

Opening and Welcome

Alfonso Page, Manager of Procurement Law Unit in Legal Services welcomed everyone and introduced himself and Zareef Kasker, Senior Legal Advisor who will present half of the meeting and Alfonso the 2nd half.

11 Panels with 15 Service Providers per panel explained (Open to Specialists Labour Entities not admitted as Legal Practitioners)

1. **Criminal Law** – relates to any criminal related matters, including litigation, advice, and representation in the Magistrates, Regional and High Court. This includes rendering of advice and legal assistance.
2. **Environmental and Energy Law** – relates to regional and Energy Law, this includes Litigation, legal assistance and legal advice, contract drafting and assistance with application for environmental authorisations to City of Cape Town Departments.
3. **Intellectual Property, Information Technology and Internet law** – this panel relates to advise to the Information systems and Technology department of the City of Cape Town.
4. **Labour Law** – this panel includes all labour relates matters.
5. **The Individual Employment Law** deals with internal City procedures.
6. **The Land Security and Eviction Law panel** – this panel relates to any matter dealing with Land Security and eviction.
7. **Magistrates Court and Regional Court** – excludes Public Liability, Debt Collection, Personal Injury and Evictions
8. **Planning and Property Law** – Deals with planning appeals, Litigation, advice, providing any form of assistance to the Municipal Evaluations appeal.
9. **Personal Injury and Public Law Panel** – Insurance Claims, Motor vehicle Claims.
10. **Procurement Law** – this panel includes formal legal advice and assistance, assistance with procurement processes, restrictions, appeals, objections, documents/templates and policy reviews
11. **Public Law** – this panel relates to all public law matters.

Determination of Panel - The City has the discretion to make a determination in respect of which panel will be utilised if there is an overlap – important to note that there's no guarantee of work if for example a matter is border line between the Public Law panel and Procurement Law Panel, the decision in terms of which panel should be used lays with the City.

This award is subject to Section 23 of the MFMA – meaning that due to the nature of the tender being 63 months council needs to decide on the regular tender being awarded to the service provider.

Conditions of Tender - Eligibility Criteria

Compliance all aspects of Tender

- a. Valid Fidelity Fund Certificate in respect of firm **and** directors
- b. Certificate of Good Standing from Legal Practice Council
- c. Company Registration Documentation/Proof of Directorship or Partnership

Minimum score for Functionality

- a. Failure to meet the minimum score for functionality will result in a tenderer being declared non-responsive.
- b. Minimum score is 70 points **per panel**.
- c. Tenderer must meet score for each panel to be considered, points weighting for each panel does differ.
- d. Evidence must be attached to tender submission to illustrate that the tenderer meets the requirements.

Clarification

- a. Note that this can be done until one week prior to closing date of tender
- b. Sufficient time provided to complete tender submission
- c. Clarification notices to be issued if needs be.

Validity Period

- a. 180 days from closing date (26 March 2025) and thereafter 12 months post-closing (26 March 2026).
- b. It is important to note if you fail to meet the 70 points per panel, not overarching, you will be deemed non responsive. The tender must meet the score for each panel to be considered and the weighting per panel does differ.
- c. The evidence must be attached to your tender submission to illustrate that you meet the tender requirements.

General Information of the Lead Legal Practitioner

- a. Post Admission Experience of the Lead Legal Practitioner
- b. Required: Curriculum Vitae, Qualification, Date of Admission and Relevant Work Experience

Experience of the Proposed Lead Legal Practitioner – Last 5 years

- a. Experience of Proposed Lead Legal Practitioner within the relevant panel.
- b. Required: Evidence wherein you meet the requirements holistically of the respective panel.

Local Government Experience of the Proposed Lead Legal Practitioner – Last 5 years

- a. Experience of Lead Legal Practitioner in Local Government.
- b. Required: Evidence of instructions to act for or against Local Government.

Pricing schedule – there are two pricing schedules

Schedule A - Details of the Proposed Lead Legal Practitioner to be inserted where called upon.

- a. Hourly Rate of the Proposed Lead Legal Practitioner excluding VAT.
- b. Price for **Each Year**, the award made by the City's Bid Adjudication Committee is based on the price provided by the tenderer.
- c. No rate inserted in any/all year(s) will be regarded as Nil Rate/R0.00 per hour.

Limitation of 3 Panels per Proposed Lead Legal Practitioner (Discussed under specifications)

Schedule B - Note, a Proposed Additional Resource hourly rate cannot be more than a Proposed Lead Legal Practitioner on a panel.

- a. Details of the Proposed Additional Resource to be inserted where called upon.
- b. Hourly Rate of the Proposed Additional Resource excluding VAT.
- c. Price for **Each Year**, the award made by the City's Bid Adjudication Committee is based on the price provided by the tenderer.
- d. No rate inserted in any/all year(s) will be regarded as Nil Rate/R0.00 per hour.
- e. There is no limitation placed on how many panels a Proposed Additional Resource can be added to provide Proposed Additional Resource has relevant expertise and experience.

Candidate Legal Practitioners

- a. City will pay for the use of Candidate Legal Practitioners in accordance with the rate inserted.
- b. There are prequalification criteria that must be met in order to be eligible for payment.
- c. The City will not pay above the rates included.

Disbursements

- a. Printing and Opening File capped at amounts inserted.
- b. No amounts over the capped amount will be paid.
- c. List is not exhaustive, City will pay for telephone costs, parking etc. on submission of proof of expenditure.
- d. CPI will apply to matters not finalised by 30 June 2031 in the event that the service provider does not form part of the next tender iteration. This will be on a tenderers' Year 5 rate.

NO CORRESPONDENCE FEES (exceptions are if matters are instituted against the City outside the boundaries, Supreme Court of Appeal Matters and Constitutional Court Matters).

Specifications

City requires the following information for the consideration of a Candidate Legal Practitioner:

- a. Copy of vocational work contract between the Legal Practitioner and the Candidate Legal Practitioner
- b. Proof of Registration of the Candidate Legal Practitioner with the Legal Practice Council (This is done at tender commencement stage)
- c. Where a Candidate Legal Practitioner either concludes their contract or leaves the employ of the service provider, the service provider must provide the documents of the replacement Candidate Legal Practitioner to the Project Manager prior to any new work being undertaken.

Substitution of Resources

- a. Request in writing to the Project Manager
- b. Detailed motivation
- c. Comparable years, qualifications, the expertise in the field etc.) time after the establishment of the panels.
- d. City reserves the right to approve or decline the request.

Conditions Applicable to a Specific Legal Practitioner

- a. Must be in the employ of the tendering entity;
- b. A Legal Practitioner may only be listed as a proposed Lead Legal Practitioner for a maximum of 3 panels;
- c. If listed for more than 3, the City will only consider the first 3 panels tendered for, the rest will be disregarded.
- d. Additional Resources can be on as many panels
- e. Numerous Legal Practitioners can be a proposed Lead Legal Practitioner.

Admitted Legal Practitioners

- a. All panels **except** the Individual Employment Law panel requires that a proposed resource be an admitted legal practitioner practising as a law firm.
- b. If a tenderer who is not practising as a law firm tenders for any other panel, it will be declared non-responsive.

Substitution of Lead Legal Practitioner

- a. Where a Lead Legal Practitioner is no longer able to render services, the tendering is expected to substitute the Lead Legal Practitioner with someone of comparable experience.
- b. No Lead Legal Practitioner, the City will not allocated work to the tendering entity.
- c. No substitution within 60 days of the effective date that the Lead Legal Practitioner has left the firm, the City within its sole discretion has the right to remove the tendering entity from the panel(s) and reallocate all work of the additional resources to the next firm in line on that particular panel.

Lead Legal Practitioner

- a. Responsible for acceptance of a instructions from the City.
- b. Determines who will deal with a matter from the tendering entity.
- c. In making determination the Lead Legal Practitioner must consider:
- d. The capacity of the proposed resource
- e. Complexity of the matter
- f. Cost effectiveness of the resource in relation to the complexity of the matter
- g. Obligation on the Lead Legal Practitioner to ensure fair allocation of work provided that the criteria stated above is met.
- h. Cost-effectiveness and ensuring the City's best interests as well as benefit are a priority
- i. The City may engage with the Lead Legal Practitioner on the allocation of a matter where the City is of the view that the criteria has not be met.

- j. If there is an impasse, matter is escalated to the Project Manager who will refer it to the appropriate Unit Manager within Legal Services to instruct the Lead Legal Practitioner which resource to employ.
- k. Lead Legal Practitioner will act as the liaison between the tendering entity and the City.
- l. Lead Legal Practitioner is responsible for all additional resources who are listed under a specific panel. The Lead Legal Practitioner undertakes to confirm that the Additional Resources have the relevant experience.
- m. Any concerns relating to performance will only be addressed to the Lead Legal Practitioner.
- n. The Lead Legal Practitioner must advise the City in respect of:
 - o. Any office closures and in particular of December and January Periods
 - p. Communication must occur at least one calendar month before closure
 - q. Lead Legal Practitioner undertakes to ensure that at least one resource is available to render services to the City during these periods.
- r. The responsibilities of the Lead Legal Practitioner apply to all Directors of entities tendering for the Individual Employment Law Panel.

Support Services

- a. All successful tenderers must have an office set up within the jurisdiction of the City, within 60 days **of the contract commencement**.
- b. This is **not** a condition of tender.

Refer to Schedule F.15H

- a. A site inspection will be undertaken 90 days from date of contract commencement to ascertain if the office has been established and if all other requisites are in place as described in the Specifications.
- b. The contract is as and when required, no guarantee of work or minimum expenditure.
- c. Allocations are done on a rotational basis
- d. 24 hours to accept an instruction from time sent to you by Legal Advisor.
- e. Allocation done in accordance with criteria listed previously
- f. Decline instruction next in line gets offered the instruction
- g. Urgent matters, 3 hours to respond. No response in 3 hours next in line will be approached.
- h. Capacity to accept is key.

Allocation of Work

- a. Work can only commence once a tenderer receives an instruction letter from the Legal Advisor.
- b. The City may deviate from the rotational roster if it is in the City's best interests and to the City's

Appointment of Advocates, Cost Consultants and Experts

- a. Advocates are appointed as and when required. Also applicable to cost consultants and experts.
- b. Tenderer will provide options for consideration factors to consider: Facts of the matter, Complexity, Expertise, Costs
- c. Appointment subject to Legal Advisor approval in writing.

Liaison

- a. Tenderers can only liaise with the City's Legal Advisor, no communication with any line department or political office bearer is allowed.
- b. Termination of a contract for non-compliance.

Conflict of Interest

- a. Tenderers to act in the City's best interests.
- b. If a matter poses a conflict the tenderer must advise the City timeously and decline the opportunity to render services.
- c. The City reserves the right to terminate the mandate of a tenderer in a particular matter if the City is of the view that a conflict has arisen and the tenderer failed to advise the City.
- d. Important to note clauses 13.25 and 13.26

Clauses 13.22 – 13.26 – Conflict of Interest

"13.25 IMPORTANT: Tenderers, upon appointment to a Panel/s shall, for the duration of the contract, not be allowed to act against the City in any matter, except with the prior permission of the City, which permission shall not be unreasonably withheld.

The request for consent must be directed to the Project Manager timeously, and not after the institution of proceedings against the City.

No Tenderer shall act against CCT with regard to any matter related to and falling within the parameters and ambit of a panel to which they have been appointed.

No consent will be granted in respect of the latter type of conflict.

The City reserves the right to terminate a Tenderer's contract who fails to adhere to this condition which shall be determined as a material breach of contract."

Clauses 13.22 – 13.26 – Conflict of Interest

"13.26 Tenderers are to please note the Conflict of Interest provisions in the Special Conditions of Contract.

On bid submission tenderers are to complete Schedule F.15G reflecting a list of matters in which it is currently acting against the CCT.

TENDERERS ARE TO NOTE THAT THIS LIST WILL NOT BE USED FOR PURPOSES OF EVALUATION AND WILL IN NO WAY AFFECT ITS BID SUBMISSION.

In the event of the tenderer being successful with its bid, this list will be used as a record of matters where the Tenderer is acting against the CCT and may be amplified at contract commencement pursuant to contract commencement. The provisions of the SCC will apply to all matters where the Tenderer may be conflicted."

Invoices

- a. Irrespective of value, City to be billed monthly.
- b. Comply with requirements of invoice, failing which invoice will not be paid.
- c. Itemised invoices.
- d. One matter per invoice.
- e. Continuous non-compliant invoices will result in breach notices being issued.

The Contract

Note additional definitions from Clauses 1.26 – 1.38.

Clause 11 – Insurance

- a. Amount of R2.5 million required in terms of Clause 11.2.3 to those who do not have a Fidelity Fund Certificate **Clause 16 - Payment**
- b. Payment will be affected 30 days from accepted invoices Clause 16.1.2
- c. Advocates fees monthly invoices also rendered, not done more than 30 days after the services rendered.
- d. Penalties may be applied if invoices are not submitted in the form required.

Penalties

- a. Failure to act in terms of the instruction letter or in accordance with instructions or within prescribed timeframes as per litigation rules deduct 5% from the monthly invoice.

Termination Refer to clauses 23.8.4 (Reputational Harm) and 23.8.5 (Abuse of the SCM System)

Clauses 35 – 38

- b. Incorporated responsibilities stated in Specifications into the Contract
- c. Clause 35: Allocation of Work, Clause 36: Conflict of Interest, Clause 37: Local Office and Clause 39: Obligations of the Lead Legal Practitioner.

Poor Performance

- a. Lead Legal Practitioner is responsible for own work and that of additional resources to that panel.
- b. City will notify the Lead Legal Practitioner of any poor performance issues.
- c. 5 days to respond to the City, from date of receipt, as to why poor performance should not be recorded on the City's Contract Register and Management System.
- d. City will respond and advise if response is accepted or whether penalties and/or a recorded on the City's Contract Register and Management System will occur.
- e. If 3 or more notices are issued in a 18 month period calculated from date of commencement and the service provider has not provided satisfactory responses to at least 3 notices, irrespective of the panel, the City reserves the right to terminate the contract.

Travel and Accommodation

- a. Travel rates by motor vehicle will be in accordance with the Automobile Association of South Africa rate, as adjusted on 1 March annually.
- b. Air travel, to a court outside the jurisdiction of the City, tenderer to be mindful of City's Cost Containment Policy (to be provided at Contract Commencement).
- c. Accommodation at no establishment greater than 4 stars.

Information to be provided with the Tender

1. Curriculum Vitae and certified copy of admission certificate and letter of good standing from the Legal Practice Council (LPC) for the proposed Lead Legal Practitioner (Append to Schedule F.15 A). Years of experience will be calculated from closing date of tender.
2. Copies of Instructions received by the Lead Practitioner in the relevant field for the past 5 years (Append to Schedule F.15 B), 5 years will be calculated from closing date of tender.
3. Copies of instructions of the Lead Practitioner in respect of instructions (acting for or against) a Local Government in the past 5 years (Append to Schedule F.15 C). 5 years will be calculated from closing date of tender.
4. Curriculum Vitae, certified copy of admission certificate and letter of good standing from the LPC for each additional Legal Practitioner (Append to Schedule F.15 D)
5. Certificate of Good Standing from the Legal Practice Council in respect of the tendering entity (may be submitted at award) or CIPC registration or partnership agreement in respect Individual Employment Law Panel only. (Append to Schedule F.15 E).
6. Completed Support Resource Schedule (Append to Schedule F.15 F)
7. List of Matters where any of the legal practitioners are currently acting against the City of Cape Town (Append to Schedule F.15G)
8. Local Office (Append to Schedule F.15 H).

Questions

1.

Answer – AP – we want to see your experience, you've written letters of demand. We want to see your overarching experience, doesn't only have to be local government, can be provincial or national.

Your particular experience as the lead practitioner.

We don't want you to be limited to litigation, it might be an opinion, we don't want to go to council every time.

2.

Answer – AP – it need not be concluded, can still be an active matter within the 5year period.

If you list matters that you've concluded in the last 5years, we will take that into consideration.

3. Answer – AP – Every section has points allocated for example you have 5years experience, you get 5 marks.

NB: The recording of the meeting is not audible in many places which is why not all the questions are captured in the minutes

Meeting Adjourned at: 11:15 am

Alfonso Page
Digitally signed
by Alfonso Page
Date: 2024.08.29
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