

TERMS OF REFERENCE

BID NUMBER: BID1707\2324

**BID – DEVELOPMENT AND IMPLEMENTATION OF AN INVESTIGATOR DEVELOPMENT PROGRAM
FOR THE COMPETITION COMMISSION OF SOUTH AFRICA**

1. BACKGROUND

- 1.1** The Competition Commission of South Africa is a statutory body established in terms of the Competition Act 89 of 1998, in order to – amongst other things – investigate anti-competitive conduct occurring in South African markets or occurring elsewhere but having an effect within South Africa. It has four main functions: (1) investigate anti-competitive conduct; (2) evaluate exemption applications; (3) assess mergers and acquisitions; and (4) advocate for competition compliance. The Commission conducts a range of ancillary functions in order to effectively carry out the four main functions already mentioned. These are (1) legal services; (2) economic research; and business support services coming from (3) corporate services and (4) finance services.
- 1.2** Every division in the Commission comprises entry, junior, intermediate, senior and executive staff. Senior and executive staff carry management responsibility and generally have entry, junior and intermediate staff reporting to them.
- 1.3** CCSA is a public entity listed in schedule 3A of the Public Finance Management Act (PFMA) and acts in compliance with section 217 of the Constitution of South Africa and applicable Public Procurement Regulations and Prescripts.
- 1.4** Therefore, the CCSA is requiring a suitability qualified service provider for the development and implementation of an Investigator Development Program for the Competition Commission of South Africa.

2. SITUATION ANALYSIS AND OBJECTIVES

- 2.1** This Terms of Reference concerns only the divisions that cover the core work of the Commission – being the Mergers and Acquisitions Division, Market Conduct Division, Cartels Division, Advocacy Division, the Economic Research Bureau and the Legal Services Division. The training we request will target junior, intermediate and senior technical staff engaged in or supporting the core work of investigating complaints, evaluating mergers or assessing exemption applications and litigation. The training will not target Principal Analysts but will make use of Principal Analysts to assist in designing the content and to assist in delivering the training. Most attendees to the training requested will be lawyers or economists. However, some Commission staff engaged in the core work of the organisation have an investigations background other than law or economics and these will also attend.

- 2.2** The selected service provider is required to provide a schedule of training over the course of one year: from June 2023 to June 2024. The trainer is required to deliver practical training which goes beyond imparting a theoretical understanding of competition concepts but rather skills the attendees in the practical application of these concepts in their day-to-day work. As the target group will comprise technical staff from junior to senior levels in the organisation, the trainer is expected to cover competition basics but rapidly escalate to cover more advanced competition subjects.
- 2.3** Technical staff at the Commission generally work on complex matters of law and economics regardless of their years of experience or seniority, albeit that junior staff are supervised by more experienced staff. As such, technical staff at all levels of the Commission are required to display the following competencies, in addition to understanding the core legal and economic content.
- 2.3.1. Understand their role, function and public responsibilities as Competition Commission Analysts
 - 2.3.2. Understand the constitutional context within which the Competition Commission operates
 - 2.3.3. Understand how to screen complaints received according to the provisions in the Competition Act and mindful of their function as well as the constitutional context of the Commission's work
 - 2.3.4. Know how to gather relevant information for purposes of an investigation
 - 2.3.5. Know how to use the most effective information gathering tools available
 - 2.3.6. Know how to conduct sound legal and economic analysis to arrive at a well supported and logical conclusion
 - 2.3.7. Know how to write and present compelling investigation reports
 - 2.3.8. Know how to manage a competition case effectively, both at investigation stage and trial stage
 - 2.3.9. Know how to write and present compelling pleadings at adjudication stage
 - 2.3.10. Know how to competently argue and respond to competition cases before the courts
 - 2.3.11. Know how to effectively negotiate case outcomes that favour the Commission's objectives
- 2.4** The investigator development program (IDP) will be divided into eight modules made up of several training sessions per module. The exact number of training sessions per module will be finalised in consultation with the service provider. The service provider should deliver the training sessions by means of mixed media including in-person lectures, e-learning; online workshops; in-person workshops; take-home assignments; debates and other means that would impart both knowledge and skill. Although the Commission has drafted a syllabus plan, the service provider is required to

partner with the Commission in its further development and in finalising the content outline for each training session. In this regard the service provider is required to display a level of flexibility in selecting trainers and creativity developing content and planning the methodology. This is primarily because the Commission wishes to secure suitable trainers from various disciplines and because the Commission would like to ensure a mixed media method of delivery which will have Commission staff engaged and interested till the conclusion of the IDP.

2.4.1 *Although the Commission has drafted a syllabus plan, the service provider is required to partner with the Commission in its further development and in finalising the content outline for each training session. In this regard the service provider is required to display a level of flexibility in selecting trainers and creativity in developing content and planning the methodology. This is primarily because the Commission wishes to secure suitable trainers from various disciplines and because the Commission would like to ensure a mixed media method of delivery which will have Commission staff engaged and interested till the conclusion of the IDP.*

2.5 The table below sets out the modules and contact days we envisage for the IDP. However, this outline is subject to *further development* with the selected service provider.

Module	Contact days
The enforcers mindset: understanding your role as an investigator	2 days
Competition enforcement in a constitutional era	2 days
First stage: Screening methodologies and developing theories of harm	3 days
Second stage: effective information gathering methods for competition enforcement	5 days
Third stage: Analytical tools for effective and relevant outcomes	5 days
Fourth stage: Report writing and presentation for sound decision making	5 days
End stage: Conducting effective negotiations and pursuing meaningful remedies	4 days
End stage: Trial advocacy for competent litigators	6 days
Total	32 days

2.6 Service provider activities will comprise the following:

- 2.6.1. Design a curriculum for a minimum of 32 days of training on the outline above.
- 2.6.2. Develop and design training methodologies for the programme.
- 2.6.3. Develop and design assessment methods for competence.
- 2.6.4. Develop, design and provide training material to promote continuous learning.
- 2.6.5. Deliver training to Commission staff within the agreed time frame.
- 2.6.6. Evaluate training and make recommendations for further development.
- 2.6.7. Produce certificates for participants at the end of training.
- 2.6.8. Provide a project plan, management and support function.

2.7 *Regarding 2.6.3 above: while the Commission is open to considering different assessment methods, we require that, at the very least, the assessment methodology should enable the Commission to determine levels of competence after the training and the Service Provider must recommend appropriate further interventions where necessary.*

3. DELIVERABLES

3.1 In addition to delivering training **(+/- 150 delegates cumulative depending on the subject matter)** in the manner set out above, the Competition Commission expects the following outcomes and outputs from the service provider:

- 3.1.1. Training material
- 3.1.2. Assessment methods and tools.
- 3.1.3. Impact evaluation report and recommendations post implementation.
- 3.1.4. Training manuals (Digital manuals must be provided with ease of accessibility and printing as and when required by the Commission delegates)
- 3.1.5. Certificates of attendance.
- 3.1.6. All modules to be addressed as referenced in section 2 of the terms of reference.

4. TIMEFRAMES

4.1 The training is anticipated to run for a period of 12 months upon appointment.

5. CONTRACTUAL OBLIGATION

- 5.1** Should the service provider be using sub-contractors, the service provider will be responsible for ensuring delivery of services from any such sub-contractors and for making any payments to such sub-contractors.
- 5.2** The bidding process is in accordance with the criteria set out in the Commission's Supply Chain Management Policy and Preferential Procurement Policy, in accordance with the provisions set out in the Preferential Policy Framework Act of 2000.
- 5.3** Bidders are also required to take all reasonable steps to protect information, in line with the provisions of the POPIA 4 of 2014.

6. ABSENCE OF OBLIGATION & CONFIDENTIALITY

- 6.1** No legal or other obligation shall arise between the service provider and CCSA unless/until both parties have signed a formal contract or Service Level Agreement in place.
- 6.2** The Contract site is at **CCSA (as and when required)**.

7. WORKMEN AND SUPERVISION ON SITE

- 7.1** The service provider shall be held responsible for the conduct of his employees and the conduct of his sub-contractor's employees for the full duration of the contract.

8. ADMINISTRATIVE CRITERIA (Phase 1)

- 8.1** Proof of registration on CSD (*Central Supplier Database*)
- 8.2** *General Conditions of Contract (GCC), Standard Bid Document (SBD) 1, 3.3, 4, and SBD 6.1.*

Note: administrative documents must fully be completed, initialled, and signed where applicable

9. EVALUATION CRITERIA

- 9.1** Responses will be evaluated using a predetermined set of evaluation criteria. The evaluation criteria is designed to reflect the Commission's requirements in terms of identifying a suitable service provider and ensure the selection process is transparent and affords all the bidders a fair opportunity for evaluation and selection.
- 9.2 Functional Evaluation threshold (Phase 2)**
- 9.2.1** The tender submission will be functionally evaluated out of a **minimum of 70 points** – **any bidder who scores less than 70** will not be considered for further evaluation (Phase 3) – BBBEE, specific goals and price preference point system, maximum score is 100.

9.3 Functional Evaluation Criteria:

The evaluation is based on functionality, which will be evaluated using the following criteria and points:

Evaluation Area	Evaluation Criterion	Maximum Points
Application and training experience	Bidder to provide: - certified qualifications (not older than 3 months) - and a detailed Curriculum Vitae (CV) setting out the relevant experience and or qualifications as evidence of his/her qualifications or experience as the case may be. Training team/facilitators: Provide a minimum of two (2) facilitators with their tertiary/academic qualifications in competition law or economics and have application and training minimum of 7 years' experience or two (2) facilitators with a minimum of 7 years' experience in training. = 40 points Training team/facilitators: Provide a minimum of two (2) facilitators with their tertiary/academic qualifications in competition law or economics and have application and training above 7 years' experience. or two (2) facilitators above 7 years' experience training. = 60 points Non-compliance with minimum points = 0 points	60
Reference letters of completed projects	Bidder must provide reference letters that indicate completed projects. The letter must be on a client letterhead, dated and signed with a contactable email address, and detailed in the reference letter must be the following information: - Project Scope which includes development of training material, facilitation of training, and customisation of training - Minimum 3 reference letters (completed projects within the past five (5) years) = 30 points - Above 3 reference letters (completed projects within the past five (5) years) = 40 points Non-compliance with minimum points = 0 points <i>CCSA reserves the right to conduct due diligence in terms of the reference letters submitted</i>	40
Total		100

- 9.3.1 Bidders who obtained less than the minimum threshold of **70 points** will be declared non-responsive and therefore will not be eligible for **evaluation of BBEE Aligned to Specific Goals & Price Preference**.

9.4 Preference Evaluation

9.4.1 BBEE Aligned to Specific Goals & Price Preference.

As the tender **price is estimated to be between R2001 and R50 million including VAT**, the tender responses will be evaluated on the **80/20**-point system.

10. ADJUDICATION USING A POINT SYSTEM

- 10.1** The bidder obtaining the highest number of total points will be awarded the contract unless objective criteria justify the award to another bidder.
- 10.2** Preference points shall be calculated after process has been brought to a comparative basistaking into account all factors of non-firm prices.
- 10.3** In the event that two or more bids have scored equal points in terms of price and preference points for BBEE & specific goals, the successful bid must be the one scoring the highest number of preference points for BBEE - in terms of PPPFA Act 5 of 2000.
- 10.4** However, when functionality is part of the evaluation process and two or more bids have scored equal points for BBEE & specific goals, the successful bid must be the one scoring the highest score for functionality.
- 10.5** Should two or more bids be equal in all respect, the award shall be decided by the drawing of lots.

11. POINTS AWARDED FOR PRICE AND BBBEE & SPECIFIC GOALS PREFERENCE POINT

The **80/20** preference point system

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

20 points allocated in terms of the Commission's BBBEE & specific goals (further recognition)

$$P_s = 80 \{1 - (P_t - P_{\min})\}$$

$P_{\min}$

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



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12. B-BBEE & SPECIFIC GOALS PREFERENTIAL POINTS WILL BE AWARDED AS FOLLOWS:

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)
BBBEE LEVEL 1	5	10		
BBBEE LEVEL 2	4	9		
BBBEE LEVEL 3	3	8		
BBBEE LEVEL 4	2	6		
BBBEE LEVEL 5	1	4		
BBBEE LEVEL 6	1	3		
BBBEE LEVEL 7	1	2		
BBBEE LEVEL 8	1	1		
Non-compliant contributor	0	0		
Further recognition for EME/QSE and or Women and or Youth, and or Rural Enterprise to be determined by the specification adjudication authority	5	10		

- 12.1** Bidders who qualify as EME's and QSE's in terms of the B-BBEE Act must submit a Sworn affidavit. Misrepresentation of information constitutes a criminal offence.
- 12.2** Bidders other than EME's or QSE's must submit their original and valid B-BBEE status level verification certificate, substantiating their B-BBEE rating issued by SANAS.
- 12.3** Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.



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13. CONSORTIUM

- 13.1** A consortium is an association of two or more individuals, companies, organisations or governments (or any combination of these entities) with the objective of participating in a common activity or pooling their resources for achieving a common goal.
- 13.2** A consortium requires that each participant retains its separate legal status and the consortium's control over each participant is generally limited to activities involving the joint endeavour, particularly the division of profits. A consortium is formed by contract, which delineates the rights and obligations of each member.
- 13.3** In a consortium, only the lead bidder's credentials both in terms of financial and technical qualifications are considered. Therefore, the interpretation and application to a RFQ/Bid process is such that the lead partner is identified and the following requirements are required as follows:
- a) Lead Partner**
 - All administrative documents (consortium agreement between the lead partner and the partner)
 - Technical requirements (which will show in the proposal and other requirements why the need for the consortium, which for all intent and purpose fulfils the requirements of the bid through combination of skills)
 - b) Partner**
 - Proof of CSD registration.
 - Tax Pin.
 - BBBEE Sworn-Affidavit.
 - SBD 4
- 13.4** It should be taken into cognisance that although the lead partner is the qualifying entity, the partner should prove that it can do business with state-owned entities, through CSD registration, proof that the taxes are compliant, its level of BBBEE status in order to align with the BBBEE status level required by the BID, declare interest and answer questions that it is not a disqualified entity with the National Treasury. The foregoing ensures compliance from an SCM process perspective that the consortium is in order.
- 13.5** Of importance is that in a consortium, each individual team members retain their identities.



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DTI Campus, Mulayo (Block C)

14. A JOINT VENTURE

A joint venture is a business entity created by two or more parties, generally characterized by shared ownership, returns and risks and shared governance.

14.1 Unincorporated joint venture:

14.1.1 All SCM documents are filled in by the joint venture in the name of the joint venture, although the submission of administrative documents (partnership agreement between parties) will be completed in the name of the joint venture, and the following will be required from both parties, amongst others.

- a) SBD 4
- b) SBD 6.1
- c) Tax pin
- d) CSD registration.
- e) The JV agreement will direct which bank account of the two entities will be used.
- f) Consolidated Joint BBBEE Certificate.

14.2 Incorporated joint venture

14.2.1 This aligned to a registered entity or company. A registered entity/ company with a consolidated BBBEE certificate and a bank account in the name of the Joint venture. The required compliance documents must be complete by the entity/ company the name of the joint venture, and the following will be required amongst others

- a) SBD 4
- b) SBD 6.1
- c) Tax pin
- d) CSD registration.
- e) The JV agreement will direct which bank account of the two entities will be used.
- f) Consolidated Joint BBBEE Certificate.

14.2.2 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended Sub-contractor is an EME that has the capacity and the ability to execute the sub-contract.

14.3 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capacity and the ability to execute the sub-contract.



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15. COMMUNICATION

- 15.1** Respondents are warned that a response will be disqualified should any attempt be made by a bidder either directly or indirectly to canvass any officer(s) or employees of CCSA in respect of BID process, between the closing date and the date of the award of the business. All enquiries relating to this BID should be emailed **three days before the closing date**.

16. CONDITIONS TO BE OBSERVED WHEN BIDDING

- 16.1** The Commission does not bind itself to accept the lowest or any BID, nor shall it be responsible for or pay any expenses or losses which may be incurred by the bidder in the preparation and delivery of his BID submission. The Commission also reserves the right to withdraw or cancel the BID at any stage.
- 16.2** No BID shall be deemed to have been accepted unless and until a formal contract / Contract Form and letter of award or Purchase Order is prepared and executed.
- 16.3** The competitive shall remain open valid by the Commission for a period of **120 days** from the closing date of the BID Enquiry.
- CCSA reserves the right to:**
- 16.4** Not evaluate and award a bid that do not comply strictly with this BID document.
- 16.5** Make a selection solely on the information received in the Bid Document and Enter into negotiations with any one or more of preferred bidder(s) based on the criteria specified in the terms of reference.
- 16.6** Contact any bidder during the evaluation process, in order to clarify any information, without informing any other bidders. During the evaluation process, no change in the content of the BID shall be sought, offered or permitted.
- 16.7** Cancel this BID at any time.
- 16.8** Should bidder(s) be selected for further negotiations, they will be chosen on the basis of the cost effectiveness and the principal of value for money not necessarily on the basis of the lowest costs.

17. COST OF BIDDING

- 17.1** The bidder shall bear all costs and expenses associated with preparation and submission of its BID submission and the CCSA shall under no circumstances be responsible or liable for any such costs, regardless of, without limitation, the conduct or outcome of the bidding, evaluation, and selection process.

18. NOTE TO BIDDERS:

- 18.1** Due diligence to be conducted by CCSA prior to the award of the contract.

END OF TERMS OF REFERENCE DOCUMENT



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Annexure to this document for completion and returnable with this document:

- ANNEXURE SBD 1 and conditions to tender.
- ANNEXURE SBD 3.3 (*pricing schedule*) and Annexure A
- ANNEXURE SBD 4
- ANNEXURE SBD 6.1
- ANNEXURE General Conditions of Contract (GCC) to be initialed on each page