

TERMS OF REFERENCE



**APPOINTMENT OF A PANEL OF ATTORNEYS OF LEGAL LAW FIRMS AS PER SPECIFIED
CATEGORIES FOR A PERIOD OF THIRTY-SIX (36) MONTHS**

WRSCM-2021/2022-0001

1. BACKGROUND TO W&RSETA

The Wholesale and Retail Sector Education and Training Authority (W&RSETA) was established in 2000 in terms of the Skills Development Act (as amended). A public entity (A schedule 3A Entity) which aims to facilitate the skills development needs of the Wholesale and Retail (W&R) sector through the implementation of learning programmes, disbursement of grants and monitoring of education and training as outlined in the National Skills Development Strategy (NSDS).

2. BACKGROUND OF THE PROJECT

The W&RSETA has a Board that is the Accounting Authority which has to play a role within the Legal Prescripts and Exercise their Fiduciary duties, however these legal prescripts and fiduciary duties at an Operational level, are exercised within the ambit of the Chief Executive Officer (CEO). The W&RSETA as an entity delivering its mandate has to engage and conclude several Agreements or Contracts to give effect to its business and deliverables on Corporate Governance and oversight provided by the Board and its sub-committees.

The W&RSETA has Organisational Policies and Procedures that guide employee Conduct and Labour Relations within the Organisation. The Legal services are therefore requested within the context of the Strategic and Operational areas of the business of the W&RSETA.

3. OBJECTIVE OF THE BID

The objective of the bid is to appoint a panel of suitably qualified legal Firms to render Legal Services within various Legal Disciplines indicated in the scope of services. The duration of the ad hoc services will be for thirty-six months (36) however, it should be noted that the appointed legal service providers that form part of the panel will be awarded work on a rotational basis.

4. SCOPE OF SERVICES

The Law Firms must choose a category of specialisation, in line with the firms' main area of expertise as tabulated here below:

CATEGORY
General and Specific Litigations (Civil Law or Criminal Law)
Commercial/Corporate Law and Governance
Labour Law
General Legal Advice and Opinions
Contract Vetting, interpretation, and disputes

DESCRIPTION OF SERVICES REQUIRED

Description:

APPOINTMENT OF A PANEL OF 5 (FIVE) LAW FIRMS OF ATTORNEYS PER SPECIFIED CATEGORIES ON AN "AS AND WHEN BASIS", AT A FIXED RATE QUOTED FOR EACH YEAR FOR 36 MONTHS.

The Services will consist of:

Litigation:

Upon receiving a brief and instruction the appointed service provider shall prepare and represent the W&RSETA in litigation cases where the W&RSETA is Cited as a Plaintiff, Defendant or is an Applicant or **Respondent in the following areas of law:**

- Contractual disputes,
- Administrative and Constitutional law,
- Sale and lease agreements,
- Debts, Claims Management and Collections, and
- Civil litigation of any nature.

Labour including:

- Upon receiving the brief and instruction the incumbent shall prepare and represent the W&RSETA in all labour forums including CCMA, Labour Court, Supreme Court or the Constitutional Court,
- Investigations of misconduct matters,
- Presiding over disciplinary matters, and
- Representation of the employer in disciplinary matters

General Legal Advice:

Provision of legal opinions inter alia, on the following areas of law but not limited

to:

- Commercial Law,
- Contractual disputes,
- Administrative and Constitutional Law,
- Sale and lease,
- General interpretation of Statutes,
- Labour Law,
- Skills Development Act and regulations and any amendments,
- Skills Levies Act and grant regulations and amendments,
- Workplace-based Learning Programme Regulations and amendment,
- SLAs with other Skills development institutes e.g. QCTO, SAQA, Other SETAs, and
- Strategic Partnerships with National and International organisations.

Corporate Law provides advisory services relating to:

- Corporate Governance,
- Code of Good Governance, e.g. King IV and King V, and
- All legal prescripts, especially the Public Finance Management Act as it relates to the management of finances of Public Entities.

	<p>Contract Drafting, Vetting, Intellectual Property, Trademark, Copy Right and patent:</p> <ul style="list-style-type: none"> • Drafting of contracts, • Vetting of contracts, and • Interpretation of contractual provisions where disputes arise • Managing matters pertaining to- • Intellectual Property rights • Trademark • CopyRight and • Patent 										
Requirements	<p>A panel of a minimum of 5 Law Firms per category:</p> <table border="1" data-bbox="411 622 1321 869"> <tr> <td>Litigation</td> <td>5 Firms</td> </tr> <tr> <td>Labour matters</td> <td>5 Firms</td> </tr> <tr> <td>General Legal Advice and Opinion</td> <td>5 Firms</td> </tr> <tr> <td>Commercial/Corporate Law and Governance</td> <td>5 Firms</td> </tr> <tr> <td>Contract Drafting, Vetting, Intellectual Property</td> <td>5 Firms</td> </tr> </table>	Litigation	5 Firms	Labour matters	5 Firms	General Legal Advice and Opinion	5 Firms	Commercial/Corporate Law and Governance	5 Firms	Contract Drafting, Vetting, Intellectual Property	5 Firms
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Contract Drafting, Vetting, Intellectual Property	5 Firms										
Pricing format	SEE ATTACHED AS ANNEXURE A for detailed pricing format										

5. Expected outcomes and deliverables

- The Service Providers will be required to deliver as per the scope and brief on each matter that will be given as and when required;
- Service Providers to demonstrate the ability to deliver the service within the required services within the set parameters and scope;
- Demonstrate a proven track record concerning the services required; and
- Demonstrate compliance with the W&RSETA requirements and briefs submitted.

6. MONITORING PROGRESS OF SERVICE

The W&RSETA shall monitor and evaluate the progress of the service delivery as per the deliverables outlined in the brief. The Appointed Service Providers are advised that their performance will be managed at various intervals as dictated by the concluded Service Level Agreement.

7. QUALITY ASSURANCE REVIEWS OF THE SERVICE

The quality of the services will be managed via the approved brief.

8. INDEPENDENCE AND OBJECTIVITY OF STAFF

In carrying out the services, the approved Service Providers must ensure that their staff members maintain objectivity by remaining independent of the activities they execute.

9. Pricing

All pricing provided must be in line with the scope of service and inclusive of any applicable VAT. Reference to the Pricing Schedule.

Position	Rate per hour Year 1	Rate per hour Year 2	Rate per hour Year 3	Indicate Resources to be used on a matter
Partner				
Director				
Senior Associate				
Junior Associate				
Candidate Attorney				
Disbursements will be billed separately				

*The Annual Escalation Rate Should Be Inflation Linked

* Service Provider to indicate where they have resource available per Column 5 in table above

When in a litigious matter the Law firm appointed on an ad hoc basis agrees to align themselves with the relevant Forum Tariff scale that is applicable where the matter is being heard.

10. Technical Evaluation

Mandatory Requirements			
Compliance Documentation	Mandatory Submission Requirements	YES	NO
	Bidder must fully complete the Prescribed Standard Bidding Documentation	<input type="checkbox"/>	<input type="checkbox"/>
	Bidder must be registered on Central Supplier Database (CSD) or must submit proof of registration	<input type="checkbox"/>	<input type="checkbox"/>
	Bidder must submit two (2) hard copies of the Compliant, Technical and Price Proposal i.e., an Original and a Copy thereof	<input type="checkbox"/>	<input type="checkbox"/>
	Bidder must provide proof of a valid letter of good standing with the Legal Practice Council	<input type="checkbox"/>	<input type="checkbox"/>
	Bidder must provide proof of a valid Fidelity Fund Certificate	<input type="checkbox"/>	<input type="checkbox"/>
	Bidder must provide proof of a valid Admission Certificate to the relevant Law Society and valid Current Membership	<input type="checkbox"/>	<input type="checkbox"/>
	Bidder must provide a Letter from Auditors that the Firm is in Good Financial Standing	<input type="checkbox"/>	<input type="checkbox"/>
Failure to adhere to the Mandatory required will result in disqualification of the bidder.			
Technical Evaluation: The Technical threshold for this bid is 80%. Bidders that fail to meet the 80% technical threshold, will not be evaluated on Price.			
Technical Evaluation			

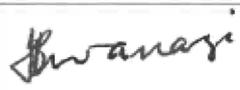


Criteria	Evidence Required	Max score	Points Allocation
Experience and Expertise			
Understanding of the regulatory framework applicable to the related area(s) of specialization and experience of providing legal services to an organ of state (The Firm)			
Experience and understanding of Legislative and Regulatory requirements	<ul style="list-style-type: none"> Bidder must demonstrate extensive experience and understanding of the legislative and regulatory framework applicable to the related areas of expertise indicated in the scope of services. This the bidder must do by submitting a full company profile and certificates to indicate the firms incorporation date and various affiliates profiles (e.g Senior or Junior advocates, other resources that the firm may use in executing the firms expertise). 	30	<ul style="list-style-type: none"> 15 years of experience to be outlined- 30 points 5 or more years of experience to be outlined- 20 points Less than 5 years of experience to be outlined- 10 points
Experience of Key Staff Lead Attorney (Team Leader) in the related area(s) of specialization (CV/Profiles to be attached)	<ul style="list-style-type: none"> Bidders must supply detailed CVs, company profiles, valid qualifications of the team to be allocated to SETA, specific relevant assignments undertaken within organs of state, and preferably within a SETA environment with contact details. 	30	<ul style="list-style-type: none"> Less than 5 years' experience i.e., total duration of professional activity- 10 points More than 5 years but less than 15 years' experience i.e., total duration of professional activity- 20 points More than 5 years but more than 15 years' experience i.e., total duration of professional activity- 30 points
Experience in comparative projects	<ul style="list-style-type: none"> Bidders must supply details of specific relevant assignments undertaken within organs of state, and preferably within a SETA environment with contact details. 	30	<ul style="list-style-type: none"> Two reference letters- 10 points Four reference letters- 20 points Six reference letters- 30 points
Capacity and Existence of the Firm			
Understanding of the regulatory framework applicable to the related area(s) of specialization and experience of providing legal services to organs of state (the Firm)			



Law firms reach or ability to practice Nationally	Bidder must indicate footprint of presence Nationally or through its preferred correspondent attorneys in various areas of the country <i>provinces/ nationally</i>	10	<ul style="list-style-type: none">• Footprint in 2-4 provinces- 3 points• Footprint in 4-6 provinces- 5 points• Footprint in 6-9 provinces-10 points
Total			100 points
Minimum functionality qualifying score of 80 points			

11. APPROVALS

Reviewed for Recommendation By:			
Name	Mr. Jacobus Geldenhuys		
Position	BSC Chairperson		
Signature		Date	2021/10/14
Recommendation for Approval By:			
Recommended:	<input type="checkbox"/>	Not Recommended:	<input type="checkbox"/>
Manager's Full Name	Ms. Lindiwe Nhlapo		
Position	Chief Financial Officer		
Notes			
CFO's Signature		Date	15/10/2021
Approval By:			
Approved:	<input checked="" type="checkbox"/>	Not Approved:	<input type="checkbox"/>
Manager's Full Name	Mr. Tom Mkhwanazi		
Position (Executive)	Chief Executive Officer		
Notes			
CEO's Signature		Date	21/10/2021

Part A - Mandatory Requirements	
1	Completion of the Prescribed Standard Bidding Documentation
2	Proof of registration on the Central Supplier Database (CSD)
3	Proof of valid letter of good standing with the Legal Practice Council
4	Proof of valid Fidelity Fund Certificate
5	Proof of valid Admission Certificate to the relevant Law Society and Current Membership
6	Letter from Auditors that the Firm is in Good financial Standing

	Weight	% Score	Weighted Score
Part B - Technical Evaluation			
1	50,00%	66,67%	33%
2	50,00%	50,00%	25%
Final Score			58%