

REQUEST FOR PROPOSAL: PROVISION OF LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference



REQUEST FOR PROPOSAL

BID NUMBER: ECIC11P-2021/22

PROVISION OF LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

CLOSING DATE: 14 DECEMBER 2021

TIME: 15H00 (SAST, OBTAINABLE BY DIALLING TELKOM ON 1026)

CONTRACT NUMBER: SLA11-21/22

**REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR
UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED**

Terms of Reference

CONTENTS

A. INTRODUCTION TO THE REQUEST FOR PROPOSAL 3

1. Introduction 3

2. Background 3

3. Knowledge and expertise required 4

4. Purpose 4

B. TERMS OF REFERENCE 5

5. Scope of services 5

6. Supporting document 5

7. Bid/contract conditions 6

8. Due diligence/site inspection 6

9. Bid evaluation 6

10. Evaluation Phase Two: Functional 7

11. Evaluation Phase Three: Preference point system 11

12. Standard bidding documents 11

13. Instructions to respondents 12

14. Timeline of the bid process 13

15. Bid rules 14

ANNEXES 17

Annexure A: Protection of personal information 17

Annexure B: Format for fee proposal (Pricing Example) 19

Annexure C: Relevant Standard Bidding Documents 20

SBD 1 20

SBD 4 23

SBD 6.1 26

SBD 8 31

SBD 9 33

Annexure D: Administrative Checklist 36

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

A. INTRODUCTION TO THE REQUEST FOR PROPOSAL

1. Introduction

- 1.1 The Export Credit Insurance Corporation of South Africa (SOC) Limited (ECIC or Corporation)¹ is a self-sustained state-owned entity listed under Schedule 3B of the Public Finance Management Act 1 of 1999 (as amended) and established in terms of the Export Credit and Foreign Investments Insurance Act 78 of 1957 (as amended).
- 1.2 The mandate of ECIC is to facilitate and encourage South African export trade, by underwriting export credit loans and investments outside the country, to enable South African contractors to win capital goods and services contracts in countries outside South Africa. ECIC is a registered Financial Service Provider and is regulated by the Financial Sector Conduct Authority and Prudential Authority (FSP No: 30656). Currently exempted in terms of FAIS Notice 78 of 2019.
- 1.3 ECIC's main business is to promote export of goods and services to foreign countries or buyers in foreign countries by providing insurance cover in connection with export transactions, investments and loans or similar facilities connected with such transactions.
- 1.4 It effectively underwrites any losses as a result of commercial causes of loss (insolvency or non-payment) or political causes of loss (nationalisation, expropriation, change in law or currency risk and other related events).
- 1.5 The insurance cover is provided to financial institutions that provide the necessary funding or loans to finance export transactions, South African exporters who provide both goods and services to foreign buyers and South African investors who invest in foreign entities.
- 1.6 ECIC operates from offices at Block C7 Eco Origins Office Park, 349 Witch Hazel Avenue, Highveld Ext 79, Centurion, 0157, South Africa.

2. Background

- 2.1 ECIC requires the legal services of an appropriately experienced Law Firm to provide legal advisory and to represent ECIC in an ongoing litigation matter that involves disputed insurance claims.
- 2.2 The legal services will be provided on an ongoing basis until the litigation matter is finally resolved, which will include dealing with any High Court processes and Appeal processes to the extent required.

¹ Further information on the ECIC can be found at www.ecic.co.za

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

3. Knowledge and expertise required

3.1 The Law Firm must have the following knowledge and expertise:

3.1.1 Assessing large cross border insurance claims and related disputes;

3.1.2 Expertise in dealing with litigation matters at the High Court: and

3.1.3 Thorough knowledge of South Africa's insurance law.

4. Purpose

4.1 Bids are hereby invited for the appointment of a service provider to provide legal advisory and to represent ECIC in an ongoing litigation matter that involves disputed insurance claims. The appointment will be for a period of five years, or until when the litigation action is finally settled.

4.2 This bid is subject to the Preferential Procurement Policy Framework Act No. 5 of 2000 and the Preferential Procurement Regulations, 2017, the General Conditions of Contract (GCC) and, if applicable, any other special conditions of contract. Where, however, the special conditions of contract conflict with the general conditions of contract, the special conditions of contract prevail.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

B. TERMS OF REFERENCE

5. Scope of services

5.1 The appointed bidder will be required to provide legal advisory and to represent ECIC in an ongoing litigation matter that involves disputed insurance claims. The scope of the legal services required by ECIC and to be provided to ECIC entails the following:

5.1.1 Acting as ECIC's defence counsel in respect of the litigation action against ECIC.

5.1.2 Dealing with the litigation action by attending to all correspondences and filing of all necessary response documents related with the plaintiff lawyers and the High Court and Appeal Court, in line with the relevant prescribed rules of the court.

5.1.3 Representing ECIC and attending all court appearances in involving the litigation action hearings.

5.1.4 Providing legal advisory and legal opinions in respect of any matter related to the litigation action.

5.2 **Bidders are required to enquire with ECIC on whether they will have a conflict of interest on the matter to which this appointment relates to.**

6. Supporting document

6.1 As part of the response, bidders are required to provide the following documents:

6.1.1 Curriculum Vitae ("CV") of the Key Personnel, including (i.e., Senior Counsel, associates and professional assistants) (together with certified copies of qualifications), containing the following:

6.1.1.1 Areas of expertise highlighted under paragraph 5;

6.1.1.2 Years of experience in the identified area of expertise;

6.1.1.3 The Key Personnel must be a Senior Counsel with more 10 years as an admitted Advocate and experience in the identified areas of expertise as highlighted in paragraph 5. in the identified area of specialisation; and

6.1.1.4 An admitted Advocate, who is in good standing with the Law Society of South Africa and/or Legal Practice Council.

6.1.2 Certified proof of admission certificate for each of the Key Personnel.

6.1.3 A certified copy of the Fidelity Fund Certificate of the bidder.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

7. Bid/contract conditions

- 7.1 ECIC will enter into an agreement with successful bidder which will detail the terms of engagement. The contract will be monitored annually.

8. Due diligence/site inspection

- 8.1 At the ECIC's discretion, a due diligence and/or site inspection may be conducted on the identified bidder. ECIC will visit the identified bidders' premises or bidder's client (with permission from the bidder) with the objective of verifying information as contained in their respective bid documents.
- 8.2 Where applicable, the ECIC will issue criteria for the due diligence review or site inspection beforehand to the applicable bidder(s). Should it be discovered during a due diligence visit or site inspection that the information submitted by the identified bidder is inconsistent with what is on their current premises of business, ECIC reserves the right to disqualify such bidder.
- 8.3 ECIC may identify another bidder using the next highest points obtained in the evaluation phase as stipulated in paragraph 9.1.3, taking into consideration the process followed under paragraphs 8.1 and 8.2.

9. Bid evaluation

- 9.1 The proposals will be evaluated in phases as highlighted below and detailed in paragraphs 10 to 11 of this document:

9.1.1 Phase One: Pre-qualification and compliance

Compliance with administrative requirements stated in the Standard Bidding Documents.

9.1.2 Phase Two: Functional evaluation (Desktop evaluation)

In this evaluation phase, bidders are expected to obtain a minimum of 75 out of 100 points to proceed to the next evaluation stage of the evaluation. Failure to obtain the prescribed minimum points will automatically disqualify the bid offer from proceeding to the next evaluation phase.

9.1.3 Phase Three: Preference point system

The 80/20 preference point system shall be applicable to this phase, where 80 points represent maximum obtainable points for the lowest acceptable price and 20 points represents maximum obtainable points for the B-BBEE level status. Points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table as listed in the bid documentation (refer to paragraph 11.3).

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

10. Evaluation Phase Two: Functional

10.1 The proposal submitted by the bidder will be evaluated by the ECIC based on the following criteria and be rated as the factor score over 5 multiplied by the applicable points:

Factor scores: 0=Poor, 1=Below average, 2=Average, 3=Good, 4=Very Good, 5=Excellent

Table 1

EVALUATION CRITERIA	DESCRIPTION	FURTHER DETAIL	SUB		POINTS
			FACTOR	POINTS	
1. Organizational Capacity, Experience in legal services	1.1. The bidder must demonstrate their experience in similar assignments/legal services and must illustrate their understanding of the services required in-line with paragraphs 5.1.1, 5.1.2, 5.1.3 and 5.1.4. Bidder must provide their company profile.	1.1.1. Bidder did not demonstrate their understanding of the assignment.	0	20	50
		1.1.2. Bidder demonstrated their experience in similar assignments/legal services and must illustrate their understanding of the services required in-line with paragraphs 5.1.1, 5.1.2, 5.1.3 and 5.1.4. Bidder provided a company profile which covers their areas of expertise.	3-5		
	1.2. Five reference letters provided with contactable references. NB- Each letter will count (2) points.	1.2.1. Bidder did not provide any letter of reference as required.	0	10	
		1.2.2. Bidder has provided one letter of reference.	1		
		1.2.3. Bidder has provided two letters of reference.	2		
		1.2.4. Bidder has provided three letters of reference.	3		
		1.2.5. Bidder has provided four letters of reference.	4		

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

EVALUATION CRITERIA	DESCRIPTION	FURTHER DETAIL	SUB		POINTS
			FACTOR	POINTS	
	1.3. The bidder must demonstrate capacity to execute the project as outlined in the proposal submitted and available resources.	1.2.6. Bidder has provided five or more letters of reference.	5		10
		1.3.1. The bidder did not demonstrate the capacity to execute the project as outlined in the proposal submitted and available resources.	0		
		1.3.2. The bidder has demonstrated their capacity to execute the project as outlined in the proposal submitted and available resources. The bidder has less than three resources in their disposal, who will be able to assist the lead in providing the service.	1-2		
		1.3.3. The bidder has demonstrated their capacity to execute the project as outlined in the proposal submitted and available resources. The bidder has at least three (3) resources in their disposal, who will be able to assist the lead in providing the service.	3-5		
	1.4. The bidder must demonstrate understanding of the South African insurance law.	1.4.1. The bidder did not demonstrate their understanding of the South African Insurance Law.	0		10
		1.4.2. The bidder has demonstrated their understanding of the South African insurance law.	3-5		

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

EVALUATION CRITERIA	DESCRIPTION	FURTHER DETAIL	SUB		POINTS
			FACTOR	POINTS	
		The bidder has resources who specialises in insurance law in their disposal.			
2. Litigation Experience	2.1. The bidder must demonstrate ability to assess large cross border insurance claims and related disputes by indicating practical experience of claims assessed and related disputes handled.	2.1.1. The bidder did not demonstrate their ability to assess large cross border insurance claims and related disputes by indicating practical experience of claims assessed and related disputes handled.		10	20
		2.1.2. The bidder has demonstrated their ability to assess large cross border insurance claims and related disputes by indicating practical experience of claims assessed and related disputes handled. The bidder has provided examples of matters that they have dealt with in the past.	3-5		
	2.2. The bidder must demonstrate litigation experience by highlighting High Court matters that have been dealt with, including any arbitration and mediation proceedings.	2.2.1. The bidder did not demonstrate their litigation experience by highlighting High Court matters that have been dealt with.	0	10	
		2.2.2. The bidder has demonstrated their litigation experience by highlighting High Court matters that have been dealt with, including any arbitration and mediation proceedings.	2-5		

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

EVALUATION CRITERIA	DESCRIPTION	FURTHER DETAIL	SUB		POINTS
			FACTOR	POINTS	
		A bidder will be awarded score factor of five (5) if some of the matters includes cross border insurance claims.			
3. Experience and Knowledge of key personnel	3.1. Key Personnel must have Minimum 10 years' post admission experience in identified areas of specialization as stated in paragraphs 5.1.1, 5.1.2, 5.1.3 and 5.1.4.	3.1.1. No information provided. or the lead has less than 10 years post admission experience.	0	15	30
		3.1.2. The lead has at least 10 years post admission experience, supported by qualified support staff. The lead has experience in dealing with cross border insurance legal matters.	3-5		
	3.2. Detailed CV and qualifications attached.	3.2.1. Bidder did not attach copy of CV as required.	0	15	
		3.2.2. Bidder has attached copy of CV of the lead, including copies of qualifications. The bidder has also attached copy of the CV and qualifications of supporting resources.	4-5		
TOTAL					100

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

11. Evaluation Phase Three: Preference point system

- 11.1 The formula below will be used to calculate the preference procurement points for price:

$$Ps = 80 \left(1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

Ps = Points scored for comparative price of bid under consideration

Pt = Comparative price of bid or offer under consideration

Pmin = Comparative price of lowest acceptable bid

- 11.2 Depending on the bidder's level of broad-based black empowerment contribution, a maximum of 20 points may be allocated to a bidder. The points scored by a bidder for broad-based black economic empowerment contribution will be added to the preference procurement points allocated for price.
- 11.3 The table below reflects the number of points to be allocated to a bidder based on broad-based black economic empowerment contribution:

Table 2

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- 11.4 The B-BBEE points will be awarded as per the rating certificate, the points for joint ventures (JV) or consortiums will be awarded based on the certificate of the JV or the consortium.

12. Standard bidding documents

- 12.1 The following compulsory additional information is required. Failure to complete and supply any of these documents may lead to disqualification from this bid:

Table 3

Invitation to bid	SBD 1
Declaration of Interest	SBD 4

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

Preference Points Claim Form for Preferential Procurement Regulations 2017 (including a valid B-BBEE Status Level Verification Certificate) Should a bidder not complete and sign the SBD6.1, the bidder will be allocated 0.00 points for B-BBEE.	SBD 6.1
Declaration: Abuse of Supply Chain Management Systems	SBD 8
Certificate of Independent Bid Determination	SBD 9

13. Instructions to respondents

13.1 Correspondence

- 13.1.1 No telephonic or any other form of communication with any other ECIC member of staff other than the named individual below, relating to this RFP will be permitted. All enquiries must be in writing only.
- 13.1.2 All questions relating to the contents of the tender (conditions, rules, terms of reference etc.) must be forwarded in writing via email to procurement@ecic.co.za by not later than 3 December 2021. Questions received after this date will not be entertained.
- 13.1.3 All questions must reference specific paragraph numbers, where applicable.
- 13.1.4 All enquiries (received on or before the closing date for enquiries) will be consolidated and ECIC will publish one response document on the ECIC website (www.ecic.co.za) within two working days after the date indicated in paragraph 13.1.2, by no later than 7 December 2021.
- 13.1.5 No requests for information shall be made to any other person or place and in particular not to the existing provider of this service.

13.2 Submission of the proposals

- 13.2.1 Bid documents must be clearly marked for ease of reference.
- 13.2.2 In view of the applicable Regulations issued in terms of the Disaster Management Act, 2002 (Act No 57 of 2002) (generally known as Covid-19 Regulations) and to comply with the Covid-19 Regulations, particularly on movement and social distancing, bid documents must be submitted on PDF format on/or before the closing date and time to the following email address:
procurement@ecic.co.za
- 13.2.3 The following email submission procedures or protocols must be adhered to ensure safe and secure submission of the tender documents and supporting documents:
 - 13.2.3.1 The tender document, including the supporting or returnable documents should be submitted via email on PDF format.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

- 13.2.3.2 If the PDF tender document, including the supporting or returnable documents is less than 20 Megabytes (MB), it should be submitted as one document. If the electronic bid document is more than 20MB, the electronic tender document should be split in order to adhere to the 20MB email capacity.
- 13.2.3.3 Bidders are also encouraged to submit a USB detailing their tender proposals.
- 13.2.4 Only if bidders are experiencing challenges with emailing documents, tenders can be delivered at the ECIC Offices on/or before the closing date and time at Block C7 Eco Origins Office Park, 349 Witch Hazel Avenue, Highveld Ext 79, Centurion, 0157, South Africa.
- 13.2.5 **Any proposal received after the closing date and time will not be accepted.**
- 13.2.6 All proposals and all subsequent information received from respondents will not be returned. The proposals should be addressed to the Head of Procurement of ECIC.

14. Timeline of the bid process

- 14.1 The period of validity of the tender and the withdrawal of offers, after the closing date and time are 160 days, expiring on 23 May 2022. The project timeframes of this bid are set out below:

Table 5

STAGE	DESCRIPTION OF STAGE	ESTIMATED COMPLETION DATE (OR WORK WEEK ENDING)
1.	Advertisement of bid on Government e-tender portal /ECIC Website	26 November 2021
2.	Questions relating to bid from bidder(s)	7 December 2021
3.	Bid closing	14 December 2021
4.	Compliance Evaluation	17 December 2021
5.	Functional Evaluation	24 December 2021
6.	Preference Points	21 January 2022
7.	Bid Adjudication	28 January 2022
8.	Notification of the outcome to the bidders	4 February 2022

- 14.2 All dates and times in this bid are in South African Standard Time.
- 14.3 Any time or date in this bid is subject to change at the discretion of ECIC. The establishment of a time or date in this bid does not create an obligation on the part of ECIC to take any action or create any right in any way for any bidder to demand that any action be taken on the date established. The bidder accepts that, if ECIC extends the deadline for bid submission (the Closing Date) for any reason, the requirements of this bid otherwise apply equally to the extended deadline.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

15. Bid rules

15.1 Documents/information required as a condition of award

- 15.1.1 Proof of registration valid registration on the National Treasury Central Supplier Database (CSD).
- 15.1.2 All SBD's signed and completed, SBD1, SBD4, SBD6.1; SBD8 and SBD9.
- 15.1.3 ECIC will conduct a fit and proper and financial soundness assessment on the proposed winning bidder and will request the required information at that point of the process.

15.2 Broad-Based Black Economic Empowerment and Socio-Economic Obligations

- 15.2.1 As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, bidders are to note that ECIC will allow a "preference" to companies who provide a valid BEE Certificate or Sworn Affidavit.
- 15.2.2 Bidders are required to complete SBD 6.1 and submit it together with proof of their B-BBEE Status as stipulated in the bidding form in order to obtain preference points for their B-BBEE status.

15.3 B-BBEE Joint Ventures or Consortiums

- 15.3.1 Bidders who would wish to respond to this bid as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their bid submission. Such Respondents must also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party.
- 15.3.2 If such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by ECIC through this bid process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to ECIC.
- 15.3.3 Bidders are to note the requirements for B-BBEE compliance of JVs or consortiums as stipulated in the bidding form in order to obtain preference points for their B-BBEE status and submit it together with proof of their B-BBEE Status.

15.4 Sub-contracting

- 15.4.1 ECIC fully endorses Government's transformation and empowerment objectives and in awarding the tender or contract, preference may be given to bidders (Generics) who are willing to subcontract at least not less than 30% of the contract to a company which is Black Owned, Black Women

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

Owned, Black Youth Owned, owned by Black People with Disabilities, an EMEs and QSE. EME's and QSE's are allowed to bid without subcontracting.

- 15.4.2 If contemplating subcontracting, please note that a bidder will not be awarded points for B-BBEE if it is indicated in its Proposal that such bidder intends subcontracting more than 30% (thirty percent) of the value of the contract to an entity/entity that do not qualify for at least the same points that the bidder qualifies for, unless the intended subcontractor is a company which is Black Owned, Black Women Owned, Black Youth Owned, owned by Black People with Disabilities, an EME and QSE , with the capability to execute the subcontract.
- 15.4.3 A person awarded a contract may not subcontract more than 25% (twenty five percent) of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.
- 15.4.4 Respondents are required to indicate the percentage of the contract that will be sub-contracted as well as the B-BBEE status of the sub-contractor/s on the SBD6.1.

15.5 ECIC's rights

15.5.1 ECIC reserves the right to:

- 15.5.1.1 Amend any bid conditions, bid validity period, bid specifications, or extend the bid closing date, all before the bid closing date. Such amendments will be posted on the ECIC's website under the relevant tender information. All prospective bidders must therefore ensure that they visit the website of ECIC (www.ecic.co.za) regularly before they submit their bid response to ensure that they are kept updated on any amendments in this regard.
- 15.5.1.2 Cancel or withdraw this bid at any time, as a whole or in part without reasons and without attracting any liability.
- 15.5.1.3 Award this bid to more than one bidder.
- 15.5.1.4 Negotiate with all or some of the shortlisted bidders.
- 15.5.1.5 Not accept the lowest priced bid or award the bid to a bidder other than the highest scoring bidder.
- 15.5.1.6 Conduct site visits at bidder's offices and / or at client sites if so required.
- 15.5.1.7 Request any relevant information and/ or documents to verify or clarify information supplied in the bid response in relation, but not

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

limited, to the structure of the bidding entity, bidder's capacity, proposed solution, proposed timelines etc.

15.6 Contract fees

- 15.6.1 Where a bidder indicates that its prices are subject to confirmation, or are in any way conditional, such pricing will not be considered.

15.7 Confidentiality

- 15.7.1 Any information relating to the submissions, through the process or otherwise shall be treated in strict confidence. In submitting a response, a Service provider agrees that it shall not be entitled to any information disclosed by another respondent to ECIC, which ECIC has determined to be of a confidential nature. The content and details of the evaluation of submissions will remain confidential to ECIC.

15.8 Other matters

- 15.8.1 If the ECIC does not accept any proposal, it will declare this bid process closed and may then elect to:
 - 15.8.1.1 Proceed on a completely different basis; and/or
 - 15.8.1.2 Not to appoint any respondent (in the event it deems all or any of the proposals not appropriate).
- 15.8.2 The ECIC reserves the right to engage in any processes required to validate all claims made in the proposal.
- 15.8.3 The ECIC has the right to enter into negotiation with a prospective Service provider regarding any terms and conditions, including fees, of a proposed contract.
- 15.8.4 Bidders are allowed to submit joint proposals to allow different companies/entities to undertake different components of the work under one single proposal. In such event however, each bidder is required to provide a B-BBEE certificate.

15.9 Disclaimer

- 15.9.1 The ECIC has produced this bid in good faith. However, the ECIC, its agents and its employees and associates, do not warrant its accuracy or completeness. The ECIC will not be liable for any claim whatsoever and howsoever arising (including, without limitation, any claim in contract, negligence or otherwise) for any incorrect or misleading information contained in this bid due to any misinterpretation of this bid.
- 15.9.2 This bid is a request for proposals only and not an offer document; answers to it must not be construed as acceptance of an offer or imply the existence of a contract between the ECIC and the bidder.

15.10 Terms of engagement

- 15.10.1 The ECIC's engagement of the service provider will be documented in a contract between the ECIC and the appointed bidder.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

ANNEXES

Annexure A: Protection of personal information

1. ECIC recognises that when the Bidder submit its proposal in response to this Request for Quotations, it will provide personal information, which ECIC will process for the sole purpose of evaluating the Bidder's proposal. By submitting its proposal in responding to this Request for Quotations, the Bidder hereby provide its consent to the processing of its Personal Information by ECIC.
2. The following terms shall have the meaning ascribed to them:
 - 2.1. **"Personal Information"** shall bear the same meaning as ascribed to it under POPI;
 - 2.2. **"POPI"** means Protection of Personal Information Act, No. 4 of 2013;
 - 2.3. **"Responsible Party"** shall bear the same meaning as ascribed to it under POPI; and
 - 2.4. **"bid"** means this Request for Quotations.
3. ECIC as the Responsible Party undertakes to:
 - 3.1. comply with the provisions of POPI as well as all applicable legislation as amended or substituted from time to time;
 - 3.2. treat all Personal Information strictly as defined within the parameters of POPI;
 - 3.3. process Personal Information only in accordance with the consent it was obtained for, for the purpose agreed, as permitted by law;
 - 3.4. secure the integrity and confidentiality of any Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss, damage, unauthorised destruction, access, use, disclosure or any other unlawful processing of Personal Information;
 - 3.5. not transfer any Personal Information to any third party in a foreign country unless such transfer complies with the relevant provisions of POPI regarding transborder information flows; and
 - 3.6. not retain any Personal Information for longer than is necessary for achieving the purpose in terms of bid or in fulfilment of any other lawful requirement.
4. ECIC will ensure that all reasonable measures are taken to:
 - 4.1. identify reasonably foreseeable internal and external risks to the Personal

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

- Information in its possession or under its control;
- 4.2. establish and maintain appropriate security safeguards against the identified risks;
 - 4.3. regularly verify that the security safeguards are effectively implemented;
 - 4.4. ensure that the security safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
 - 4.5. provide immediate notification to the Bidder if a breach in information security or any other applicable security safeguard occurs; provide immediate notification to the Bidder where there are reasonable grounds to believe that the Personal Information has been accessed or acquired by any unauthorised person;
 - 4.6. remedy any breach of a security safeguard in the shortest reasonable time and provide the Bidder with the details of the breach and, if applicable, the reasonable measures implemented to address the security safeguard breach;
 - 4.7. provide immediate notification to the Bidder where the Bidder has, or reasonably suspects that, Personal Information has been processed outside of the purpose agreed to or consented to;
 - 4.8. provide the Bidder, upon request, with all information of any nature whatsoever relating to the processing of the Personal Information for the purpose of the bid and any applicable law; and
 - 4.9. notify the Bidder, if lawful, of receipt of any request for access to Personal Information, in its possession and relating to the Bidder.

The Bidder has the right to inspect the Personal Information processing operations, as well as the technical and organisational information security measures employed by the ECIC to ensure compliance with the provisions of this Annexure.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

Annexure B: Format for fee proposal (Pricing Example)

1. Bidders are required to submit their rates using the example below. The proposed rates must include all costs for providing services to the ECIC as described in this bid.

Resource (Category)	Hourly Rate Excluding Value Added Tax				
	Year 1	Year 2	Year 3	Year 4	Year 5
	Amount in Rands	Amount in Rands	Amount in Rands	Amount in Rands	Amount in Rands
1. Lead attorney/Partner /Director or equivalent.	RXXX	RXXX	RXXX	RXXX	RXXX
2. Candidate attorney or equivalent	RXXX	RXXX	RXXX	RXXX	RXXX

2. The above rates will be utilised for price evaluation purposes. For price evaluation, ECIC will assume number of hours that will be required for the contract period and use those hours to calculate an assumed contract price.
3. The above rates must be on the letterhead of the bidder.
4. ECIC acknowledges that there may be other fees that needs to be paid for disbursements, and those will be payable for as and when charged. Bidders are required to provide a schedule of their current fees. The schedule will be for information purposes to the ECIC and will not be used for evaluation purposes. In the instance whereby the disbursements fees appear to be unreasonable, as compared to the market, the ECIC reserves the right to negotiate those fees.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

Annexure C: Relevant Standard Bidding Documents

SBD 1

PART A INVITATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE EXPORT CREDIT INSURANCE CORPORATION OF SOUTH AFRICA (SOC) LIMITED					
BID NUMBER:	ECIC11P-2021/22	CLOSING DATE:	14 December 2021	CLOSING TIME:	15H00
DESCRIPTION	Provision of legal services for a period of five years, or until when the litigation action is finally settled				
BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS)					
Preferably via email: procurement@ecic.co.za					
or					
Block C7 Eco Origins Office Park 349 Witch Hazel Avenue Highveld Ext 79 Centurion 0157					
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO			TECHNICAL ENQUIRIES MAY BE DIRECTED TO:		
CONTACT PERSON	Ayanda Mdunge		CONTACT PERSON	Ayanda Mdunge	
E-MAIL ADDRESS	procurement@ecic.co.za		E-MAIL ADDRESS	procurement@ecic.co.za	
SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE No:	MAAA

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No	B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX] <input type="checkbox"/> Yes <input type="checkbox"/> No
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES & QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]			
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER THE QUESTIONNAIRE BELOW]
QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 BELOW.			

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:	
1.1.	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2.	ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED--(NOT TO BE RE-TYPED) OR IN THE MANNER PRESCRIBED IN THE BID DOCUMENT.
1.3.	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT, 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT.
1.4.	THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).
2. TAX COMPLIANCE REQUIREMENTS	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
2.3	APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
2.4	BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
2.5	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
2.6	WHERE NO TCS PIN IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
2.7	NO BIDS WILL BE CONSIDERED FROM PERSONS IN THE SERVICE OF THE STATE, COMPANIES WITH DIRECTORS WHO ARE PERSONS IN THE SERVICE OF THE STATE, OR CLOSE CORPORATIONS WITH MEMBERS PERSONS IN THE SERVICE OF THE STATE."

NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

SIGNATURE OF BIDDER:

CAPACITY UNDER WHICH THIS BID IS SIGNED:
(Proof of authority must be submitted e.g. company resolution)

DATE:

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

SBD 4

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state², or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
 - the bidder is employed by the state; and/or
 - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.
2. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.
 - 2.1. Full Name of bidder or his or her representative:
 - 2.2. Identity Number:
 - 2.3. Position occupied in the Company (director, trustee, shareholder³):
 - 2.4. Company Registration Number:
 - 2.5. Tax Reference Number:
 - 2.6. VAT Registration Number:
 - 2.6.1. The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.
 - 2.7 Are you or any person connected with the bidder **YES / NO**
presently employed by the state?
 - 2.7.1 If so, furnish the following particulars:
Name of person / director / trustee / shareholder/ member:
Name of state institution at which you or the person
connected to the bidder is employed :

² "State" means –

- a. any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- b. any municipality or municipal entity;
- c. provincial legislature;
- d. national Assembly or the national Council of provinces; or
- e. Parliament.

³ Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

Position occupied in the state institution:

Any other particulars:

.....

.....

.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....

.....

.....

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**

2.8.1 If so, furnish particulars:

.....

.....

.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

If so, furnish particulars.

.....

.....

.....

2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? **YES/NO**

2.10.1 If so, furnish particulars.

.....

.....

.....

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract? **YES/NO**

2.11.1 If so, furnish particulars:

.....

3. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Tax Reference Number	State Employee Number / Persal Number

4. DECLARATION

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
 Signature

.....
 Date

.....
 Position

.....
 Name of bidder
 May 2011

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

SBD 6.1

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2

- (a) The value of this bid is estimated to not exceed R500 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable.

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

	POINTS
PRICE	80
B-BBEE STATUS LEVEL OF CONTRIBUTOR	20
Total points for Price and B-BBEE must not exceed	100

1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.6 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

Empowerment Act, 2003 (Act No. 53 of 2003);

- (e) “**EME**” means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) “**functionality**” means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) “**prices**” includes all applicable taxes less all unconditional discounts;
- (h) “**proof of B-BBEE status level of contributor**” means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) “**QSE**” means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) “**rand value**” means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

$$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{\min} = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: . = (maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES		NO	
-----	--	----	--

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE

(Tick applicable box)

YES		NO	
-----	--	----	--

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

Designated Group: An EME or QSE which is at least 51% owned by:	EME √	QSE √
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

8.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
 - ☐ One person business/sole propriety
 - ☐ Close corporation
 - ☐ Company
 - ☐ (Pty) Limited
- [TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

.....

.....

.....

8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
 - ☐ Supplier
 - ☐ Professional service provider
 - ☐ Other service providers, e.g. transporter, etc.
- [TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding process;
 - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
 - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

- (d) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution.

<p>WITNESSES</p> <p>1.</p> <p>2.</p>	<div><div>SIGNATURE(S) OF BIDDERS(S)</div><div>DATE:</div><div>ADDRESS</div><div>.....</div><div>.....</div></div>
--	--

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

SBD 8

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website (www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

Item	Question	Yes	No
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME).....
CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

Js365bW

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids.⁴ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).⁵. Collusive bidding is a per se prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

⁴ Includes price quotations, advertised competitive bids, limited bids and proposals.

⁵ Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _____ that:
(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium^{3, 6} will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;

⁶ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

- (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

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Date

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Position

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Name of Bidder

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REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR UNTIL WHEN THE LITIGATION ACTION IS FINALLY SETTLED

Terms of Reference

Annexure D: Administrative Checklist

Hereunder is a checklist to ensure that the bid document is complete in terms of administrative compliance. Please ensure that the following forms have been completed and signed and that all documents, as requested, are attached to the tender document.

ITEM	DOCUMENT REFERENCE		ACTION TO BE TAKEN	YES/NO
1.	SBD 1	Invitation to bid	Is the form duly completed and signed?	
2.	SBD 4	Declaration of Interest	Is the form duly completed and signed?	
3.	SBD 6.1	Preference Points Claim Form for Preferential Procurement Regulations 2017	Is the form duly completed, B-BBEE points claimed, and form signed?	
4.	B-BBEE status level verification certificate or Sworn Affidavit		Is proof of B-BBEE Status level of contributor attached? Bidder must attach copy of B-BBEE Certificate or copy of Sworn Affidavit, whichever is applicable.	
5.	SBD 8	Declaration: Abuse of Supply Chain Management Systems	Is the form duly completed and signed?	
6.	SBD 9	Certificate of Independent Bid Determination	Is the form duly completed and signed?	
7.	CSD Report or MAAA Number			
8.	Tender submission (if the bidder is submitting physical information/documents)		Two (2) printed copies (one original and one copy) submitted? (if submitting physical copies)	
			One (1) electronic copy submitted?	
9.	A certified copy of the Fidelity Fund Certificate			

I, the undersigned (name) certify that the information furnished on this checklist is true and correct.

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Signature

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Date

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**REQUEST FOR PROPOSAL: LEGAL SERVICES FOR A PERIOD OF FIVE YEARS, OR
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Terms of Reference

Position

Name of Bidder