



**TERMS OF REFERENCE AND CALL FOR PROPOSALS:**

**LEGAL ASSISTANCE FOR THE COMMISSION ON THE LAW RELATING TO THE FIXED TERM EMPLOYMENT CONTRACT OF THE CEO OF THE SAHRC AND MATTERS CONNECTED THERETO**

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**Deadline for Submissions: 31 January 2022**

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**1. PURPOSE AND PROJECT DESCRIPTION**

1.1. The purpose of this document is to request proposals from qualifying service providers to provide the Executive Authority (the “Commission”), legal advice and written opinions related to various aspects of the existing contract of employment with the CEO of the SA Human Rights Commission, and general advice relating to, the appointment process, conditions of service, including but not limited to assistance with the drafting and development of a new contract of employment for future use, advice on the procedure for appointment of a CEO upon the termination of the existing fixed term contract of employment of the incumbent, prevailing employment/ labour law and all related matters.

**2. BACKGROUND**

2.1. The SAHRC is an independent constitutional institution established in terms of the Constitution Act 108 of 1996, and further derives its powers and functions from the South African Human Rights Commission Act 40 of 2013 (Act).

2.2. Section 19 of the Act provides for the appointment of the CEO of the Commission for the purpose of assisting the Commission in the performance of its financial and clerical functions. The Commission determines the terms and conditions for the appointment of the CEO.

- 2.3. The current five-year fixed term employment contract of the CEO commenced on 1 June 2017 and expires on 31 May 2022.

### **3. KEY OBJECTIVES OF THE PROJECT**

- 3.1. To provide the Commission, through the office of the Chairperson of the SAHRC (the “Chairperson”), with:
- a) Legal advice, and where required, written opinions related to various aspects of the existing contract of employment of the CEO of the SA Human Rights Commission.
  - b) Advice relating to the appointment, appointment process, and conditions of service of a CEO, and related matters, including but not limited to assistance with advice on the development of a new contract of employment for future use by the Commission in the appointment of its CEO.
  - c) Drafting and refining, in consultation with the Chairperson, and finalizing a revised new fixed-term contract of employment of a CEO for future use by the Commission, by the 31 May 2022.
  - d) Advice on the prevailing law and case law relating to the relevant employment, procedures and practices, conditions of service and obligations of the relevant parties, and any related matter; and
  - e) Advice on the ideal selection and appointment procedure to be pursued in appointing the Commission’s CEO.

### **4. PROJECT SCOPE AND DELIVERABLES**

- 4.1. Providing legal advice to the Commission, through the office of the Chairperson, on various matters related to the existing and future contract of employment of its CEO.
- 4.2. Assisting with developing procedures and practices and clarifying expectations pertaining to the employment relationship between the CEO and the Commission.
- 4.3. Providing written legal opinions, when requested to do so by the Chairperson of the Commission, pertaining to the existing contract of employment and practices of the Commission.
- 4.4. Attending meetings with the Chairperson of the Commission and other Commissioners when invited to do so.

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- 4.5. Attending to the review, drafting, and finalizing of a new fixed-term contract of employment for the future use of the Commission with effect from 01 June 2022 or such other date that the Commission may determine.
- 4.6. Assisting with defining a selection and appointment process for the selection of a CEO beyond 31 May 2022, and, where requested, providing related assistance and advice.

## 5. REQUIRED EXPERTISE

- 5.1. The Commission requires the services of an experienced provider, with at least 10 years of experience in advising, adjudicating and/or litigating on labour law in South Africa.
- 5.2. Virtual or physical consultation before and/or after the provisioning of the written opinion on the issues raised.
- 5.3. Excellent verbal and drafting skills.

## 6. PROJECT TIMELINES

- 6.1. The expected project commencement date is **14 February 2022**. The service to be provided to finality, as per the Commission's needs but will not extend beyond 30 June 2022.

## 7. EVALUATION CRITERIA

- 7.1. Please note that the following evaluation criteria will be used:

- a) **Price evaluation based on the 80/20 preferential point system.**
- b) **Evaluation on functionality, as in Table 1 below:**

8. Bidders who submit proposals must meet a minimum of 70% threshold to be considered for Price and BEE

**Table 1: Functionality evaluation**

	<b>Criteria</b>	<b>Percentage weighting</b>
1.	Previous experience working on similar projects – successfully consulting, advising, and litigating in employment law matters.  1 = 1 year of experience 2= 2 to 3 years of experience in the industry	35

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	3= 4 to 6 years of experience in the industry 4-5= 7 to 8 years of experience in the industry	
2.	Skills and competencies of key experts to be assigned to the project including expertise and up to date understanding of the law relating to employment as well as excellent writing skills.	30
3.	Proposed methodology to be used to realize the expected results	20
4.	High level work-plan with an overview of timelines, key milestones and a costs breakdown indicating the major costs drivers.	15
	<b>Total</b>	<b>100</b>

Bidders must obtain a minimum threshold of 70% on Functionality to proceed to the next stages of the evaluation process. Failure to obtain the minimum of 70% will result in your bid being considered non-responsive.

**Price and BBEE evaluation**

Only Bidders that have met the 70% threshold to be considered for price and BBEE. Price and BBEE will be evaluated as follows:

In terms of regulation 6 of the Preferential Procurement Regulations pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated on the 80/20-preference point system in terms of which points are awarded to bidders based on:

- The bid price (maximum 80 points)
- B-BBEE status level of contributor (maximum 20 points)

*i. Stage 1 – Price Evaluation (80 Points)*

Criteria	Points
Price Evaluation	80

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$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	
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The following formula will be used to calculate the points for price:

Where

$P_s$  = Points scored for comparative price of bid under consideration

$P_t$  = Comparative price of bid under consideration

$P_{\min}$  = Comparative price of lowest acceptable bid

**ii. Stage 2 – BBEE Evaluation (20 Points)**

**a. BBEE Points allocation**

A maximum of 20 points may be allocated to a bidder for attaining their B-BBEE status level of contributor in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

B-BBEE points may be allocated to bidders on submission of the following documentation or evidence:

- A duly completed Preference Point Claim Form: Standard Bidding Document (SBD 6.1); and

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- B-BBEE Certificate

## **8. SUBMISSION REQUIREMENTS**

8.1. To be considered as the preferred service provider, kindly submit the following:

- a) Proposal indicating the service providers' relevant experience, success rates, references, conceptualization of the project, process, and method of delivery, costing and any other relevant information.
- b) Valid Tax Clearance Certificate.
- c) BBEE Certificate.
- d) Company Profile, if any.
- e) Standard bid document 4
- f) Standard bid document 7.2
- g) Standard bid document 6.1
- h) Central supplier database report

8.2. **Submissions are due by Monday 31 January 2022, before 15:00.**

8.3. **Submissions must be emailed to:**

[tdlamini@sahrc.org.za](mailto:tdlamini@sahrc.org.za) or [tenderoffice@sahrc.org.za](mailto:tenderoffice@sahrc.org.za)

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