

## REQUEST FOR REGISTRATION

**YOU ARE HEREBY INVITED TO SUBMIT A BID TO MEET THE REQUIREMENTS OF THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

<b>BID NUMBER:</b>	<b>RFR006/EMPLOYMENT/WHITE COLLAR CRIME/FORENSIC INVESTIGATIONS/2025</b>
<b>COMPULSORY BRIEFING SESSION DETAILS:</b>	<a href="#">Briefing Session Meeting Registration Link</a>
<b>CLOSING DATE:</b>	<b>13 January 2026</b>
<b>CLOSING TIME:</b>	23H55 (Midnight)
<b>PERIOD FOR WHICH BIDS ARE REQUIRED TO REMAIN OPEN FOR ACCEPTANCE:</b>	240 days
<b>DESCRIPTION OF BID:</b>	<b>PANEL OF LAW FIRMS: EMPLOYMENT, WHITE COLLAR CRIME AND FORENSIC INVESTIGATIONS</b>
<b>BID DOCUMENTS ELECTRONIC SUBMISSION:</b>	<p><b>ELECTRONIC SUBMISSIONS</b></p> <p><b><u>INSTRUCTIONS:</u></b></p> <ul style="list-style-type: none"> <li>➤ Bidders are required to submit written requests for clarification via e-mail to <a href="mailto:davidscm@dbsa.org">davidscm@dbsa.org</a> <b>ONLY</b>, quoting the RFR Number on the subject of the e-mail. This must be done three (3) working days submission day.</li> <li>➤ Bidders will thereafter receive a OneDrive Link to upload their submission documents electronically.</li> <li>➤ Written requests for clarification (including request for submission link) considered up to and including <b>07 January 16:30PM</b> Johannesburg time. Requests received after this date may not be attended to.</li> <li>➤ Any requests after the stipulated date and time may be disregarded.</li> </ul> <p><b>NB: Electronic submission is encouraged for all bidders interested in this tender.</b></p> <p><b>Closing date of this RFR006/2025 is 07 January 2026 before 23:55PM.</b></p> <p><b>No physical bids will be received or accepted at the DBSA offices</b></p>
<b>NAME OF BIDDER:</b>	
<b>CONTACT PERSON:</b>	
<b>EMAIL ADDRESS:</b>	
<b>TELEPHONE NUMBER:</b>	
<b>FAX NUMBER:</b>	
<b>BIDDER'S STAMP OR SIGNATURE</b>	



The Development Bank of Southern Africa has a Zero Tolerance on Fraud and Corruption.  
Report any incidents of Fraud and Corruption to Whistle Blowers on any of the following:

TollFree : 0800 20 49 33  
Email : [dbsa@whistleblowing.co.za](mailto:dbsa@whistleblowing.co.za)  
Free Post : Free Post KZN 665 | Musgrave | 4062  
SMS : 33490

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**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED ("DBSA")</b>
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BID NUMBER: **RFR006/2025**

DESCRIPTION: **PANEL OF LAW FIRMS: EMPLOYMENT, WHITE COLLAR CRIME AND FORENSIC INVESTIGATIONS**

NON-COMPULSORY BRIEFING LINK: [Briefing Session Meeting Registration Link](#)

NON-COMPULSORY BRIEFING DATE: 10 December 2025

Time: 10:00AM

Closing time for the OneDrive Link submissions - **23h55 on the 13 January 2026 (SAST)**

CLOSING DATE: 13 January 2026

CLOSING TIME: 23H55PM

Name



Bidder Name

Name



Folder 1\_Financial Proposal



Folder 2\_Technical Proposal

- a) It remains the bidder's responsibility to ensure that the bid submission is uploaded using the correct bidder document and tender link.
- b) Should a bidder encounter an issue with the system, the bidder must provide sufficient evidence as proof of attempting to upload their submission before the cut-off time and the error received.
- c) Faxed, emailed bids will not be accepted, only an electronic submission received via the link will be accepted.
- d) It is therefore the responsibility of the bidder to request for a link to participate.
- e) The DBSA assumes no responsibility if a Bidder's designated email address is not correct, or if there are technical challenges, including those with the Bidders computer, network, or internet service provider (ISP).

**BID SUBMISSION LINK REQUESTS:**

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT, WHICH ARE SET OUT IN PART C OF THIS DOCUMENT.

THE FOLLOWING PARTICULARS MUST BE FURNISHED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED).

BIDDERS THAT ARE UNINCORPORATED CONSORTIA CONSISTING OF MORE THAN ONE LEGAL ENTITY MUST SELECT A LEAD ENTITY AND FURNISH THE DETAILS OF THE LEAD ENTITY, UNLESS OTHERWISE SPECIFIED.

<b>NAME OF BIDDER AND EACH ENTITY IN CONSORTIUM:</b>				
<b>POSTAL ADDRESS:</b>				
<b>STREET ADDRESS:</b>				
<b>CONTACT PERSON (FULL NAME):</b>				
<b>EMAIL ADDRESS:</b>				
<b>TELEPHONE NUMBER:</b>				
<b>FAX NUMBER:</b>				
<b>BIDDER REGISTRATION NUMBER OR REGISTRATION NUMBER OF EACH ENTITY IN CONSORTIUM</b>				
<b>BIDDER VAT REGISTRATION NUMBER OR VAT REGISTRATION NUMBER OF EACH ENTITY IN CONSORTIUM</b>				
<b>BBBEE STATUS LEVEL VERIFICATION CERTIFICATE /BBBEE STATUS LEVEL SWORN AFFIDAVIT SUBMITTED?</b> <b>[TICK APPLICABLE BOX]</b>	<b>YES</b>		<b>NO</b>	
<b>IF YES, WHO ISSUED THE CERTIFICATE?</b>				

1..1.1	ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES/WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]		
1..1.2	ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES/WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW]		
1..1.3	SIGNATURE OF BIDDER			
1..1.4	DATE			
1..1.5	FULL NAME OF AUTHORISED REPRESENTATIVE			
1..1.6	CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			
REGISTERED WITH THE NATIONAL TREASURY CSD [TICK APPLICABLE BOX]	YES		NO	
CSD REGISTRATION NUMBER				
TAX COMPLIANCE STATUS PIN (TCS) NUMBER ISSUED BY SARS				

**PART B**  
**TERMS AND CONDITIONS FOR BIDDING**

<b>1. BID SUBMISSION:</b>
<p>1.1. BIDS MUST BE SUBMITTED ELECTRONICALLY BY THE STIPULATED TIME TO THE LINK PROVIDED. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.</p> <p>1.2. <b>ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED – (NOT TO BE RE-TYPED)</b></p> <p>1.3. <b>SOUTH AFRICAN BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED BY BIDDING INSTITUTION.</b></p> <p>1.4. <b>WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MUST BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.</b></p>
<b>2. TAX COMPLIANCE REQUIREMENTS</b>
<p>2.1 ALL BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS IN THEIR COUNTRY OF RESIDENCE.</p> <p>2.2 SOUTH AFRICAN BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.</p> <p>2.3 SOUTH AFRICAN BIDDERS CAN APPLY FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE <a href="http://WWW.SARS.GOV.ZA">WWW.SARS.GOV.ZA</a>.</p> <p>2.4 SA BIDDERS' MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.</p> <p>2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER (TAX COMPLIANCE) IN ACCORDANCE WITH APPLICABLE LEGISLATION IN THEIR COUNTRY OF RESIDENCE.</p> <p>2.6 WHERE SA BIDDERS HAVE NO TCS AVAILABLE BUT ARE REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.</p>
<b>3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>
<p>3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?  <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?  <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES</span>  <input type="checkbox"/> NO</p> <p>3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? <span style="float: right;"><input type="checkbox"/> YES</span>  <input type="checkbox"/> NO</p> <p><b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.</b></p>

**NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

## PART C

### CHECKLIST OF COMPULSORY RETURNABLE SCHEDULES AND DOCUMENTS

Please adhere to the following instructions:

- Tick in the relevant block below;
- Ensure that the following documents are completed and signed where applicable; and
- Use the prescribed sequence in attaching the annexes that complete the Bid Document

**NB:** Should all these documents not be included, the Bidder may be disqualified on the basis of non-compliance

**YES**

**NO**

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One original Bid document in separate folders; Folder 1 - for Pre-Qualifying Criteria and Functional Evaluation– **Electronic submission**

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**Part A:** Invitation to Bid

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**Part B:** Terms and Conditions of Bidding

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**Part C:** Checklist of Compulsory Returnable Schedules and Documents

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**Part D:** Conditions of Tendering and Undertakings by Bidders

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**Part E:** Specifications/Terms of Reference and Project Brief

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**Annexure A:** Price Proposal Requirement (**not applicable**)

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**Annexure B:** SBD4 Declaration of Interest

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**Annexure C:** SBD6.1 and B-BBEE status level certificate

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**Annexure F:** Certified copies of your CIPC company registration documents listing all members with percentages, in case of a lose corporation

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**Annexure G:** Certified copies of latest share certificates, in case of a company.

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**Annexure H: (if applicable):** A breakdown of how fees and work will be spread between members of the bidding consortium.

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**Annexure I:** Supporting documents to responses to Pre-Qualifying Criteria and Functional Evaluation Criteria.



**Annexure J:** General Condition of Contract



**Annexure K:** CSD Tax Compliance Status and Registration Requirements Report

## **PART D**

### **CONDITIONS OF TENDERING AND UNDERTAKINGS BY BIDDER**

#### **1. DEFINITIONS**

In this Request for Proposals, unless a contrary intention is apparent:

- 1.1 **B-BBEE** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003.
- 1.2 **B-BBEE Act** means the Broad-Based Black Economic Empowerment Act, 2003.
- 1.3 **B-BBEE status level of contributor** means the B-BBEE status received by a measured entity based on its overall performance used to claim points in terms of regulation 6 and 7 of the Preferential Procurement Regulations, 2022.
- 1.4 **Business Day** means a day which is not a Saturday, Sunday or public holiday in South Africa.
- 1.5 **Bid** means a written offer in the prescribed or stipulated form lodged by a Bidder in response to an invitation in this Request for Proposal, containing an offer to provide goods, works or services in accordance with the Specification as provided in this RFR.
- 1.6 **Bidder** means a person or legal entity, or an unincorporated group of persons or legal entities that submit a Bid.
- 1.7 **Companies Act** means the Companies Act, 2008.
- 1.8 **Compulsory Documents** means the list of compulsory schedules and documents set out in Part B.
- 1.9 **Closing Time** for the OneDrive Link submissions - 23h55 on the 31 January 2025 (Telkom Time)
- 1.10 **DBSA** means the Development Bank of Southern Africa Limited.
- 1.11 **DFI** means Development Finance Institution.
- 1.12 **Evaluation Criteria** means the criteria set out under the clause 26 (Evaluation Process) of this Part C, which includes the Qualifying Criteria, Functional Criteria and Price and Preferential Points Assessment (where applicable).
- 1.13 **Functional Criteria** means the criteria set out in clause 27 of this Part C.
- 1.14 **Intellectual Property Rights** includes copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- 1.15 **PFMA** means the Public Finance Management Act, 1999.



- 1.16 **PPPFA** means the Preferential Procurement Policy Framework Act, 2000.
- 1.17 **PPPFA Regulations** means the Preferential Procurement Regulations, 2022 published in terms of the PPPFA.
- 1.18 **Pre-Qualifying Criteria** means the criteria set out in clause 26.3 of this Part C.
- 1.19 **Price and Preferential Points Assessment** means the process described in clause **Error! Reference source not found.** of this Part C, as prescribed by the PPPFA.
- 1.20 **Proposed Contract** means the agreement including any other terms and conditions contained in or referred to in this RFR that may be executed between the DBSA and the successful Bidder.
- 1.21 **Request for Registration or RFR** means this document (comprising each of the parts identified under Part A, Part B, Part C and Part D) including all annexures and any other documents so designated by the DBSA.
- 1.22 **SARS** means the South African Revenue Service.
- 1.23 **Services** means the services required by the DBSA, as specified in this RFR Part D.
- 1.24 **SLA** means Service Level Agreement.
- 1.25 **SOE** means State Owned Enterprise, as defined by the Companies' Act.
- 1.26 **Specification** means the conditions of tender set and any specification or description of the DBSA's requirements contained in this RFR.
- 1.27 **State** means the Republic of South Africa.
- 1.28 **Statement of Compliance** means the statement forming part of a Tender indicating the Bidders compliance with the Specification.
- 1.29 **Tendering Process** means the process commenced by the issuing of this Request for Proposals and concluding upon formal announcement by the DBSA of the selection of a successful Bidder(s) or upon the earlier termination of the process.
- 1.30 **Website** means a website administered by DBSA under its name with web address [www.dbsa.org](http://www.dbsa.org)

## **2. INTERPRETATIONS**

In this RFR, unless expressly provided otherwise a reference to:

- 2.1 "includes" or "including" means includes or including without limitation; and
- 2.2 "R" or "Rand" is a reference to the lawful currency of the Republic of South Africa.

## **3. TENDER TECHNICAL AND GENERAL QUERIES**

Queries pertaining to this tender must be directed to:-

DBSA Supply Chain Management Unit

Email: [davidscm@dbsa.org](mailto:davidscm@dbsa.org)

No questions will be answered telephonically.

#### **4. SUBMISSION OF TENDERS**

COMPULSORY BRIEFING: 10 December 2025

LINK: [Briefing Session Meeting Registration Link](#)

**LINK REQUESTS:** Bidders are asked to nominate one dedicated contact person (name, email address and phone number).

CLOSING DATE: **13 January 2026**

CLOSING TIME: **23H55PM**

#### **5. RULES GOVERNING THIS RFR AND THE TENDERING PROCESS**

- 5.1 Participation in the tender process is subject to compliance with the rules contained in this RFR Part C.
- 5.2 All persons (whether a participant in this tender process or not) having obtained or received this RFR may only use it, and the information contained herein, in compliance with the rules contained in this RFR.
- 5.3 All Bidders are deemed to accept the rules contained in this RFR Part C.
- 5.4 The rules contained in this RFR Part C apply to:
  - 5.4.1 The RFR and any other information given, received or made available in connection with this RFR, and any revisions or annexure.
  - 5.4.2 the Tendering Process; and
  - 5.4.3 any communications (including any briefings, presentations, meetings and negotiations) relating to the RFR or the Tendering Process.

#### **6. STATUS OF REQUEST FOR PROPOSAL**

- 6.1 This RFR is an invitation for person(s) to submit a proposal(s) for the provision of the services as set out in the Specification contained in this RFR. Accordingly, this RFR must not be construed, interpreted, or relied upon, whether expressly or implicitly, as an offer capable of acceptance by any person(s), or as creating any form of contractual, promissory or other rights. No binding contract or other understanding for the supply of services will exist between the DBSA and any Bidder unless and until the DBSA has executed a formal written contract with the successful Bidder.

## **7. ACCURACY OF REQUEST FOR REGISTRATION**

- 7.1 Whilst all due care has been taken in connection with the preparation of this RFR, the DBSA makes no representations or warranties that the content in this RFR or any information communicated to or provided to Bidders during the Tendering Process is, or will be, accurate, current or complete. The DBSA, and its officers, employees and advisors will not be liable with respect to any information communicated which is not accurate, current or complete.
- 7.2 If a Bidder finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this RFR or any other information provided by the DBSA (other than minor clerical matters), the Bidder must promptly notify the DBSA in writing of such discrepancy, ambiguity, error or inconsistency in order to afford the DBSA an opportunity to consider what corrective action is necessary (if any).
- 7.3 Any actual discrepancy, ambiguity, error or inconsistency in this RFR or any other information provided by the DBSA will, if possible, be corrected and provided to all Bidders without attribution to the Bidder who provided the written notice.

## **8. ADDITIONS AND AMENDMENTS TO THE RFR**

- 8.1 The DBSA reserves the right to change any information in, or to issue any addendum to this RFR before the Closing Time. The DBSA and its officers, employees and advisors will not be liable in connection with either the exercise of, or failure to exercise this right.
- 8.2 If the DBSA exercises its right to change information in terms of clause 8.1, it may seek amended Tenders from all Bidders.

## **9. REPRESENTATIONS**

No representations made by or on behalf of the DBSA in relation to this RFR will be binding on the DBSA unless that representation is expressly incorporated into the contract ultimately entered between the DBSA and the successful Bidder.

## **10. CONFIDENTIALITY**

- 10.1 All persons (including all Bidders) obtaining or receiving this RFR and any other information in connection with this RFR or the Tendering Process must keep the contents of the RFR 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 RFR.

## **11. REQUESTS FOR CLARIFICATION OR FURTHER INFORMATION**

- 11.1 All communications relating to this RFR and the Tendering Process must be directed to the Tender Officer.
- 11.2 All questions or requests for further information or clarification of this RFR or any other document issued in connection with the Tendering Process must be submitted to the Tender Officer in writing, and most preferably by e-mail to [davidscm@dbsa.org](mailto:davidscm@dbsa.org)
- 11.3 Any communication by a Bidder to the DBSA will be effective upon receipt by the Tender Officer (provided such communication is in the required format).
- 11.4 The DBSA has restricted the period during which it will accept questions or requests for further information or clarification and reserves the right not to respond to any enquiry or request, irrespective of when such enquiry or request is received.
- 11.5 Except where the DBSA is of the opinion that issues raised apply only to an individual Bidder, questions submitted and answers provided will be made available to all Bidders by e-mail, as well as on the DBSA's website without identifying the person or organisation which submitted the question.
- 11.6 In all other instances, the DBSA may directly provide any written notification or response to a Bidder by email to the address of the Bidder (as notified by the Bidder to the Tender Manager).
- 11.7 A Bidder may, by notifying the Tender Officer in writing, withdraw a question submitted in accordance with clause 12, in circumstances where the Bidder does not wish the DBSA to publish its response to the question to all Bidders.

## **12. UNAUTHORISED COMMUNICATIONS**

- 12.1 Communications (including promotional or advertising activities) with staff of the DBSA or their advisors assisting with the Tendering Process are not permitted during the Tendering Process, or otherwise with the prior consent of the Tender Officer. Nothing in this clause 12 is intended to prevent communications with staff of, or advisors to, the DBSA to the extent that such communications do not relate to this RFR or the Tendering Process.
- 12.2 Bidders must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the Tendering Process in any way.

## **13. IMPROPER ASSISTANCE, FRAUD AND CORRUPTION**

- 13.1 Bidders may not seek or obtain the assistance of employees of the DBSA in the preparation of their tender responses.
- 13.2 The DBSA may in its absolute discretion, immediately disqualify a Bidder that it believes has sought or obtained such improper assistance.
- 13.3 Bidders are to be familiar with the implications of contravening the Prevention and Combating of Corrupt Activities Act, 2004 and any other relevant legislation.

## **14. ANTI-COMPETITIVE CONDUCT**

- 14.1 Bidders and their respective officers, employees, agents and advisors must not engage in any collusion, anti-competitive conduct or any other similar conduct in respect of this Tendering Process with any other Bidder or any other person(s) in relation to:
- 14.1.1 the preparation or lodgement of their Bid
  - 14.1.2 the evaluation and clarification of their Bid; and
  - 14.1.3 the conduct of negotiations with the DBSA.
- 14.2 For the purposes of this clause 14, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information whether or not such information is confidential to the DBSA or any other Bidder or any other person or organisation.
- 14.3 In addition to any other remedies available to it under law or contract, the DBSA may, in its absolute discretion, immediately disqualify a Bidder that it believes has engaged in any collusive, anti-competitive conduct or any other similar conduct during or before the Tendering Process.

## **15. COMPLAINTS ABOUT THE TENDERING PROCESS**

- 15.1 Any complaint about the RFR or the Tendering Process must be submitted to the Supply Chain Management Unit in writing, by email, immediately upon the cause of the complaint arising or becoming known to the Bidder, ([tenders@dbsa.org](mailto:tenders@dbsa.org))
- 15.2 The written complaint must set out:
- 15.2.1 the basis for the complaint, specifying the issues involved;
  - 15.2.2 how the subject of the complaint affects the organisation or person making the complaint;
  - 15.2.3 any relevant background information; and
  - 15.2.4 the outcome desired by the person or organisation making the complaint.
- 15.3 If the matter relates to the conduct of an employee of the DBSA, the complaint should be addressed in writing marked for the attention of the Chief Executive Officer of the DBSA, and delivered to the physical address of the DBSA, as notified.

## **16. CONFLICT OF INTEREST**

- 16.1 A Bidder must not, and must ensure that its officers, employees, agents and advisors do not place themselves in a position that may give rise to actual, potential or perceived conflict of interest between the interests of the DBSA and the Bidder's interests during the Tender Process.
- 16.2 The Bidder is required to provide details of any interests, relationships or clients which may or do give rise to a conflict of interest in relation to the supply of the services under any contract that may result from this RFR. If the Bidder submits its Bid and a subsequent conflict of interest arises, or is likely to arise, which was not disclosed in the Bid, the Bidder must notify the DBSA immediately in writing of that conflict.

- 16.3 The DBSA may immediately disqualify a Bidder from the Tendering Process if the Bidder fails to notify the DBSA of the conflict as required.

## **17. LATE BIDS**

- 17.1 Bids must be delivered by the Closing Time. The Closing Time may be extended by the DBSA in its absolute discretion by providing written notice to Bidders.
- 17.2 Bids delivered after the Closing Time or lodged at a location or in a manner that is contrary to that specified in this RFR will be disqualified from the Tendering Process and will be ineligible for consideration. However, a late Bid may be accepted where the Bidder can clearly demonstrate (to the satisfaction of the DBSA, in its sole discretion) that late lodgement of the Bid was caused by the DBSA; that access was denied or hindered in relation to the physical tender box; or that a major/critical incident hindered the delivery of the Bid and, in all cases, that the integrity of the Tendering Process will not be compromised by accepting a Bid after the Closing Time.
- 17.3 The determination of the DBSA as to the actual time that a Bid is lodged is final. Subject to clause 17.2, all Bids lodged after the Closing Time will be recorded by the DBSA and will only be opened for the purposes of identifying a business name and address of the Bidder. The DBSA will inform a Bidder whose Bid was lodged after the Closing Time of its ineligibility for consideration. The general operating practice is for the late Bid to be returned within 5 (five) working days of receipt or within 5 (five) working days after determination not to accept a late Bid.

## **18. BIDDER'S RESPONSIBILITIES**

- 18.1 Bidders are responsible for:
- 18.1.1 examining this RFR and any documents referenced or attached to this RFR and any other information made or to be made available by the DBSA to Bidders in connection with this RFR;
  - 18.1.2 fully informing themselves in relation to all matters arising from this RFR, including all matters regarding the DBSA's requirements for the provision of the Services;
  - 18.1.3 ensuring that their Bids are accurate and complete;
  - 18.1.4 making their own enquiries and assessing all risks regarding this RFR, and fully considering and incorporating the impact of any known and unknown risks into their Bid;
  - 18.1.5 ensuring that they comply with all applicable laws in regard to the Tendering Process particularly as specified by National Treasury Regulations, Guidelines, Instruction Notes and Practice Notes and other relevant legislation as published from time to time in the Government Gazette; and
  - 18.1.6 submitting all Compulsory Documents.

- 18.2 South African bidders with annual total revenue of ZAR10 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the B-BBEE Act must submit a certificate issued by a registered, independent auditor (who or which is not the Bidder or a part of the Bidder) or an accredited verification agency.
- 18.3 South African bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy, or a sworn affidavit thereof, substantiating their B-BBEE status. The submission of such certificates must comply with the requirements of instructions and guidelines issued by National Treasury and be in accordance with the applicable notices published by the Department of Trade and Industry in the Government Gazette.
- 18.4 The DBSA reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the DBSA.
- 18.5 Failure to provide the required information may result in disqualification of the Bidder.

## **19. PREPARATION OF BIDS**

- 19.1 Bidders must ensure that:
- 19.1.1 their Bid is submitted in the required format as stipulated in this RFR; and
  - 19.1.2 all the required information fields in the Bid are completed in full and contain the information requested by the DBSA.
- 19.2 The DBSA may in its absolute discretion reject a Bid that does not include the information requested or is not in the format required.
- 19.3 Unnecessarily elaborate responses or other representations beyond that which is sufficient to present a complete and effective tender proposal are not desired or required. Elaborate and expensive visual and other presentation aids are not necessary.
- 19.4 Where the Bidder is unwilling to accept a specified condition, the non-acceptance must be clearly and expressly stated. Prominence must be given to the statement detailing the non-acceptance. It is not sufficient that the statement appears only as part of an attachment to the Bid or be included in a general statement of the Bidders usual operating conditions.
- 19.5 An incomplete Bid may be disqualified or assessed solely on the information completed or received with the Bid.

## **20. ILLEGIBLE CONTENT, ALTERATION AND ERASURES**

- 20.1 Incomplete Bids may be disqualified or evaluated solely on information contained in the Bid.
- 20.2 The DBSA may disregard any content in a Tender that is illegible and will be under no obligation whatsoever to seek clarification from the Bidder.
- 20.3 The DBSA may permit a Bidder to correct an unintentional error in its Bid where that error becomes known or apparent after the Closing Time, but in no event will any correction be permitted if the DBSA

reasonably considers that the correction would materially alter the substance of the Bid or effect the fairness of the Tendering Process.

## **21. OBLIGATION TO NOTIFY ERRORS**

If, after a Bidder's Response has been submitted, the Bidder becomes aware of an error in the Bidders Response (including an error in pricing but excluding clerical errors which would have no bearing on the evaluation of the Bid), the Bidder must promptly notify the DBSA of such error.

## **22. RESPONSIBILITY FOR BIDDING COSTS**

22.1 The Bidders participation or involvement in any stage of the Tendering Process is at the Bidders sole risk, cost and expense. The DBSA will not be held responsible for, or pay for, any expense or loss that may be incurred by Bidders in relation to the preparation or lodgement of their Bid.

22.2 The DBSA is not liable to the Bidder for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Bidders participation in the Tendering Process, including without limitation, instances where:

22.2.1 the Bidder is not engaged to perform under any contract; or

22.2.2 the DBSA exercises any right under this RFR or at law.

## **23. DISCLOSURE OF BID CONTENTS AND BID INFORMATION**

23.1 All Bids received by the DBSA will be treated as confidential. The DBSA will not disclose contents of any Bid and Bid information, except:

23.1.1 as required by law;

23.1.2 for the purpose of investigations by other government authorities having relevant jurisdiction;

23.1.3 to external consultants and advisors of the DBSA engaged to assist with the Tendering Process; or for the general information of Bidders required to be disclosed as per National Treasury Regulations, Guidelines, Instruction Notes or Practice Notes.

## **24. USE OF BIDS**

24.1 Upon submission in accordance with the requirements relating to the submission of Bids, all Bids submitted become the property of the DBSA. Bidders will retain all ownership rights in any intellectual property contained in the Bids.

24.2 Each Bidder, by submission of their Bid, is deemed to have licensed the DBSA to reproduce the whole, or any portion, of their Bid for the sole purposes of enabling the DBSA to evaluate the Bid.

## **25. BID ACCEPTANCE**

All Bids received must remain open for acceptance for a minimum period of 120 (one-hundred and twenty) days from the Closing Time. This period may be extended by written mutual agreement between the DBSA and the Bidder.



## 26. EVALUATION PROCESS

26.1 The Bids will be evaluated and adjudicated as follows:

### 26.1.1 First Stage – Test for administrative Responsiveness

The test for administrative responsiveness will include the following:

#### **Stage 1: Responsiveness**

The Tenderer should be able to provide all the relevant information required in the Supplier Information Form (SIF) which will include but not limited to;

**A. Tenderers who do not adhere to those criteria listed a PRE-QUALIFIER, will be disqualified immediately.**

Responsiveness Criteria		Criteria
1	Provision of a valid Legal Practitioners' Fidelity Fund Certificate for each senior attorney whose CV is included in the bid	Pre-Qualifier
2	List of hourly rates of all attorneys employed by the Law Firm and percentage discount offered on Fees for duration of appointment, if any.	Pre-Qualifier
3	Confirmation of Professional Indemnity Insurance as set out in each term of reference.	Pre-Qualifier
4	Three reference letters from clients demonstrating relevant experience as set out in each term of reference.	Pre-Qualifier
5	Adherence to submitting Tender as a One-folder tender. Folder 1: Functionality and returnable submission.	Pre-Qualifier

**B. Tenderers who do not adhere to the indicated response time for clarifications requested by the Employer will be deemed to be non-responsive and their submissions will not be evaluated further.**

Responsiveness Criteria	Clarification Time
Adherence to the <b>Standard Conditions of Tender</b> as required (No deviations, qualifications & alternatives).	48 hours
<b>Returnable Documents</b> 10.1 to 10.13 completed, signed and provision of supporting documents where requested.	48 hours
Submission of Registration with <b>National Treasury Central Supplier Database (CSD)</b> <b>Summary Report:</b> - Bidder must be registered in order to do business with the DBSA.	48 hours
Provision of a <b>Tax Pin</b> issued by SARS.	48 hours
A schedule of hourly rates of all attorneys employed by the firm and a discount applicable to fees for the duration of the appointment, if any.	48 hours

Only those Bidders which satisfy all the Pre-Qualifying Criteria of the First Stage will be eligible to participate in the Tendering Process further. Bids which do not satisfy all the Pre-Qualifying Criteria of the First Stage will not be evaluated further.

#### 26.1.2 **Second Stage – Functional criteria**

26.1.1 Bidders are required to submit supporting documentation evidencing their compliance with each requirement, where applicable.

26.1.2 A minimum score of **70** on functionality is required to be appointed to the panel.

26.1.3 This Panel will be composed of ten (10) law firms comprising Legal Sector Measured Entities (“LSME”) and Exempt Legal Entities (“ELE”). The DBSA will only consider firms that meet a minimum threshold of 70 points based on the functional criteria listed in section 7 below. Firms will be ranked in two groups. Large LSME (firms with a turnover of greater than R25 million) will be ranked in one group. Qualifying Small Enterprises (“QSE”) LSME, (firms that generate annual revenue between R5million and not more than R25million), and ELE (firms with a turnover lower than R5 million), will be ranked in another group. Of those firms that meet the minimum threshold of 70 points, the five (5) highest scoring firms in each group, based on total points awarded for functionality, will be appointed to the DBSA’s Employment, White Collar Crime and Forensic Investigations Law Firm Panel. Appointment to this Panel is for a period of five (5) years. In the event that multiple firms achieve the same ranking that would increase the pool of highest scoring firms in each group, this Panel’s size will be increased accordingly, to include those firms.

<b>Functional Criteria</b>		
<b>Evaluation Criteria</b>	<b>Weighting (Points)</b>	<b>Assessment Factors</b>
<b>1. Expertise of Firm’s Senior Attorneys in Employment and Labour Relations Matters (25 points)</b> <i>Submit a maximum of 3 (three) CVs from proposed senior attorneys – a maximum of 3 (three) CVs will be reviewed under this category. Scoring will be based on the CV of the most experienced resource.</i>		
<b>Years of Experience (post admission) of Firm’s Senior Attorneys in Employment matters</b>	<b>10</b>	<ul style="list-style-type: none"> <li>- Less than 7 years post admission of relevant experience (2 points)</li> <li>- 7 to 10 years’ post admission experience (5 points)</li> <li>- 11 to 15 years’ post admission experience (7 points)</li> <li>- More than 15 years’ post admission experience (10 points)</li> </ul>
<b>Demonstrated experience and expertise of Firm’s Senior Attorneys in Employment matters</b>  Demonstrated expertise in relevant and/or complex Employment matters in line with Scope of Work. <b><i>Please list relevant matters attended to by senior attorney in CV with brief description of each matter.</i></b>	<b>15</b>	1.5 (one point five) points for each relevant matter attended to up to a maximum of 15 points.

<b>2. Expertise of Firm's Senior Attorneys in White Collar Crime and Forensic Investigations (21 points)</b> <i>Submit a maximum of 3 (three) CVs from proposed senior attorneys – only 3 (three) CVs will be reviewed under this category. Scoring will be based on the CV of the most experienced resource.</i>		
<b>Years of Experience of Attorneys dealing with White Collar Crime and Forensic Investigations.</b>	<b>6</b>	<ul style="list-style-type: none"> <li>- Less than 7 years of relevant experience (1 point)</li> <li>- 7 to 10 years' experience (3 points)</li> <li>- 11 to 15 years' experience (5 points)</li> <li>- More than 15 years' experience (6 points)</li> </ul>
<b>Notable Matters Handled by Senior Attorneys</b>  CVs must demonstrate expertise in attending to white collar crime and forensic investigations in line with Scope of Work. Please list relevant matters attended to by senior attorney in CV with brief description of each matter.	<b>15</b>	1.5 (one point five) points for each relevant matter attended to up to a maximum of 15 points.
<b>3. Experience of Firm in Employment Law, White Collar Crime and Forensic Investigations Matters (20 points)</b>		
<b>3.1 Employment Law &amp; Labour Relations Experience in line with Scope of Work</b> Bidders are required to provide brief summary of relevant matters advised on.	<b>8</b>	One point for each relevant matter up to a maximum of 8 points.
<b>3.2 Experience in chairing disciplinary, grievance and incapacity hearings</b>	<b>4</b>	One (1) to three (3) matters – 1 points Four (4) to six (6) matters - 3 points Seven (7) or more matters – 4 points
<b>3.3 White Collar Crime &amp; Forensic Investigations (including probity reviews) in line with Scope of Work</b>	<b>8</b>	One point for each relevant matter up to a maximum of 8 points.
<b>4. Reputation, Firm Credentials and Value Proposition (18 points)</b>		
<b>4.1 Firm Profile, Market Reputation &amp; Ranking</b>	<b>8</b>	A score will be provided for overall impression of the firm considering inter alia <ul style="list-style-type: none"> <li>• Establishment (firm established more than 5 years ago) (2 points)</li> <li>• profile of firm including, vision and mission, culture and values (2 points)</li> <li>• technology and innovation, (2 points)</li> <li>• corporate social responsibility (2 points)</li> </ul>
<b>4.2 Institutional Strength &amp; Global Reach</b>	<b>3</b>	Evidence of combination of any of the following will be considered in allocating marks - <ul style="list-style-type: none"> <li>- Relationships, strategic partnerships with other entities.</li> <li>- Track record of advising Banks &amp; Development Finance Institutions.</li> <li>- Awards and recognitions of law firm and senior attorneys</li> <li>- Firm and partner of firm's ranking in Legal 500, Chambers, or IFLR1000.</li> </ul>
<b>4.3 Value Proposition to the DBSA</b>	<b>3</b>	Proposed additional value proposition to DBSA, including training, access to precedents, updates on new legislation, access to boardrooms for meetings and arbitration etc.
<b>4.4 Relationship &amp; Quality Management</b>	<b>4</b>	Demonstrate how the relationship with the DBSA and instructions from DBSA will be managed to ensure timely, professional and quality assistance to the DBSA. Details of quality review mechanism employed by the Bidder.

<b>5. Commitment to Transformation and Gender Mainstreaming (16 points)</b>		
<b>5.1 Black women ownership</b> Bidders are required to evidence the black women ownership of the firm	<b>8</b>	<b>Evidence black women ownership in the firm</b> 50.00 % - 100% scores 8 points 25.00 % - 49.99 % scores 6 points 10.00 % - 24.99 % scores 4 points 1 % - 9.99 % scores 2 points
<b>5.2 Black Candidate Attorneys trained in past three years (as percentage of total candidate attorneys employed by the firm)</b> Bidders are required to evidence the total number of black candidate attorneys employed by the firm between 1 January 2022 to date as a percentage of total candidate attorneys employed by the firm over this period.	<b>8</b>	<b>Provide a list of all candidate attorneys employed between 1 January 2022 to 31 August 2025 including racial identity of each candidate.</b>  75.01 % - 100% scores 8 points 51.01 % - 75.00 % scores 6 points 25.01 % - 51.00 % scores 4 points 1 % - 25.00 % scores 2 points

#### 26.1.4 Third Stage – price

Not applicable

**26.2 NB: Bidders are required to submit, as Annexure J to their Bids, any documentation which supports the responses provided in respect of the Eligibility Criteria below.**

#### 26.3 First Stage: Pre-Qualifying Criteria

**Note: A tender that fails to meet any Pre-Qualifying Criteria stipulated herein in the tender documents is an unacceptable tender. Please refer to the table above.**

#### 27. Risk Analysis and Objective Criteria

In addition to the previous evaluation stage, the Tenderers in line with the shortlisting criteria, will additionally be reviewed against the following points listed as “**Other Objective Criteria**” in terms of the PPR2022, to ascertain suitability for award – we reserve the right to clarify any aspects listed hereunder where applicable.

- i. If having passed Responsiveness, the tenderer will again be checked in terms of having a Compliant Tax Status at time of recommendation to confirm that the status has not changed, based on an active and Tax Complaint Pin issued by the South African Revenue Services.
- ii. Fully compliant and registered with the National Treasury Central Supplier Database.
- iii. No misrepresentation in the tender information submitted.
- iv. The tenderer or any of its directors/shareholders is not listed on the Register of Tender Defaulters in terms of the Prevention and Combating of Corrupt Activities Act of 2004 as a person prohibited from doing business with the public sector; and
- v. The tenderer has completed the Compulsory Enterprise Questionnaire and there are no conflicts of interest which may impact on the tenderer’s ability to perform the contract in the best interests of the employer or potentially compromise the tender

process and persons in the employ of the state are permitted to submit tenders or participate in the contract.

- vi. Convicted by a court of law for fraud and corruption.
- vii. Removed from a contract between them and any organ of state on account of failure to perform on or comply with the contract.
- viii. The DBSA reserves the right to make a decision on contract award based solely on the information received in the responses to this RFR. The DBSA also reserves the right to use relevant information not contained in any tender but which, in the ordinary course of business, is within the knowledge of any employee or Board member of DBSA or its advisors, agents or representatives for the purposes of making its decision.
- ix. Any bidder who has had a tender award terminated by the DBSA for non-performance during the 18 months preceding the closing date of this RFR, may at the discretion of the DBSA, be excluded from recommendation for further under this RFR. In addition, any bidder who has received a written notice of non-performance in the 12-month period preceding the award of this RFR, may at the discretion of the DBSA, be excluded from recommendation for further awards until the non-performance, or the circumstance giving rise to the non-performance, has been remedied to the satisfaction of the DBSA.
- x. Financial health of the bidder may be assessed if deemed necessary, to ensure that the service provider will be able to operate as per required deliverables (Ratios: Accounts Receivable & Payable Turnover, Liquidity & Solvency).
- xi. PEP Check and Procure Check to be initiated and if negative, may result in exclusion.
- xii. Online verification of the Professional Registration Document will be actioned only to confirm the authenticity of the document.
- xiii. The DBSA reserves the right to request a bidder to provide formal documented evidence within 48hrs (independent from bidder; e.g. employer), to prove authenticity of the documents and its content, failing which will result in bid being deemed non-responsive. Such evidence must include a contactable reference via email and telephone.
- xiv. The DBSA reserves the right to further action an authenticity verification of the documents and content, through contacting the representing employer/s and/or contactable reference.

A check against any other requirement as stipulated in the **Additional Conditions of Tender**.

The DBSA reserves the right to award the tender to the tenderer who scores the highest number of points overall in line with Section (2) (1) (f) of the PPPFA, unless there are objective criteria which will justify the award of the tender to another tenderer. The objective criteria that the DBSA may apply in this bid process includes:

- i. Any bidder that has a cumulative order book totaling 5 Awards with outstanding value, **may be excluded from further evaluation**.
- ii. Where a bidder has 5 active Awards with an outstanding value and the outstanding value is 10% or less, indicating the project is nearing completion, the bidder may be included **for further evaluation and/or recommendation for award**.
- iii. Where a bidder has 5 active Awards with an outstanding value and at least one of the projects has stalled for a period of 6 months or more, or the client has placed the

- project on hold indefinitely, the bidder may be included **for further evaluation and/or recommendation for award**.
- iv. The DBSA has the discretion to apply an objective criterion.

## **28. Due Diligence**

DBSA shall perform a due diligence exercise on the preferred bidder to determine its risk profile. The due diligence exercise may take the following factors into account inter alia.

**a. Judgements and criminal convictions**

DBSA may consider previous civil judgements against the preferred bidder as part of its risk assessment. DBSA may also consider whether the preferred bidder or any of its directors have been convicted of a serious offence.

**b. Pending litigation/liquidation/business rescue (distinct from Working Capital)**

DBSA may consider any pending litigation in a court of law or administrative tribunal as part of its risk assessment.

**c. Performance**

DBSA will not consider the Service provider having a history of poor performance on any task orders/purchase orders or contracts, including poor performance in respect of compliance with policies or procedures regarding safety, health, quality control or environment, or having committed a serious and gross breach of contract.

**d. Reputational harm**

If DBSA is likely to suffer substantial reputational harm because of doing business with the preferred service provider, it may take this into account as part of its risk assessment.

**e. Restricted/Blacklisted**

Is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement.

**f. Vetting**

The DBSA reserves the right to conduct vetting on the tenderer or any of its directors.

- g. PEP Checks for both Companies and Individual directors, as well as Procure Check and or any other systems that the DBSA may choose to utilize (which may be conducted by an authorized third party) that would be done to assess all risks, including but not limited to

- a. Financial stability of the bidder based on key ratio analysis.
- b. Efficiency ;
- c. Profitability ;
- d. Financial Risk;
- e. Liquidity ;
- f. Acid Test ;
- g. Solvency; and
- h. Commercial relationship with a politically exposed and brand risk

- i. The DBSA reserves the right to award the scope in full or part thereof, subject to budget availability.
- ii. The DBSA reserves the right to negotiate to ensure the value for money principle is not compromised.

**29.** Generally, suppliers have their own business standards and regulations. Although DBSA cannot control the actions of our suppliers, we will not tolerate any illegal activities. These include, but are not limited to:

- Misrepresentation of any kind (e.g. origin of manufacture, specifications, intellectual property rights, etc.).
- Collusion.
- Failure to disclose accurate information required during the sourcing activity (ownership, financial situation, BBBEE status, etc.).
- Corrupt activities listed above; and
- Harassment, intimidation or other aggressive actions towards DBSA's employees.

### **30. STATUS OF BID**

30.1 Each Bid constitutes an irrevocable offer by the Bidder to the DBSA to provide the Services required and otherwise to satisfy the requirements of the Specification as set out in this RFR.

30.2 A Bid must not be conditional on:

- 30.2.1 the Board approval of the Bidder or any related governing body of the Bidder being obtained.
- 30.2.2 the Bidder conducting due diligence or any other form of enquiry or investigation.
- 30.2.3 the Bidder (or any other party) obtaining any regulatory approval or consent.
- 30.2.4 the Bidder obtaining the consent or approval of any third party; or
- 30.2.5 the Bidder stating that it wishes to discuss or negotiate any commercial terms of the contract.

30.3 The DBSA may, in its absolute discretion, disregard any Bid that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other relevant conditions).

30.4 The DBSA reserves the right to accept a Bid in part or in whole or to negotiate with a Bidder in accordance with the provisions of this RFR and the applicable laws and regulations.

### **31. CLARIFICATION OF BIDS**

31.1 The DBSA may seek clarification from and enter into discussions with any or all of the Bidders in relation to their Bid. The DBSA may use the information obtained when clarification is sought or discussions are held in interpreting the Bid and evaluating the cost and risk of accepting the Bid. Failure to supply clarification to the satisfaction of the DBSA may render the Bid liable to disqualification.

31.2 The DBSA is under no obligation to seek clarification of anything in a Bid and reserves the right to disregard any clarification that the DBSA considers to be unsolicited or otherwise impermissible or irrelevant in accordance with the rules set out in this RFR.

## **32. DISCUSSION WITH BIDDERS**

32.1 The DBSA may elect to engage in detailed discussions with any one or more Bidder(s), with a view to maximising the benefits of this RFR as measured against the evaluation criteria and in fully understanding a Bidder's offer.

32.2 Where applicable, the DBSA will invite Bidders to give a presentation to the DBSA in relation to their submissions.

32.3 The DBSA is under no obligation to undertake discussions with, and Bidders.

32.4 In addition to presentations and discussions, the DBSA may request some or all Bidders to:

32.4.1 conduct a site visit, if applicable.

32.4.2 provide references or additional information; and/or

32.4.3 make themselves available for panel interviews.

## **33. SUCCESSFUL BIDS**

33.1 Selection as a successful Bidder does not give rise to a contract (express or implied) between the successful Bidder and the DBSA for the supply of the Services. No legal relationship will exist between the DBSA and a successful Bidder for the supply of the Services until such time as a binding contract is executed by them.

33.2 The DBSA may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Bidder.

33.3 A Bidder is bound by its Bid and all other documents forming part of the Bidder's Response and, if selected as a successful Bidder, must enter into a contract on the basis of the Bid with or without further negotiation.

## **34. NO OBLIGATION TO ENTER INTO CONTRACT**

34.1 The DBSA is under no obligation to appoint a successful Bidder or Bidders (as the case may be), or to enter into a contract with a successful Bidder or any other person, if it is unable to identify a Bid that complies in all relevant respects with the requirements of the DBSA, or if due to changed circumstances, there is no longer a need for the Services requested, or if funds are no longer available to cover the total envisaged expenditure. For the avoidance of any doubt, in these circumstances the DBSA will be free to proceed via any alternative process.

34.2 The DBSA may conduct a debriefing session for all Bidders (successful and unsuccessful). Attendance at such debriefing session is optional.



## **35. BIDDER WARRANTIES**

35.1 By submitting a Bid, a Bidder warrants that:

- 35.1.1 it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the DBSA, its officers, employees, or advisers other than any statement, warranty or representation expressly contained in the RFR;
- 35.1.2 it did not use the improper assistance of DBSA's employees or information unlawfully obtained from them in compiling its Bid;
- 35.1.3 it is responsible for all costs and expenses related to the preparation and lodgement of its Bid, any subsequent negotiation, and any future process connected with or relating to the Tendering Process;
- 35.1.4 it accepts and will comply with the terms set out in this RFR; and
- 35.1.5 it will provide additional information in a timely manner as requested by the DBSA to clarify any matters contained in the Bid.

## **36. DBSA'S RIGHTS**

36.1 Notwithstanding anything else in this RFR, and without limiting its rights at law or otherwise, the DBSA reserves the right, in its absolute discretion at any time, to:

- 36.1.1 cease to proceed with or suspend the Tendering Process prior to the execution of a formal written contract.
- 36.1.2 alter the structure and/or the timing of this RFR or the Tendering Process;
- 36.1.3 vary or extend any time or date specified in this RFR
- 36.1.4 terminate the participation of any Bidder or any other person in the Tendering Process.
- 36.1.5 require additional information or clarification from any Bidder or any other person;
- 36.1.6 provide additional information or clarification.
- 36.1.7 negotiate with any one or more Bidder;
- 36.1.8 call for new Bid.
- 36.1.9 reject any Bid received after the Closing Time; or
- 36.1.10 reject any Bid that does not comply with the requirements of this RFR.

## **37. GOVERNING LAWS**

37.1 This RFR and the Tendering Process are governed by the laws of the Republic of South Africa.

37.2 Each Bidder must comply with all relevant laws in preparing and lodging its Bid and in taking part in the Tendering Process.

37.3 All Bids must be completed using the English language and all costing must be in South African Rand (ZAR).



# Terms of Reference

## TERMS OF REFERENCE

### **PANEL OF LAW FIRMS: EMPLOYMENT, WHITE COLLAR CRIME AND FORENSIC INVESTIGATIONS**

#### **1. BACKGROUND**

The Development Bank of Southern Africa Limited (DBSA) is a state-owned development finance institution, reconstituted and incorporated under section 2 of the Development Bank of Southern Africa Act, 1997. The DBSA drives national and regional infrastructure development and integration, with core focus areas in energy, water, transport, and information and communication technology (ICT).

In support of South Africa's development agenda, the DBSA also assists government in accelerating infrastructure delivery in priority sectors such as education, health, housing, and municipal infrastructure. In its capacity as implementing agent, the DBSA actively procures, appoints, and manages infrastructure construction and maintenance projects across South Africa.

Operating across the full infrastructure value chain—planning, preparation, financing, implementation, and maintenance—the DBSA also executes cross-border transactions. These transactions often fall outside the purview of South African law and require English or French law expertise. Accordingly, external legal support is essential, particularly from international law firms with in-house English/French law capabilities or affiliations with global networks.

The DBSA participates in syndicated financing and international bond issuances, where global financiers and regulatory requirements necessitate legal advice from Tier 1 international law firms. The DBSA's treasury operations often raise funding in foreign jurisdictions, further reinforcing the need for internationally recognised legal counsel.

For further information, please visit [www.dbsa.org](http://www.dbsa.org).

The DBSA Legal Unit provides professional, timely, and strategic legal support across all divisions, including SA Financing, International Financing, Corporate, Treasury, Strategy, and Infrastructure Delivery. Key responsibilities of the DBSA Legal Unit include:

- 1.1 Legal support on public and private sector financing and investment transactions, including structuring, negotiation, and documentation.
- 1.2 Participation in project life cycles, from conceptualisation to implementation.
- 1.3 Advisory support on regulatory compliance, procurement, employment law, commercial litigation, debt recovery, construction and engineering disputes, and fraud investigations.

Given the Bank's broad mandate and transaction volume, the Legal Unit regularly engages external legal providers to ensure efficient delivery of services.

Firms appointed to the DBSA's Panel of Law Firms may be called upon to support both the DBSA's core activities and special funds/programmes it manages as an implementing or managing agent.

To promote knowledge exchange and build legal capacity, panel firms may be expected to participate in **twinning arrangements**—collaborative engagements with other panel firms involving skills transfer, joint training, and co-advisory initiatives. These arrangements aim to foster mutual learning, enhance capabilities, and strengthen the DBSA's broader legal ecosystem.

## 2. PURPOSE OF REQUEST FOR PROPOSAL

The DBSA seeks duly incorporated law firms to form part of its Employment, White Collar Crime and Forensic Investigations Law Firm Panel. The DBSA proposes to establish four law firm panels namely,

- 2.1 Employment, White Collar Crime and Forensic Investigations Law Firm Panel (this Panel).
- 2.2 Banking, Finance and Investments Law Firm Panel.
- 2.3 Compliance, Public Law and Regulatory Law Firm Panel.
- 2.4 Construction & Engineering Contracts and Dispute Resolution Law Firm Panel.

### 3. COMPOSITION OF PANEL

This Panel will be composed of **ten (10)** law firms comprising Legal Sector Measured Entities (“LSME”) and Exempt Legal Entities (“ELE”). The DBSA will only consider firms that meet a minimum threshold of 70 points based on the functional criteria listed in section 7 below. Firms will be ranked in two groups. Large LSME (firms with a turnover of greater than R25 million) will be ranked in one group. Qualifying Small Enterprises (“QSE”) LSME, (firms that generate annual revenue between R5million and not more than R25million), and ELE (firms with a turnover lower than R5 million), will be ranked in another group. Of those firms that meet the minimum threshold of 70 points, the five (5) highest scoring firms in each group, based on total points awarded for functionality, will be appointed to the DBSA’s Employment, White Collar Crime and Forensic Investigations Law Firm Panel. Appointment to this Panel is for a period of five (5) years. In the event that multiple firms achieve the same ranking that would increase the pool of highest scoring firms in each group, this Panel’s size will be increased accordingly, to include those firms.

### 4. DETAILED SCOPE OF WORK

#### 4.1 Employment

DBSA employs approximately 500 permanent employees and a further approximate 200 employees on fixed term contracts. DBSA requires the assistance of experienced employment law attorneys to advise the DBSA on all aspects of employment law and assist the DBSA in the handling of disputes arising out of employment relationships. Bidders must demonstrate expertise and experience in:

- 4.1.1 General employment advice, including the provision of legal opinions, on relevant application of Labour legislation including, *inter alia*, the Employment Equity Act, the Skills Development Act, the Basic Conditions of Employment Act, the Labour Relations Act, the Pension Funds Act and medical aid schemes as well as advise on the impact of new legislation and regulations on the DBSA.
- 4.1.2 Advising on matters pertaining to collective labour law, including organisational rights and collective bargaining.
- 4.1.3 Advising on matters pertaining to temporary employment services.
- 4.1.4 Advising on matters pertaining to employee benefits.
- 4.1.5 Assisting with matters relating to misconduct, incapacity, poor performance and operational requirements.
- 4.1.6 Assisting with disciplinary investigations and enquiries, and workplace grievances.

- 4.1.7 Managing employee related disputes in the Commission for Conciliation, Mediation and Arbitration.
- 4.1.8 Attending to litigation in the Labour Court, the Labour Appeal Court, and the High Court or in private arbitration.
- 4.1.9 Drafting of agreements such as employment agreements, consultancy agreements, temporary employment services agreements, restraint of trade agreements, secondment agreements, performance contracts and mutual separation agreements.
- 4.1.10 Developing and implementing fair, commercially viable employment policies, procedures and codes of conduct.
- 4.1.11 Advising on employment aspects of business changes, including restructurings and outsourcing.
- 4.1.12 Advising on employment equity and discrimination issues.
- 4.1.13 Provision of Labour relations training such as how to prosecute and chair disciplinary enquiries and poor performance enquiries, and how to conduct incapacity consultations.

#### **4.2 White Collar Crime and Forensic Investigations**

DBSA requires the assistance of external attorneys to assist the DBSA in conducting assessments and investigations pertaining to alleged irregularities or economic crimes. For this purpose, Bidders must demonstrate access to multi-disciplinary teams of specialists including forensic auditors, computer forensic specialists and investigators where required. In addition to conducting forensic investigations, Bidders may be expected to assist DBSA with the subsequent institution of legal action where necessary and to guide DBSA on pre-emptive compliance strategies. Bidders must demonstrate expertise and experience in:

- 4.2.1 Undertaking fact and evidence finding forensic investigations.
- 4.2.2 Advice on Compliance and White-Collar Crime prevention.
- 4.2.3 Probity reviews on administrative processes including procurement.
- 4.2.4 Implementation of recommendations flowing from any forensic investigation, including advising on possible civil remedies, the initiation or defence of civil proceedings, the initiation of disciplinary enquiries or criminal investigations, and taking remedial steps to address the risk of corporate criminal liability.
- 4.2.5 Liaising with law enforcement authorities.
- 4.2.6 Drafting and reviewing policies and procedures to deal with economic crime.

#### 4.3 General Experience

**In addition, Bidders must demonstrate where applicable**

- 4.3.1 Experience in dealing with government departments and entities listed under the Public Finance Management Act, 1999 (PFMA) or Municipal Finance Management Act, 2003 (MFMA).
- 4.3.2 Experience in working with the financial sector, including banks and development financial institutions.
- 4.3.3 Ability to render timely, professional and cost-effective legal solutions.
- 4.3.4 Understanding of importance of delivering on instructions within the applicable time frame and budget.
- 4.3.5 Ability to offer solutions which are innovative and/or contribute to DBSA's ability to carry out its operations in a more efficient, cost-effective manner.
- 4.3.6 Commitment to skills transfer, transformation and capacity building including through twinning.

#### 5. EVALUATION PROCESS

The Evaluation Process for this tender will be as follows:

Phase 1 – Prequalification & Responsiveness Assessment

Phase 2 - Functional Evaluation

There will be no Price & Preference Evaluation for this tender, but bidders are requested to submit the hourly rates of all attorneys employed by the Bidder as well as the binding discount offered on standard hourly rates for the duration of the Bidder's appointment to the DBSA's Law Firm panel.

#### 6. PRE-QUALIFIER & RESPONSIVENESS

**Bidders who do not meet the following criteria as Pre-Qualifier will be disqualified –**

- 6.1 Possession of a valid Legal Practitioners' Fidelity Fund Certificate for each senior attorney included in the bid (CVs of a maximum of three senior attorneys are required to be included with relevant experience in Employment, White Collar Crime and Forensic Investigations matters as set out in paragraphs 4.1 and 4.2 above, irrespective of size of firm).
- 6.2 In respect of Large LSME, submission of a confirmation of Professional Indemnity Insurance per matter to the value of no less than R5 million (five million rand). Firms appointed to this Panel will be required to maintain Professional Indemnity Insurance for the duration of their appointment.
- 6.3 In respect of QSE LSME and ELE firms, proof of Professional Indemnity Insurance of no less than R1 million (one million rand) per matter, alternatively an undertaking to obtain Professional Indemnity Insurance of no less than R1 million per matter if appointed to this Panel. Firms appointed to this

Panel will be required to maintain Professional Indemnity Insurance for the duration of their appointment.

- 6.4 **Three** reference letters from clients demonstrating relevant Employment, White Collar Crime and Forensic Investigations related legal support rendered from 1 January 2022 to date. **Relevance will be measured against criteria set out in paragraphs 4.1 and 4.2 above.**
- 6.5 Schedule of current hourly rates of all categories of attorneys of the firm, and confirmation of the percentage of discount on fees which would be applicable for the duration of the firm's appointment to this Panel (if any)

Notwithstanding that this tender does not include Price and Preference evaluation, all bidders are required to submit a schedule of current hourly rates of all attorneys of the firm, and to confirm the percentage of discount on fees which would be applicable for the duration of the firm's appointment to this Panel (if any), as part of **compulsory responsiveness criteria.**

## **7. FUNCTIONAL EVALUATION CRITERIA**

Firms and their proposed senior attorneys will be evaluated based on technical expertise, experience, and capacity to deliver services in employment, white collar crime and forensic investigations. **Relevance of expertise and experience will be measured against criteria set out in paragraph 4.1 and 4.2 above.**

As set out in Table 1 below, functionality will be assessed against the following criteria:

- 7.1 Expertise of Proposed Senior Attorneys of Firm in Employment and Labour Relations matters (25 points).
- 7.2 Expertise of Proposed Senior Attorneys of Firm in White Collar Crime and Forensic Investigations matters (21 points).
- 7.3 Experience of Firm in Employment, White Collar Crime and Forensic Investigations Matters (20 points).
- 7.4 Reputation, Firm Credentials and Value Proposition (18 points).
- 7.5 Commitment to Transformation and Gender Mainstreaming (16 points).

Functional Criteria		
Evaluation Criteria	Weighting (Points)	Assessment Factors
<b>6. Expertise of Firm's Senior Attorneys in Employment and Labour Relations Matters (25 points)</b> <i>Submit a maximum of 3 (three) CVs from proposed senior attorneys – a maximum of 3 (three) CVs will be reviewed under this category. Scoring will be based on the CV of the most experienced resource.</i>		
<b>Years of Experience (post admission) of Firm's Senior Attorneys in Employment matters</b>	<b>10</b>	<ul style="list-style-type: none"> <li>- Less than 7 years post admission of relevant experience (2 points)</li> <li>- 7 to 10 years' post admission experience (5 points)</li> <li>- 11 to 15 years' post admission experience (7 points)</li> <li>- More than 15 years' post admission experience (10 points)</li> </ul>
<b>Demonstrated experience and expertise of Firm's Senior Attorneys in Employment matters</b>  Demonstrated expertise in relevant and/or complex Employment matters in line with Scope of Work. <b>Please list relevant matters attended to by senior attorney in CV with brief description of each matter.</b>	<b>15</b>	1.5 (one point five) points for each relevant matter attended to up to a maximum of 15 points.
<b>7. Expertise of Firm's Senior Attorneys in White Collar Crime and Forensic Investigations (21 points)</b> <i>Submit a maximum of 3 (three) CVs from proposed senior attorneys – only 3 (three) CVs will be reviewed under this category. Scoring will be based on the CV of the most experienced resource.</i>		
<b>Years of Experience of Attorneys dealing with White Collar Crime and Forensic Investigations.</b>	<b>6</b>	<ul style="list-style-type: none"> <li>- Less than 7 years of relevant experience (1 point)</li> <li>- 7 to 10 years' experience (3 points)</li> <li>- 11 to 15 years' experience (5 points)</li> <li>- More than 15 years' experience (6 points)</li> </ul>
<b>Notable Matters Handled by Senior Attorneys</b>  CVs must demonstrate expertise in attending to white collar crime and forensic investigations in line with Scope of Work. Please list relevant matters attended to by senior attorney in CV with brief description of each matter.	<b>15</b>	1.5 (one point five) points for each relevant matter attended to up to a maximum of 15 points.
<b>8. Experience of Firm in Employment Law, White Collar Crime and Forensic Investigations Matters (20 points)</b>		
<b>8.1 Employment Law &amp; Labour Relations Experience in line with Scope of Work</b> Bidders are required to provide brief summary of relevant matters advised on.	<b>8</b>	One point for each relevant matter up to a maximum of 8 points.
<b>8.2 Experience in chairing disciplinary, grievance and incapacity hearings</b>	<b>4</b>	One (1) to three (3) matters – 1 points Four (4) to six (6) matters - 3 points Seven (7) or more matters – 4 points
<b>8.3 White Collar Crime &amp; Forensic Investigations (including probity reviews) in line with Scope of Work</b>	<b>8</b>	One point for each relevant matter up to a maximum of 8 points.
<b>9. Reputation, Firm Credentials and Value Proposition (18 points)</b>		
<b>9.1 Firm Profile, Market Reputation &amp; Ranking</b>	<b>8</b>	A score will be provided for overall impression of the firm considering inter alia <ul style="list-style-type: none"> <li>• Establishment (firm established more than 5 years ago) (2 points)</li> <li>• profile of firm including, vision and mission, culture and values (2 points)</li> <li>• technology and innovation, (2 points)</li> <li>• corporate social responsibility (2 points)</li> </ul>



9.2 <b>Institutional Strength &amp; Global Reach</b>	<b>3</b>	Evidence of combination of any of the following will be considered in allocating marks - - Relationships, strategic partnerships with other entities. - Track record of advising Banks & Development Finance Institutions. - Awards and recognitions of law firm and senior attorneys - Firm and partner of firm's ranking in Legal 500, Chambers, or IFLR1000.
9.3 <b>Value Proposition to the DBSA</b>	<b>3</b>	Proposed additional value proposition to DBSA, including training, access to precedents, updates on new legislation, access to boardrooms for meetings and arbitration etc.
9.4 <b>Relationship &amp; Quality Management</b>	<b>4</b>	Demonstrate how the relationship with the DBSA and instructions from DBSA will be managed to ensure timely, professional and quality assistance to the DBSA. Details of quality review mechanism employed by the Bidder.
<b>10. Commitment to Transformation and Gender Mainstreaming (16 points)</b>		
10.1 <b>Black women ownership</b> Bidders are required to evidence the black women ownership of the firm	<b>8</b>	<b>Evidence black women ownership in the firm</b> 50.00 % - 100% scores 8 points 25.00 % - 49.99 % scores 6 points 10.00 % - 24.99 % scores 4 points 1 % - 9.99 % scores 2 points
10.2 <b>Black Candidate Attorneys trained in past three years (as percentage of total candidate attorneys employed by the firm)</b> Bidders are required to evidence the total number of black candidate attorneys employed by the firm between 1 January 2022 to date as a percentage of total candidate attorneys employed by the firm over this period.	<b>8</b>	<b>Provide a list of all candidate attorneys employed between 1 January 2022 to 31 August 2025 including racial identity of each candidate.</b>  75.01 % - 100% scores 8 points 51.01 % - 75.00 % scores 6 points 25.01 % - 51.00 % scores 4 points 1 % - 25.00 % scores 2 points

**A minimum score of 70 (seventy) is required to be considered for inclusion in this Panel.** Large LSME firms will be ranked separately from ELE and QSE LSME firms. Only the top scoring firms in each group will be appointed so that the Employment & White-Collar Crime and Forensic Investigations Law Firm Panel consists of a maximum of ten (10) firms constituted of five (5) Large LSME firms and five (5) ELE and QSE LSME firms collectively. In the event of multiple firms achieving the same ranking in each group, this Panel's size will be increased to include those firms.

## **8. FINANCIAL OFFERING**

Bidders will not be evaluated on any price offering at this stage but are requested to provide the DBSA with the hourly rates of all attorneys employed by the Bidder (including envisaged annual escalations), as well as a binding offer on percentage discount offered on standard hourly and disbursement rates for the duration of the Bidder's appointment to the DBSA's Employment & White-Collar Crime and Forensic Investigations Law Firm Panel.

## **9. TERMS OF APPOINTMENT**

Law Firms appointed to this Panel would be required to sign a Service Level Agreement in the form attached hereto.

## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

### 2. Bidder's declaration

- 2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**
- 2.1.1 If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

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<sup>1</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....  
 .....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any

interest in any other related enterprise whether or not they are bidding for this contract? **YES/NO**

2.3.1 If so, furnish particulars:

.....  
 .....

### 3 DECLARATION

I, \_\_\_\_\_ the \_\_\_\_\_ undersigned,  
 (name)..... in submitting  
 the accompanying bid, do hereby make the following statements that I certify to be  
 true and complete in every respect:

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this

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<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

**SBD 4**

- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....  
Signature

.....  
Date

.....  
Position

.....  
Name of bidder

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

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### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

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

1.2 **To be completed by the organ of state**

*(delete whichever is not applicable for this tender).*

- a) The applicable preference point system for this tender is the **90/10** preference point system.
- b) The applicable preference point system for this tender is the **80/20** preference point system.
- c) Either the **90/10 or 80/20 preference point system** will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals (namely, BBBEE status level of contributor).

#### 1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	80/90
PREFERENCE POINTS	20/10
<b>Total points for Price and Preference Points</b>	<b>100</b>

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

### 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

#### 3.1. POINTS AWARDED FOR PRICE

##### 3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps = 80 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)} & \mathbf{or} & \mathbf{Ps = 90 \left( 1 - \frac{Pt - P_{min}}{P_{min}} \right)} \end{array}$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = Price of lowest acceptable tender

#### 3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

##### 3.2.1. POINTS AWARDED FOR PRICE

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)} & \mathbf{or} & \mathbf{Ps = 90 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)} \end{array}$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmax = Price of highest acceptable tender

### 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation



stated in the conditions of this tender:

4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—

(a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or

(b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

***(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.)***

***Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)***

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
1	10	20		
2	9	18		
3	6	14		
4	5	12		
5	4	8		
6	3	6		
7	2	4		
8	1	2		
Non-compliant contributor	0	0		

(Note: Bidders are required to submit their BBBEE certificates or sworn affidavits (in the case of EMEs/QSEs) in order to be eligible to claim points)

#### **DECLARATION WITH REGARD TO COMPANY/FIRM**

4.3. Name \_\_\_\_\_ of  
company/firm.....

4.4. Company registration number:  
.....

4.5. TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
  - ☐ One-person business/sole propriety
  - ☐ Close corporation
  - ☐ Public Company
  - ☐ Personal Liability Company
  - ☐ (Pty) Limited
  - ☐ Non-Profit Company
  - ☐ State Owned Company
- [TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 1.4 and 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

- (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
- (d) recommend that the tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
- (e) forward the matter for criminal prosecution, if deemed necessary.

<div style="text-align: center;">..... <b>SIGNATURE(S) OF TENDERER(S)</b></div> <div><b>SURNAME AND NAME:</b> .....</div> <div><b>DATE:</b>.....</div> <div><b>ADDRESS:</b>..... ..... ..... .....</div>
--

## RESTRICTED SUPPLIERS

- 1 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

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

## **Annexure D**

**Bidders are required to include, as Annexure F to their Bids, certified copies of all relevant CIPC registration documents listing all members with percentages, in the case of a close corporation**

## **Annexure E**

**Bidders are required, as annexure G to their Bids, to submit certified copies of the latest share certificates of all relevant companies**

## **Annexure F**

**Bidders which submit Bids as an unincorporated joint venture, consortium or other association of persons are required to submit, as Annexure H, a breakdown of how the percentage (%) fees and work will be split between the various people or entities which constitute the Bidder.**

## **Annexure G**

**Bidders are required to include, as Annexure I to their Bids, supporting documents to their responses to the Pre- Qualifying Criteria and Evaluation Criteria.**

**Where the supporting document is the profile of a member of the Bidder's proposed team, this should be indicated.**



## Annexure H

### [General Conditions of Contract]

PLEASE NOTE THAT ALL BIDDERS ARE REQUIRED TO READ THROUGH THE GENERAL CONDITIONS OF CONTRACT PRESCRIBED BY THE NATIONAL TREASURY. SUCH GENERAL CONDITIONS OF CONTRACT CAN BE ACCESSED ON THE NATIONAL TREASURY WEBSITE.

PLEASE NOTE FURTHER THAT ALL BIDDERS MUST ENSURE THAT THEY ARE WELL ACQUAINTED WITH THE RIGHTS AND OBLIGATIONS OF ALL PARTIES INVOLVED IN DOING BUSINESS WITH GOVERNMENT.

NOTE: All Bidders are required to confirm (*Tick applicable box*) below:

Item	YES	NO
Is the Bidder familiar with the General Conditions of Contract prescribed by the National Treasury?		

## Annexure I

### Tax Compliant Status and CSD Registration Requirements

**ALL PROSPECTIVE BIDDERS MUST HAVE A TAX COMPLIANT STATUS EITHER ON THE CENTRAL SUPPLIER DATABASE (CSD) OF THE NATIONAL TREASURY OR SARS E FILING PRIOR TO APPOINTMENT/AWARD OF THE BID.**

**REGISTRATION ON THE CSD SITE OF THE NATIONAL TREASURY IS A COMPULSORY REQUIREMENT FOR A BIDDER TO BE APPOINTED, TO CONDUCT BUSINESS WITH THE DBSA. THE ONUS IS ON THE SUCCESSFUL BIDDER TO REGISTER ON THE CSD SITE AND PROVIDE PROOF OF SUCH REGISTRATION PRIOR TO APPOINTMENT/AWARD OF THE BID.**

**CSD Registration Number:**



The Development Bank of Southern Africa has a Zero Tolerance on Fraud and Corruption. Report any incidents of Fraud and Corruption to Whistle Blowers on any of the following:

TollFree : 0800 20 49 33  
Email : [dbsa@whistleblowing.co.za](mailto:dbsa@whistleblowing.co.za)  
Free Post : Free Post KZN 665 | Musgrave | 4062  
SMS : 33490

## Annexure J

### LEGAL PANEL GENERAL TERMS AND CONDITIONS

agreed to between

**DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**

and

**[INSERT]**



## Introduction:

1. The DBSA issued the RFP to procure law firms to include on the Panel of Attorneys.
2. The Advisor was one of the successful bidders in respect of the RFP and the Parties now wish to record the terms and conditions upon which the Advisor is appointed to the Panel of Attorneys and the terms and conditions upon which the Advisor will provide the Services to the DBSA.

## Definitions:

3. The headings to the clauses, schedules and annexures of these General Terms and Conditions are for reference purposes only and shall in no way govern or affect the interpretation of nor modify nor amplify the terms of these General Terms and Conditions nor any clause, schedule or annexure hereof.
4. Unless the context dictates otherwise, the words and expressions set forth below shall bear the following meanings and cognate expressions shall bear corresponding meanings:
  - (a) **"Advisor"** means [name of firm to be included], being a successful bidder in respect of the RFP and to be appointed to the Panel of Attorneys;
  - (b) **"Agreement"** means these General Terms and Conditions as supplemented by the terms of a Request for Quote and an Engagement Letter for purposes of an Engagement;
  - (c) **"Award Letter"** means the written notification from the DBSA confirming that a bidder has been successful in its bid for the RFP and has been appointed to the Panel of Attorneys;
  - (d) **"Engagement"** means a matter to which the Parties have signed an Engagement Letter for the Advisor to provide Services to the DBSA;
  - (e) **"Engagement Letter"** means the written letter concluded between the DBSA and the Advisor on the back of the Advisor's successful response to a Request for Quote which sets out the complete scope of the Services to be provided, the fees payable for such Services, as well as any specific terms that may be applicable to the Services contemplated in that specific Engagement Letter;
  - (f) **"DBSA"** means the Development Bank of Southern Africa Limited, a development funding institution, reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act, 1997, with its principal place of business situated at 1258 Lever Road, Headway Hill, Midrand
  - (g) **"Deliverables"** means a deliverable as defined in terms of clause 29;
  - (h) **"General Terms and Conditions"** means these Legal Panel General Terms and Conditions which shall read into all Engagement Letters;
  - (i) **"Panel of Attorneys"** means the panel of attorneys created by the DBSA to provide specialist and general legal services to the DBSA pursuant to the RFP;
  - (j) **"Parties"** means the DBSA and the Advisor and **"Party"** shall mean either the DBSA or the Advisor, as the context may require;
  - (k) **"Performance Review"** means a performance review as defined under clause 47;
  - (l) **"POPIA"** means the Protection of Personal Information Act 4 of 2013;
  - (m) **"Request for Quote"** means a written request for quote issued by the DBSA to a member of the Panel of Attorneys requesting such member(s) to submit a quote (and relevant supporting documents) to provide Services to the DBSA;
  - (n) **"RFP"** means the request for proposal issued by the DBSA under RFP [1]; and
  - (o) **"Services"** means the Services to be provided by the Advisor the DBSA in terms of a Request for Quote.

**Structure:**

5. These General Terms and Conditions, together with the Request for Quote and Engagement Letter for an Engagement shall form the contractual framework for the provision of the Services by the Advisor to the DBSA.
6. These General Terms and Conditions shall be read into each Engagement Letter issued to the Advisor and the execution of an Engagement Letter shall be deemed to be an execution of these General Terms and Condition as relates to that Engagement.
7. The Agreement sets out the entire contract between the Parties as relates to an Engagement and no change to these General Terms and Conditions will have any effect unless such change is reduced to writing and signed by both Parties in the Engagement Letter.
8. For the avoidance of doubt, to the extent that the Parties amend any portion of these General Terms and Conditions in an Engagement Letter, such amendment shall only apply to the specific Engagement which that Engagement Letter relates to and shall not serve as an amendment to these General Terms and Conditions as a whole.

**Appointment**

9. DBSA hereby appoints the Advisor to the Panel of Attorneys for purposes of rendering the Services to the DBSA, and the Advisor hereby accepts the appointment and agrees to render the Services to the DBSA on the terms and conditions set out hereunder.
10. Whilst the DBSA will use reasonable endeavors to achieve a fair and even distribution of work to all of the law firms on the Panel of Attorneys, the Advisor accepts that this appointment to the Panel of Attorneys does not guarantee that any work will be allocated to the Advisor, nor does it guarantee that the Advisor will be afforded the opportunity to respond to every Request for Quote issued by the DBSA.

**Duration of appointment**

11. The Advisor's appointment on the Panel of Attorneys shall commence on the date of the Award Letter and shall continue for a period of five (5) years, unless the appointment is terminated in accordance with these General Terms and Conditions.
12. The expiration of the Advisor's appointment to the Panel of Attorneys through the effluxion of time as contemplated under clause 11 above, shall not have the effect of terminating any Engagement Letter entered into between the Parties prior to such expiration. The Parties agree that the Advisor's appointment as well as these General Terms and Conditions shall remain in force, as relates to those Letters of Engagement, for as long as the Advisor is required to provide Services to the DBSA under such Engagement Letters.
13. The DBSA may, at any time and without cause, terminate these General Terms and Conditions or any Engagement on thirty (30) days' written notice. The Advisor shall be entitled only to payment for Services duly performed up to the effective date of termination.

**Performance of the Services**

14. The Advisor will provide the Services using the highest standard of skill and care. The Advisor acts an independent contractor to the DBSA and will have no decision-making power in respect of the Services. Notwithstanding this, it is agreed that the DBSA will rely on the Advisor executing the Services diligently and at a standard which is expected of an organization such as the Advisor.

15. The Advisor shall assign the attorneys agreed to in Engagement Letter to any Services provided to the DBSA. Should any attorney become unavailable to attend to an Engagement, the replacement of that attorney with an equally experienced attorney must be agreed to in writing by the DBSA.
16. The Advisor shall not be entitled to subcontract any portion of the Services unless such subcontracting is specifically agreed to in an Engagement Letter. To the extent that subcontracting of any portion of the Services is permitted in an Engagement Letter, the Advisor will remain solely responsible to the DBSA for the performance of the Services.
17. The Advisor acknowledges the DBSA's commitment to transformation and capacity building within the South African legal profession. The Advisor shall use reasonable endeavors to promote transformation, including meaningful participation of black, women-owned, youth-owned, and emerging firms in the delivery of the Services, and shall report annually to the DBSA on such initiatives.
18. The Advisor shall, at all times, comply with all applicable laws, professional conduct rules, and DBSA policies communicated in writing, including those relating to anti-corruption, ethics, environmental sustainability, transformation, and information security. The Advisor shall promptly report any actual or suspected breach of such laws or policies to the DBSA.
19. The Advisor warrants that neither it nor any of its partners, employees, or representatives has offered, given, or received any undue financial or other advantage in connection with the award of the RFP or performance of an Engagement. The Advisor shall immediately notify the DBSA of any suspected or actual corrupt or unethical conduct and shall cooperate fully in any related investigation.

#### **Nature of relationship**

20. The Advisor shall at all times remain an independent service provider to the DBSA and neither the Advisor nor any employees or agents of the Advisor shall be regarded as an employee or agent of the DBSA.
21. To the extent that any laws provide that any employee of the Advisor, for whatever reason, is deemed to be an employee of the DBSA pursuant to the provision of the Services, the Advisor hereby agrees to indemnify the DBSA against any liabilities which the DBSA may have as a result thereof.

#### **Complimentary training and secondment opportunities**

22. The Advisor commits to provide complimentary training to the DBSA in a topic chosen by the DBSA representative, at least twice a year with a minimum of six (6) complimentary hours. Training shall be held at the DBSA's offices or the Advisor's premises or any other venue agreed to by the Parties.
23. The Parties agree that the Advisor would, whenever possible, provide the DBSA opportunities for its attorneys to upskill and enhance their legal skills by including them in:
  - (a) Advisor's inhouse training;
  - (b) Providing secondment opportunities; and
  - (c) Any other training and/or secondment opportunity that the Parties may agree from time to time.

#### **Fees and charges**

24. DBSA shall pay the Advisor the fees as set out in an Engagement Letter.
25. All payments in terms of or arising out of an Engagement shall be made in South African Rands, free of bank or other exchange, commission or any other deduction to the DBSA.

26. DBSA shall make payment of all invoices in respect of Services within sixty (60) days of receiving such invoice. Where the DBSA disputes any portion of an invoice, it shall be entitled to withhold payment of the disputed amount until the dispute is resolved
27. Should an Engagement Letter be terminated early, for whatever reason, DBSA shall only be obliged to pay for Services received.
28. DBSA shall not pay for any disbursements or charges unless such disbursements or charges has specifically been agreed to in an Engagement Letter. Should the Advisor be required to incur any disbursements or charges additional to what has been contemplated in the relevant Engagement Letter, the DBSA shall not be liable for such disbursements or charges unless the DBSA has provided prior written approval to the Advisor to incur such additional disbursements or charges.

#### **Deliverables**

29. All reports, memoranda, opinions, legal documents, templates, research, analyses, advice, pleadings, summaries, and any other materials or deliverables (collectively, the “**Deliverables**”) prepared, developed or produced by the Advisor in the performance of the Services shall, upon payment of the applicable fees agreed in an Engagement Letter, become the sole and exclusive property of the DBSA.

#### **Protection of personal information**

30. The Parties agree that they will each comply with the provisions of POPIA in dealing with any personal information of the other Party during this appointment.
31. To the extent that the Advisor acts as an operator to the DBSA, as defined in POPIA, the Advisor agrees to comply with all its obligations as set out in POPIA.
32. The Advisor shall implement appropriate technical and organisational measures to safeguard personal information and shall immediately notify DBSA of any data breach which has resulted in any unauthorized access to personal information of the DBSA or any of its representatives.

#### **Confidentiality**

33. Except as otherwise permitted by an Agreement, neither party may disclose to third parties any information provided by or on behalf of the other that ought reasonably to be treated as confidential.
34. Except as allowed for in an Agreement or any applicable law, the Parties undertake to ensure that all confidential information shall remain confidential and shall not be used for any purpose other than the fulfilment of the respective obligations imposed on each Party in terms of an Agreement.

#### **Intellectual Property**

35. Each Party shall retain ownership in any intellectual property which it has or has developed outside of an Engagement. Any intellectual property developed in the provision of the Services shall belong to the DBSA. The Advisor hereby grants the DBSA a perpetual license free right to use any intellectual property owned by the Advisor which is incorporated in any Deliverable.

#### **Breach**

36. In the event of any of the Parties breaching a material term of an Agreement and failing to remedy such breach within seven (7) days of having been requested in writing by a Party to do so, the other Party shall be entitled immediately and without further notice to cancel such Agreement, without prejudice to any of the aggrieved Party's rights under the Agreement or in law, to claim damages from the defaulting Party, as well as any other relief which is permitted in law. For the avoidance of

doubt, late payment of any invoice of the Advisor by the DBSA shall not be deemed a material breach of an Agreement, unless such payment is outstanding for a period in excess of ninety (90) days.

37. In the event of a dispute arising between the Parties, DBSA may, at its sole discretion, withhold payment of any fees due to the Advisor under the Engagement Letter to which the dispute relates, while such dispute remains unresolved.

#### **Dispute resolution**

38. Any dispute arising out of or relating to an Agreement concerning the interpretation of the terms and conditions of such Agreement or of compliance by any Party with the terms/conditions of an Agreement which is not resolved amicably through consultations or negotiations shall, subject to the provisions of these General Terms and Conditions, be settled by arbitration in terms of the arbitration rules of the Arbitration Foundation of Southern Africa.
39. Nothing in clause 38 will preclude either Party from obtaining immediate relief on an urgent basis from a court of competent jurisdiction, pending the decision of the arbitrator.

#### **Professional indemnity and Limitation of liability**

40. The Advisor shall maintain, at its own cost, professional indemnity insurance with reputable insurers per claim or occurrence as required in the RFP and shall provide the DBSA with proof of such cover on request. The Advisor shall immediately notify the DBSA of any material reduction, lapse, or claim under such insurance.
41. Except for instances of wilful misconduct, fraud or gross negligence, the Advisor's liability to the DBSA shall be limited as contemplated herein.
42. The Advisors liability to the DBSA shall be limited to the greater of (i) the amount of the indemnity provided by the Advisor's professional indemnity cover provided at time of appointment in respect of such claims; or (ii) five (5) times the fees payable by the DBSA under the Engagement Letter which caused the loss to the DBSA.

#### **Conflicts**

43. The Advisor shall ensure that it protects the interest of the DBSA and shall ensure that it does not act in a manner which may prejudice the DBSA in favor of any other client, or prospective client of the Advisor.
44. The Advisor shall not act for any person or entity whose interests are, or may reasonably be perceived to be, in conflict with or adverse to those of the DBSA. The Advisor may not represent such persons or entities in any matter in which the DBSA has a direct or indirect interest, unless the DBSA, in its sole discretion, has provided prior written consent to such engagement.
45. The Advisor shall notify the DBSA within twenty-four (24) hours of becoming aware of an actual or potential conflict of interest.
46. The Advisor acknowledges that it owes a fiduciary duty to the DBSA to act in the best interest of the DBSA which includes to maintain strict confidentiality and to protect all information obtained in the course of its engagement with the DBSA. The Advisor shall not, under any circumstances, use, disclose, or in any way act contrary to the interests of the DBSA in respect of any confidential, privileged, or commercially sensitive information belonging to the DBSA. This duty extends to all information acquired pursuant to the General Terms and Conditions or any Agreement, whether or



not marked as confidential, and continues indefinitely after the termination of these General Terms and Conditions or such Agreement.

#### **Performance review**

47. The DBSA shall be entitled, in its sole discretion, to conduct performance reviews of the Advisor at least twice a year (each a “**Performance Review**”) during the term of its appointment to the Panel of Attorneys. Each Performance Review shall assess, among other things:
- (a) the quality, accuracy and timeliness of the Advisor’s legal work;
  - (b) the Advisor’s responsiveness, accessibility and adherence to agreed service levels;
  - (c) cost efficiency, value for money and compliance with the DBSA’s approved tariff or fee arrangements;
  - (d) the Advisor’s contribution to the DBSA’s transformation and empowerment objectives, including Broad-Based Black Economic Empowerment (“B-BBEE”), supplier development, skills transfer initiatives;
  - (e) innovation, knowledge sharing, collaboration and proactive risk identification and management;
  - (f) compliance with the DBSA’s policies, procurement requirements, confidentiality undertakings and ethical standards; and
  - (g) overall service standards and professionalism.
48. Should any Performance Review indicate, in the DBSA’s reasonable opinion, that the Advisor’s performance, conduct or value delivery is unsatisfactory or inconsistent with the DBSA’s expectations, the DBSA may, in its sole discretion:
- (d) require the Advisor to submit and implement, within a period specified by the DBSA, a remedial action plan addressing the deficiencies identified; and/or
  - (e) suspend, reduce or withhold the allocation of new instructions or matters to the Advisor; and/or
  - (f) remove the Advisor from the Panel of Attorneys.

#### **Record keeping**

49. The Advisor shall maintain accurate and complete records (including correspondence, drafts, research, notes, and time sheets) for each Engagement.
50. The Advisor shall, at its own cost, provide the DBSA with searchable electronic copies of any file, Deliverables or records within five (5) business days of written request for such documents by the DBSA.
51. Upon completion or termination of an Engagement, the Advisor shall if required by the DBSA, promptly deliver to the DBSA all files, records and Deliverables, whether final or in draft form.
52. The Advisor shall have no right to exercise any lien over DBSA records, or over any Deliverables once payment for such Deliverables has been made by the DBSA.
53. The Advisor shall securely retain back-up copies of records for no less than five (5) years after completion of the Engagement, thereafter destroying them in accordance with POPIA and DBSA’s written instructions.
54. The Advisor shall maintain appropriate systems, procedures, and disaster recovery measures to ensure continuity of service and protection of DBSA data. In the event of a disruption, the Advisor shall notify the DBSA within twenty-four (24) hours and implement remedial action at its own cost.

55. The DBSA, its internal or external auditors, and any authorised regulator shall have the right, on reasonable written notice, to inspect, copy, and audit any records, documents, or systems relating to the performance of the Services or amounts invoiced. The Advisor shall cooperate fully with such audits and provide access to all relevant personnel and information. Any deficiencies identified must be rectified at the Advisor's cost.

**Notice and domicilia**

56. Each Party chooses the physical address and/or email address corresponding to its name below as the address to which any notice in terms of an Agreement must be sent.

**DBSA:**

Physical address: 1258 Lever Road

Headway Hill

Midrand

1685

Tel number: +27 11 313 3911

Email address: claimadmin@dbsa.org

Attention: General Legal Counsel; and

**ADVISOR:**

Physical address: [●]

Tel number: [●]

Email address: [●]

Attention: [●]

**General**

57. The terms and conditions contained on either Party's forms or invoices shall not apply to, supplement or supersede any provisions of an Agreement.
58. No alteration or variation to or agreed cancellation of these General Terms and Conditions or an Agreement shall be of any force or effect, unless it is recorded in writing and signed by both Parties.
59. The Advisor shall not cede, assign, transfer, or delegate any rights or obligations under an Agreement without the prior written consent of the DBSA. The Advisor shall immediately notify the DBSA of any change in ownership or control, merger, or restructuring that may affect its performance or independence. The DBSA may, in its discretion, terminate an Engagement or the appointment of the Advisor to the Panel of Attorneys if, in the opinion of the DBSA, such change is material.
60. Nothing in these General Terms and Conditions makes either Party the agent, principal, representative or partner of the other, and no Party shall be entitled to represent to any third party that the relationship between the Parties is that of a partnership, joint venture or the like.
61. No failure or delay by a Party to enforce any provision of an Agreement shall constitute a waiver or suspension of such provision or affect in any way a Party's right to require performance of any such

provision at any time in the future, nor shall the waiver of any right arising from any subsequent breach nullify the effectiveness of the provision itself.

62. In the event that any of the terms of these General Terms and Conditions or an Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the Parties agree to negotiate in good faith an amendment to remove the invalidity.
63. These General Terms and Conditions may be signed in two or more counterparts, one or more of which shall constitute a binding agreement between the Parties.
64. Each Party acknowledges that it does not enter into these General Terms and Conditions on the basis of and does not rely on any representation, warranty or other provision, whether express or implied, except as expressly provided in these General Terms and Conditions.
65. Each Party warrants that it is acting as principal and not as agent for any other person, whether disclosed or otherwise. Save that the DBSA may from time to time require legal support from the Advisor for programmes or projects in which the DBSA is acting as an agent to a third party. Unless otherwise agreed these, terms will apply to all Engagements irrespective of whether DBSA is acting as a principal or agent.
66. These General Terms and Conditions, and any Agreement pursuant to it, shall be governed by, construed and interpreted in accordance with the laws of the Republic of South Africa.
67. The Parties shall each pay their own costs of negotiating, drafting, preparing and implementing an Agreement and any annexure to it.

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 202[●]

For and on behalf of

**Development Bank of Southern Africa Limited**

**[NOT FOR SIGNATURE]**

\_\_\_\_\_

Name:

Capacity:

Who warrants authority

Signed at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 202[●]

For and on behalf of

**[Insert name of Advisor]**

**[NOT FOR SIGNATURE]**

\_\_\_\_\_

Name:

Capacity:

Who warrants authority