

12 Gloucester Road  
Vincent, East London, 5217

Postnet Vincent  
Private Bag X9063  
Suite 302, Vincent, 5247

+27 (0)43 701 3400  
+27 (0)43 701 3415

info@ecsecc.org  
www.ecsecc.org



## INVITATION TO BID

<b>REFERENCE NUMBER:</b>	<b>ECS03/24/25</b>
<b>SERVICES NEEDED:</b>	<b>PROVIDE LEGAL SERVICES FOR 3 YEARS</b>
<b>CLOSING DATE:</b>	<b>27 SEPTEMBER 2024</b>
<b>CLOSING TIME:</b>	<b>15H00</b>
<b>EVALUATION CRITERIA:</b>	<b>80/20 PREFERENCE POINT SYSTEM</b>
<b>ENQUIRIES</b>	
<b>BIDDING PROCEDURES</b>	<b>TECHNICAL-RELATED</b>
<b>MR MALWANDE NTONGANA</b> <a href="mailto:TENDERS@ECSECC.ORG">TENDERS@ECSECC.ORG</a> <a href="mailto:TENDERS.ECSECC@GMAIL.COM">TENDERS.ECSECC@GMAIL.COM</a>	<b>MS NOTHANDO SHENXANE</b> <a href="mailto:NOTHANDO.SHENXANE@ECSECC.ORG">NOTHANDO.SHENXANE@ECSECC.ORG</a> <a href="mailto:TENDERS@ECSECC.ORG">TENDERS@ECSECC.ORG</a> <a href="mailto:TENDERS.ECSECC@GMAIL.COM">TENDERS.ECSECC@GMAIL.COM</a>

### PROPOSAL SUBMITTED BY:

NAME OF COMPANY	
PHYSICAL ADDRESS	



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# **1 INTRODUCTION**

ECSECC is a Schedule 3C public entity reporting to the OTP which was established as a multi-stakeholder Council to advise the provincial government on improving service delivery and to create a common platform for debate between the various development communities of the Eastern Cape.

ECSECC as a knowledge-based organization, seeks to generate, effectively manage, and disseminate information and knowledge. Its core vision is to reduce poverty in the Eastern Cape by means of providing policy advice through facilitation of multi-agency partnerships for execution of provincial priorities, strategic intelligence, and platforms for short- and long-term innovations.

ECSECC is located at Vincent in East London in the Eastern Cape Province only and has a staff compliment of just less than 100 personnel.

ECSECC does not have legal resources internally and therefore is seeking to appoint legal service provider(s) with the following areas of expertise:

- a. Labour and Employment Law
- b. Environmental Law
- c. Intellectual Property Law
- d. Corporate and Commercial Law
- e. Debt Collection Litigation
- f. Procurement Law
- g. Public and Administrative Law

## **2 PURPOSE**

The purpose of this document is to detail the scope of work, incorporating the tasks and responsibilities of the bidder, required by ECSECC for providing legal advice and support for three (3) years.

## **3 LEGISLATIVE FRAMEWORK OF THE BID**

### **3.1 Tax Legislation**

Bidders must be compliant when submitting a proposal to ECSECC and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

### 3.2 Procurement Legislation

This will be processed in accordance with the PPPFA requirements. ECSECC's Supply Chain Management Policy and Contract Management Policy outline the procurement process and a supplier performance evaluation process, respectively.

### 3.3 Technical Legislation and/or Standards

Bidders should be cognizant of the legislation and/or standards specifically applicable to the services.

## 4 COMPULSORY BRIEFING SESSION

4.1 There will be no briefing session planned for this RFP.

## 5 TIMELINE OF THE BID PROCESS

5.1 The period of validity of this bid and the withdrawal of offers, after closing date and time is **90** days. The project timeframes of this bid are set out below:

Activity	Due Date
Advertisement of bid on Government e-Tender Portal/ Eastern Cape Tender Bulletin/ ECSECC Website	6 September 2024
Bid documents will be accessed from the ECSECC website; <a href="http://www.ecsecc.org">www.ecsecc.org</a>	6 September 2024
Questions relating to the bid from bidders	9 September 2024 – 19 September 2024
Bid closing date and time	27 September 2024 at 15H00
Notice to bidders: - ECSECC will endeavor to share any communication related to the bid, that may arise, during the advert period through website <a href="http://www.ecsecc.org/tenders">www.ecsecc.org/tenders</a>	20 September 2024

5.2 All dates and times in this bid are South African standard time.

5.3 Any time or date in this bid is subject to change at the ECSECC's discretion.

5.4 The establishment of a time or date in this bid does not create an obligation on the part of ECSECC 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.

5.5 The bidder accepts that, if ECSECC extends the deadline for bid submission (the Closing Date) for any reason, the requirements of this bid otherwise apply equally to the extended deadline.

## **6 CONTACT AND COMMUNICATION**

- 6.1 A nominated official of the bidder(s) can make enquiries in writing quoting the Bid Number, to Malwande Ntongana for enquiries, via email [tenders@ecsecc.org](mailto:tenders@ecsecc.org) and/or [tenders.ecsecc@gmail.com](mailto:tenders.ecsecc@gmail.com) by phone at 043 701 3400. Bidders must reduce all telephonic enquiries to writing and send them to the above email address.
- 6.2 The delegated official at ECSECC may communicate with the bidder(s) where clarity is sought in the bid proposal.
- 6.3 Any communication to an official or a person acting in an advisory capacity for ECSECC in respect of the bid between the closing date and the award of the bid by the bidder(s) is discouraged.
- 6.4 All communication between the bidder(s) and ECSECC must be done in writing.
- 6.5 Whilst all due care has been taken in connection with the preparation of this bid, ECSECC makes no representations or warranties that the content of the bid or any information communicated to or provided to bidder(s) during the bidding process is, or will be, accurate, current, or complete. ECSECC and its employees and advisors will not be liable with respect to any information communicated which may not be accurate, current, or complete.
- 6.6 If bidder(s) find(s) or reasonably believe(s) it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by ECSECC (other than minor clerical matters), the bidder(s) must promptly notify ECSECC in writing of such discrepancy, ambiguity, error, or inconsistency in order to afford ECSECC an opportunity to consider what corrective action is necessary (if any).
- 6.7 Any actual discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by ECSECC will, if possible, be corrected and provided to all bidder(s) via ECSECC website, without attribution to the bidder(s) who provided the written notice.
- 6.8 All persons (including bidder(s) obtaining or receiving the bid and any other information in connection with the bid of the tendering process) must keep the contents on the bid and other such information confidential, and not disclose or use the information except as required for the purpose of developing a proposal in response to this bid.

## **7 LATE BIDS**

Bids received after the closing date and time, at the address indicated in the bid documents, will not be accepted for consideration and where practicable, be returned unopened to the bidder(s).

## 8 COUNTER CONDITIONS

Bidders' attention is drawn to the fact that amendments to any of the bid conditions or setting of counter conditions by bidders or qualifying any bid conditions may result in the invalidation of such proposals.

## 9 FRONTING

9.1 ECSECC supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent, and legally compliant manner. Against this background, ECSECC condemns any form of fronting.

9.2 ECSECC, in ensuring that bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct, or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in the proposals. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry/investigation, the onus will be on the bidder to prove that fronting does not exist. Failure to do so within a period of (14) fourteen days from date of notification may invalidate the bid/contract and may also result in the restriction of the bidder/contractor to conduct business with the public sector for a period not exceeding (10) ten years, in addition to any other remedies ECSECC may have against the bidder/contractor concerned.

## 10 SUBMISSION OF PROPOSALS

10.1 Bid documents will only be considered if received by ECSECC before or on the closing date and time, regardless of the method used to send or deliver such documents to ECSECC.

10.2 Bids may be submitted either by:

10.2.1 Depositing **into the tender box** placed in the foyer at ECSECC, 12 Gloucester Road, Vincent, East London

OR

10.2.2 Electronically, by way of compressing the documents into a zip format OR by sending through a link pointing to your cloud account for the file access by email to [tenders@ecsecc.org](mailto:tenders@ecsecc.org) and [tenders.ecsecc@gmail.com](mailto:tenders.ecsecc@gmail.com) quoting the reference of the **Bid Number ECS03/24/25**.

10.3 Bids must be submitted on or before 27 September 2024 at 15H00.

## 11 DURATION OF CONTRACT

The successful bidder will be appointed for a period of (36) thirty six months with an option to renew at ECSECC's sole discretion for an additional (24) twenty four months on the same terms and conditions unless the parties agree otherwise. The renewal of the contract will be at intervals of (12) twelve months each.

## 12 SCOPE OF WORK

12.1 ECSECC's primary objective in issuing this request for proposal is to enter into an agreement with prospective Legal Practitioners to provide advice and support on the specific key areas.

12.2 The scope of work includes, but not limited to:

12.2.1 Providing legal opinion and advice,

12.2.2 Legal representation, and

12.2.3 Reviewing of legal document(s) and document templates.

12.3 The bidder(s) are expected to perform the following tasks, but not limited to, per area of expertise:

### 12.3.1 AREA 1: Labour and Employment Law

12.3.1.1 Interpretation of and advice on Labour Law legislative prescripts

12.3.1.2 Provide strategic advice on labour related issues

12.3.1.3 Chairing and prosecution of internal disciplinary proceedings

12.3.1.4 Advise on disciplinary and employee performance issues

12.3.1.5 Labour related litigation

12.3.1.6 Representation at the CCMA, Bargaining Council Forums, Labour Court, Appeal Court, High Court and/or any other competent forum in respect of any labour related disputes

12.3.1.7 Provide general Labour Law advice and services

12.3.1.8 Provide Labour Law training

12.3.1.9 Report on the current status of all matters.

### 12.3.2 AREA 2: Environmental Law

12.3.2.1 Provide advice on regulatory and compliance issues

12.3.2.2 Provide advice on contractual and transactional issues

12.3.2.3 Provide advice on waste and hazardous substance emissions and control.



### **12.3.3 AREA 3: Intellectual Property Law**

- 12.3.3.1 Provide advice on intellectual property matters including trademarks, copyright, designs, etc.
- 12.3.3.2 Provide advice on intellectual property rights generally
- 12.3.3.3 Provide training on intellectual property law
- 12.3.3.4 Report on current status of all matters.

### **12.3.4 AREA 4: Corporate and Commercial Law**

- 12.3.4.1 Provide legal advice on corporate governance
- 12.3.4.2 Conduct legal due diligence exercises
- 12.3.4.3 Assist with drafting, negotiating and reviewing of corporate agreements
- 12.3.4.4 Provide litigation and dispute resolution services in all areas of Corporate and Commercial Law
- 12.3.4.5 Assist with draft, negotiate, review lease agreements, purchase and sale agreements
- 12.3.4.6 Provide advice on all aspects of property law
- 12.3.4.7 Provide advice on insurance related matters
- 12.3.4.8 Provide advice on third party claims
- 12.3.4.9 Provide litigation and dispute resolution services in all areas of Public Liability
- 12.3.4.10 Provide general advice in respect of Public Liability
- 12.3.4.11 Act on behalf of ECSECC in civil matters
- 12.3.4.12 Provide general advisory services
- 12.3.4.13 Provide training
- 12.3.4.14 Report on the current status of all matters

### **12.3.5 AREA 5: Debt Collection Litigation**

- 12.3.5.1 Assist ECSECC with any debt collection litigation
- 12.3.5.2 Report on the current status of all matters

### **12.3.6 AREA 6: Procurement Law**

- 12.3.6.1 Interpretation of and advice on procurement legislative prescripts
- 12.3.6.2 Provide litigation and dispute resolution services in all areas of procurement law
- 12.3.6.3 Provide training on procurement law
- 12.3.6.4 Report on the current status of all matters

#### **12.3.7 AREA 7: Public and Administrative Law**

- 12.3.7.1 Interpretation of and advice on public and administrative legislative prescripts
- 12.3.7.2 Provide litigation and dispute resolution services in all areas of public and administrative law
- 12.3.7.3 Provide training
- 12.3.7.4 Report on the current status of all matters.

### **13 COMPETENCY AND EXPERTISE REQUIREMENTS**

- 13.1 The bidders must ensure that their legal practitioners:
  - 13.1.1 Comply with the Legal Practice Act 28 of 2014, as amended.
  - 13.1.2 Are in good standing with the South African Legal Practice Council Rules and Regulations, as amended.
  - 13.1.3 Possess a valid Fidelity Fund Certificate.
- 13.2 The bidders must demonstrate that they have adequate and suitable human resources dedicated to the needs of the project which includes the following:
  - 13.2.1 Admitted attorney with minimum of three (3) years' experience from date of admission as a legal practitioner, relevant to the area of expertise chosen.
  - 13.2.2 Director with a minimum of ten (10) years' experience from date of admission as an admitted attorney.
- 13.3 The bidders must be located in the Eastern Cape.

### **14 SPECIAL CONDITIONS OF CONTRACT**

- |                            |  |
|----------------------------|--|
| 14.1 Due Diligence         | ECSECC reserves the right to conduct due diligence prior to final award or any time during the contract period. Should that be necessary, the bidder provide the required information or give access to the required information.  |
| 14.2 Provision of Services | The request for service is based on need. Should there be a need for service, ECSECC shall issue a task to the service provider to which the service provider will respond with a quotation with a minimum of estimate hours to spend on the task at hand, rates as per the agreed rates in the contract. ECSECC, on acceptance of the quotation, will issue a purchase order. |

14.3	Invoicing	<p>The service provider will issue the necessary report as per the accepted quotation, invoice showing the actual hours spent on the task and the rates charged as per the agreed rates in the contract.</p> <p>ECSECC shall not pay any invoice without an authorized purchase order.</p>
14.4	Payment	<p>The payment of invoices shall be made within thirty (30) days of the date on which the invoice and all supporting documentation is received.</p> <p>The supporting documentation includes invoices from third parties, and all other proof of liability, etc.</p>
14.5	Prices	<p>The prices charged on the invoices shall not exceed the prices quoted and committed in the purchase order, unless prior approval by ECSECC.</p>
14.6	Tax compliancy	<p>No contract shall be concluded with any bidder whose tax matters are not in order.</p> <p>The bidder must ensure that their tax matters are in order throughout the contract period.</p>
14.7	Declaration Compliance	<p>ECSECC shall supply the service provider with the Bidder's Declaration Form every beginning of the financial year, for the duration of the contract, which the service provider will complete and send it back to ECSECC year.</p>
14.8	Good Standing	<p>Legal Practitioners must maintain a good standing with the South African Legal Practice Council, for the duration of the contract period, as per the rules and regulations.</p>
14.9	Disputes Resolution	<p>Should there be disagreement between the service provider and the project officials pertaining to this contract, the service provider may escalate the matter to the ECSECC CEO before engaging the legal process.</p> <p>ECSECC will always attempt to address any disagreements with the service provider to avoid legal disputes.</p>

## 15 PRICING MODEL

- 15.1 The pricing must include all costs that will ensure that all requirements and scope of work are met.
- 15.2 Price must be in South African currency and must be inclusive of VAT in compliance with Value Added Tax No. 89 of 1991, and all applicable disbursements.
- 15.3 The bidders must indicate the price in all applicable elements listed in their pricing schedule (**no hidden costs/ unknown costs will be accepted**).
- 15.4 The pricing schedule is for illustrative purposes, bidders must indicate the rate per hour for each legal practitioner using the estimated hours reflected below.

LEGAL PRACTITIONER	TOTAL ESTIMATE HOURS PER YEAR	FEES PER PRACTITIONER BASED ON RATE PER HOUR (ZAR)			
		YEAR 1	YEAR 2	YEAR 3	TOTAL
Director	480 hours				
Admitted Attorney	480 hours				
<b>Total Fees (excluding VAT)</b>	<b>960 hours</b>				
ITEMS	RATES	DISBURSEMENTS (ZAR)			
		YEAR 1	YEAR 2	YEAR 3	TOTAL
Telephone calls					
Fax <b>(Rands per page)</b>					
Copies -black & white <b>(cents per page)</b>					
Copies -colour <b>(cents per page)</b>					
Travelling costs <b>(Rands per km)</b>					
Postal/ Courier Service					
Receiving calls					
Receiving emails					
<b>Total Disbursements (excluding VAT)</b>					
<b>Total Fees and Disbursements (excluding VAT)</b>					
<b>VAT</b>					
<b>TOTAL (including VAT)</b>					

## 16 EVALUATION AND SELECTION CRITERIA

ECSECC has set minimum standards (Gates) that a bidder needs to meet in order to be evaluated and selected as a successful bidder. The minimum standards consist of the following:

Pre-qualification Criteria (Gate 0)	Functionality Criteria (Gate 1)	Price and Specific Goals (Gate 2)
Bidders must submit all documents as outlined in <b>(Table 1)</b> below. Only bidders that comply with ALL these criteria shall proceed to Gate 1.	Bidder(s) are required to achieve a minimum of <b>80</b> points out of 100 points to proceed to Gate 2 (Price and Specific Goals).	Bidders will be evaluated out of 100 points, as per <b>(Table 2)</b> , below and Gate 2 will only apply to bidders who have met and exceeded the threshold of 80 points.

### 16.1 **Gate 0: Prequalification**

16.1.1 The bidders must return the documents listed in **Table 1 below**.

16.1.2 All documents must be completed and signed by the duly authorized representative of the prospective bidders.

16.1.3 During this phase Bidders' responses will be evaluated based on compliance with the listed administration, using the Central Supplier Database (CSD), and mandatory bid requirements.

16.1.4 The bidders' proposals may be disqualified for non-submission of any of the documents.

**Table 1:** Documents that must be submitted for Pre-qualification.

<b>Document that must be submitted</b>	<b>Non-submission may result in disqualification?</b>	
<b>1. SBD 1 -Invitation to Bid</b>	<b>YES</b>	Complete and sign the supplied pro forma document.
<b>2. Tax Clearance Certificate</b>	<b>YES</b>	a. ECSECC transacts with service providers that have a compliant tax status. b. ECSECC makes use of the CSD report to verify tax status of suppliers. Please ensure that your tax affairs are in good order with SARS. c. ECSECC does not transact with service providers that have a non-compliant tax status.
<b>3. SBD 3.3 -Pricing Schedule</b>	<b>YES</b>	Complete the supplied pro forma document.
<b>4. SBD 4 -Bidders' Disclosure</b>	<b>YES</b>	Complete and sign the supplied pro forma document.
<b>5. SBD 6.1 -Preference Points Claim Form in terms of Preferential Procurement Regulations, 2022</b>	<b>NO</b>	Complete and sign the supplied pro forma document. Non-submission will lead to a zero (0) score on Specific Goals.
<b>6. SBD 7.2 -Contract Form</b>	<b>NO</b>	Complete and sign the supplied pro forma document.
<b>7. General Conditions of Contract (GCC)</b>	<b>YES</b>	Complete and sign the supplied pro forma document.
<b>8. Proposal showing the areas of expertise of your choice and responding to the scope of work</b>	<b>YES</b>	Non-submission will render bid non-responsive.

## 16.2 **Gate 1: Functionality Criteria**

Bidders must score 80 points to proceed to Gate 2.

<b>Criterion Element</b>	<b>Weight</b>
<b>Capacity and relevant experience of firm</b> a. The bidder's proposal showing the areas of expertise they propose for and show appropriate resourcing, as detailed under scope of work, above. Minimum of three (3) reference letters from clients the bidder provided services to: i. 3x favourable reference letters <b>[10 points]</b> ii. Less than 3 reference letters <b>[0 points]</b> b. Proof of adequate and suitable human resource: i. Director with relevant experience and expertise in the proposed area of expertise <b>[10 points]</b> ii. Admitted attorney with relevant experience and expertise in the proposed area of expertise <b>[10 points]</b> <b>[points based on submission of proposal, reference letters and CV]</b>	30
<b>Capacity and competency of team in providing legal services</b> a. Competency and qualification of team: i. Director with minimum of 10 years' experience from date of being admitted as an admitted attorney <b>[10 points]</b> ii. Admitted attorney with minimum of 3 years' experience from date of being admitted as an admitted attorney <b>[10 points]</b> b. Letter of good standing with Legal Practice Council i. Director <b>[10 points]</b> ii. Attorney <b>[10 points]</b> c. Valid Fidelity Fund Certificate i. Director <b>[10 points]</b> ii. Attorney <b>[10 points]</b> <b>[points based on submission of CV, certified certificates]</b>	60
<b>Location</b> a. Operating offices within the borders of Eastern Cape <b>[10 points]</b> b. Operating offices outside the borders of Eastern Cape <b>[0 points]</b> <b>[submit proof in the form of municipal utility bill or lease agreement, etc.]</b>	10
<b>Total</b>	100

## 16.3 **Gate 2: Price and Specific Goals**

16.3.1 In terms of regulation 4 of the Preferential Procurement Regulations, 2022, pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated on the 80/20-preference point system in terms of which points are awarded to bidders on the basis of:

- The bid price (maximum 80 points) and
- Specific Goals (maximum 20 points).

16.3.2 The evaluation of price and specific goals will be evaluated as outlined in **Table 2 below**.

**Table 2:** Price and Specific Goals Evaluation

Element	Weight
Price	80
Specific Goals	20
Historically Disadvantaged Individuals (HDIs)	
- Enterprises with ownership of 51% or more by person(s) who are black persons (5 points)	
- Enterprises with ownership of 51% or more by person(s) who are women (5 points)	
- Enterprises with ownership of 51% or more by person(s) who are youth (5 points)	
- Enterprises with ownership of 51% or more by person(s) with disability (2 points)	
- Enterprises located and/or operating within the borders of the Eastern Cape (3 points)	
<b>Total</b>	<b>100</b>

## 17 GENERAL CONDITIONS OF CONTRACT

17.1 any award made to a bidder(s) under this bid is conditional, amongst others, upon-

17.2 The bidder(s) accepting the terms and conditions contained in the General Conditions of Contract (GCC) as the minimum terms and conditions upon which ECSECC is prepared to enter into a contract with the successful bidder(s).

17.3 The bidder submitting the **GCC to ECSECC together with its bid, duly signed** by an authorized representative of the bidder.



## **18 SERVICE LEVEL AGREEMENT**

- 18.1 Upon award, ECSECC and the successful bidder will conclude a supplementary agreement regulating the specific terms and conditions applicable to the services being procured by ECSECC.

## **19 CONDITIONS OF THIS BID**

- 19.1 Bidders must ensure compliance on a paragraph-to-paragraph basis. Bids that are not completed in the manner prescribed may be considered incomplete and rejected.
- 19.2 ECSECC reserves the right to:
- 19.2.1 Not award or cancel this bid at any time and shall not be bound to accept the lowest or any bid.
  - 19.2.2 Negotiate with one or more preferred bidder(s) identified in the evaluation process, regarding any terms and conditions, including price without offering the same opportunity to any other bidder(s) who have not been awarded the status of the preferred bidder(s).
  - 19.2.3 Accept part of a bid rather than the whole bid.
  - 19.2.4 Carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the service offered by the bidder(s), whether before or after adjudication of the bid.
  - 19.2.5 Correct any mistakes at any stage of the bid that may have been in the bid documents or occurred at any stage of the tender process.
  - 19.2.6 Cancel and/or terminate the bid process at any stage, including after the closing date and/or after presentations have been made, and/or after the bids have been evaluated and/or after the preferred bidder(s) have been notified of their status as such.
  - 19.2.7 Conduct Financial Statement Analysis only on the recommended bidders after completion of the pricing and specific goals evaluation stage.
  - 19.2.8 Award a bid based on which bidder is offering the best value for money, even if the bid is not the lowest priced bid.

19.2.9 Not award the bid to the bidder whose financial statements are not in order.

19.2.10 Award to multiple bidders to spread the risk.

## **20 BIDDER'S DECLARATION**

20.1 The bidders are required to confirm that they will:

20.1.1 Act honestly, fairly, and with due skill, care, and diligence, in the interests of ECSECC,

20.1.2 Have and effectively employ the resources, procedures, and appropriate technological systems for the proper performance of the services,

20.1.3 Act with circumspection and treat ECSECC fairly in a situation of conflicting interests,

20.1.4 Comply with all applicable statutory or common law requirements applicable to the conduct of business,

20.1.5 Make adequate disclosures of relevant material information including disclosures or actual or potential own interests, in relation to dealings with ECSECC,

20.1.6 Avoid fraudulent and misleading advertising, canvassing, and marketing.

20.1.7 Conduct their business activities with transparency and consistently uphold the interests and needs of ECSECC as a client before any other consideration, and

20.1.8 Ensure that any information acquired by the bidder(s) from ECSECC will not be used or disclosed unless the written consent of ECSECC has been obtained to do so.

## **21 CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

21.1 ECSECC reserves the right to disqualify any bidder who either itself or any of whose members (save for such members who hold a minority interest in the bidder through shares listed on any recognized stock exchange), indirect members, being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognized stock exchange, directors or members of senior management, whether in respect of ECSECC or any other government organ or entity and whether from the Republic of South Africa or otherwise "Government Entity".

- 21.1.1 Engages in any collusive bidding, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid;
- 21.1.2 Seeks any assistance, other than assistance officially provided by a Government Entity, from any employee, advisor or other representative of a Government Entity in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;
- 21.1.3 Makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of ECSECC's officers, directors, employees, advisors or other representatives;
- 21.1.4 Makes or offers any gift, gratuity, anything of any value or other inducement, to any Government Entity's officers, directors, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;
- 21.1.5 Accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to a Government Entity;
- 21.1.6 Pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or results from, the award of any bid, contract, right or entitlement which is in any way related to procurement or the bidding of any services to a Government Entity;
- 21.1.7 Has in the past engaged in any matter referred to above; or
- 21.1.8 Has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such bidder, member or director's name not specifically appearing on the List of Tender Defaulters kept at National Treasury.

## **22 MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT**

- 22.1 The bidder should note that the terms of its Tender will be incorporated in the proposed contract by reference and that ECSECC relies upon the bidder's Tender as a material representation in making an award to a successful bidder and in concluding an agreement with the bidder.

22.2 It follows therefore that misrepresentations in a Tender may give rise to service termination and a claim by ECSECC against the bidder notwithstanding the conclusion of the SLA between ECSECC and the bidder for the provision of the service in question. In the event of a conflict between the bidder's proposal and the SLA concluded between the parties, the SLA will prevail.

## **23 PREPARATION COSTS**

The bidder will bear all its costs in preparing, submitting, and presenting any response or Tender to this bid and all other costs incurred by it throughout the bid process. Furthermore, no statement in this bid will be construed as placing ECSECC, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the bidder(s) in the preparation of their response to this bid.

## **24 INDEMNITY**

If a bidder breaches the conditions of this bid and as a result of that breach, ECSECC incurs costs or damages (including, without limitation, the costs of any investigations, procedural impairment, repetition of all or part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations), then the bidder indemnifies and holds ECSECC harmless from any and all such costs which ECSECC may incur and for any damages or losses ECSECC may suffer.

## **25 PRECEDENCE**

This document will prevail over any information provided during any briefing session whether oral or written unless such written information provided expressly amends this document by reference.

## **26 LIMITATION OF LIABILITY**

A bidder participates in this bid process entirely at its own risk and cost. ECSECC shall not be liable to compensate the bidder on any grounds whatsoever for any costs incurred or any damages suffered as a result of the bidder's participation in this bid process.

## **27 TAX COMPLIANCE**

No tender shall be awarded to a bidder who is not tax compliant. ECSECC reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award, or has submitted a fraudulent TCC to ECSECC, or whose verification

against the Central Supplier Database (CSD) proves non-compliant. ECSECC further reserves the right to cancel a contract with a successful bidder in the event that such bidder does not remain tax compliant for the full term of the contract.

## **28 NATIONAL TREASURY**

No tender shall be awarded to a bidder whose name (or any of its members, directors, partners, or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. ECSECC reserves the right to withdraw an award, or cancel a contract concluded with a bidder should it be established, at any time, that a bidder has been blacklisted with the National Treasury by another government institution.

## **29 GOVERNING LAW**

South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African courts in any dispute of any kind that may arise out of or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

## **30 RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL**

A bidder is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors, and other representatives), its sub-contractors, if any, and personnel of its sub-contractors comply with all terms and conditions of this bid. In the event that ECSECC allows a bidder to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the bidder and ECSECC will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

## **31 CONFIDENTIALITY**

Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s) will be disclosed by any bidder or other person not officially involved with ECSECC's examination and evaluation of a Tender.

No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a Tender. This bid and any other documents supplied by

ECSECC remain proprietary to ECSECC and must be promptly returned to ECSECC upon request together with all copies, electronic versions, excerpts, or summaries thereof or work derived there from.

Throughout this bid process and thereafter, bidder(s) must secure ECSECC's written approval prior to the release of any information that pertains to (a) the potential work or activities to which this bid relates; or (b) the process which follows this bid. Failure to adhere to requirement may result in disqualification from the bid process and civil action.

No confidential information relating to the process of evaluating or adjudicating bids or appointing a bidder will be disclosed to a bidder or any other person not officially involved with such process.

### **32 PROPRIETARY INFORMATION**

Bidder will on their bid cover letter make declaration that they did not have access to any ECSECC proprietary information or any other matter that may have unfairly placed that bidder in a preferential position in relation to any other bidder(s).