**TERMS OF REFERENCE FOR A SOLICITED WRC PROJECT**

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| **KEY STRATEGIC AREA** | Water Use, Wastewater Resources and Sanitation Futures |
| **THRUST** | 3. WATER SENSITIVE AND RESILIENT SETTLEMENTS |
| **PROGRAMME** | *Programme 4: Water services institutional and management programme* |
| **TITLE** | **Development of compulsory Water Services Providers operating license application and review system** |

**Objectives**

* + Develop a guideline of the WSP Licensing Application Process
    - Determination of key conditions and requirements for license application
  + Develop a guideline on Review and analysis/assessment of applications (financial, technical, institutional)
  + Develop a guideline on the ongoing management and operation of the licensing system
  + Undertake detailed legal review of the license requirements and conditions to check that they are aligned to all Water, Municipal and Treasury legislation and regulations.
  + Develop the communication and awareness materials to support the guidelines

**Background and rationale**

Water and sanitation services in municipalities are in serious decline across South Africa and citizens cannot rely on a safe and secure water supply in many municipalities. The trend in service outcomes and performance indicators has been down over the last five to ten years or more. The situation is serious and change is urgently needed.

The municipal direct delivery model for providing water services is broken. After 22 years of municipalities providing water services directly, it is clear that this model has largely failed. The separation of the water services authority and water services provider (WSP) functions is not functioning as intended (as spelt out in the Water Services Act). In almost all cases, municipalities play the role of both authority and provider and these functions are not properly separated as required by legislation. Water services authorities are generally not carrying out their legally mandated function of ensuring that water service providers meet minimum norms and standards where they are performing as WSPs in addition to being Water Services Authorities.

Fundamental reform is required. Based on research conducted by the WRC, the DWS is proposing a new model for providing water services in the form of compulsory licensing of WSPs at a municipal level, a model that will enable and support professional management of a financially viable and sustainable entity providing the service.

The legislative basis for the introduction of a compulsory licensing system has been developed and is contained in the Water Services Amendment Bill which was recently gazette for public comment.

Based on the **framework developed by the WRC and further preliminary work by the Department on the scope of the WSP licenses** – requirements/ regulations/ conditions (available on request), it is now envisaged that a more tailored process be developed which will enable the process of licensing to move ahead. Thus the application process for a license, its awarding, any disputes etc. is a key step toward the process, but also to form the basis for regulations and reporting requirements of the licenses going forward.

**Specific objectives**

The specific objectives are:

* Capture global lessons of WSP licensing application processes and their regulation of relevance to South Africa.
* Development of a framework the licensing system and for the requirements for license applications
  + including differentiated categories of licenses if necessary
  + Minimum information and threshold requirements for each category of licensing of Water Service Providers (WSPs)
  + conditions for each category of licensing
  + monitoring and enforcement
* suspension or withdrawal and renewal of operating licenses Develop the license process guidelines based on the framework
* Develop and establish criteria and process for assessment and evaluation of licensing applications and information submitted.
* Develop guidelines on license review processes in line with the condition requirements (including suitable frequency).
  + Ensure linkages with water services systems including Water Services Development Plans, Blue Drop, Green Drop, Institutional Performance Assessment Programme and the No Drop, where suitable
  + Develop standard operating procedures for managing instances of non-compliance to Water Services Amendment Act (current Bill) and license conditions
  + Develop standard operating procedure for appeals against administrative action (issuance, decline, suspension or withdrawal of operating license and directives)
  + Review the legal obligations of the licensing application, review and monitoring processes
* Develop a set of communication materials which raises awareness and contents of the WSP licensing guidelines and application processes. These should be in the form of:
  + - Hard copy graphic related booklets which should cover:
      * + Purpose of guidelines and how it will help
        + Envisaged process for application
        + roles and responsibilities of WSP and WSA (regulatory/administrative etc.)
        + and any key information which needs to be conveyed as identified
        + These products should also be considered to be digitized as well.
        + Please be creative as we have different audiences to engage – councilors/ mayors/ portfolio committees/ MMs/ Water services Managers etc.

**Expected outcomes and impacts:**

* Promotion of universal access to safe and dignified sanitation
* Improving public health, environmental protection and socioeconomic conditions
* Improved performance and professionalisation of water services.

**Outputs:**

* Inception report clearly demonstrating the requirements of the objectives and outputs.
* Proposed outline and structure of the compulsory operating license system for WSPs
* Guidelines on the application of compulsory license of WSPs
* Standard license application forms and licensing templates for each category license with minimum standard conditions
* Guidelines on regulatory review of licenses
* Standard operating procedure for managing instances of non-compliance to Water Services Amendment Act (current Bill) and license conditions
* Standard operating procedure for appeals against administrative action (issuance, decline, suspension or withdrawal of operating license and directives)
* All legal reviews and positions.
* Guidelines and manuals as required.
* Comprehensive comms and marketing package
* Final report covering the scope of work

**Principles which must underpin the operating license system**

* The licensing system must be as simple as possible and not result in an excessive additional administrative burden for municipalities and DWS – the simpler the better
* Consideration should be given to incremental introduction of the licensing system (e.g., start with a very basic system and add licensing requirements over time)
* The number of license applications that WSPs or aspirant WSPs have to make should be kept to a minimum – ideally a WSP with a high level of capability (e.g. Rand Water) should only have to apply for an operating license once, and not have to apply for a different license every time it needs to be appointed as a WSP
* The scope and purpose of the operating license system should be limited as much as possible – the purpose is to ensure that WSPs have a minimum level of capability
* The licensing system must be ‘good enough’, not perfect
* The licensing system must be ready to be implemented immediately when the Water Services Amendment Bill becomes an Act.

**Lighthouse:**

* Water-Energy-Food Nexus
* Climate Change
* Circular economy
* Inclusive and sustainable socioeconomic development

**Impact Areas:**

* Water and the Economy; Water and the Environment; Water and Society

**Knowledge Tree**

* Sustainable Development Solutions

**Time Frame: 7** months

**Total Funds Available:** R 1 800 000.00 inclusive of VAT.

**Additional requirements**

* The applicant must build in time for availability and frequent engagements with the DWS, other partners and dissemination. We expect a highly interactive engagement process.
* Applications must demonstrate the competency and capacity to undertake this research assignment, and having a track record on establishing regulatory platforms will be welcome
* The team must have sufficient expertise and experience in municipal water services
* The team must have sufficient knowledge of local government in South Africa

* The teams must be multi-disciplinary and include legal, regulation, systems and performance assessment expertise.
* The team must appoint a communication specialist as well.
* The work should capture key aspects related to the following as an example:
  + PRELIMINARY PROVISIONS
    - Citation
    - Application
    - Interpretation
    - Objective
    - Scope of the Regulations
    - Regulatory Authority’s Exclusive Power to Issue Licence
  + LICENCING PROCEDURES
    - Applications and Fees
    - Application Record
    - Preliminary Evaluation
    - Technical and Financial Evaluation
    - Public Consultation
    - Hearing on License Application
    - Decision on Licence Application
    - Date of Commencement
  + LICENCE PROVISIONS
    - Extension of Licence Term
    - Amendment of Licence terms
    - Transfer of Licence
    - Surrender of Licence
    - Suspension of Licence
    - Revocation of Licence
    - Appointment of an Administrator
    - Cessation of the Licence
  + TRANSITIONAL AND FINAL PROVISIONS
    - Compliance with these Regulations
    - Judicial Review of License Decisions
    - Repealing Provision