

INVITATION TO TENDER

DEMARICATION PROJECT

INVITATION

The Municipal Demarcation Board requires the services of a service provider/consultant to investigate and draft a report and recommendations in two parts, on:

PART ONE

- Challenges faced by the new local government system in South Africa towards realising the vision of developmental local government, particularly those challenges that come with large, inclusive municipalities;
- The relationship between municipal size and the efficiency of the delivery of municipal services. Is there an optimal size or range of sizes for a municipality in the South African context, from the standpoint of efficiency and to minimise duplication of resources and efforts.

PART TWO

- Unpacking, clarifying and expanding on the meaning and application of sections 24 and 25 of the Local Government: Municipal Demarcation Act (Act 27 of 1998, as amended) which set out the criteria for demarcation and, more specifically, the objectives of demarcation and factors to be taken into account by the Board when it determines a municipal boundary;
- Unpacking, clarifying and expanding on the meaning and application of section 2 of the Local Government: Municipal Structures Act (Act 177 of 1998, as amended), which provides the criteria for an area to be regarded as a metropolitan area, and that it must therefore have a metropolitan municipality.

More details are provided later in this document under the project's terms of reference below.

It is important to note that:

1. The lowest or only tender will not necessarily be approved and a resolution taken by the Municipal Demarcation Board regarding the acceptance or non-acceptance of a tender, if any, shall be final.
2. The service provider will not be required to work for the Board on a full time basis, but to carry out specific work within specified timeframes, and report to a Project Steering Committee established specially for this investigation.
3. The successful service provider will be obliged to sign a contract with the Board.
4. The service provider will perform functions in terms of the Agreement as an independent contractor on a contractual basis and is, as such, not in the full time employ of the Board and

nothing contained in such an agreement shall be construed as having the effect of establishing a relationship of an agent or principle or employer and employee between the Board and the service provider.

5. The declaration of interest must be completed and signed.
6. All short listed service providers may be requested to make a presentation of no longer than 20 (twenty) minutes to the Municipal Demarcation Board or a committee of the Board on a date determined by the Board;
7. The successful service provider must be registered on the Board's suppliers' database. If at the time of appointment the successful service provider has not yet registered on the Board's supplier's database, he will be requested to register as a condition for appointment;
8. The reports must conform with the terms of reference and highest quality standards, and payment will only be effected once the Board, or a person designated by the Board, has certified the quality;
9. The service provider will be required to effect any amendments to the report that might be required, within 1 month after submitting the report to the Board;
10. The appointed service provider will be expected to submit all documents, reports and data electronically to the Board, and in the English language;
11. Copyright of all deliverables will vest in the Municipal Demarcation Board.

QUALIFICATIONS AND EXPERIENCE

The successful bidder must have:

1. Extensive knowledge of local government, and the applicable local government legislation;
2. Advanced and proven research experience in spatial sciences/studies
3. Excellent report writing and legal drafting skills.

TIMEFRAMES

The successful bidder must provide the Report and an Executive Summary to the Board on or before 30 April 2010. If the report is not submitted on or before 30 April 2010, a penalty may be imposed on the bidder/service provider.

The report must deal extensively and insightfully with:

- The significant challenge of size for the average South African municipality, as it deals with issues and expectations of it being the level of government that is closest to the citizens, being best able to obtain and understand people's wishes and aspirations for the locality, and being best placed to identify and unlock potential, and mobilise resources present in the locality.

- Expanding on and precisely defining the criteria implied, for an area to be regarded as a Category A (metropolitan) area, as outlined in Section 2 of the Local Government: Municipal Structures Act, 1998, including developing quantifiable indicators, benchmarks and thresholds for each criterion
- Expanding on and precisely defining the criteria implied for municipal boundary demarcation and, more specifically, the objectives of demarcation and factors to be taken into account by the Board when it determines a municipal boundary, as outlined in Sections 24 and 25 of the Local Government: Municipal Demarcation Act, 1998. The report must develop quantifiable indicators, benchmarks and thresholds for each or clusters of factors/criteria as outlined in section 25 Local Government: Municipal Demarcation Act, 1998.
- Institutionalisation and precise application of the section 2 criteria as well as the sections 24 and 25 demarcation objectives and factors. The report must develop quantifiable indicators, benchmarks and thresholds for each of the cluster factors/criteria as outlined in section 25 Local Government: Municipal Demarcation Act, 1998, including recommendations/advice on data requirements, skills sets and other resource requirements.
- A Collation and evaluation of work that has already been done on the above areas by government and non-governmental departments and agencies, to deepen insight into the issues, and to strengthen the investigation.

REQUIREMENTS

Persons interested in bidding for this project:

1. Must complete **Annexure B** and **Annexure C**;
2. Must submit **Annexure B** and **Annexure C** by email (Hillary@demarcation.org.za) or by fax (012-3422480) **on or before 07 December 2009**.

The successful bidder must:

1. Conduct a desktop analysis of the legislation and other relevant material to the subject areas.
2. Conduct interviews with selected persons either employed on in leadership positions in all three spheres of government, or in the private sector, with a sound knowledge of the subject areas in South Africa.
3. Analyse the general reasons and trends of applications for the determination and re-determination of municipal boundaries, and the applicability of the criteria provided for in the Demarcation Act, 1998.
4. Draft a report and recommendations on the current legal provisions, and proposed legal provisions to ensure the implementation of the recommendations.

COMPENSATION

The MDB is prepared to pay up to a maximum of R500, 000.00 for the full investigation and all of the reports.

Interested bidders must submit an all inclusive quote in the attached Annexure B.

The CEO of the Board may approve travel and accommodation costs that may be necessary, and those will be covered by the MDB.

Payment will be made within 30 days after the date on which a report is submitted to the Board.

Payment is subject to any corrections or additions that the Board may require.

BACKGROUND TO PROJECT AND REQUIREMENTS

1. OPTIMAL SIZE OF MUNICIPALITY

In terms of the South African Constitution, 1996, municipalities are constitutionally responsible to perform certain functions and exercise certain powers for the delivery of a range of services to residents. They must provide democratic and accountable government, provide services to communities in a sustainable manner, promote social and economic development, promote a safe and healthy environment, and encourage the involvement of communities and community organisations in the matters of local government. In a sense, the Constitution mandates municipalities to pledge responsibility to work towards sustainable development.

Municipal Government in South Africa is thus largely understood in terms of service delivery, and service delivery and local economic development in South Africa are core concerns of local government.

It is however, widely acknowledged that local government is marked by some dramatic deficiencies in terms of its capacity and structure to meet the demands of service delivery. Municipalities are faced with new challenges. Among other challenges facing municipalities in the country today are the following:

- The creation of larger areas of jurisdiction through the demarcation of new municipal boundaries. The joining of former Black townships and rural areas with established municipalities, following the enactment of the Local Government: Municipal Demarcation Act, 1998, led to a complete change in the size of municipalities in South Africa, by reducing the number of municipalities from 843 to 284. This demarcation was largely driven by economies of scale imperatives;
- A corresponding increase in service backlogs, which new municipalities were tasked with eliminating;
- A complete re-definition of local government roles;
- The devolution of several new powers and functions to local government, without accompanying increase in its fiscal base;
- Increased demands and opportunities provided by the information age;
- A new and evolving relationship between councillors and officials, such as the introduction of Executive Mayors, Speakers, etc.
- New ways of service delivery;
- Electricity restructuring;
- Lack of Capacity; and
- New developmental duties.

A significant challenge is the size of the average South African municipality. The country now has 283 municipalities that serve a population of close to 48 million people, and cover a land mass of 1,2 million square kilometres.

The challenge in South Africa is the realisation that the size of the municipality in most cases correlates with capacity and viability. The smaller the municipality, (as defined in terms of small population and narrow economic base) the more the tendency to experience capacity constraints and serious viability challenges, and these in turn undermine the constitutional and developmental obligations of a municipality.

Requests have been made to the Board mainly from three provinces to consider amalgamating and rationalising some small municipalities in an attempt to increase the viability and effectiveness of these municipalities. The range and disparate size of municipalities in South Africa has given rise in policy circles to the notion of differentiation as a new approach in dealing with municipalities. While this approach is still being debated in policy circles, there is an acknowledgement that the uniform or "one size fits all" approach to municipal governance is no longer realistic. This investigation must then seek to answer the question of whether size matters in effective service delivery and if so, which size is the optimal size for a municipality to be effective. This part of the assignment will constitute the first part of this study to be followed by the part 2

which is outlined below.

A quick comparison with Spain (50 provinces and 8108 municipalities) and Germany (323 districts and 12,477 municipalities), show that South Africa's municipalities are vast in size and population.

2. **SECTION 2 OF THE STRUCTURES ACT AND SECTIONS 24 AND 25 OF THE DEMARCATION ACT**

The Constitution and the Municipal Structures Act, 1998, provides for three main categories of municipalities. These categories are described in the table below:

Municipal Categories	Description of Categories
Category A: Metropolitan Municipalities	Municipalities that have exclusive municipal executive and legislative authority in their own areas.
Category B: Local Municipalities	Municipalities that share municipal executive and legislative authority in their areas with Category C municipalities within whose areas they fall.
Category C: District Municipalities	Municipalities that have municipal executive and legislative authority in areas that include more than one local municipalities.

Metropolitan areas are described as large urban areas with high population density, an intense movement of people, goods and services, extensive development and multiple business districts and industrial areas.

Outside metropolitan areas there is a two-tier system of government with local municipalities and region-wide District Municipalities. District Municipalities cover a wider geographic areas than local municipalities. The original goal of the District Municipality was to enable better regional planning and bulk infrastructure delivery.

In terms of Section 2 of the Municipal Structures Act, 1998, an area must have a single Category A municipality if the area can reasonably be regarded as:

a) A conurbation featuring:

- i. Areas of high population density;
 - ii. An intense movement of people, goods and services;
 - iii. Extensive development; and
 - iv. Multiple business districts and industrial areas.
- b) A centre of economic activity with a complex and diverse economy;
 - c) A single area for which integrated development planning is desirable;
 - d) Having strong interdependent social and economic linkages between its constituent units.

The importance hereof is that once an area complies with the criteria stated in Section 2 it must have a Category A municipality.

Section 3 requires areas that do not comply with Section 2 to have municipalities of both Category B and C as described in the Constitution (Act 108 of 1996, as amended).

Section 2 of the Structures Act effectively defines what may qualify as a metropolitan area. An impression that seems to come through is that, in order for any area to be deemed metropolitan in terms of the Structures Act, it must fulfil all of the provisions of Section 2. But conversely, if an area does reasonably fulfil all of these criteria, then it must be declared a metropolitan municipality.

However, a significant number of the Section 2 criteria are open to wide interpretation, because their meaning in precise terms has not been developed beyond what stands in legislation. This investigation must therefore address this gap and expand on the meaning and criteria implied in legislation.

Therefore, beyond the declaration of the first six metropolitan areas in South Africa, which were by and large "obvious", the Municipal Demarcation Board's application of the criteria, and its ultimate decision on whether or not further areas in the country qualify as metro, is potentially contestable.

For example, what "high population density" means in South Africa is potentially contestable. At a minimum, a liberal (as opposed to strict) interpretation of this point would suggest that a metropolitan area must show the presence of several higher density areas. A more strict interpretation would require that a Category A municipality must include reasonably substantial areas of unusually high population density by typical South African urban standards, and not merely small pockets of high density.

Also, the sub-criterion "an intense movement of people, goods and services" can be criticized on

the grounds of its unclear expression. The concept, which it nevertheless clearly suggests, is that of a range of intensities of movement. Whether of people, goods or services. It thus suggests that below a certain point on a range of movement density scale, an area cannot be regarded as metropolitan.

Strict application of this criterion requires quantitative data. However, the data will be of no use without knowing at what point a break in the intensity of movement would separate a metropolitan from a non-metropolitan area. It seems probable that such a break would be difficult to identify, or might separate only the very largest urban areas in the country from the rest. One would seek such a break then at the top of the scale of movement intensity.

A more liberal interpretation would probably require only a sense that movement intensity could be satisfactorily separated from the ordinary urban circumstances of the large number of busy towns in the country in the effort to identify the metropolitan areas. In other words, one would look for the break at the lower end of the scale.

None of the criteria in Section 2 specifically require that a metropolitan area must be of a particular size. However, the criteria demand a conurbation, meaning typically something urban and very large. Extensive development certainly also implies that the metropolitan area is large and the notion of complexity implies questions of scale.

Section 24 and 25 of the Municipal Demarcation Act set out the criteria for demarcation and, more specifically, the objectives of demarcation and factors to be taken into account by the Board when it determines a municipal boundary.

The Municipal Demarcation Act states that when the Board determines an outer boundary for a municipality, its objective must be to establish an area that meets a number of criteria.

The boundary and the area contained in it must enable the municipality proposed for that area to fulfil its constitutional obligations, which are as follows:

- The provision of democratic and accountable government for local communities;
- The provision of services to the communities in an equitable, and sustainable manner;
- The promotion of social and economic development;
- The promotion of a safe and healthy environment.

Since these criteria derive from the Constitution, the supreme law of the land, they can be described as being overarching and a basic guideline for everything done by the Municipal Demarcation Board.

In considering an area and its boundaries, the Board must satisfy itself that what will be established will have the resources and capacity to fulfil a wide constitutional mandate.

Furthermore, there are factors whose purpose is to enable the Board, when determining a municipal boundary, to attain the demarcation objectives referred to above. In effect, the purpose of the demarcation factors is to narrow down the demarcation objectives, by steering the Board towards specific benchmarks. There are 12 factors, two of which are sub-divided into sub-factors.

In the same manner as with the Section 2 Structures Act criteria, the Section 24 and 25 Demarcation Act objectives and factors requires substantial unpacking, because the Municipal Demarcation Board's application of these objectives and factors, and the Board's ultimate determinations and re-determinations based on the application, is potentially contestable.

Sections 24 and 25 of the Demarcation Act, 1998, are also silent on the optimal size of a municipality for effective and sustainable service delivery.

REQUIREMENTS

The final report must give a clear exposition and recommendations on:

- The challenge of size for the average South African municipality, which must deal with issues and expectations of it being the level of government that is closest to the citizens, being best able to obtain and understand people's wishes and aspirations for the locality, and being best placed to identify and unlock potential, and mobilise resources present in the locality.
- Precise definitions of, and bench marks for, the criteria, benchmarks and thresholds for an area to be regarded as a metropolitan area, as outlined in Section 2 of the Local Government: Municipal Structures Act, 1998.
- Precise definition of the criteria for demarcation and, more specifically, the objectives of demarcation and factors to be taken into account by the Board when it determines a municipal boundary, as outlined in Sections 24 and 25 of the Local Government: Municipal Demarcation Act, 1998, including indicators, benchmarks and thresholds.
- A comprehensive exposition of work that has already been done on the above areas by government and non-governmental departments and agencies, to deepen insight into the Proposals for the amendment of the relevant legislation so as to ensure that any Objective and precise application of the section 2 criteria as well as the sections 24 and 25 demarcation objectives and factors, including quantifiable benchmarks.
- Recommendations as to which provisions in Section 2 of the Structures Act, 1998, and Sections 24 & 25 of the Demarcation Act, 1998, should be reviewed;

- recommendation on the size of category A, B and C municipalities that can be implemented.