

POLICY OF THE SOUTH AFRICAN NATIONAL ROADS AGENCY IN RESPECT OF UNSOLICITED PROPOSALS

May 1999

1 THE CLIENT

For the purposes of this document, the client is the South African National Roads Agency Ltd, hereinafter referred to as the "Agency", or its successor in title.

2 INTRODUCTION

The Agency, in support of the Minister of Transport's aim to stimulate innovation and to create new opportunities for the private sector, is keen to receive proposals for road transport infrastructure development.

This policy guideline is a revision of the policy dated September 1997, issued by the predecessor of the Agency, namely the South African Roads Board.

It has been drafted in order to provide the private sector with a framework within which Unsolicited Proposals ("the Proposals") should be prepared. It also explains how Proposals will be dealt with by the Agency, and lays down procedures which will be followed in order to stimulate a competitive environment, ensure transparency, and offer the public protection from the possibility of monopolistic practices and exploitation.

In general, Proposals should reflect a conformance with governmental aims, be in the public interest, avoid the creation of monopolistic practices, not seek to place onerous conditions upon government, for example no explicit government guarantees will be issued, and reflect environmental, social and economic sustainability. In this respect, the *White Paper on Transport* and the *Reconstruction and Development Programme* may further assist sponsors with the preparation of their Proposals.

3 PROCEDURE

3.1 Preliminary Note

Annexure A contains a diagrammatic presentation of the procedure that will be followed in dealing with Unsolicited Proposals.

No obligation shall rest on the Agency to accept any Proposal. For the avoidance of doubt, the Agency shall not be responsible for any costs which a party may incur in preparing and submitting a Proposal, and such costs will not be considered by the Agency in negotiating the costs as provided for in Section 3.4. The Agency may enter into an Agreement with the Proponent as Scheme Developer subsequent to the

submission of the Proposal. Cost apportionment, thereafter, shall be as provided for in Section 3.4 of this document.

In the event of a Proposal being rejected, aborted or abandoned by the Agency, or having being withdrawn, aborted or abandoned by the Proponent, neither the Proponent nor the Agency may claim from the other party damages or loss of earnings or loss of profit, or any other compensation whatsoever, other than as may have been provided for in the Agreement between the Agency and the Proponent for Scheme Development, such amount to be agreed upon as set out in Section 3.4 of this document.

3.2 Contents of an Unsolicited Proposal

In order to qualify as an Unsolicited Proposal, the Proposal must contain, *inter alia*, the following:

- a clear description of the scope of the Proposal together with a key plan to elucidate the description
- present traffic figures as well as traffic growth predictions
- proposed road cross sections and a programme of cross sectional development motivated by means of predicted traffic patterns
- road pavement proposals and pavement improvements with a programme motivated by means of predicted traffic patterns
- any other safety and capacity enhancing features proposed
- proposed residual life of pavement at the end of the concession period
- cost estimate of sufficient accuracy to illustrate the financial viability of the project. This must also identify whether the Agency is expected to contribute financially
- tolling Strategy
- minimum design standards and performance criteria
- a list of the parties making the Proposal and their partners, if any, as well as details of their capabilities and relevant experience in the field of the Proposal
- a list of all conditions precedent which are part of the Proposal, or which remain to be overcome, and which will be required to be fulfilled prior to the implementation of the project

3.3 Evaluation of Proposal

The Agency will consider the Proposal in terms of, *inter alia*, the Agency's business and strategic planning. If the Agency is interested in developing the Proposal, the Agency will:

- inform the Proponent of any scope changes the Agency may require or propose for consideration by the Proponent
- inform the Proponent of all Matters to be Resolved which the Agency may have identified and which need to be addressed during the Development Phase of the Proposal

3.4 Appointment of Scheme Developer, and Development Agreement

If the Proponent: accepts the scope changes required by the Agency, or accommodates the proposals put forward by the Agency for the Proponent's consideration and also undertakes to address the Matters to be Resolved raised, the Agency will;

- award the Proponent the status of Scheme Developer, which will enable it to formally approach other Authorities and perform duties required to address the various issues raised
- publicly announce an acknowledgement of the Proposal and the award of Scheme Developer Status to the Proponent

At this stage a Scheme Development Agreement (the "Agreement") between the Agency and the Scheme Developer will be drawn up to, *inter alia*, address;

- the rights and obligations of the two parties flowing from the Agreement
- the time at which the Agency may accept liability for the whole of or part of the costs incurred by the Proponent with regard to the Proposal ("the agreed costs"). The time for acceptance of the liability of the agreed costs will be agreed upon between the parties and may be at any time between the stage of award of Scheme Developer Status and the stage where Tender Documentation has been compiled. The acceptance by the agency of this liability will be determined by the nature of the Proposal. It is recorded that this acceptance is to be agreed upon and the Agency is under no obligation to accept this liability
- the budget amount for the development of the postulated scheme up to the stage where Tenders are invited. This amount will be provided for in the Tender Documentation as a provisional amount, payable by the successful Tenderer to the Scheme Developer, in the event of the Scheme Developer not submitting the most attractive tender. Should the project be aborted by the Agency after Agency Acceptance, the Agency will reimburse the Scheme Developer for its costs incurred up to the date as agreed upon, such date not being earlier than the date of appointment of Scheme Developer, to an amount not exceeding this budget amount
- the limit of the liability of the Proponent to the Agency in respect of the costs incurred by the Agency in procuring third party advice with respect to the Proposal, in the event of the Proponent withdrawing their bid in the period subsequent to their having been awarded Scheme Developer status, but prior to calling for tenders for the project

3.5 Addressing of Matters to be Resolved identified by the Agency, and Scheme Development

As part of the Agreement, the Scheme Developer and the Agency shall agree on a time period within which the Matters to be Resolved and any required scope changes must be addressed.

The Scheme Developer shall then liaise with the relevant stakeholders and/or role players and take any actions that may be necessary to resolve the identified Matters to be Resolved and to bring about the required scope changes. If successful, the Scheme Developer should optimise the Proposal and present the Agency with the optimised Proposal as well as evidence (where applicable) of solutions to the Matters to be Resolved.

Once the Agency's Matters to be Resolved have been satisfactorily addressed and the scope changes have been satisfactorily affected, the Agency will allow the Scheme Developer, in conjunction with the Agency (and other Authorities, if applicable) to further develop the Proposal in accordance with the Agreement, including, but not limited to;

- technical aspects
- plaza positions
- the Environmental Impact Assessment (including public participation, and socio- economic aspects) up to and including the Environmental Management Plan

It must be noted that this is an integrated process and it might not be possible to address all Matters to be Resolved without taking at least some, if not all of the other actions listed above.

3.6 Scheme Acceptance

Once the Proposal has been developed to the point where, at the sole discretion of the Agency, it satisfies the terms of the Agreement, it will be accepted by the Agency in writing.

3.7 Tender Documentation

Upon successful completion of the above Development phase and the acceptance of the Proposal by the Agency, the Scheme Developer will be required to compile tender documentation under Agency supervision, after agreeing with the Agency on;

- the format of the documents
- projected time frames
- information to be included in, or excluded from the documents

3.8 Calling for Tenders and the Tender Process

The Scheme Developer may now bid along with all other interested parties for the project. From this point onward the normal bid evaluation and award process, as for any Agency initiated project, will be followed.

The two most advantageous Tenders will be selected by the Agency, from whom Best and Final Offers will be invited. Should the Scheme Developer 's Tender not be among these, he will, however, be afforded the opportunity to also submit a Best and Final Offer, which will be evaluated along with those of the Selected Tenderers. It is recorded, however, that at no stage will the Agency disclose any information with respect to any of the other Tenders submitted to the Scheme Developer. From these will then be selected the Preferred Tenderer with whom the Agency will then enter into negotiations. This selection will be at the sole discretion of the Agency and the Agency will be under no obligation to select any Preferred Tenderer.

4 SIMULTANEOUS PROPOSALS

In cases where more than one Proposal is received for the same, or a similar project at the same location, before the Agency has awarded Scheme Developer Status to the first Proponent, the following shall apply:

- if the projects are materially the same, a first come first serve approach will be adopted by the Agency, and the second Proposal will be returned to its Proponent
- if two or more projects, at one location, having common elements, but being substantially different in other respects, are submitted, the Agency will decide at its sole discretion which of the projects is the most desirable, and return the other(s) to its/their Proponent(s)

5 THIRD PARTY ADVICE AND APPRAISAL

The Agency reserves the right to submit Proposals, at any stage during the process, to third party advisors for appraisal and advice.

Appropriate undertakings for the confidential handling of the Proposals will be obtained from advisors before any documentation is handed to them.

The cost of obtaining such third party advice will be for the account of the Agency. However, should the Proponent withdraw the Proposal subsequent to their having been awarded Scheme Developer status, but prior to tenders having being called for the project, the Proponent shall be liable for the costs incurred by the Agency in respect of obtaining third party advice. The limit of this liability shall be as agreed in the Agreement.

6 SUBMISSION OF BIDS

Four copies of the Proposal should be delivered by hand to;

The Chief Executive Officer
South African National Roads Agency Limited
North Block
Celtis Plaza
1085 Schoeman Street
HATFIELD
PRETORIA

The Agency will record the date and time it receives Proposals.

Please note:

1. **In the evaluation process the emphasis will be on value for money and the affordability of the Project.**
2. **Schedule A contains a flow diagram describing the above procedure and should be read as forming part of this document.**