



competition commission
south africa

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TERMS OF REFERENCE

BID NUMBER: 1009/2023

BID – APPOINTMENT OF A PANEL OF LEGAL SERVICE PROVIDERS FOR A PERIOD OF THREE YEARS FOR THE COMPETITION COMMISSION OF SOUTH AFRICA (AS AND WHEN REQUIRED)



1. BACKGROUND

- 1.1 The Competition Commission of South Africa ("the Commission") is a statutory body constituted in terms of the Competition Act, No. 89 of 1998 (the Act). It is one of three, independent competition regulatory authorities established in terms of the Act, with the other two being the Competition Tribunal and the Competition Appeal Court. The Commission is empowered by the Competition Act to investigate, control and evaluate restrictive business practices, abuse of dominant positions, mergers, undertake market inquiries and advocacy in order to achieve equity and efficiency in the South African economy.
- 1.2 The Commission is a public entity listed in schedule 3A of the Public Finance Management Act (PFMA), and acts in compliance with section 217 of the Constitution of South Africa and applicable Public Procurement Regulations and Prescripts.
- 1.3 Therefore, the Commission is requiring a suitability qualified and competent experts with adequate capacity and relevant experience to **serve as a panel of legal service providers for a period of thirty-six (36) months..**
- 1.4 The purpose of this bid is to appoint a panel of legal services providers that can provide appropriate, timely and value adding legal services to the Commission. This document intends to provide the prospective service providers with adequate information to understand and respond to Commission's requirements for the provision of legal services. It serves to ensure uniformity in responses and to provide a structured framework for the evaluation of proposals. The appointment will be for a period of thirty-six (36) months commencing on the date as prescribed in the letter of award and signed contract documents.

2. SCOPE OF SERVICE

- 2.1. The appointed panel of legal service providers will be required to provide legal services, and will be expected to render services for Commission when called upon to do so on an ad-hoc basis.
- 2.2. Drafting and reviewing of charge sheets and prosecution of cases against registered auditors for disciplinary action before the Disciplinary Committee, including providing advice on evidence and interviewing witnesses.
- 2.3. Civil and/or Competition litigation support, including Competition Tribunal and Competition Appeal Court litigation as well as High Court reviews and appeals.
- 2.4. Advice on regulatory matters.



3. EXPECTED OUTCOMES AND DELIVERIES

3.1. The appointed panel of legal service providers will be expected to provide legal and regulatory support, including legal advice or opinions relating to the Commission's mandate, including, but not limited to:

- 3.1.1. The Competition Act 89 of 1998
- 3.1.2. Public Law (Constitutional and administrative law - *inter alia* the Constitution of the Republic of South Africa, 1996)
- 3.1.3. The Promotion of Access to Information Act 2 of 2000,
- 3.1.4. The Protection of Personal Information Act 4 of 2013
- 3.1.5. The Cybercrimes Act 19 of 2020
- 3.1.6. The Prevention of Organised Crime Act 121 of 1998,
- 3.1.7. Promotion of Administrative Justice Act 3 of 2000
- 3.1.8. Public Finance Management Act 1 of 1999, Treasury Regulations and Directives)
- 3.1.9. Corporate and Commercial Law;
- 3.1.10. Labour Relations Act 66 of 1995:
- 3.1.11. Basic Conditions of the Employment Act 75 of 1997,
- 3.1.12. Employment Equity Act 55 of 1998

3.2. The appointed panel of legal services providers will be expected to provide legal opinion on the interpretation of high-risk and complex contracts that the Commission intends to enter, considering all respective legislation. In addition, drafting, vetting and review of Service Level Agreements and any other related contract matter(s);

3.3. Litigation – Competition Tribunal, Competition Appeal Court, Magistrates Court, High Court, CCMA, Labour Court, etc.

3.4. Bidders are expected to perform duties as per the below but not limited to;

- 3.4.1. To provide legal advice to the Commission on competition law and policies
- 3.4.2. To represent or act on behalf of the Commission at the Competition Tribunal and Higher Courts.



- 3.4.3. To prosecute cases on behalf of the Commission.
- 3.4.4. To negotiate settlements with other parties on behalf of the Commission.
- 3.4.5. Contribute fully to team planning sessions, retrospectives and training sessions.

Area of Work	Scope of Work	Skills Required
Competition Law	<ul style="list-style-type: none">• Litigation• Providing Legal advice and opinions• Briefing advocates• Settlement of cases	<ul style="list-style-type: none">• Experience in competition law and enforcement litigation• Understanding of the regulatory framework governing the application of competition law• Understanding of competition law jurisprudence for the purpose of providing legal opinions
Labour and Employment Law	<ul style="list-style-type: none">• Provide legal opinions on labour employment benefits and employment law related matters• Assist in disciplinary hearings, arbitration and others dispute resolution fora.• Provide advice on contracts of employment and related matters	<ul style="list-style-type: none">• Experience in labour and employment law litigation• Understand the regulatory framework governing public service employment• Understanding of labour law and employment law jurisprudence for the purpose of providing legal opinions• Knowledge of bargaining council and other dispute resolution fora.
Corporate and Contract Law.	<ul style="list-style-type: none">• Advice on projects / transactions of a corporate law nature.• Review and advice on a broad range of complex	<ul style="list-style-type: none">• Experience in working in transactions of a corporate law nature• Excellent research and drafting skills, for purposes of preparing legal opinions of a corporate law nature



	<p>DG and Special project contracts and</p> <ul style="list-style-type: none">Provide opinion on any contract related matters.	<ul style="list-style-type: none">Understanding the legal and contractual framework governing public entities
General Litigation	<ul style="list-style-type: none">Conduct litigation on behalf of the Commission and develop and review appropriate litigation strategy in each matterEnsure effective and efficient litigation process is followed.Provide custody of all pleadings and documents in litigation matters.Provide oral and written legal advice throughout the litigation process.	<ul style="list-style-type: none">Knowledge of litigation processes and procedures in various forums including but not limited to the High court, Labour court, Equality and Magistrate court.Comprehensive and coherent understanding of all laws and regulations that determine and shape the role and responsibility of the Accounting Officer or Authority in the government entities
Constitutional and Administrative Law.	<ul style="list-style-type: none">Provide legal opinion in respect of constitutional, administrative, and international law matters.Assist in drafting of public or private international law agreementsEnsure technical quality, adherence to best practise and consistency with the constitution and other Acts of Parliament.	<ul style="list-style-type: none">Experience in providing opinions in constitutional, administrative, and international law matters.Extensive knowledge of South African constitutional and administrative law, including international law.Extensive experience in the drafting, vetting and interpretation of public and private international law.
Opinion on legislations and legal topics.	<ul style="list-style-type: none">Provide legal opinion on prescript relating to Commission as public entity andProvide legal opinion to the Accounting Officer and/or Accounting Authority as and when required.	<ul style="list-style-type: none">Extensive experience in provision of legal opinion in public sector, Accounting Officer and Authority.
Legal advice on general legal matters and/or topics.	<ul style="list-style-type: none">Provide legal expertise in matters of a general	<ul style="list-style-type: none">Investigation skills and



	<p>nature and conduct due diligence exercises;</p> <ul style="list-style-type: none">• Conduct fraud investigations	<ul style="list-style-type: none">• Knowledge of administrative and criminal law
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4. CATERGORY OF FIRMS

It is recommended that law firms specializing/expertise on the areas of law listed below submit their bids. Mark with X on your core function (s).

PRACTICE AREA	MARK “X”
Competition Law	
Labour and Employment Law.	
Corporate and Contract Law	
Constitutional and Administrative Law.	
Opinion on legislations and legal topics.	
Legal advice on general legal matters and/or topics.	

5. CONDITIONS OF A PANEL

- 5.1. As and when services are required by the Commission panel members will be requested to submit proposals including quotation on specific cases.
- 5.2. In requesting quotations and adjudicating the proposals on specific cases and projects, due consideration may be given to some or all of the following factors: B-BBEE , Specific Goals, price, level of relevant experience in the sector or section of the Act particular to a case, conflicts of interest, and specific expertise and skills.

6. TIMEFRAMES

- 6.1. The panel is for a fixed period of thirty-six 36 months from the date of appointment.



7. EVALUATION CRITERIA

Responses will be evaluated using a predetermined set of evaluation criteria. The evaluation criteria are designed to reflect the Commission's requirements in terms of identifying a suitable service provider and ensure the selection process is transparent and affords all the bidders a fair opportunity for evaluation and selection.

7.1. ADMINISTRATIVE CRITERIA (Phase 1)

- 7.1.1. Proof of registration on CSD (**Central Supplier Database**)
- 7.1.2. Bidder to provide valid (upon closing date of the bid) **BBBEE Certificate (accredited by SANAS or fully completed, signed and commissioned Sworn affidavit.)**
- 7.1.3. Initialled General **conditions of contract (GCC)** on each page, completed and signed **Standard bid documents (SBD 1, 4 and 6.1)**

7.2. MANDATORY CRITERIA (Phase 2)

- 7.2.1. Bidders must be law firms and the Lead Legal Practitioner (Director / Partner) must be registered with the Legal Practice Council. Bidders must submit proof of a valid Fidelity Fund Certificate issued to the relevant Lead Legal Practitioner (Partner/Director) by the Legal Practice Council.
- 7.2.2. Bidders must submit a Certificate of Good Standing issued by the Legal Practice Council or relevant Law Society issued to the relevant Lead Legal Practitioner (Partner/Director) or to the law firm by the Legal Practice Council.

Note: All bidders who do not comply with the item listed above will be disqualified.

7.3. FUNCTIONAL EVALUATION CRITERIA (Phase 3)

- 7.3.1. Responses will be evaluated using a predetermined set of evaluation criteria. The evaluation criteria is designed to reflect the Commission's requirements in terms of identifying a suitable service provider and ensure the selection process is transparent and affords all the bidders a fair opportunity for evaluation and selection.



7.3.2. The tender submission will be functionally evaluated out of a **minimum of 75 points** – any bidder who scores less than 75 will not be considered for further evaluation. **The maximum score is 100.** The evaluation is based on functionality, which will be evaluated using the following criteria and points:

No	Evaluation Criteria	Description	Maximum Points
1	Reference letters	<p>The bidder to provide a minimum of three (3) signed reference letters related to the bidder's experience in legal services.</p> <p>The reference letters must be on the client's letterhead, duly signed by the authorized person, reflecting the nature of the service provided, level of satisfaction for the service and performance of the bidder.</p> <ul style="list-style-type: none">Three (3) signed reference letters with contactable references from different clients, for legal services provided = 20 points <p>Noncompliance with the minimum requirement = 0 points</p> <p>Competition Commission reserves the right to validate the above information as part of due diligence.</p>	20
2	Experience of the leading Partner/ Director/ Practitioner	<p>The bidder must provide a comprehensive CV of the Lead legal practitioner outlining work experience.</p> <p>Bidders must attach Certified copies (not older than 6 months) of LLB Degree or equivalent qualification and ID copy.</p> <p>Points will be allocated as follows:</p> <ul style="list-style-type: none">Submission of a comprehensive CV, certified copies of LLB Degree or equivalent for the team lead plus 15 and above years of post-admission of experience = 35 pointsSubmission of a comprehensive CV, certified copies of LLB Degree or equivalent for team lead plus 10-14 years' of post admission experience = 20 points	35



		<ul style="list-style-type: none">Submission of a comprehensive CV, certified copies of LLB Degree or equivalent for the team lead plus 05 to 09 years' of post admission experience = (10 points)Submission of a comprehensive CV, certified copies of LLB Degree of equivalent for the team lead plus 1-4 years' of post admission experience = (5 points)Submission of a comprehensive CV, certified copies of LLB degree or equivalent for the team lead with less than 1 year of post admission experience = (0 points)	
3	Experience of the team member(s)	<p>Bidders team must comprise of at least one team member other than the Lead legal practitioner who is an admitted attorney with more than 10 years of post-admission experience.</p> <p>Bidder must submit a comprehensive CV(s) of team member(s) outlining work experience, certified copies (not older than 6 months) of LLB Degree or equivalent qualifications and certified ID copies.</p> <p>Points will be allocated as follows:</p> <ul style="list-style-type: none">Submission of a comprehensive CV(s), of admitted attorney(s), certified copies of qualifications with 10 and above years of post-admission experience = 25 PointsSubmission of a comprehensive CV(s), of admitted attorney(s), certified copies of qualifications with 5-9 years of post-admission experience = 15 PointsSubmission of a comprehensive CV(s), of admitted attorney(s), certified copies of qualifications with 1-4 years of post-admission experience = 5 PointsSubmission of a comprehensive CV(s), of admitted attorney(s), certified copies of qualifications with less than 1 year of post admission experience = 0 Points	25
4	Litigation Strategy/ methodology	<p>The bidder must provide a step-by-step guide to effective litigation case management strategy.</p> <p>Points will be allocated as follows:</p> <ul style="list-style-type: none">Identified stages in litigation, demonstrated a litigation strategy for Competition Commission, demonstrated how such an approach will assist Competition Commission and provided practical examples from previous or current litigation cases = 20 Points	20



		<ul style="list-style-type: none">Identified stages in litigation, demonstrated a litigation strategy for Competition Commission and further demonstrated how such an approach will assist Competition Commission but did not provide examples from previous or current clients = 10 PointsDid not Identify stages in litigation and no demonstration of a litigation strategy for Competition Commission and did not provide examples from previous or current clients= 0 Points	
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7.3.3. Bidders who obtained less than the minimum threshold of **75 points** will be declared non-responsive and therefore will not be eligible for **evaluation of B-BBEE Aligned to Specific Goals & Price Preference**.

7.4. B-BBEE, Specific Goals and Price – to be as and when services are required, against award.

7.4.1. As the tender **price is estimated to be between R2001 and R50 million including VAT**, the tender responses will be evaluated on the **80/20**-Point system.

8. ADJUDICATION USING A POINT SYSTEM

- 8.1 The bidder obtaining the highest number of total points will be awarded the contract unless objective criteria justify the award to another bidder.
- 8.2 Preference points shall be calculated after process has been brought to a comparative basistaking into account all factors of non-firm prices.
- 8.3 In the event that two or more bids have scored equal points in terms of price and preference points for BBBEE, the successful bid must be the one scoring the highest number of preference points for BBBEE - in terms of PPPFA Act 5 of 2000.
- 8.4 However, when functionality is part of the evaluation process and two or more bids have scored equal points for BBBEE, the successful bid must be the one scoring the highest score for functionality.
- 8.5 Should two or more bids be equal in all respect, the award shall be decided by the drawing of lots.



9. POINTS AWARDED FOR PRICE AND BBBEE PREFERENCE POINT

The **80/20** preference point system

A maximum of **80** points is allocated for price on the following basis:

$$Ps = 80 \{1 - (Pt - P_{min})\}$$

P_{min}

Where:

Ps = Points scored for comparative price of bid under Consideration

Pt = Comparative price of bid under consideration

P_{min} = Comparative price of lowest acceptable bid



10. B-BBEE PREFERENTIAL POINTS AND SPECIFIC GOALS WILL BE AWARDED AS FOLLOWS:

10.1 Bidders who qualify as EME's and QSE's in terms of the B-BBEE Act must submit a Sworn affidavit. Misrepresentation of information constitutes a criminal offence.

10.2 Bidders other than EME's or QSE's must submit their original and valid B-BBEE status level verification certificate, substantiating their B-BBEE rating issued by SANAS.

10.3 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

11. CONSORTIUM

11.1 A consortium is an association of two or more individuals, companies, organisations or governments (or any combination of these entities) with the objective of participating in a common activity or pooling their resources for achieving a common goal.

11.2 A consortium requires that each participant retains its separate legal status and the consortium's control over each participant is generally limited to activities involving the joint endeavour, particularly the division of profits. A consortium is formed by contract, which designates the rights and obligations of each member.

11.3 In a consortium, only the lead bidder's credentials both in terms of financial and technical qualifications are considered. Therefore, the interpretation and application to a RFQ/Bid process is such that the lead partner is identified and the following requirements are required as follows:

a) Lead Partner

- All administrative documents (consortium agreement between the lead partner and the partner)
- Technical requirements (which will show in the proposal and other requirements why the need for the consortium, which for all intent and purpose fulfills the requirements of the bid through combination of skills)

b) Partner

- Proof of CSD registration.
- Tax Pin.
- BBBEE Sworn-Affidavit.
- SBD 4



11.4 It should be taken into cognisance that although the lead partner is the qualifying entity, the partner should prove that it can do business with state-owned entities, through CSD registration, proof that the taxes are compliant, its level of BBBEE status in order to align with the BBBEE status level required by the BID, declare interest and answer questions that it is not a disqualified entity with the National Treasury. The foregoing ensures compliance from an SCM process perspective that the consortium is in order.

11.5 Of importance is that in a consortium, each individual team members retain their identities.

12. A JOINT VENTURE

A joint venture is a business entity created by two or more parties, generally characterized by shared ownership, returns and risks and shared governance.

12.1 Unincorporated joint venture:

12.1.1. All SCM documents are filled in by the joint venture in the name of the joint venture, although the submission of administrative documents (partnership agreement between parties) will be completed in the name of the joint venture, and the following will be required from both parties, amongst others

- a) SBD 4
- b) SBD 6.1
- c) Tax pin
- d) CSD registration.
- e) The JV agreement will direct which bank account of the two entities will be used.
- f) Consolidated Joint BBBEE Certificate.

12.1.2. Incorporated joint venture

This aligned to a registered entity or company. A registered entity/ company with a consolidated BBBEE certificate and a bank account in the name of the Joint venture. The required compliance documents must be complete by the entity/ company the name of the joint venture, and the following will be required amongst others

- a) SBD 4
- b) SBD 6.1
- c) Tax pin
- d) CSD registration.
- e) The JV agreement will direct which bank account of the two entities will be used.
- f) Consolidated Joint BBBEE Certificate.

12.1.3. A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the



points that such a bidder qualifies for, unless the intended Sub-contractor is an EME that has the capacity and the ability to execute the sub-contract.

12.2 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capacity and the ability to execute the sub-contract.

13. COMMUNICATION

Respondents are warned that a response will be disqualified should any attempt be made by a bidder either directly or indirectly to canvass any officer(s) or employees of CCSA in respect of BID process, between the closing date and the date of the award of the business.

All enquiries relating to this BID should be emailed ***three days before the closing date.***

14. CONDITIONS TO BE OBSERVED WHEN BIDDING

The Commission does not bind itself to accept the lowest or any BID, nor shall it be responsible for or pay any expenses or losses which may be incurred by the bidder in the preparation and delivery of his BID submission. The Commission also reserves the right to withdraw or cancel the BID at any stage.

No BID shall be deemed to have been accepted unless and until a formal contract / Contract Form and letter of award or Purchase Order is prepared and executed.

The competitive shall remain open valid by the Commission for a period of **120 days** from the closing date of the BID Enquiry.

CCSA reserves the right to:

14.1 Not evaluate and award a bid that do not comply strictly with this BID document.

14.2 Make a selection solely on the information received in the Bid Document and Enter into negotiations with any one or more of preferred bidder(s) based on the criteria specified in the terms of reference.

14.3 Contact any bidder during the evaluation process, in order to clarify any information, without informing any other bidders. During the evaluation process, no change in the content of the BID shall be sought, offered or permitted.

14.4 Cancel this BID at any time.

14.5 Should bidder(s) be selected for further negotiations, they will be chosen on the basis of the cost effectiveness and the principal of value for money not necessarily on the basis of the lowest costs.



15. COST OF BIDDING

15.1 The bidder shall bear all costs and expenses associated with preparation and submission of its BID submission and the CCSA shall under no circumstances be responsible or liable for any such costs, regardless of, without limitation, the conduct or outcome of the bidding, evaluation, and selection process.

16. NOTE TO BIDDERS:

16.1 Due diligence to be conducted by CCSA prior to the award of the contract.

END OF TERMS OF REFERENCE DOCUMENT



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Annexed to this document for completion and return with the document:

- ANNEXURE SBD 1 and conditions to tender.
- ANNEXURE SBD 4
- ANNEXURE SBD 6.1
- ANNEXURE General Conditions of Contract (GCC)