TERMS OF REFERENCE

THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

REF: SCMM 10/11/01R: APPOINTMENT OF A SERVICE PROVIDER TO SERVE AS A MEDIATOR TO RESOLVE DISPUTES BETWEEN MINISTERS AND DIRECTORS-GENERAL/HEADS OF DEPARTMENT WITHIN THE NATIONAL EXECUTIVE FOR A PERIOD OF ONE (1) YEAR.

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1. THE PURPOSE OF TERMS OF REFERENCE

1.1. The purpose of these Terms of Reference (TORs) is to provide for the appointment and engagement of an independent mediator to facilitate the resolution of disputes, disagreements, relationship breakdowns or any similar matter that may arise between Ministers/Executive Authorities (EAs) and Directors-General/Heads of Department (HODs) (herein collectively referred to as Parties) within the National Executive.

1.2. The Mediation process is intended to promote effective governance, professional working relationships, accountability, and the uninterrupted delivery and/or continuity of government programmes and services.

2. BACKGROUND

2.1. Now and then the President is required to intervene to resolve disputes between EAs and their HODs. The President is empowered by section

12(1)(a) read with Section 42A(3) of the Public Service Act, 1994 (Proclamation 103 of 3 June 1994), as amended (the PSA) to deal with career incidents of HODs of National Departments and or Heads of National Government Components.

2.2. Previous experience shows that disputes/breakdown in the working relationship between EAs and HODsaffect service delivery and sometimes end up in protracted Labour Disputes and/or litigation wherein The President, as the appointing authority would be required to intervene.

2.3. The Presidency desires to build internal capacity to handle these matters as per the law. The current practice of dealing with disputes between Eas and HODs is a protracted and sometimes costly as it will require delegations from the President to the Deputy President or a Minister to be followed. Government programmes continuity and delivery unavoidably get interrupted.

2.4. An Alternative Dispute Resolution (ADR) is therefore crucial to resolve disputes between the Ministers and their HODs more efficiently and effectively.

2.5. It is therefore important that a service provider with experience in Mediation be appointed as a Mediator to resolve the breakdown in the working relationship between EAs and their respective HODs, and assist The President(cy) to rebuild /repair such relationships.

3. OBJECTIVES OF THE MEDIATION PROCESS

3.1 The mediation process shall seek to:

- Facilitate constructive dialogue between the parties.
- Identify and clarify the issues in dispute.
- Promote mutual understanding and trust.
- Explore options for resolution and agreement.
- Assist parties in reaching mutually acceptable outcomes.

- Strengthen working relationships and improve collaboration.
- Minimise disruption to the functioning of the department/ government.
- Avoid escalation of disputes where possible.
- Ensure that the interpersonal/working dynamics are improved in the interest of delivering in the mandate of the affected department.

4. SCOPE OF WORK

4.1 The Presidency hereby seeks to appoint a Mediator to provide Mediation services as and when required in matters involving EAs and HODs.

4.2 The Mediator shall act independently and impartially and shall not represent the interests of any party involved in the Mediation process.

5. GUIDING PRINCIPLES

The Mediation shall be conducted according to the following principles:

5.1 **Independence and Neutrality**

5.1.1 The Mediator shall remain neutral and impartial at all times and shall not favour any party.

5.2 **Participation by the EAs and HODs**

5.2.1 While parties may be directed by the President to participate in a mediation process, any settlement or agreement reached shall be voluntary and based on informed consent.

5.3 **Confidentiality**

5.3.1 All discussions, documents, transcripts, proposals, communications, etc arising during Mediation shall remain confidential unless:

5.3.2 Disclosure is required by law;

5.3.3 The parties agree otherwise in writing; or

5.3.4 Disclosure is necessary to implement a settlement agreement or further progression of the dispute.

5.4 Good Faith

5.4.1 All participants shall engage in the process honestly, respectfully and in good faith.

5.4.2 Adherence to applicable legal prescripts.

5.4.3 The Mediation must be done in strict accordance with all laws, regulations, policies, guidelines, circulars, directives currently existing and as amended/issued from time to time regarding career incidents of HODs as well as Rules of Natural Justice.

6. DUTIES AND RESPONSIBILITIES OF THE MEDIATOR

The mediator will be required to perform duties/functions, including but not limited to the following:

6.1. Conduct preliminary consultations with the parties.

6.2. Develop an appropriate mediation process and timetable.

6.3. Facilitate individual and joint sessions with the parties.

6.4. Assist the parties in identifying areas of common interest and areas of disagreement.

6.5. Encourage constructive engagement and problem-solving.

6.6. Ensure that the interpersonal/working dynamics are improved in the interest of delivering in the mandate of the affected department.

6.7. Draft settlement agreements or certificate of non-resolution/non-settlement when a matter is finalised.

6.8. Provide a written report to the Presidency confirming:

- ✓ Whether mediation was conducted and the details thereof;
- ✓ Whether the matter was resolved or not and the details thereof; and
- ✓ Any recommendations concerning future engagement between the parties.

6.9. Submit all information/ documentation/transcripts obtained during the Mediation process to The Presidency.

7. <u>THE MEDIATOR SHALL NOT:</u>

- Make binding decisions on behalf of the parties.
- Act as an arbitrator/Adjudicator.
- Determine fault or misconduct.
- Issue directives to any party.

8. REFFERAL PROCESS

8.1 Any matter relating to career incidents between EAs and HODs, may be referred for mediation by the President, as he may so determine from time to time.

9. MEDIATION PROCESS

The Mediation process may include but not limited to the following:

9.1 Separate consultations with each party.

9.2 Joint Mediation sessions.

9.3 Development of options for resolution.

9.4 Negotiation and agreement in line with applicable laws.

9.5 Formalisation of any settlement reached between the parties.

10. REPORTING

10.1 At the conclusion of the Mediation process, the Mediator shall submit a full written report to the President.

10.2 The report shall be confidential..

10.3 All the documents/ information/transcripts relating to the matters referred to Mediation process shall remain the property of The Presidency.

11. CONFLICT OF INTERESTS

11.1 The Mediator shall immediately disclose any actual, perceived or potential conflict of interest arising in relation to a matter referred for Mediation.

11.2 The Presidency may appoint an alternative Mediator where a conflict of interest is identified and/or disclosed.

12. REQUIREMENTS FOR THE PROJECT

12.1 The Mediator should demonstrate experience in ADR, successfully mediated and completed at least 2 ADR projects. The Mediator must attach Portfolio of Evidence, completion certificates/letters of previous successful work performed. The certificate/ letter must be on the Mediator's client official letter head with contact details and duly signed.

12.2 Mediator's experience: The Mediator must have a minimum of five (5) years of experience in ADR, specifically Mediation (CVs must be attached).

12.3 Mediator's qualification: The Mediator must have a minimum of NQF level 7 in Law or equivalent and a mediation certificate and registration from and with any accredited institution (copy of qualifications and proof of registration must be attached).

12.4 Failure to meet the minimum requirements will result is the Mediator being disqualified.

13. SPECIAL CONDITIONS OF PROJECT/CONTRACT

13.1 A service level agreement/contract shall be signed with the awarded Mediator.

13.2 The contract will commence on the date of the signing of the contract between the bidder and the Presidency.

13.3 Potential Mediators are requested to submit means of verification for specific goals (women, youth and the person with disabilities, e.g. ID documents and verification from the Central Supplier Database (CSD)), failing which the points for specific goals claimed will be forfeited.

13.4 In the event of changes in the resources, the Mediator must provide detailed CVs for the new replacement Mediators. The new Mediators will be subjected to the security clearance process before confirmation of involvement in the project In all instances.

13.5 The Presidency undertakes to pay out in full within thirty days (30) after all valid claims for services rendered to its satisfaction upon presentation of a substantiated claim/invoice, according to the payment schedule agreed upon in the contract.

13.6 The Presidency may request clarification or additional information regarding any aspect of the proposal that was submitted. Mediators must respond to requests by The Presidency for additional information within three working

days after the request has been made. Failure to comply may invalidate a potential Mediator.

13.7 The Presidency reserves the right to conduct site inspections at the supplier's facilities prior to the conclusion or awarding of contracts to the shortlisted Mediators where necessary.

13.8 The Presidency reserves the right to conduct due diligence prior to the conclusion or awarding of contracts to the shortlisted Mediators where necessary

13.9 Department of Public Service and Administration (DPSA) consultancy rates must be used.

14. SECURITY REQUIREMENTS

14.1 The Presidency will subject the successful Mediator including their staff assigned to the project to a security clearance exercise. If the outcome of the security clearance is negative, the successful Mediator(s) will be disqualified.

15. DURATION OF CONTRACT

15.1 The appointment shall remain valid for the period of one (1) year.

16. MONITORING AND EVALUATION OF THE PROJECT

16.1 All work is to be carried out in accordance with the time schedule as agreed with The Presidency Project Manager and within the agreed deliverables and terms and conditions of the signed contract.

16.2 Monitoring and evaluation of performance and adherence to the project requirement will be done by the Project Manager.

16.3 The Mediator shall be required to convene regular project meetings and submit progress reports.

17. LEGISLATIONS APPLICABLE TO THE BID

17.1 Bids will be subject to the Supply Chain Management conditions as follows:

- ✓ The Preferential Procurement Policy Framework Act, Act No. 05 of 2000
- ✓ Preferential Procurement Regulations, 2022

✓ Public Finance Management Act 1 of 1999

✓ The Presidency Supply Chain Management Policy

17.2 **The management of career incidents of DGs is handled in line with the following legal prescripts**:

- ✓ The Public Service Act, 1994 (Proclamation 103 of 3 June 1994), as amended (the PSA);
- ✓ The Public Service Regulations, 2026 as amended in 2023 (the PSR);
- ✓ The Senior Management Handbook, 2003 (the SMS Handbook);
- ✓ The Executive Protocol: Principles and Procedures for the employment of Heads of Department (HoDs) and Deputy Directors-General (DDGs) Nationally (the Protocol);
- ✓ Directives and Circulars issued by the DPSA regarding career incidents of DGs; and
- ✓ Case law on Career incidents of HODs

18. EVALUATION PROCESS

A three (3)-phase approach will be followed during the evaluation process. All proposals received will be evaluated in accordance with the 80/20-point system as prescribed in the Preferential Procurement Regulation, 2022.

18.1 FIRST PHASE: MANDATORY AND ADMINISTRATIVE COMPLIANCE

During this phase, screening will be conducted to ensure compliance with the mandatory submission of documents as listed below. Mediators who have not complied with the mandatory submission of the document(s) shall be disqualified at this phase of the evaluation and will not be considered in the next phase.

Note that all the required documentation must be signed by a duly authorised representative, where a signature is required.

18.1.1 MANDATORY REQUREMENTS

- Quotation/ Financial proposal in company letter head.

Only Mediators who have met mandatory requirements will be considered for the next phase.

18.1.2 ADMINISTRATIVE COMPLIANCE

a) Completed and signed Mediators' disclosure form (SBD 4)

b) ID copies of employees to be assigned to this project. Assigned employees may be subjected to a security screening, where applicable as per specification.

c) ID copies of owner(s) Owners may be subjected to a security screening, where applicable as per specification.

d) Copy of Mediator's company/Professional registration document with CIPC or relevant Professional body(ies).

e) Tax compliant status or SARS Tax pin of the Mediator.

f) Copy of CSD or CSD registration number

g) Joint Ventures and consortium

In the case where Mediators are bidding as Joint Ventures and/or consortium, the following must be complied:

- Submit a Joint Ventures and/or consortium agreements signed for teaming parties by persons who are duly authorised to do so. The agreement should state the details of the persons who are authorised to sign the documents on behalf of the teaming parties. The joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the Lead Partner and the joint venture and/or consortium party. The agreement must also clearly identify the Lead Partner, with the power of attorney to bind the other party/parties in respect of matters pertaining to the joint venture and/or consortium arrangement.)

- Submit SARS issued pin code, which will be verified for both companies/Professionals.

- Submit a consolidated Central Supplier Database Registration (CSD).
- For technical evaluation, members from those teamed companies/Professionals will be assessed based on the requirements indicated in the project as a single company for incorporated Joint Venture and/or consortium and individually party for unincorporated Joint Venture and consortium.
- Supplier Database Registration (CSD).

NB: The Mediators who have not met the administrative compliance will be required to correct any omissions or error and/ or submit any outstanding information on documents within the reasonable stipulated period. failure to comply will result in disqualification.

18.2 SECOND PHASE: FUNCTIONAL/TECHNICAL EVALUATION

Only proposals that have met the criteria for mandatory compliance will qualify for this phase. During Phase Two, the ability of the Mediator to execute the project will be evaluated.

STAGE 1: Desk-top Evaluation

The following categories will be evaluated:

- Experience and References
- Qualifications

CRITERIA	SUB-CRITERIA	POINTS	WEIGHT
1.Mediator's experience	The Mediator should demonstrate experience in ADR particularly Mediation. Successfully mediated and completed at least 2 projects in dispute resolution. The Mediator must attach portfolio of evidence completion certificates/ letters of previous successful work performed by the mediator. The certificate/ letter must be on the Mediator's client official letter head with	Attached 0-1 portfolio of evidence of completed project in dispute resolution certificates/ letters of previous successful work performed by the company**= 0 points.** Attached 2 portfolio of evidence of completed project in dispute resolution certificates/ letters of previous successful work performed by the company**= 20 points.**	**40**

	contact details and duly signed.	Attached 3-4 portfolio of evidence of completed project in ADR particularly Mediationcertificates/ letters of previous successful work performed by the company**=25 points.** Attached 5-6 portfolio of evidence of completed project in ADR particularly Mediationcertificates/ letters of previous successful work performed by the company**=30 points.** Attached 7 or more portfolio of evidence of completed project in ADR particularly Mediationcertificates/ letters of previous successful work performed by the company**= 40 points.**	
2.Mediator's experience (CVs must be attached)	The Mediator should demonstrate experience and knowledge in ADR particularly Mediation.	Less than 5 -years' experience = **0 points** 5 years' experience **= 20 points**	**30**

		more than 5 years to less than 8 years' experience **= 25 points** 8 or more years' experience **=30 points**	
3.Mediator's qualification (copy of qualifications must be attached)	A mediator should have NQF level 7 in Law or equivalent and mediation certificate from any accredited institution.	No qualification or one qualification = **0 points** NQF level 7 and mediation certificate **= 20 points** NQF level 8 or more and certificate of mediation **=30 points**	**30**
TOTAL			**100**
Minimum threshold			**60**

Each criteria will be allocated points with a total 100 points allocated. Only proposals that scored at least 60 points or more will proceed to third phase.

8.3 THIRD PHASE: PRICE AND SPECIFIC GOALS

The bid will be awarded to the Mediator who scored the highest points in terms of price and specific goals.

DESCRIPTION	POINTS
PRICE	80
SPECIFIC GOALS	20
TOTAL PONTS FOR PRICE AND SPECIFIC GOALS	**100**

Table 1: Specific goals for the tender and points claimed are indicated per the table below.
(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Means of verification
Women ownership		10	CSD report
Youth ownership		7	CSD report
People with Disabilities		3	CSD report

NB: Formula for calculating number of points: Ownership percentage X number of points allocated /100

19. VALIDITY PERIOD

The validity period of the Quotation is 90 days from the closing date.

The Presidency may extend the validity period should the process not be completed within 90 days, and Mediators will be consulted to extend the validity. Please note that non-response from the Mediators will be regarded as consent to the extension of the validity period, and The Presidency will proceed with evaluating the proposal submitted by the closing date.

20. CONFIDENTIALITY

No communication will be undertaken with any Mediator until the winning Mediator has been informed of his winning bid.

Information relating to the evaluation of proposals and recommendations concerning an award shall not be disclosed to neither the Mediator who submitted the proposals nor to other persons not officially involved or concerned with the process[i]. The Presidency necessarily operates under the conditions of the Promotion of Access to Information Act (PAIA) provisions. No material or information derived from the procurement and provision of the service under this contract may be used for any purposes other than those of The Presidency, except where authorised in writing to do so.

21. DISCLAIMER

The Presidency reserves the right not to award the bid.

22. SUBMISSION OF PROPOSALS

Completed bid documents should be sealed, clearly marked as follows:
The Presidency Reference number: SCMM 10/11/01R (Mediators to enter the relevant number).

Completed bid documents must be deposited on e-tender portal before 18 November 2026 **@11:00.**

Mediators must ensure that they received all pages of this document.

23. <u>ENQUIRIES</u>

• All enquiries related to technical should be directed in writing for attention to

Ms Hlengiwe Goba at HlengiweG@presidency.gov.za.

The Reference number should be mentioned in all correspondence.

- Any other enquiry related to bid process (SCM related enquiries) should be directed in writing for attention quotesenquiries@presidency.gov.za

NB: All enquiries should be made at least 2 days before the closing date

COST BREAKDOWN INFORMATION

ANNEXURE B:

Mediators are welcome to customise the pricing schedule/ cost breakdown and further submit the quotation in their company/Professional letter head.

Mediators should take note that the below table is a guide

Description	**Number of hours**	**Hourly cost excl. VAT**	**Total Cost excl. VAT**
		R	R
		R	R
		R	R
		R	R
		R	R
		R	R
Sub-total cost exl. VAT			R
15% VAT			R
Grand-total cost incl. VAT			**R**