



**TERMS OF REFERENCE:**

**APPOINTMENT OF LEGAL PRACTICES TO SERVE ON A PANEL OF ATTORNEYS FOR A PERIOD OF TWENTY-FOUR (24) MONTHS**

**Tender No: PRSA/BID/2023/24/01**

ITEM NUMBER	TABLE OF CONTENTS	PAGE
1	Purpose	3
2	Introduction and Background	3
3	Scope and extent of work	3 - 4
4	Area of speciality	4
5	Period/Duration of appointment	5
6	Fixed tariff structure/Fee structure for Attorneys	5 - 6
7	Evaluation Methods	6 - 10
8	Bid Submission requirements	10 - 11
9	Special conditions of contract	11 - 13
10	Sub-contracting conditions/requirements	13
11	Payment terms	13
12	Enquiries	13
13	Closing date	13

## 1 PURPOSE

- 1.1 The Ports Regulator of South Africa (“the Regulator”) would like to invite suitably qualified, reputable and competent legal practices to submit proposals to be considered on its panel of attorneys for a period of twenty-four (24) months.
- 1.2 The panel will comprise of at least 5 and a maximum 20 legal practices that will be required to provide specialized legal advice and services on an ad hoc basis or as and when required.

## 2 INTRODUCTION AND BACKGROUND

- 2.1 The Ports Regulator is a Schedule 3A Public Entity in terms of the Public Finance Management Act, 1 of 1999 (PFMA), as amended (Act No. 1 of 1999), and is established an independent ports regulatory body, vested with legal personality.
- 2.2 The Ports Regulator is governed by other legislative frameworks applicable to such state entities. The entity is accountable to Parliament through the Minister of Transport who is the Shareholder Representative of the Regulator, while the Accounting Authority functions are delegated to the appointed Regulator Members.
- 2.3 The mandate of the Ports Regulator, *inter alia*, is to exercise economic regulation of the South African ports system consistent with the government’s strategic objectives, promotes equity of access to ports, facilities and services provided in ports and monitors the activities of the National Ports Authority to ensure that it performs its functions in accordance with the National Ports Act, Act No.12 of 2005
- 2.4 The Regulator has a detailed evaluation methodology premised on Treasury Regulation 16A promulgated under Section 76 of the Public Finance Management Act, the Preferential Procurement Policy Framework Act 2000 (Act, No.5 of 2000) and the Broad-Based Black Economic Empowerment Act, 2003 (Act, No. 53 of 2003).

## 3 SCOPE AND EXTENT OF WORK

- 3.1. The selected panellists will be expected to render legal services to the Ports Regulator in the various fields as outlined below, *inter alia*:
  - 3.1.1. Extensive experience in civil litigation at various courts/forums (e.g. Magistrates Court, High Court, Labour Courts, and other Superior Courts)
  - 3.1.2. Experience in labour and employment law;
  - 3.1.3. Advice on regulatory matters and other legal matters affecting the Regulator, when necessary;
  - 3.1.4. To render advisory services to the delegated Hearing Panel, when required;
  - 3.1.5. To serve as mediators in tribunal matters, when required;
  - 3.1.6. To provide any general legal services to the Ports Regulator; and
  - 3.1.7. To conduct forensic investigations on behalf of the Ports Regulator.

- 3.2. The selected panellists will be expected to possess the following knowledge, expertise and experience:
- 3.2.1. Vast knowledge and experience in Maritime Law;
  - 3.2.2. Broad knowledge and experience in Administrative and Constitutional Law;
  - 3.2.3. Extensive experience in civil litigation;
  - 3.2.4. An excellent knowledge and experience with Tribunals;
  - 3.2.5. Experience in Labour and Employment law;
  - 3.2.6. Vast knowledge and experience in forensic investigations (*inter alia*, labour disputes, fraud, corruption, breach of statutory frameworks and/ organisational policies, IT related breaches);  
and
  - 3.2.7. Extensive knowledge of National Public Entities and its operations.

#### 4 AREA OF SPECIALITY

4.1 Each Legal Practice must clearly indicate and submit proposal(s) detailing experience together with reference letters for the field(s) they are bidding for.

4.2 Kindly indicate which area/field of law you are specialising in by ticking the appropriate box.

No	Area of specialty/field of law	Mark the appropriate box
1.	Administrative Law	
2.	Constitutional Law	
3.	Civil law	
4.	Labour and Employment law	
5.	Forensic investigations	
6.	Maritime law	
7.	Commercial law	
8.	Mercantile law	
9.	Trade law	
10.	Competition law	
11.	If other, please specify	

## 5 PERIOD / DURATION OF APPOINTMENT

- 5.1 The contract with the appointed service providers will be for a period of twenty-four (24) months from date of appointment.
- 5.2 The successful service providers will be subjected to an annual performance assessment and the continuation of the contract will be dependent on a favourable assessment.

## 6 FIXED TARIFF STRUCTURE/FEE STRUCTURE FOR ATTORNEYS

- 6.1 The PRSA reserves the right to negotiate with the preferred bidders identified in the evaluation process, regarding any terms and conditions, including rationalisation of the fees to ensure cost containment measures in terms of National Treasury guidelines prior to the awarding of the bid.
- 6.2 Table 3: Tariff structure / fee structure per hour (Including VAT):

### Senior Admitted Legal Practitioner (Attorney) (7 years and above)

Superior Court	R1 – R2618.00
Labour Court and Labour Appeal Court	R1 – R2408.00
Magistrates Court	R1 – R1885.00
Tribunals	R1 – R1885.00
Alternative Dispute Resolution	R1 – R1885.00
Bargaining Council and / or CCMA	R1 – R1885.00
Legal Opinions	R1 – R1780.00
Alternative Dispute Resolution sitting	R1 – R1571.00
Complaints Investigations	R1 – R1466.00
Forensic Investigations	R1 – R1466.00
Legislative/Regulatory drafting	R1 – R1466.00

### Junior Admitted Legal Practitioner (Attorney) (1 to 6 years of experience)

Superior Court	R1 – R1675.00
Labour Court and Appeal Court	R1 – R1675.00
Magistrates Court	R1 – R1305.00
Tribunals	R1 – R1305.00
Alternative Dispute Resolution	R1 – R1305.00
Bargaining Council and / or CCMA	R1 – R1466.00
Legal Opinions	R1 – R1571.00
Alternative Dispute Resolution sitting	R1 – R1256.00
Complaints Investigations	R1 – R1047.00
Forensic Investigations	R1 – R1047.00
Legislative/Regulatory drafting	R1 – R1047.00

### Disbursements

Flights	Economy
Car Hire	Group B
Accommodation	R1530.00 (incl. breakfast and dinner)
Rate per kilometre	R5.30
Telephone calls	Per applicable hourly rate
Copy per page	R6.00

**NOTE: All disbursements are to be charged on an actual cost basis with no markups.**

The appointed Legal Practice should charge in terms of the Fee Structure as outlined above.

## 7 EVALUATION METHODS

### 7.1 PHASE 1: Pre-compliance or Initial Screening

7.1.1 During this phase bid documents will be reviewed to determine compliance with SCM returnable, tax matters and whether the Central Supplier Database (CSD) report has been submitted with the bid documents at the closing date and time of the bid. Bids which do not satisfy the compliance criteria will not

be evaluated further. Those who fulfil the requirements or have submitted the required documents will be further evaluated.

7.1.2 The bid proposal will be screened for compliance with administrative requirements as indicated below:

Item No.	Administrative Requirements	Check / Compliance	Non-submission may result in disqualification
1	Master Bid Document	Provided and bound	*YES
2	2 Copies of Bid Documents	Provided and bound	*YES
<b>INCLUDED IN THE BID DOCUMENT</b>			
3	SCM - SBD 1 - Invitation to Bid	Completed and signed	*YES
4	CSD registration number / SARS PIN and CSD summary report	Provided	*YES
5	SCM- SBD 3.3- Pricing Schedule	Completed	*YES
6	SCM - SBD 4 – Bidder's Disclosure	Completed and signed	*YES
7	General Conditions of Contract	Every page initialled	*YES
8	In case of bids where Consortia / Joint Ventures, Consortia / Joint Venture agreement signed by both parties must be submitted with bid proposal	JV agreement completed and signed, if applicable	*YES
9	Supplier POPIA Consent Form	Completed and signed	*YES

**\*YES** – PRSA reserves the right to reject proposals that are not submitted in the prescribed format or where information presented is illegible or incomplete and may not be further evaluated for Pre=Qualification Criteria (Phase 2).

## 7.2 PHASE 2: MANDATORY REQUIREMENTS

7.2.1 Only bid proposals that meets pre-compliance requirements will be evaluated on mandatory requirements. The Bidder must complete the section below by answering **YES** or **NO**. If, yes, please attach proof.

NO.	REQUIREMENT	COMPLY: YES OR NO
1	<b>Professional registration with the Professional Body / Institution.</b> The Bidder must submit documentary proof of their current and valid certificate of good standing from the <b>Legal Practice Council (LPC)</b> for each Legal Practitioner who will be assigned to the Ports Regulator	
2	The bidder must submit comprehensive Curriculum Vitae (CVs) of each Legal Practitioner who will be assigned to the Ports Regulator reflecting the Legal Practitioner's professional background and years of experience	
3	<b>Professional registration with the Professional Body / Institution.</b> The Bidder must submit documentary proof of their current and valid Fidelity Fund Certificate	
4	The Bidder must indicate in their proposals the relevant experience, exposure and capacity in relation to the selected areas of law in the table above and attach three (3) reference letters which are not older than three (3) years for each area of specialty the bidder is bidding for. Reference letters must be in the letterhead of the referee and must be dated and signed by the referee.	
5	Submit a Legal Practice profile stating when it was established and its areas of specialisation together with the demonstrated expertise in either of the particular fields of law the bidder is bidding for. The profile should include the Practice's core business, and organisational chart indicating the ownership structure of the Practice and a brief history of the Practice	

**NOTE: Failure to meet all the mandatory requirements will lead in the Bidder being disqualified and not further evaluated for functionality (Phase 3).**

### **7.3 PHASE 3: Functionality Criteria**

- 7.3.1 Only bid proposals that meets mandatory requirements will be further evaluated on functionality criteria.
- 7.3.2 The Bidder must score a minimum of **80%** during Phase 3 (functionality / technical) of the evaluation to be able to be listed on the panel.
- 7.3.3 The functionality is as follows:

PHASE 3			
GUIDELINES FOR CATEGORY CRITERIA	FUNCTIONALITY (GUIDELINES FOR CRITERIA APPLICATION)	WEIGHT	
Capacity/ Resources	Indicator	30	
	Service provider's capacity/available resources. The Service Provider must submit a detailed company profile setting all resources at the legal practice. The organogram must set out the following: *Directors/Partners *Senior Associates *Junior Associates *Candidate Legal Practitioner *Admin Support		
	No organogram submitted		0
	• Sole Practitioner (Only Director)		5
	• Directors / Partners • Candidate Legal Practitioner/ Admin support		10
	• Directors / Partners • Associates		15
	• Directors / Partners • Associates • Candidate Legal Practitioner		20
	• Directors / Partners • Senior Associates • Junior Associates • Candidate Legal Practitioner		25
	• Directors / Partners • Senior Associates • Junior Associates • Candidate Legal Practitioner • Admin Support	30	
Experience of project team	Bidders must provide Individual CVs with valid certified copies of Certificates of Admission and qualifications	30	
	No CV submitted/certificates not certified.		0
	Lead / Director 2 years' experience in area of law		5
	Lead /Director 3 years' experience in area of law		10

<b>PHASE 3</b>			
<b>GUIDELINES FOR CATEGORY CRITERIA</b>	<b>FUNCTIONALITY (GUIDELINES FOR CRITERIA APPLICATION)</b>		<b>WEIGHT</b>
	Lead/Director 5 years' experience in area of law	15	
	Lead/Director 8 years' experience in area of law	20	
	Lead/Director 10 years' experience in area of law	25	
	Lead / Director 15 years' experience in area of law	30	
<b>Experience of the bidder</b>	Indicator		<b>40</b>
	Bidders must attach reference letters confirming experience in area(s) of law which they are bidding for as indicated above. The Reference letter must be on the referee's letterhead, dated and signed and must be for services rendered in the past three (3) years.		
	0 reference letters / irrelevant letters submitted	0	
	1 recent reference letter	10	
	2 recent reference letters	25	
	3 recent reference letters	40	
<b>Total points on functionality</b>			<b>100</b>

**N.B: The Bidder must score a minimum of 80 out of 100 (80%) during Phase 3 (functionality / technical) of the evaluation to be able to be listed on the panel.**

## **8 BID SUBMISSION REQUIREMENTS**

8.1 The service providers should ensure that the following submission requirements, which will be needed for evaluation purposes are included in their bid proposal and are as follows:

- 8.1.1 The service provider must draft a table of content which will indicate where each document is in the proposal.
- 8.1.2 The proposal must consist of two parts, namely the technical bid and the pricing bid (master and copy).
- 8.1.3 A certified copy of the relevant tertiary qualification or equivalent from a member from a recognised institution. The Bidders are expected to ensure that nominated Team Members with foreign qualifications submit South African Qualifications Authority (SAQA) Certificate with the bid submission for evaluation.

**Failure to do so will render the resource nominated not being allocated points and scoring zero (0).**

- 8.1.4 The information in the CV of the proposed team members should include relevant experience and qualifications in the chosen area of expertise demonstrating the required competency.
- 8.1.5 A detailed Project Plan with clear indication of who will be responsible for the management of the assignment as well as its execution. The allocation of team members on the assignments should be based on the experience in delivering the scope of work as listed.
- 8.1.6 Standard bidding documents (SBD 1, 3.3, and 4). Tax compliance status requirements and/or Central Supplier Database (CSD) number or report.
- 8.1.7 Certified copies of identity documents of directors and shareholders of the Bidder(s).
- 8.1.8 Letter of Authority to sign documents on behalf of the Bidder(s).
- 8.1.9 All returnable bid documents must be completed in full and submitted together with the bidder's proposal.

## **9 SPECIAL CONDITIONS OF CONTRACT**

- 9.1 The Ports Regulator will not be held responsible for any costs incurred by the service providers in the preparation, presentation and submission of their proposals.
- 9.2 The service provider(s) must make sure that if one of the team members allocated to the Ports Regulator is no longer forming part of the team, such member must be replaced with the person with the similar expertise and qualifications and the Ports Regulator must be notified.
- 9.3 All the conditions specified in the General Conditions of Contract (GCC) will apply and where the conditions in the special conditions of contract contradicts the conditions in the general conditions of contract the special conditions of contract will prevail.
- 9.4 The proposals should be submitted with all required information containing technical information.
- 9.5 Legal Practices that will qualify to be included in our panel will be prohibited from acting against the Ports Regulator in any matter.
- 9.6 The Bidders failing to meet all the mandatory requirements will automatically be disqualified.
- 9.7 If the application is made by a Joint Venture or Partnership, the accreditation credentials in name of joined entity should be submitted. Both members in the joint venture must meet the requirements of the proposal.
- 9.8 Poor or non-performance by the Bidders will result in removal from the panel.
- 9.9 Should the Bidder(s) fail to perform, the Ports Regulator reserves the right to request that the Bidder remedy the non-performance within fourteen (14) days. Should this non-performance persist, the Bidder will be given thirty (30) days' notice of cancellation of the contract.
- 9.10 Only Legal Practices established in accordance with the provisions of the Legal Practice Act No.28 of 2014, and any other applicable legislation, will be considered for this tender.
- 9.11 A contract will be signed with each Legal Practice appointed to the panel.
- 9.12 Each panel member will be required to sign confidentiality and indemnity agreements with the Ports Regulator.
- 9.13 Panel members are not guaranteed any work under this tender proposal.
- 9.14 The Ports Regulator reserves the right to interview panel members that are shortlisted for specific assignments.
- 9.15 The Ports Regulator, may at its sole discretion award an assignment or any part thereof to more than one panel member.

- 9.16 The Ports Regulator may at its own discretion vary an instruction to include more work.
- 9.17 Panel members may not cede or assign any part of its agreement with Ports Regulator nor subcontract any part of the work assigned to them without the prior written authorisation of the Ports Regulator.
- 9.18 Failure to comply with any condition of this request for a proposal will invalidate respective tender proposal.
- 9.19 The panel members must declare any interest they have in an assignment as well as declare any possible conflict of interest with the Regulator in the pursuance of the proposed assignment.
- 9.20 In the event that any conflict of interest is discovered during the assignment, the Ports Regulator reserves the right to summarily cancel the agreement and demand that all the information, documents and property of the Ports Regulator be returned forthwith.
- 9.21 The Ports Regulator reserves the right to request new or additional information regarding each bidder and any individual or other persons associated with its project proposal.
- 9.22 Bidders shall not make available or disclose details pertaining to their project proposal with anyone not specifically involved, unless authorized to do so by the Ports Regulator.
- 9.23 Bidders shall not issue any press release or other public announcement pertaining to the details of their projects without prior written approval of the Ports Regulator.
- 9.24 Bidders are required to declare any conflict of interest they may have in the transaction for which the bid is submitted or any potential conflict of interest. The Ports Regulator reserves the right not to consider further any bid where such a conflict of interest exists or where such potential conflict of interest may arise.
- 9.25 Bidders are advised that submission of a project proposal does not give rise to any contractual obligations on the part of the Ports Regulator.
- 9.26 Disputes that may arise between the Ports Regulator and a bidder must be settled by means of mutual consultation, mediation (with or without legal representation) or, when unsuccessful, in a South African court of law.
- 9.27 In addition to adherence to the specific terms and conditions of proposals, provided in this document, the bidder shall be bound by the provisions of the conditions of Service Level Agreement ("SLA") yet to be signed with the successful bidder.
- 9.28 All material submitted in response to this Tender will become the sole property of the Ports Regulator. The Ports Regulator expressly reserves the right to utilize any and all ideas submitted in the proposals received unless covered by legal or proprietary rights.
- 9.29 The successful service provider must agree to provide the Regulator with audit access on request during the term of the contract.
- 9.30 The Ports Regulator at any time, in its sole discretion, may terminate its contract with the selected Legal Practice(s), or postpone or delay all or any part of the contract, upon written notice to the selected Legal Practice(s).
- 9.31 The Legal Practice shall exercise all reasonable skill, care and diligence in discharging its obligations in terms of the agreement and shall comply with all prevailing Legislation relating to the rendering of the Services.
- 9.32 The Services will be rendered in a timely manner as each request for services requires, and the Legal Practice will use reasonable endeavours to adhere to the time limits agreed upon when instructions are furnished.
- 9.33 The Legal Practice will be expected to respond to any issue raised by telephone, or e-mail within 24 hours and to any issue raised in any letter or similar manner within 48 hours.

- 9.34 The Legal Practice will be expected to timeously submit all information as requested by the Auditor General and or any relevant authority.
- 9.35 Where no time limits are agreed to, the services will be rendered within a reasonable period and where necessary, in accordance with prevailing legislation.
- 9.36 Failure to render Services within a reasonable time shall be regarded as non-performance and may lead to termination of the mandate.
- 9.37 The Legal Practice shall not settle any claim or litigation by or against the Regulator without the necessary consultation with the Ports Regulator, which authorization shall be made in writing.
- 9.38 The Legal Practice will not appoint Advocates and or Counsel and third parties without prior written consent from the Ports Regulator.
- 9.39 The Ports Regulator will not make payment for any additional human resources e.g (Candidate Legal Practitioner, General Surveyors etc.) other than the Project Manager in the event that written consent was not given by the Regulator for the use of such services.
- 9.40 The Legal Practice once appointed cannot institute and or engage in legal proceedings against the Ports Regulator.
- 9.41 The term of your appointment to the panel of external legal advisors will be a period of twenty-four (24) months. The Regulator may, in its sole discretion, terminate the appointment at any time during that term.
- 9.42 On appointment, the performance measures for the delivery of the agreed services will be closely monitored by the Ports Regulator.

## **10 SUB-CONTRACTING CONDITIONS / REQUIREMENTS**

- 10.1 In a case whereby sub-contracting is not set as a pre-qualification criterion, however the tenderer is intending to sub-contract portion of work, such tenderer awarded a contract may only enter into sub-contracting arrangements with the written approval of the Ports Regulator.

## **11 PAYMENT TERMS**

- 11.1 The Ports Regulator undertakes to pay out in full or as per deliverables within thirty (30) days all valid claims for work done to its satisfaction upon presentation of a substantiated claim and the required reports stipulated in special conditions. No payment will be made where there is outstanding information/work not submitted by the Service Provider/s until that outstanding information is submitted.

## **12 ENQUIRIES**

- 12.1 Should you require any further information in this regard, please do not hesitate to contact: E-Mail: [tenders@portsregulator.org](mailto:tenders@portsregulator.org)

## **13 CLOSING DATE**

- 13.1 The closing date for the submission of your proposals is on the: **14<sup>th</sup> December 2023** at 12h00 midday