



Companies and Intellectual
Property Commission

a member of **the dti** group

ANNEXURE “H”

TERMS OF REFERENCE (“TOR”)

CIPC BID NUMBER: 12/2021/2022

DESCRIPTION: INVITATION FOR PROPOSALS FROM QUALIFYING SERVICE PROVIDERS FOR THE ESTABLISHMENT OF CIPC PANEL OF EXPERTS FOR THE PROVISION OF **LEGAL SERVICES IN INTELLECTUAL PROPERTY (IP)**

CONTRACT PERIOD: FIVE (05) YEARS ON AN “AS AND WHEN” REQUIRED BASIS.

BID CLOSING DATE: 18 JANUARY 2022



1. TERMS AND CONDITIONS OF REQUEST FOR TENDER (RFP)

- 1) CIPC's standard conditions of purchase shall apply.
- 2) Late and incomplete submissions will not be accepted.
- 3) Any bidder who has reasons to believe that the RFP specification is based on a specific brand must inform CIPC before BID closing date.
- 4) Bidders are required to submit an original Tax Clearance Certificate for all price quotations exceeding the value of R30 000 (VAT included). Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of this RFP. Certified copies of the Tax Clearance Certificate will not be acceptable.
- 5) No services must be rendered or goods delivered before an official CIPC Purchase Order form has been received.
- 6) ***There will be not price evaluation for this bid***
- 7) The bidder must provide assurance/guarantee to the integrity and safe keeping of the information (that it will not amended/corrupted/distributed/permanently stored/copied by the service provider) for the duration of the contract and thereafter. Failure to submit will invalidate the bid proposal.
- 8) CIPC reserves the right to negotiate with the successful bidder on price.
- 9) The service provider must ensure that their work is confined to the scope as defined.
- 10) Travel between the consultant's home, place of work to the DTI (CIPC) vice versa will not be for the account of this organization, including any other disbursements.
- 11) The Government Procurement General Conditions of contractors (GCC) will apply in all instances.
- 12) As the commencement of this project is of critical importance, it is imperative that the services provided by the Service Provider are available immediately. Failing to commence with this project immediately from date of notification by CIPC would invalidate the prospective Service Provider's proposal.
- 13) No advance payment(s) will be made. CIPC will pay within the prescribed period as per the PFMA.
- 14) All prices must be valid for 120 days
- 15) The successful Service Provider must at all times comply with CIPC's policies and procedures as well as maintain a high level of confidentiality of information.
- 16) All information, documents, programmes and reports must be regarded as confidential and may not be made available to any unauthorized person or institution without the written consent of the Commissioner or his/her delegate.
- 17) The successful bidder must ensure that the information provided by CIPC during the contract period is not transferred/copied/corrupted/amended in whole or in part by or on behalf of another party.
- 18) Further, the successful bidder may not keep the provided information by way of storing/copy/transferring of such information internally or to another party in whole or part relating to companies and/or close corporation. As such all information, documents, programs and reports must be regarded as confidential and may not be made available to any unauthorized person or institution without the written consent of the Commissioner or his delegate.



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- 19) The service provider will therefore be required to sign a declaration of secrecy with CIPC. At the end of the contract period or termination of the contract, all information provided by CIPC will become the property of CIPC and the service provider may not keep any copy /store/reproduce/sell/distribute the whole or any part of the information provided by CIPC unless authorized in terms of the declaration of secrecy.
- 20) The Service Provider is restricted to the time frames as agreed with CIPC for the various phases that will be agreed to on signing of the Service Level Agreement.
- 21) CIPC will enter into Service Level Agreement with the successful Service Provider.
- 22) CIPC reserves the right not to award this bid to any prospective bidder or to split the award.**
- 23) Fraud and Corruption:**

The Service Provider selected through this Terms of Reference must observe the highest standards of ethics during the performance and execution of such contract. In pursuance of this policy, CIPC Defines, that for such purposes, the terms set forth will be as follows:

- i. "Corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of CIPC or any personnel of Service Provider(s) in contract executions.
 - ii. "Fraudulent practice" means a misrepresentation of facts, in order to influence a procurement process or the execution of a contract, to CIPC, and includes collusive practice among bidders (prior to or after Proposal submission) designed to establish Proposal prices at artificially high or non-competitive levels and to deprive CIPC of the benefits of free and open competition;
 - iii. "Unfair trade practices" means supply of services different from what is ordered on, or change in the Scope of Work;
 - iv. "Coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the execution of contract;
 - v. CIPC shall reject a proposal for award, if it determines that the bidder recommended for award, has been engaged in corrupt, fraudulent or unfair trade practices;
 - vi. CIPC also reserves the right to terminate this Agreement by giving 10 (ten) business days written notice to the service provider due to any perceived (by CIPC) undue reputational risk to CIPC which CIPC can be exposed to resulting from the service provider or its management/directors being found to be involved in unethical behaviour, whether in its dealings with CIPC or any other business dealings.**
- Note: "Unethical behaviour" includes but not limited to an action that falls outside of what is considered morally right or proper for a person, a profession or an industry**
- vii. CIPC shall declare a Service Provider ineligible, either indefinitely or for a stated period of time, for awarding the contract, if at any time it determines that the Service Provider has been engaged in corrupt, fraudulent and unfair trade practice including but not limited to the above in competing for, or in executing, the contract.
 - viii. The service provider will sign a confidentiality agreement regarding the protection of CIPC information that is not in the public domain.



2. COMPLUSORY BID REQUIREMENTS (FAILURE TO COMPLY WITH ALL REQUIREMENTS BELOW WILL IMMEDIATELY DISQUALIFY THE PROPOSAL)

INSTRUCTIONS FOR THE SUBMISSIONS OF A PROPOSALS

2.1. SUBMISSION OF ORIGINAL HARD COPY

- a) Bidder's must submit **One (1) original copy (hard printed copy of the technical proposal)**
- b) The Bid Document must be marked with the Bidder's Name
- c) The Bid documents **must be signed in ink** by an authorized employee, agent or representative of the bidder and each and every page of the proposal shall contain the initials of same signatories
- d) All pages of the submitted proposal must be numbered.

2.2. SUBMISSION OF USB

- a) **NO DISC WILL BE ALLOWED**
- b) **ONE (1) USB must be submitted, including technical proposal as well as price proposal saved in separate folders;**
- c) The USB must be marked with the bidder's name.
- d) **The USB must have an index page/ table of contents listed all documents included in the proposal for easy referencing during evaluation (group information in separate folders)**
- e) The **USB** must contain the **exact** documents/ information submitted in the original copy
- f) Bidders to ensure that the information is properly copied in the USB prior submitting to CIPC and that there are no missing pages.
- g) **THE USB WILL BE USED FOR EVALUATION HENCE THE BIDDER IS REQUIRED TO ENSURE THAT THE USB CONTAINS ALL INFORMATION.**
- h) **CIPC WILL NOT BE HELD LIABLE FOR INCOMPLETE PROPOSALS/ INFORMATION SUBMITTED IN THE USB'S**
- i) All pages must be signed; numbered and initial as per the Original copy
- j) The USB must be submitted in **PDF format ONLY** and must be **read ONLY**

NB: Bidders must also refer to page 11 of 16 of the Terms of reference under Mandatory Requirements

FAILURE TO COMPLY WITH ALL THE ABOVE MENTIONED REQUIREMENTS WILL IMMEDIATELY INVALIDATE THE BID.

I, the undersigned (NAME).....certify that:

I have read and understood the conditions of this tender.

I have supplied the required information and the information submitted as part of this tender is true and correct.

.....
Signature

.....
Date



3. INTRODUCTION

The Companies and Intellectual Property Commission (CIPC), herewith referred to as 'the Commission' was formed by the amalgamation of the Office of Companies and Intellectual Property Enforcement (OCIPE) and the Companies and Intellectual Property Registration Office (CIPRO), and is mandated by the Companies Act, 2008 (Act 71 of 2008). CIPC is an organ of state, outside the public service but within the public administration.

MAIN FUNCTIONS OF THE COMMISSION:

- Registration of Companies, Co-operatives and Intellectual Property Rights and maintenance thereof;
- Disclosure of Information on its register;
- Promotion of education and awareness of Company and Intellectual Property Law;
- Promotion of compliance with relevant legislation;
- Efficient and effective enforcement of relevant legislation;
- Monitoring compliance with and contraventions of financial reporting standards, and making recommendations thereto to Financial Reporting Standards Council (FRSC);
- Licensing of Business rescue practitioners;
- Supervision of the Collecting Societies in sound recordings
- Taxation of legal costs in Patent matters
- Oversight role of Independent Review professional bodies;
- Report, research and advise Minister on matters of national policy relating to company and intellectual property law.

4. BACKGROUND

For an agency that has a regulatory function such as CIPC, a sound understanding of the applicable legal framework and the businesses it regulates cannot be over-emphasized. The industry can only have confidence in a Regulator that is competent and knowledgeable on its mandate as the decisions of CIPC have both legal and economic implications.

The task and mandate of implementation and making policy inputs involves a thorough understanding of industries and the market behaviors which includes international practices and trends.

South Africa is a member state of the World Intellectual Property Organization (WIPO) The CIPC in its capacity as Intellectual Property National Office, represents the country through participating in various committees of the IP domains at WIPO. CIPC has observed the practice by other member-states of engaging their own experts to augment policy positions and to assist their own delegations with developing position papers in response to international IP policy.

Locally CIPC participates in the Parliamentary legal review processes of amending IP Laws with the aim of modernizing outdated provisions in the various related Acts. This will add value for our stakeholders, especially the small medium sized enterprises and international stakeholders at large.

These programmes have thus far stretched the division's available capacity creating a definite need and justification for the IP Group to solicit expert and professional services from academia, think tanks on IP, legal fraternity and other independent service providers outside of the CIPC.



5. PURPOSE

The purpose of this Terms of Reference (TOR) is to advertise and appoint the individuals to serve in the panel of experts that will provide services to Innovation and Creativity Group and CIPC at large *on an-as-and-when-required* basis for a period of **five (05) years**.

These services will assist the Innovation and Creativity Group to carry out its legislative mandate in the area of intellectual property (Patents, Designs, Copyright and Trademarks) as spelt out in the Companies Act 2008

5.1. Target Audience of the CIPC Services

All the business oriented CIPC services are targeted for public use within and outside South Africa. Consumers of the services are:

- New clients and partners requesting information and data.
- New clients registering IP and legal entities.
- Partners and Third Parties registering new legal entities on behalf of clients.
- Existing clients maintaining IP and legal entities and satisfying compliance needs according to the Companies Act of South Africa.
- Clients, Partners and Third Parties requesting data and information from the CIPC.

6. OBJECTIVES AND SCOPE

Successful service providers will be required to perform the following for CIPC:

- Provide legal research and opinions in the four domains of Intellectual Property
- Provide legal representation to CIPC in all Intellectual Property matters
- Provide any legal support that CIPC may require
- Analyse and review International Intellectual Property law when there are implications to South Africa and advise accordingly
- To attend and perform any other Intellectual Property task so assigned

7. INVITATION FOR PROPOSALS (RFP)

Invitation for proposals are hereby invited from suitably-qualified service providers to be registered on the CIPC supplier database for the provision of professional legal services to deliver services for a period of five (05) years on an-as-and-when-required basis.

SPECIFICATIONS (OVERVIEW OF REQUIREMENTS)

All proposals are to be submitted in a format specified in this enquiry (as applicable)

Service providers are requested to provide proof of: (example)

- Individual Experience of person to be involved in the projects –
- Company capability of the service provider –
- resources of the service provider
- The interested service providers will be required to submit their Curriculum Vitae of people to be involved demonstrating the experience of persons to be involved in the project for consideration by CIPC
- Successful service providers will form a Panel of Consultants and will be used as and when CIPC required for professional legal services



8. THE FOLLOWING COMPETENCIES ARE REQUIRED

All bidders should meet the academic and functional requirements namely; contain minimum compliance

Legal Consultancy Criteria

- Must possess admission as Advocate or Attorney with high court right of appearance
- Must possess LLB degree with 10 – 15 years' experience in civil litigation in the high court and providing of legal opinions while experience in any of the four domains of Intellectual Property law will be an added advantage
- Experience in legal representation in Intellectual Property matters will be an added advantage

The bidders satisfying most academic and functional requirements have the potential to be selected as panel members.

9. TERMS AND CONDITIONS Request for proposals (RFP)

Please Note:

- a. The Service Provider must ensure that their work is confined to the scope as defined and agreed.
- b. Government Procurement General Conditions of contract (GCC) as issued by National Treasury will be applicable on all instances. The general conditions are available on the National Treasury website (www.treasury.gov.za)
- c. The Service Provider shall be expected to sign a Non-Disclosure Agreement
- d. Proposal offers must be received on the tender closing date and time specified on the invitation, fully completed and signed as per Standard Conditions of Tender.
- e. Completion and submission of the Declaration of Interest.
- f. CIPC reserves the right not to make this appointment.



10. EVALUATION PROCESS (Criteria)

The evaluation process will be done in accordance with the following criteria.

Evaluation (Phases)

The evaluation will be completed in 2 phases:

Phase 1: Compliance to minimum requirements

Phase 2: Functional Evaluation

PHASE 1: COMPLIANCE TO MINIMUM REQUIREMENTS AND MANDATORY REQUIREMENTS

During Phase 1 all bidders will be evaluated to ensure compliance to minimum document requirements. Without limiting the generality of the CIPC 'S other critical requirements for this Bid, bidder(s) **must submit the documents** listed in the **Table** below. All documents must be completed and signed by the duly authorized representative of the prospective bidder(s). During this phase Bidders' response will be evaluated based on compliance with the listed administration and mandatory bid requirements. All bidders that comply with the minimum requirements will advance to Phase 2.

Item No	Document that must be submitted	Compliance provide ANSWER: Yes /No	Non-submission may result in disqualification
1.	Invitation to Bid – SBD 1		Complete and sign the supplied pro forma document.
2.	Tax Status – SBD1		Bidders must submit Tax Clearance Certificate (TCC) PIN The TCS PIN will be used for the verification of tax compliance status a Bidder
3.	Declaration of Interest –SBD 4		Complete and sign the supplied pro forma document.
4.	Preference Point Claim Form – SBD 6.1		Non-submission will lead to a zero (0) score on BBBEE
5.	Declaration of Bidder's Past Supply Chain Management Practices – SBD 8		Complete and sign the supplied pro forma document.
6.	Certificate of Independent Bid Determination – SBD 9		Complete and sign the supplied pro forma document.
7.	Registration on Central Supplier Database (CSD)		The Service Provider is encouraged to be registered as a service provider on the Central Supplier Database (CSD). Visit https://secure.csd.gov.za/ to obtain your. Vendor number. Submit PROOF of registration on the Central Supplier Database (CSD Report) SUBMIT SUPPLIER NUMBER AND UNIQUE REFERENCE NUMBER
9	IMPORTANT: SUBMISSION OF USB REFER TO PAGE 5 OF 17 <u>FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL IMMEDIATELY DISQUALIFY A BIDDER.</u>		Bidders must submit a USB with their proposal- 1 copy of the original document USB to be submitted in pdf format and to be read only All documents to be signed and bidders initial each page <u>FAILURE TO COMPLY WITH THIS REQUIREMENT SHALL IMMEDIATELY DISQUALIFY A BIDDER.</u>
10	MUST POSSESS ADMISSION AS ADVOCATE OR ATTORNEY WITH HIGH COURT RIGHT OF APPEARANCE		

ALL BIDDERS THAT COMPLY WITH THE MINIMUM REQUIREMENTS WILL ADVANCE TO PHASE 2.



PHASE 2: EVALUATION CRITERIA

All bidders that advance to Phase 2 will be evaluated by a panel to determine compliance to the functional requirements of the bid.

The functional evaluation will be rated out of 100 points and will be determined as follows:

No	EVALUATION CRITERIA	Rating					Weight	Total
		1	2	3	4	5		
1.	<p>CONSULTANTS/COMPANY REFERENCES</p> <p>The bidders must provide a minimum of two (3) testimonial letters from clients where they have performed consultancy service similar to this projects. The testimonials must indicate completed projects in legal consultancy services:</p> <p><u>Ratings to be awarded as follows</u></p> <p>1 = One or No testimonial letters for similar projects, project not completed</p> <p>2 = Two (2) testimonial letters for similar projects with clients for all work successfully completed</p> <p>3 = Three (3) testimonial letters for similar projects with clients for all work successfully completed</p> <p>4 = Four (4) testimonial letters for similar project with clients for all work successfully completed</p> <p>5 = Five (5) or more testimonial letters for similar project with client for all work successfully completed</p>						30	
2.	<p>CONSULTANTS EXPERIENCE & SKILLS</p> <p>Provide a detailed Curriculum Vitae (CV) of the key Consultant/s depicting experience of (10 -15) years Min) (NB: refer to par 6 above) Maximum of (1-3) CVs.</p> <p><u>Ratings to be awarded as follows</u></p> <p>1 = Inadequate, inappropriate experience, skills and qualification,</p> <p>2 = Relevant experience, skills but not meeting all the requirements of par 6 above</p> <p>3 = 10 years' experience and skills in civil litigation in the high court and providing of legal opinions in any of the four domains of Intellectual Property.</p> <p>4 = 12 years' experience and skills in civil litigation in the high court and providing of legal opinions in any of the four domains of Intellectual Property.</p> <p>5 = 15 years' experience and skills in civil litigation in the high court and providing of legal opinions in any of the four domains of Intellectual Property.</p> <p>Combination of experience from the CVs submitted will be considered and scored accordingly. One CV meeting all the above will also be considered to be fully compliant</p>						40	
3.	<p>QUALIFICATIONS OF CONSULTANTS</p> <p>Demonstrate qualifications by attaching certified copies of qualification of the following:</p> <p><u>Ratings to be awarded as follows</u></p> <p>1 = Inadequate, inappropriate qualification,</p> <p>2 = Qualification but not meeting all the requirements of par 6 above e.g. Non Legal Bachelor's degree</p> <p>3 = Relevant qualification (LLB)</p> <p>4 = Relevant qualification – (LLM) or LLM plus other relevant qualifications or related to IP</p> <p>5 = Relevant qualification (LLD) or LLD plus other related qualifications or with IP research</p>						30	
	Total						100	



NOTE:

1. Proposals will be evaluated on functionality which will count out of 100 points. Bidders must achieve a minimum score of **60 points out of 100** on the functionality evaluation to proceed to the next phase.
2. The service provider **THAT ACHIEVE LESS THAN 60 POINTS ON FUNCTIONALITY WILL BE DISQUALIFIED FOR FURTHER EVALUATION**
3. The service provider shall prepare for a possible presentation should CIPC require such and the service provider shall be notified timeously.
4. **Bidders obtaining 60 and above points will be placed on the CIPC panel of service providers**
5. **A letter of Acceptance will be forwarded to all successful service providers**
6. **No pricing is required for this RFP**

11. MEDIUM OF COMMUNICATION

All documentation submitted in response to this Request for proposals must be in English.

12. COST OF RESPONDING TO THIS REQUEST FOR PROPOSALS (RFP)

Individuals are expected to fully acquaint themselves with the conditions, requirements and specifications of this RFP before submitting responses. Each service provider assumes all risks for resource commitment and expenses, direct or indirect, of RFP preparation and participation throughout the RFP process. The CIPC is not responsible directly or indirectly for any costs incurred by Companies.

13. ENGAGEMENT MODEL

- 1) The basis of engaging service providers will be on needs identified by CIPC as and when such arises.
- 2) CIPC will send through requests for quotations to all registered service providers as and when the CIPC requires them on a rotational basis.
- 3) Accredited service providers on the panel are **not guaranteed** any work under this project.
- 4) The accredited service providers will be expected to provide quotations as and when the service is required for services they are accredited for with specific terms of reference.
- 5) The accreditation process will be subject to the service provider's acceptance of the Supply Chain Management Department's general contract conditions.
- 6) CIPC may at its sole discretion, award assignment or any part thereof to more than one accredited service provider(s).
- 7) CSD and tax matters will be confirmed prior to award
- 8) Pricing Guidelines will be provided for each RFQ send and participants will be required to indicated a total cost inclusive of VAT on the pricing schedule (SBD 3.3 provided
- 9) CIPC will ensure that a competitive process will apply to all projects identified

14. CIPC RESERVES THE RIGHT TO:

- I. Extend the closing date;
- II. Verify any information contained in a response;
- III. Request documentary proof regarding any tendering issue;
- IV. Cancel or withdraw this RFP as a whole or in part; and
- V. Not to include any supplier on the list of suppliers on the approved database based on functional criteria not met.



15. DISCLAIMER

This RFP 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 parties. By submission of RFP, individuals shall be deemed to have satisfied themselves with and to have accepted all Terms & Conditions of this RFP. The CIPC makes no representation, warranty, assurance, guarantee or endorsements to service provider concerning the RFP, whether with regard to its accuracy, completeness or otherwise and the CIPC shall have no liability towards the service provider or any other party in connection therewith.

16. BRIEFING SESSION

There will be **NO** briefing session for this RFP.

17. SUBMISSION OF PROPOSALS

Sealed proposals will be received at the **CIPC Tender Box**- the bid box is situated at: at the West Gate on 77 Meintjies Street, close to Entfufukweni Building (Block "F"), 77 Meintjies Street, Sunnyside, "THE DTI" Campus, Pretoria.

Proposals should be addressed to:

Manager (Supply Chain Management)
Companies and Intellectual Property Registration Office
the dti Campus, 77 Meintjies Street,
Sunnyside
PRETORIA

18. ENQUIRIES

A. Supply Chain Enquiries

Mr Solomon Motshweni OR Ms Ntombi Maqhula

Contact No: (012) 394 3971 /45344

E-mail: SMotshweni@cipc.co.za OR Nmaqhula@cipc.co.za

B. Technical Enquiries

Mr. Kadi Petje

E-mail: KPetje@cipc.co.za

BIDS OPENING DATE: 18 NOVEMBER 2021

BIDS CLOSING TIME: 11: 00 AM

BIDS CLOSING DATE: 18 JANUARY 2022

PLEASE NOTE: BID PROPOSALS MUST BE SUBMITTED TO CIPC OFFICES BEFORE OR ON THE BID CLOSING DATE AND TIME.

NB: IT IS THE PROSPECTIVE BIDDERS' RESPONSIBILITY TO OBTAIN BID DOCUMENTS IN TIME SO AS TO ENSURE THAT RESPONSES REACH CIPC, TIMEOUSLY. CIPC SHALL NOT BE HELD RESPONSIBLE FOR DELAYS IN THE POSTAL SERVICE.

NB: COVID -19 REGULATIONS TO BE ADHERED TO