



**Terms of Reference and Request for proposals with quotations:**  
**Request for Expressions of Interest: Provision of Pro bono Legal Services in  
respect of proposed litigation against the Department of Basic Education and  
Others 2022**

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**Deadline for Submissions: 28 JULY 2022**  
**SAHRC RFP 6-2022**

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**1. Background**

The South African Human Rights Commission (the SAHRC/ the Commission) is an independent state institution supporting constitutional democracy and established in terms of the Constitution of South Africa, 1996; to promote, protect and monitor human rights. Further, the South African Human Rights Commission Act, 40 of 2013 gives effect to the powers and functions of the Commission. In terms of the mandate, the SAHRC is required to protect and promote the protection of human rights. As one of the methods employed for the advancement and protection of human rights, the Commission engages in Strategic Impact Litigation. The Commission has, during the course of monitoring school readiness to receive learners following the hard lockdown as a result of the Covid-19 pandemic, been alerted to the non-compliance of a large number of schools with the norms and standards relating to infrastructure in regard to the provisions of access to potable water and safe and dignified sanitation. In particular the Commission had noted the slow progress and lack of cohesion regarding the implementation of plans to eradicate plain pit latrines and interim plans to ensure the safety of learners while the upgrades are taking place in accordance with the mentioned Norms and Standards. In the years since the much publicised death of Michael Komape who tragically lost his life through drowning in a pit latrine, progress towards ensuring safe and dignified sanitation in schools has been painfully and unconscionably slow. While acknowledging the impact of the pandemic on this progress, in the years since the promulgation of the Norms and Standards relating to School Infrastructure in 2013, and until the declaration of the State of Disaster in March 2020, just over six years had passed, however

progress until that point was sketchy. It is clear in these circumstances that the rights of learners and educators to have access to clean and safe water and safe and dignified sanitation are violated where the plans are incoherent and unreasonable as set forth in 2000 already when the Constitutional Court considered the way in which government action for the realisation of socio-economic rights is given effect to.<sup>1</sup>

The Commission accordingly seeks to ensure a cohesive and time bound plan which the relevant departments will be obliged to comply with to ensure orderly and steady progress to the eradication of the indignity of unsafe sanitation. To this end, the Commission herein calls for expressions of interest from law firms meeting the criteria set out below for the provision of *pro bono* legal services.

## **2. Objective**

The SAHRC intends to source quotations from suitable service providers to provide it with *pro bono* full litigation services and to this end seeks expressions of interest from suitable law firms noting that the proposed litigation cites the Department of Basic Education as well as five Provincial Education Departments.

## **3. Scope of service**

The service is envisaged to include the full range of services applicable to litigation including :

- Perusal of documentation and correspondence in the matter;
- Considering and advising the Commission on the prospects of success in its proposed course of action;
- Considering and advising on the best manner in which to phrase the desired relief should it be considered appropriate and advisable for the Commission to proceed with the proposed litigation;
- Advising regarding concerns around jurisdiction in view of the proposed plan to cite several provincial education departments;
- Drafting and settling papers commencing the action or application against the DBE;

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<sup>1</sup> Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000)

- Briefing pro bono counsel (subject to the Commission's approval and where there may be financial implications, compliance with Supply Chain Management processes and policies) to appear on behalf of the Commission;
- Attending to any interlocutory applications which may arise in the course of the matter;
- Attending to hearings and pre-hearing proceedings on behalf of the Commission;

The successful service provider will be required to meet with the focus area Commissioner and his team, the Chief Operations Officer of the Commission, the Head of Legal Services and other relevant persons for purposes of taking instructions.

#### **4. Minimum requirements**

- Capacity to undertake high court litigation;
- Medium to large sized firm;
- Capacity to assist the Commission on a pro bono basis;
- Level 1 BBBEE Contributor;
- Demonstrated commitment to advancement of black female counsel in briefing patterns;
- Previous experience of Constitutional/Public Interest Litigation is an advantage.

#### **5. Deliverables**

- Consultations, Opinions, Notice of Motion and Supporting Affidavits drafted, perusal of opposing papers if any, advising the Commission on replying papers if required, drafting and settling replying papers, preparation and submission of heads of argument if indicated, appearance to move the application, presentation of argument in support of the relief claimed.

#### **6. Pricing**

- Although the service is requested on a pro bono basis, the Commission in its commitment to the advancement of previously disadvantaged legal professionals is amenable to considering the briefing of a second junior with a view to exposing said junior counsel to Constitutional/Public Interest litigation and should the selected firm of attorneys indicate in their proposal that they wish to engage in such a practice, a full breakdown of the fees to be charged including hourly rate and an estimate of the number of hours such junior counsel will charge for would be required.

- The Commission will also cover reasonable disbursement costs.
- A detailed fee breakdown structure must be included at any rate in order for the Commission to be able to verify the value of the services provided should this be requested of it at any time; All pricing must be shown inclusive of any applicable VAT.
- A current BBBEE certificate showing the contributor level required (including proof of CSD registration of all counsel to be briefed)
- A tax clearance certificate must be provided

## 7. Evaluation Criteria

Please note that the following evaluation criteria will be used:

All quotes received will be evaluated based on the following criteria: functionality criteria will be further evaluated on applicable values as outlined below:

0 = **Unacceptable**, 1 = **Serious Reservations**, 2 = **Minor Reservations**, 3 = **Acceptable**, 4 = **Good**, and 5 = **excellent**

**Evaluation on functionality, as in Table 1 below:**

- Bidders will be evaluated out of 100 points and are required to achieve minimum threshold of 70%
- The overall score must be equal or above 70% in order to proceed to for Price and BBBEE evaluations.
- The minimum threshold for qualification by functionality is 70%, assessed as per criteria listed in Table 1 below:

**Table 1: Functionality evaluation**

	<b>Criteria</b>	<b>Percentage weighting</b>
1	Bidder should have 5 years or more experience of relevant service to undertake high court litigation 0 = less than 1 year experience 1 = 1 year experience 2 = 2 years of experience 3 = 3 years of experience 4 = 4 years of experience 5 = 5 years or more of experience	40

2	Capacity to assist on a pro bono basis for the entire duration of the project	25
3	<p>Previous experience of Constitutional/ Public Interest litigation would be an advantage, bidders will be assessed on this on the number of litigation cases taken to the Superior Courts.</p> <p>0 = 0 cases taken to Superior Courts  1 = 1 case taken to Superior Courts  2 = 2 cases taken to Superior Courts  3 = 3 cases taken to Superior Courts  4 = 4 cases taken to Superior Courts  5 = 5 cases taken to Superior Courts</p>	30
4	A brief breakdown of price where applicable in line with Annexure A	5
	<b>Total</b>	<b>100</b>

**Price evaluation based on the 80/20 preferential point system.**

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

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

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

Criteria	Points
<b>Price Evaluation</b>  $P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	80

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

**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	16
4	12
5	10
6	8
7	6
8	2
Non-compliant contributor	0

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

- B-BBEE Certificate or sworn affidavit
- As the services are on a Pro Bono basis, suppliers that submit with no amount will be evaluated based on their experience in functionality and a final recommendation will be made by the evaluation committee.

### **8. Confidentiality, independence and objectivity**

The service provider will hold all material and information exchanged in the course of the implementation of this project in the strictest confidence, and will take all steps necessary to prevent dissemination of this information to any third party without the prior written agreement of the SAHRC. The service provider must ensure that its staff maintains their objectivity by remaining independent of the activities they execute.

### **9. Mandatory Procurement documents requirement**

- Quotation;
- Valid Tax Certificates;
- Company Profile;
- Central supplier database

- Standard bid document 4
- Standard bid document 7.2
- BBBEE Certificate; and
- Record of advocates briefed during 2021.

## **10. Contact Details**

Quotations can be submitted by e-mail to: [Tenderoffice@sahrc.org.za](mailto:Tenderoffice@sahrc.org.za) . Quotations must be submitted by **11:00 on 28 July 2022**.

For further information and clarification, contact Ms Princess Ka-Siboto or Mr Kenneth Sithebe at [pka-siboto@sahrc.org.za](mailto:pka-siboto@sahrc.org.za) or [ksithebe@sahrc.org.za](mailto:ksithebe@sahrc.org.za);