractors falling within the thresholds prescribed by the Broad-Based Black Economic Empowerment Act No. 53 of 2003, as amended or replaced from time to time ("the BBBEE Act") should be obliged to provide contracting companies and contractors respectively with a current certificate issued by an accreditation agency setting out the level which they have achieved for the purposes of the BBBEE Act and to do so within the time frame prescribed in each contract.

2.2.2 Contracting companies and contractors should give preference to contractors and subcontractors with an accredited higher level BBBEE score and who meet other requirements such as performance and price.

2.3 **Contract Duration**

2.3.1 When deciding the duration of a contract, the Parties should take account of the levels of investment in capital equipment required by the contractor or subcontractor necessary to carry out contract activities to the required standard.

2.3.2 Where the duration of a contract has been established taking account of investment by the contractor or subcontractor in its business or staff, the investment requirement may be included as a contractual obligation and the contract may provide for monitoring of compliance with that obligation.

2.3.3 All contracts should clearly state the period for which they have been concluded. Where a contract applies for a fixed term, it must set out its commencement and expiry dates. If a contract is for an initial period followed by an indefinite period, the Parties must consider whether it can be terminated on notice and if so, the contract should say so and set out the applicable notice period.

2.3.4 Where a contract may be renewed, it must set out the circumstances in which that renewal will take place and describe any applicable process.

2.3.5 A contract should set out how it can be terminated early and a contracting company may not solicit bids while in contracting with a contractor.

2.4 **Rate Determination**

Rates should give consideration to all statutory costs associated with the services which are provided, including applicable minimum wage levels and health and safety compliance requirements. Industry models are available for estimating contracting rates.

2.5 **Payments**

Contracts should stipulate the prerequisites for, timing of, and the manner in which, payments will take place and, if applicable, deal with any early, late, penalty and bonus payments. If finance charges are applicable it will be capped at the prime bank rate applicable at the time.

2.6 **Performance Management System**

The contract should clearly set out any applicable performance standards and the consequences for not achieving those standards. It should stipulate how to achieve these standards and the system or method to be used to ensure compliance and to stipulate the consequences of non compliance to both parties. The contracting company shall facilitate training in respect of the Performance Management System for new contractors or when the Performance Management System is modified.

2.7 **Impossibility of performance**

The complexity of the forestry business environment regularly includes decisions as to whether or not to operate in conditions of extreme weather, fire and adverse economic conditions. Contracts should include clauses describing the circumstances in which failure to perform contract obligations on time, or at all, will not be a breach of the contract because of temporary or permanent

impossibility, together with stipulations that will determine if and when costs will be determined and allocated between the Parties.

2.8 **Dispute resolution**

Contracts should give the Parties an opportunity to resolve any disputes before resorting to arbitration or litigation. Contracts should contain dispute resolution clauses that include, where appropriate, mediation with a mutually agreed mediator. The contract should further state that the mediation process must be complete within 3 months of referral of the dispute, unless otherwise agreed to in writing by the parties. Parties are entitled to representation in the resolution of disputes.

2.9 **Health and Safety**

2.9.1 The health and safety of forestry workers and a safe working environment are of paramount concern for all Parties.

2.9.2 Contracts must oblige the Parties to comply with the standards prescribed by law in relation to the health and safety of forestry workers.

2.9.3 Where Parties apply rules which impose standards higher than those prescribed by law, the contract must state whether those apply and if so, where those standards can be obtained.

2.9.4 Joint responsibility should be assumed for appropriate minimum living standards.

2.10 **Confidentiality**

Contracts should oblige the Parties to keep confidential the contracts and their terms and conditions, including the rate agreed and any rate adjustment terms and the method applied to calculate that rate and adjustment.

2.11 **Compliance with the Law**

Contracts must oblige the Parties to comply with all applicable laws.

2.12 **Freedom of association**

2.12.1 All contracting companies and contractors have the freedom to join any industry, trade or representative organisation of their choice.

2.12.2 Membership of any industry, trade or representative organisation should not prejudice or disadvantage a contractor or subcontractor in negotiations with a contracting company or contractor, subject to the Competition Act, 89 of 1998.

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