



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002 Tel: +27 12 399 9000, Fax: +27 86 625 1042

Ref: EDMS239835 E1589 (Matiwane B Region)

Enquiries: Nametso Matshika

Tel: 0123998504 / Email: Nmatshika@dffe.gov.za

Mr T Gaarekoe
Manager: Dephethogo Trading CC
63A Mikro Street
La Hoff
KLERKSDORP
2571

Email: info@dephethogo.co.za

Dear Mr T Gaarekoe

RE: TERMINATION OF A MEMORANDUM OF AGREEMENT ENTERED INTO BETWEEN THE DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT AND DEPHETHOGO TRADING CC

1. I hereby refer to the above, our letter dated 09 November 2022, your letters dated 28 December 2022 and 4 September 2023 respectively.
2. The Department has noted the contents of your letter dated 04 September 2023, wherein Dephethogo Trading CC (herein referred to as the Service Provider) informed the Department of its intention declaring a formal dispute based on various issues that hampered the successful execution of the Memoranda of Agreements (MoAs). The issues cited in the aforementioned letter are as follows:
 - 2.1 Infrastructure;
 - 2.2 Firearm compliance;
 - 2.3 Statutory increment;
 - 2.4 Regional instability;
 - 2.5 Communication;
 - 2.6 Plotting; and
 - 2.7 Late payments.
3. However, we would like to draw your attention to the fact that, during 2023, the Department received an allegation with regards to non - compliance with the services that were suppose be rendered by the Service Provider and a possible irregularity in the Supply Chain Management (SCM) processes. As you are aware that the procurement system of organs of state, including the Department, is regulated by the Constitution of the Republic of South Africa, 1996 and other pieces of legislation such as the Public Finance Management Act, 1999 (Act No. 1 of 1999) (the PFMA). In terms of section 38 (1) (a)(i) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (PFMA), the Accounting Officer has a fiduciary duty to *“ensure that the Department has and maintains effective, efficient and transparent systems of financial and risk management*



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and *internal control*". Section 38 (1) (c) (ii) also places a fiduciary duty to the Accounting Officer to "*prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct*".

4. The aforesaid fiduciary duty compelled the Department to review the proposal(s) received from the Service Provider. The Department initiated an investigation into the alleged non-compliance by the Service Provider and possible irregularities in the SCM processes, through its internal procedures and conducted the investigation and the findings were not favourable. The outcome of the investigation indicates the following:
 - 4.1 Service Provider submitted fictitious Unemployment Insurance Fund (UIF) Certificate;
 - 4.2 Service Provider has failed to meet its contractual obligations, therefore poorly performed; and
 - 4.3 there has been no value for money accrued from the performance of the Service Provider.
5. The misrepresentation committed by your company in submitting fictitious UIF certificate during the bidding, carries serious consequences for a Qualifying Small Enterprise which is 100% black-owned and it is against the prescripts that Government has put in place to benefit companies like yours which are built from scratch by black entrepreneurs and professionals.
6. Therefore, the continuation of implementing the MoAs would result in violation of the Constitution and PFMA.
7. In view of the above, taking into consideration the non-compliance with the contractual obligations of the MoAs, and the findings of the investigation initiated, the Department herewith evokes the provisions of clause 7.4 of the signed MoAs, which reads as follows:

Clause 7.4 - "*In the event of either Party committing a breach of any of the terms and/or conditions of this Agreement and failing to remedy such breach within the period of 14 (fourteen) calendar days of having been given written notice by the aggrieved Party requiring such breach to be remedied, the aggrieved Party may, without prejudice to any rights it may have to claim for damages suffered as a result of the breach, **either cancel this Agreement** or enforce performance of the terms of the Agreement*".

8. Kindly be advised that this communicate serves to notify the Service Provider that:
 - 8.1 the Department herewith terminates the signed MoAs concluded during September 2021 with immediate effect;
 - 8.2 the Department is not amenable to the proposed declaration of the dispute; and
 - 8.3 the Service Provider is under no obligation to provide any further physical security services to the Department.
9. In conclusion the Department has an obligation to inform the National Treasury about the lack of provision of services and the submission of fictitious UIF certificate, by your company as the Service Provider, and this might result in your company being blacklisted and barred from doing any work for Government. Please feel free to contact the Department should you seek any further clarity, and your correspondence can be forwarded to Ms N Matshika at e-mail: NMatshika@dffe.gov.za.

Yours sincerely



Ms Nomfundo Tshabalala
DIRECTOR-GENERAL
DATE: 29/12/2023