

INVITATION TO TENDER

FOR APPOINTMENT OF A SUITABLE AND EXPERIENCED PANEL OF LEGAL SERVICE PROVIDERS TO RENDER LEGAL SERVICES TO THE QUALITY COUNCIL FOR TRADES AND OCCUPATIONS (QCTO) FOR A PERIOD OF THIRTY - SIX (36) MONTHS

TENDER NO: QCTO 13/2021

CLOSING DATE: 23 March 2022 at 11:00

Company Name		
Address		
Contact person	Ms/Mrs/Mr/Prof/Dr	
Contact numbers	(w)	(cell)
Email address		

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1. INTRODUCTION

The QCTO is a Schedule 3A Public Entity that was established in accordance with the Skills Development Act, No. 97 of 1998 (as amended) and the National Qualifications Framework Act, No. 67 of 2008 (as amended) and came into operation on 1 April 2010. The main functions, amongst other, of the QCTO are to develop standards for occupational qualifications including trades and skills programmes, accredit skills development providers, assessment centres, conduct assessment and quality assurance and issue certificates to qualifying candidates. Therefore, the QCTO is responsible for standards generation and maintenance; quality assurance of occupational full and part qualifications registered on the National Qualifications Framework (NQF) and the Occupational Qualifications Sub-Framework (OQSF) policy, including skills programmes. The QCTO has approximately 120 staff members and is situated in Hatfield, Pretoria. More information can be obtained from <https://www.qcto.org.za/>

Prospective, suitable, competent and experienced Service Providers who are interested in being appointed to a panel of legal services providers to render legal services to Quality Council for Trades and Occupations (QCTO) for a period of thirty-six (36) months on an ad hoc basis as specified herein, and in accordance with the General Conditions of offer, as well as the specifications, are requested to complete this tender document, together with all the standard bidding documents in full and submit proposals in sealed Envelopes marked with **Tender Number QCTO 13/2021** and placed in the tender box at 256 Glyn Street, Hatfield, Pretoria, 0083, not later than the closing time and date. It is compulsory for bidders to attend the virtual briefing session.

1.1 TENDER SUBMISSION AND COMPLIANCE

The tender must be submitted in the following manner;

- 1.1.1 One (1) original technical proposal and One (1) copy of the original technical submission;
- 1.1.2 One (1) USB Technical submission in a sealed envelope;
- 1.1.3 One (1) original pricing proposal and one (1) copy must be submitted in a separate sealed envelope; 'The pricing schedule must be submitted adjacent to SBD3.3 form in the bid proposal'.

NB: Please paginate your proposal submission by using numbered file dividers or similar system and create an index page for ease of reference.

Table: 1.1

Closing Date	Address
Date: 23 March 2022 Time: 11:00	Quality Council for Trade and Occupations Tender Box @ Reception 256 Glyn Street Hatfield Pretoria 0083

NB: Late Submissions will not be considered

Table: 1.2

Briefing Session Information
Compulsory Virtual Briefing session Date: 07 March 2022 Time: 11:00am – 12:00am Link: To receive the link, kindly send an email to tenders@qcto.org.za before 03 March 2022.

Prior to submission, the tenderers must check that all pages are properly numbered, and all required documents are signed, initialled and submitted. QCTO will hold the duly authorised signatory liable on behalf of the tenderer.

Each page should be initialed with a black ink.

1.2 PRICING

- 1.2.1 The tenderer must submit details regarding the tender price for the services on the pricing schedule provided in SBD 3.3, which completed form/s must be submitted together with the proposal.
- 1.2.2 Bidders are required to indicate their rates (costs) inclusive of all applicable taxes. Note. The fees/rates applied will be the prevailing rates at the time of the service being rendered.
- 1.2.3 The price proposal must include VAT (if applicable) and include all operating costs, etc. inclusive of any escalation and/or all costs deemed necessary for the period of the contract, as no additional costs will be accepted later.
- 1.2.4 All other cost increases will be negotiated, not exceeding the actual inflation rate (CPI).
- 1.2.5 QCTO will not provide upfront payments

NB: FAILURE TO PROVIDE THE PRICING PROPOSAL WILL INVALIDATE THE BID AND RESULT IN IMMEDIATE DISQUALIFICATION OF THE PROPOSAL

The service providers on the panel will be engaged through Request for Quotations Process based on the desired deliverables (as and when required) to confirm actual costs per brief or scope of work.

1.3 PARTNERSHIPS AND LEGAL ENTITIES

In the case of the tenderer being a partnership, close corporation or a company, a certificate reflecting the names, identity numbers and address of the partners, members or directors (as the case may be) must be submitted with the tender.

1.4 CONSORTIUMS AND JOINT VENTURES

- 1.4.1 If the tendering unit emanates from a joint venture or collaborative partnership or consortium (including a newly formed company), which does not have a joint track record of at least three (3) years, the individual entities that make up the tendering unit should each provide all the mandatory requirements. Should all the requirements in respect of the tendering unit or the individual entities, as the case may be, not be met, the tendering unit will be disqualified.
- 1.4.2 It is recognised that tenderers may wish to form consortia to provide the services.
- 1.4.3 A tender in response to this invitation to tender by a consortium shall comply with the following requirements: -

- 1.4.3.1 It shall be signed so as to be legally binding on all consortium members;
- 1.4.3.2 One of the members shall be nominated by the others as authorised to be the lead member and this authorisation shall be included in the agreement entered into between the consortium members;
- 1.4.3.3 The lead member shall be the only authorised party to make legal statements, communicate with QCTO and receive instructions for and on behalf of any and all the members of the consortium;
- 1.4.3.4 A copy of the agreement entered into by the consortium members shall be submitted with the tender. It shall be signed so as to be legally binding on all consortium members;
- 1.4.3.5 A copy of the agreement entered into by the consortium members shall be submitted with the tender.

1.5 ACCEPTANCE OF TENDERS

QCTO does not bind itself to accept either the lowest or any other tender and reserves the right to accept the tender which it deems to be in the best interest of the organisation. QCTO reserves the right to accept the offer in full or in part or not at all.

2. AIM OF PROPOSAL

The purpose of this bid is to appoint an experienced and competent panel of legal services provider that can provide appropriate, timely and value adding legal services to QCTO. This document intends to provide the prospective Service Providers with adequate information to understand and respond to QCTO'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 Service Level Agreement.

3. BACKGROUND

The Quality Council for Trades and Occupations (QCTO) is a Quality Council established in 2010 in terms of the Skills Development Act, No. 97 of 1998 (as amended) and the National Qualifications Framework Act, No. 67 of 2008 (as amended). Its role is to oversee the design, implementation, assessment and certification of occupational qualifications, including trades, on the Occupational Qualifications Sub-Framework (OQSF). The QCTO also offers guidance to skills development providers who must be accredited by the QCTO to offer occupational qualifications.

In summary the QCTO is responsible for:

Establishment and management of the Occupational Qualification Sub-Framework (OQSF);

- Occupational Qualifications and skills programmes development and maintenance;
- Accreditation of Skills Development Providers;
- Accreditation of Assessment Centres;
- Assessment;
- Certification;
- Research and Knowledge Development; and
- Stakeholder Management and Advocacy.

4. SCOPE OF SERVICES

The appointed panel of legal Service Providers will be required to provide general legal services and will be expected to render services for QCTO when called upon to do so on an *ad-hoc* basis.

4.1 EXPECTED OUTCOMES AND DELIVERABLES

- 4.1.1 The appointed panel of legal Service Providers will be expected to provide legal and regulatory support, including legal advice or opinions relating to the Skills Development Act, No. 97 of 1998 (as amended) and the National Qualifications Framework Act, No. 67 of 2008 (as amended); and any other legislative prescripts related to QCTO's mandate, including, but not limited:

- Public Law (Constitutional and administrative law - inter alia the Constitution of the Republic of South Africa, 1996)
- the Promotion of Access to Information Act 2 of 2000,
- the Protection of Personal Information Act 4 of 2013
- the Cybercrimes Act 19 of 2020
- the Prevention of Organised Crime Act 121 of 1998,
- the Promotion of Administrative Justice Act 3 of 2000,
- Public Finance Management Act 1 of 1999, Treasury Regulations and Directives)
- Corporate and Commercial Law;
- Labour Relations Act 66 of 1995:
- Basic Conditions of the Employment Act 75 of 1997,
- Employment Equity Act 55 of 1998;

- 4.1.2 The appointed panel of legal Service Providers will be expected to provide legal opinion on the interpretation of high risk and complex contracts that QCTO intends entering into, taking into account all respective legislation. In addition, drafting, vetting and review of Service Level Agreements and any other related contract matter(s);
- 4.1.3 Litigation – Magistrates Court, High Court, CCMA, Labour Court, etc.
- 4.1.4 Recover the costs of litigation where appropriate; and
- 4.1.5 Defend or institute civil action against or by QCTO in any court
- 4.1.6 Bidders are expected to perform duties as per the below but not limited to;

Practice Area	Scope of work	Skills required
Corporate and Commercial Law	• Advise on projects/transactions of corporate law nature. • Draft, review and advise on a broad range of complex commercial contracts and or Service Level Agreements. • Provide advice/ opinions on governance related matters. • Other legal advice	• Exposure in working on transactions of corporate law nature. • Experience in drafting complex contracts and Service Level Agreements of commercial law nature. • Experience in providing advice in general commercial law.
Administrative Law & Public Law (including expertise in PFMA, Public Procurement,	• Advise on projects of Administrative Law and Public Law. • Draft, review and advise on a broad range of complex Service Level Agreements.	• Experience in drafting complex Service Level Agreements

Practice Area	Scope of work	Skills required
Tax Law, Audit law and other applicable legislation impacting the QCTO / Schedule 3A Public Entities)	• Provide advice/ opinions on related matters. • Other legal advice	
Employment and Labour Law	• Provide legal opinions and assist with labour and employment related matters. • Chairing and initiating disciplinary hearings. • Advising on labour and employment law related matters • Assist in disciplinary hearings, conciliation arbitration, and other dispute resolution for a (for example CCMA, Labour Court, etc.). • Assist with reviewing of contracts and policies related to labour law and employment. • Other legal advice.	• Experience in labour and employment law litigation. (for example CCMA, Labour Court, etc.). • Understanding of labour law and employment jurisprudence for purposes of providing legal opinions.
Constitutional and Administrative law	• Provide legal opinions in respect of constitutional and administrative law matters. • Advise on legal interpretation and legal implications of existing or proposed agreements to be entered into and decisions taken by QCTO • Other legal advice.	• Experience in providing opinions on constitutional and administrative law.
Public Private Partnerships and related matters	• Advise on restructuring PPP projects. • Draft or review project documentation, including but not limited to PPP agreements, legal opinions, due diligence and expert reports. • Advise on legislative and regulatory matters related to PPPs. • Other legal advice	• Knowledge of SA PPP market and regulatory environment • Expertise in PPP risk analysis, allocation and mitigation • Expertise in drafting, analysis and review of PPP documentation and structuring of BEE in PPPs • Experience in conducting PPP due diligence exercises

Practice Area	Scope of work	Skills required
Litigation, civil law, criminal law and dispute resolution	- Act on behalf of QCTO on litigation matters. - Develop and review appropriate litigation strategy in each matter. - Ensure effective and efficient litigation process is followed. Collect litigation costs awarded in favour of QCTO. - Provide regular update reports throughout the litigation process. - Other legal advice.	Knowledge of litigation processes and procedures including Magistrate Court, Equality Court, High Court, Labour Court, Supreme Court of Appeal, Constitutional Court.
Regulatory Law (for example; Skills Development Act, No. 97 of 1998 (as amended) and the National Qualifications Framework Act, No. 67 of 2008 (as amended))	- Assist with regulatory and compliance matters. - Other legal advice.	Full understanding of legal and regulatory framework governing the Post School and Education Training Sector and QCTO legislative mandate.
Intellectual Property (IP) Law and competition Law	- Advise on projects/transactions of corporate law nature. - Draft, review and advise on a broad range of complex commercial contracts. - Provide advice/ opinions on governance related matters. - Other legal advice	Full understanding of IP law
Good corporate Governance and council /board management.	- Provide advice/ opinions on corporate governance related matters. - Draft, review and advise on a broad range of complex council and governance contracts.	Full understanding of governance matters in public entities
Forensic Investigations	- Ability and capacity to conduct forensic investigations - Ability to conduct lifestyle audits	Full understanding of forensic investigation processes

Bidders are required to clearly indicate in their technical proposal the Practice Area(s) in respect of which the bid is submitted. Bidders are allowed to bid for multiple practice areas.

4.2 REQUIREMENTS

- i. Advocate or admitted attorney
- ii. Minimum 12 years' legal experience (post admission)
- iii. Excellent drafting and prosecution skills.

PROPOSED MAXIMUM LEGAL RATES PER HOUR AND DAY

Bidders to include both day and hourly rates in the below table.

	Practise Area	Advocate			Attorney			
		Administrator	Advocate	Senior Advocate	Administrator	Candidate Attorney	Admitted Attorney	Attorney with right of appearance
1	Commercial Law and Corporate Law		-					
2	Constitutional Law; Administrative Law and Public Procurement Law							

3	Labour and Employment Law							
4	Litigation and Arbitration							
5	General Legal Advice							
6	Corporate and Commercial Law							
7	Administrative Law & Public Law (including expertise in PFMA, Public Procurement, Tax Law, Audit law and other applicable legislation impacting the QCTO / Schedule 3A Public Entities)							
8	Public Private Partnerships and related matters							
9	Regulatory Law (for example; Skills Development Act, No. 97 of 1998 (as amended) and the National							

	Qualifications Framework Act, No. 67 of 2008 (as amended)							
10	Provide advice/ opinions on governance related matters							
11	Forensic Investigations							

5. PROJECT TIMELINES

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 Service Level Agreement.

6. SPECIAL CONDITIONS OF CONTRACT

6.1 Contract performance and penalties for non-performance:

- 6.1.1 The contract shall be for a maximum duration of 36 months subject to an annual appraisal by the QCTO.
- 6.1.2 Renewal for the next year shall be subject to satisfactory performance in the preceding year.
- 6.1.3 The only exclusions to penalties shall be conditions that the QCTO accepts to be beyond the service provider's control.

7. SERVICE LEVEL AGREEMENT

The successful bidders will be expected to enter into a service level agreement with the QCTO. The service level agreement will include, amongst others, the following:

- i. Period of agreement
- ii. Charges
- iii. Changes to the proposed team
- iv. Method of communication and reporting
- v. Non-performance
- vi. Financial penalties and termination of contract
- vii. Procedures relating to payments
- viii. Procedures relating to management reports
- ix. Terms of deliverables
- x. Forms and formats of working papers
- xi. Reviews
- xii. Uncompleted work
- xiii. Confidentiality
- xiv. Disputes

8. CONFIDENTIALITY

The Panel of Legal service providers will be required to sign confidentiality, indemnity and/or Non-Disclosure Agreement. The successful service provider undertakes, at any time during the term of its appointment and after any termination or cancellation thereof, not to directly or indirectly disclose, nor directly or indirectly use, whether for its own benefit or that of any other person any confidential information of QCTO including that of or any information relating to its clients, customers, suppliers, donors, sponsors or agents

9. EVALUATION CRITERIA

QCTO may request additional information, clarification, or verification regarding any information contained in or omitted from a tenderer's proposal. This information will be requested in writing, and the bidder must provide the requested information within forty-eight (48) hours after the request has been made; otherwise, the bidder may be disqualified;

QCTO may conduct due diligence on any tenderer, which may include interviewing customer references or other activities to verify a tenderers or other information and capabilities (Including visiting the tenderer's various premises and/or sites to verify certain stated information or assumptions) and in these instances, the tenderers will be obliged to provide QCTO with all necessary access, assistance and/or information which QCTO may reasonably request and to respond within the given time frame set by QCTO;

The 80/20 principle will be applied in terms of the Preferential Procurement Policy Framework Act.

The Tender will be evaluated in Two stages:

Stage 1: Mandatory Evaluation

During this Stage, proposals will be reviewed to determine compliance with all mandatory requirements and such documents must be signed by a duly authorized representative.

Stage 2: Functionality

Only service providers that qualified during the Mandatory Evaluation will be evaluated on functionality. At this Stage, the evaluation process will be based on the service provider's responses in respect of their proposals against specifications and quality.

Service providers who score a minimum qualifying threshold score of 80 Points or more will be automatically categorized as technically acceptable and will be included on the respective panel. A bid will be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation.

9.1 Stage 1: Pre-Qualification (Mandatory Evaluation)

I/We have attached to this document:	Tick if submitted		Office use
• Correctly completed bid proposal and signed by authorised signatories	Yes	No	
• One (1) original hard copy technical bid document and three (3) hard copies of the original technical submission.	Yes	No	
• One (1) original hard copy technical pricing document (sealed in an envelope) and one (1) copy.	Yes	No	
• One (1) USB Submission	Yes	No	
• Proof of company/closed corporation registration and a copy of CM/CK certificates	Yes	No	
• Copies of the identity documents of those with equity/shares	Yes	No	
• Completion of SBD 1 to SBD 9	Yes	No	
• CSD Registration (National Treasury)	Yes	No	
• Letter of Good standing (COIDA)			
• Proof of registration with the Legal Practice Council.	Yes	No	
• Proof of qualification of the lead attorney and of the proposed team members for the service	Yes	No	
Company Profile – including • Short history of the Firm including opening date	Yes	No	

I/We have attached to this document:	Tick if submitted		Office use
- The practice number issued by the relevant law society - The Premises from which the firm conducts its business - Contact Details - List of support staff employed by the firm. - Controls in place to ensure that conflict of interest will be managed effectively and to the best interest of QCTO; - Any value-added services that the bidder may be in a position to offer QCTO			
Valid certified copy of the Attorneys Fidelity Fund Certificate for each member who is a sole practitioner, partner or director of the firm of attorneys and who will attend to QCTO matters.	Yes	No	
Valid certified copy of the Attorneys Fidelity Fund Certificate for each member who is a sole practitioner, partner or director of the firm of attorneys and who will attend to QCTO matters.	Yes	No	
Certified valid letter of good standing with the Legal Practice Council, for each attorney who forms part of the team that will attend to QCTO matters, not older than 6 (six) months.	Yes	No	
Firms Indemnity Certificate issued for present year.	Yes	No	

It is compulsory for Bidders to indicate the relevant practice area/s for which resources are proposed for:

Practice Area	Tick ✓
1. Corporate and Commercial Law	
2. Administrative Law & Public Law (including expertise in PFMA, Public Procurement, Tax Law, Audit law and other applicable legislation impacting the QCTO / Schedule 3A Public Entities)	
3. Employment and Labour Law	
4. Constitutional and Administrative law	
5. Public Private Partnerships and related matters	
6. Litigation, civil law, criminal law and dispute resolution	
7. Regulatory Law (for example; Skills Development Act, No. 97 of 1998 (as amended) and the National Qualifications Framework Act, No. 67 of 2008 (as amended)	
8. Intellectual Property (IP) Law and competition Law	
9. Provide advice/ opinions on governance related matters	
10. Forensic Investigations	

Note: Failure to meet all the above mandatory requirements will lead to bidder being disqualified.

9.2 Stage 2: Functionality

No.	Evaluation Criteria	Guideline	Scoring	Points
1	Lead Partner	CV of the Director (on Compulsory CV format)	At least one Partner(s) and/or one Director(s) or Sole Proprietor must have a minimum of 12 years post admission experience in the relevant practise area. Please furnish us with a CV(s) of Partner(s) and/or Director(s) or Sole Proprietor at least the following: • Personal information; • Qualification and date of admission; • Work experience; and • Contactable references Note the points allocation: More than 12 years post admission experience in Civil Litigation as per CV CV= 20 points for Between 9 years and more than 12 years post admission experience in Civil Litigation as per CV= 15 points Between 7 years and less than 9 years post admission experience in Civil Litigation as per CV= 10 points Less than 7 years post admission experience	20

No.	Evaluation Criteria	Guideline	Scoring	Points
2	Company's Experience	Dated and signed (on own Company letterhead) Letter /Completion letters based on cases dealt with and attach relevant case reports / award.	Evidence of the firm's engagement in either of the following PSET legislative context and or specific practice area with an Indication of the success rate: - National Qualifications Framework Act, No. 67 of 2008 (as amended) - Skills Development Act, No. 97 of 1998 (as amended) - Occupational Qualifications Sub-Framework (OQSF) - Continuing Education and Training Act (previously known as Further Education and Training Colleges Act) 16 of 2006 Five cases = 50 points Four cases = 40 points Three cases = 30 points Two cases = 20 points One case = 10 points No case = 0 points	50
3	Right of Appearance	Right of Appearance Letter (from a Registrar)	The Lead Attorney must have Right of Appearance in the High Court of South Africa Note the points allocation: Valid Certificate provided by Lead Attorney(s) = 10 points No proof or valid certificate provided by Lead Attorney(s) = 0 points	10
4	References	Dated and signed (on Clients Company letterhead) Reference/Completion letters based on Clients	0 references = 0 points 1 to 5 references = 5 points 6 to 10 references = 15 points 11 and more references = 20 points	20
Total Points				100

Each of the criteria is to be assessed and scored on the evaluation sheet using the above points.

Threshold: Bidders who score less than 80 out of 100 points on functionality, will not be considered for this project.

The percentage for functionality will be calculated as follows

$$Ps = \frac{So}{Ms} \times 100$$

Where:

Ps = percentage scored for functionality by bid under consideration

So = total score of bid under consideration

Ms= maximum possible score, i.e., 5x (a) 100 = 500

Ap = percentage allocated for functionality (in this bid = 100)

- i. The value scored for each criterion will be multiplied by the specified weight for the relevant criterion to obtain the marks scored for each criterion.
- ii. The scores for each criterion will be added to obtain the total score.
- iii. This score will be converted to a percentage and only bidders that have met or exceeded the minimum qualifying score of 80 percent on functionality will be on the panel
- iv. Bidders not meeting a minimum qualifying score of 80 percent on functionality will be disqualified.

NB: Bidders may be required to present to the QCTO.

10. TENDER VALIDITY PERIOD

The validity period for this tender is 180 days

11. ENQUIRIES

Any technical enquiries regarding the terms of reference shall be directed in writing to:

Mr. John April

Email: April.J@qcto.org.za

Contact persons for SCM and administrative related issues::

Mr. Lekhotla Motloun

Email: tenders@qcto.org.za

Compulsory CV template for Uniformity

Bidders must clearly indicate the practice area in the CV template.

Bidders must replicate this CV template for each practice area.

Proposed role	
Area of Practice	
First name and Surname	
Date of birth	
Nationality	
Professional Membership	
Present position	
Years with the bidders organization or Company	

Education

Institution	Duration (Date from - Date to)	Qualification Obtained (e.g., Degree(s) or Diploma(s) (Start from the most recent, Copies of each qualification to be included in the CV pack)

Professional Experience (Relevant to the Area of Practice)

Date (From – To)	
Organisation	
Location	
Position	
Description of duties (listed)	

Date (From – To)	
Organisation	
Location	
Position	
Description of duties (listed)	

Date (From – To)	
Organisation	
Location	
Position	
Description of duties (listed)	

References (relevant to the Practise area)

Name	Organisation	Contact details