



**REQUEST FOR PROPOSALS FOR
APPOINTMENT OF FIRM OF ATTORNEYS FOR THE
EDUCATION LABOUR RELATIONS COUNCIL**

ELRC-SCM-T004 18/19

Terms of Reference: For Appointment Of The ELRC Firm Of Attorneys

1. Purpose

1.1 The Education Labour Relations Council (ELRC) wishes to appoint 4 firms of attorneys to provide legal and litigation services to the Council in various regions.

2. Background

The ELRC is a bargaining Council established in terms of Section 37 (2) of the Labour Relations Act (LRA). The Council serves educators in the public education sector, specifically those employed in terms of the employment of Educators Act 76 of 1998.

The Council also serves the learners of this country by effectively resolving disputes in the public education that involve the child as the victim or witness and therefore comply with section 28 of the Constitution of the South Africa which provides that the child's rights are of paramount importance in every matter concerning a child.

One of the strategic objectives of the ELRC is to provide efficient dispute resolution functions to the parties to the Council. The ELRC provides the dispute resolution services through conciliations and arbitration. Arbitration Awards issued by commissioners are reviewable at Labour Court. The services required will mainly be for review applications at Labour Court and High Court appearances and submission of opposing affidavits.

3. PROJECT PROPOSAL

The ELRC requests suitable service providers in good standing within the legal fraternity to submit proposals to assist the Council on legal matters.

4. SCOPE OF WORK

4.1. The successful bidders shall be required to assist the Council with the services in the following categories:

4.1.1 Commercial and Civil litigation

4.1.2 Labour and Employment Law

4.1.3 Any other specialized field of law that the firm of attorney has expertise in and that is relevant to the working environment of the Council.

4.2. The services that may be required from the service providers include but are not limited to the following:

4.2.1. Perusal of review applications to establish possible risk to the Council.

4.2.2. Checking the completeness of records and filing/despaching same to the Labour Court/High Court.

4.2.3 Drafting and filing affidavits (as and when requested to do so by the Council)

4.2.4 Drafting letters to parties, preparing and filing various notices, and dealing with any queries related to the matters.

4.2.5 Periodical update of the Labour Court Files

4.2.6 Appearances at Court/relevant tribunal (as requested and approved by the Council)

4.2.7 Uplifting copies of judgements/orders regularly and update the Council monthly of the status of the various review applications.

4.2.8 Attend to all employment matters as and when requested to do so by the Council

4.2.9 Attend to all commercial and civil litigation matters as and when requested to do so by the Council. Attorneys will attend to civil litigation on behalf of the Council, either in the court of law or through arbitrations. Attorneys must therefore have an in-depth practical knowledge of civil litigation procedures through arbitration or in the High Court and/or Magistrate' Court.

4.2.10 Drafting of and vetting of Legal documents including contracts and service level agreements.

5. SPECIAL CONDITIONS

- 5.1 Service delivery and quality of the work will be a measure of appointment and retention of the firm.
- 5.2 A firm of attorneys appointed may not cede, assign or sub-contract any part thereof to any person unless there is a written prior approval of the Council or as may be required by the applicable laws, for instance, in cases where correspondent attorneys may be necessary.
- 5.3 Fees shall be charged in accordance with the Council's Service Level Agreement. The Service Level Agreement will be signed with the successful bidders.
- 5.4 There work / instructions will be issued as and when received.
- 5.5 All instruction(s) to the appointed law firm shall be given, in writing, by duly authorized representative of the Council.
- 5.6 The performance of the appointed law firms will be reviewed on an annual basis.
- 5.7 The Council shall be entitled in its discretion to terminate the appointed Law Firm before the expiry of the said 5-year period by written notice and recall all files in the possession of the said law firm.
- 5.8 The bidders shall have at least five years' experience.
- 5.9 The general conditions of the tender, contract and order will be applicable in this tender.

5.10 Intellectual property rights

- 5.10.1 All copyright and intellectual property rights that may result as consequences of the work to be performed will become the property of the Council.
- 5.10.2 The appointed Law Firm must hand over all documents and information in any format, including copies thereof, that it received from the Council or that it had access to during the assignment immediately after completion of the assignment to the Council.
- 5.10.3 The appointed Law Firm shall deliver to the Council, on completion of an assignment, any security passwords or protective mechanisms to the soft versions of documents that were written and the Council will have the right to amend and change these without obligation whatsoever to the firms of attorneys upon completion of the tasks or assignment.
- 5.10.4 The Council reserves the right, under exceptional circumstances, to appoint attorneys outside the panel attorneys.

6. RESPONSE GUIDELINES

Your company profile must be a maximum of 15 pages and address the following areas/aspects in the following order.

6.1 HISTORY

Provide a brief history of the firm and an outline of the firm's organisational structure or organogram, indicating names of the resources and geographic structure (provincial/regional offices within the Republic of South Africa).

6.2 CLIENT BASE

Provide three reference letters of the most recently served clients not older than three years. This must be on a company letterhead and signed by the client.

6.3 FIELD OF EXPERTISE

Each proposal must include the specialist fields of the law firm, with specific reference to the fields as set out in paragraph 4 above.

6.4 YOUR TEAM

Curriculum Vitae's of your core service team that will be attending to the Council work with specific reference to their educational/professional background and their relevant experience.

6.5 PRICING SCHEDULE

A pricing schedule should cover the hourly rate for each of the team members in the following manner: - Partner or Director- Junior and/Senior Associate- Junior and/or Senior Attorney.

6.5.1. Pricing Schedule (hourly rate)

6.5.2. Travel and all other reimbursable costs.

6.5.3. Any other relevant information in support of or elucidating the proposal.

7. PAYMENT

The amount quoted must be denominated in South African Rand value, and should include VAT. Payment conditions will be stipulated in the Service Level Agreement (SLA). The amount quoted should include all the expenses related to this project. No additional fees will be entertained thereafter.

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8. EVALUATION CRITERIA

Proposals for the appointment of the bidder will be evaluated on functionality, in accordance with the supply chain management procurement policies.

The following criteria will be used, as the criteria for appointment.

8.1 Phase 1 – Bidders will be evaluated on administrative requirements as indicated under paragraph 13 below. Failure to provide the stated documents will result in a disqualification.

8.2 Phase 2 – Functionality; suppliers will be evaluated as per the criteria in the table below and must meet the minimum score of 65% to be considered further.

8.3 Bidders who scored equivalent scores will be evaluated in line with their BBEE rating

Phase 2: Technical Evaluation and BBEEE points

A) Technical Evaluation Criteria	Value score (1-5)					Weight %
	Below average (1)	Average (2)	Good (3)	Very Good (4)	Excellent (5)	
	1	2	3	4	5	
Capacity						
Structure and Resources (Number of Team Members with qualification)	Two members with LLB and admission as attorney With combined experience of 0 to 3 years	Two members with LLB and admission as attorney With combined experience of 4 to 5 years	Two members with LLB and admission as attorney With combined experience of 6 to 7 years	Two members with LLB and admission as attorney With combined experience of 8 to 9 years	Two members with LLB and admission as attorney With combined experience of 10 years and more	25
Experience						
Number of years' experience of law firm's existence	Less than years of existence	three to four years	Five to Seven	Eight to Ten years	Eleven years and more years.	10

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A) Technical Evaluation Criteria	Value score (1-5)					Weight %
	Below average (1) Average (2) Good (3) Very Good (4) Excellent (5)					
	1	2	3	4	5	
Number of years' experience of Lead Attorney / Advocate in the related specialist area	One to two years of experience	three to four years of experience	Five to nine	Ten to fifteen years' experience	More than fifteen years	25
Knowledge						
Area of speciality / Category :Labour Law Administrative Commercial and Civil Law Criminal procedure Others -specify	None submitted	One to two areas of speciality	Labour Law and Three areas of speciality	Labour Law and Four areas of speciality	Labour Law and More than five areas of speciality	20
Qualification						
Relevant qualification of the lead Attorney/ Advocate	Paralegal – Diploma in Law	BProc/LLB without admission as attorneys	LLB with admission as attorney	LLB with admission as attorney + LLM	LLB with admission as attorney + Doctorate	15
References						
Reference Letters –not older than three year. three relevant contactable references	None submitted.	One to two relevant to the required field contactable reference	Three relevant to the required field contactable reference	Four to five relevant to the required field contactable reference	More than five relevant to the required field contactable reference	5
Total						100

The minimum threshold is 65% must be obtained

9. TERMS AND CONDITIONS OF THE BID

- 9.1 Awarding of the contract will be subject to the service provider's acceptance of the Council's Service Level Agreement (SLA).
- 9.2 The appointed service provider will enter into a service level agreement with the ELRC, which will include:
 - 9.2.1 Period of agreement
 - 9.2.2 Project objectives and scope;
 - 9.2.3 Method of communication;
 - 9.2.4 Disputes;
 - 9.2.5 Termination of contract and other specific matters that will be agreed upon to form part of the service level agreement;
- 9.3 The Council reserves the right to terminate the contract in the event there is clear evidence of non-performance;
- 9.4 The Council reserves a right to appoint one bidder or more than one bidder per area;
- 9.5 The Council may at its sole discretion, award an assignment or any part thereof, to more than one bidder
- 9.6 Payments will only be made for acceptable work completed and delivered as directed by the ELRC.
- 9.7 Any deviation from the project plan should be put in writing and signed by the project manager
- 9.8 Any suggestions during the progress meetings, once accepted by both parties, shall form part of the contract

10 AREA OF WORK

The files for the Council will be clustered in regions as follows:

- 10.1 Limpopo, Gauteng, Mpumalanga, North West Free State and Northern Cape Provinces will be clustered.
- 10.2 Western Cape Province will be dealt with alone
- 10.3 Eastern Cape Province will be alone
- 10.4 Kwazulu-Natal Province will be alone

Please note: You must have an office in the Province for which you want to render services for the Council. No firm will serve in more than one region.

11 Expertise and Documentation Required

- 11.1 Administrative Documents as per Paragraph 13 below.
- 11.2 Proposal with a clear outline of the firm's ability of addressing the scope of work and requirements per paragraph 2
- 11.3 Capacity and Resources must indicate not only capability but also the support structure that the organisation has and pool of expertise and proximity to the courts. (Include Company Profile)
- 11.4 Experience must reflect the skills and knowledge of the project team; especially that of the team leader that is the lead attorney. (Attach CV's of key personnel)
- 11.5 Proof of qualification and certificates must be provided to support information.
- 11.6 Reference letters; must be issued on a client's letterhead and be signed.
- 11.7 Costing must reflect total cost including all taxes. Also indicated the hourly rate chargeable and if any travel costs are applicable they must also be indicated.
- 11.8 The ELRC will be following a Quality Based Selection (QBS) approach to appoint the preferred Service Provider/s. The bidder with the highest ranked technical proposals after evaluating on functionality will have its financial proposal compared with other submitted financial proposal(s) and the contract(s) will be negotiated.
- 11.9 NB:** The Pricing is requested to ensure the costing is market related
- 11.10 Also the ELRC reserves the right not to award the tender should it not be satisfied with proposals received.

12 Duration of the Contract

- 12.1 The contract period will be for a period of five (5) years and will be subjected to entering into a Service Level Agreement with ELRC. The ELRC reserves the right to review the period should expectations not be met.

13 Documents required to be completed, signed and submitted

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13.1 All information contained in this Request for proposal, must be taken into account and used as a basis for the formulation of quotations and preparation of costs estimates.

13.2 All forms attached thereto must be duly and comprehensively completed and submitted, with specific reference to:

13.2.1 Invitation to Bid Part A

13.2.2 SBD 3.1

13.2.3 Preference points claims Forms (SBD 6.1 with a certified copy BBEE Certificate)

13.2.4 SBD 4

13.2.5 SBD 8

13.2.6 SBD 9

13.2.7 Valid Tax Clearance Certificate.

13.2.8 Law Society Certificate of membership

14 Validity Of Quotes

The Bidders must provide a quotation that is valid not less than 90 days.

15 Submission Requirement

15.1 Responses to this RFP must be submitted between 08h00 and 16h30 (Monday to Friday, excluding public holidays); on the closing date submissions must be done before 11h00 am.

15.2 Responses to this RFP must follow a two-envelope approach where service providers' Pricing and Technical response must be submitted in separate sealed envelopes.

15.3 The copies must be bundled together and submitted as a single pack and clearly marked, indicating the contents of the envelope as well as the tender reference number.

15.4 The bidder/s must submit 3 sets of documents one original and two copies. Envelopes must be clearly marked "Technical" and the other "Financial/ Price" Proposal as well as Original and copy.

15.5 Service providers should ensure that there no costing is indicated within the Technical proposal.

Submissions that are faxed, sent via telex, and/ or electronic mail delivery will not be accepted.

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16 Briefing Session

No briefing session

17 Closing Date and Time

The closing time 11:00 am

Date: 21st November 2018

Bids should be **Hand delivered** at the below address;.

The Education Labour Relations Council
261 West Avenue
Centurion
Pretoria
(Opposite Gautrain Station)

**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE (*EDUCATION LABOUR RELATIONS COUNCIL*)

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BID NUMBER:		CLOSING DATE:		CLOSING TIME:	
DESCRIPTION					
THE SUCCESSFUL BIDDER WILL BE REQUIRED TO FILL IN AND SIGN A WRITTEN CONTRACT FORM (SBD7).					

BID RESPONSE DOCUMENTS MAY BE DEPOSITED IN THE BID
BOX SITUATED AT (STREET ADDRESS)

SUPPLIER INFORMATION					
NAME OF BIDDER					
POSTAL ADDRESS					
STREET ADDRESS					
TELEPHONE NUMBER	CODE		NUMBER		
CELLPHONE NUMBER					
FACSIMILE NUMBER	CODE		NUMBER		
E-MAIL ADDRESS					
VAT REGISTRATION NUMBER					
	TCS PIN:		OR	CSD No:	
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE [TICK APPLICABLE BOX]	<input type="checkbox"/> Yes <input type="checkbox"/> No		B-BBEE STATUS LEVEL SWORN AFFIDAVIT		<input type="checkbox"/> Yes <input type="checkbox"/> No
IF YES, WHO WAS THE CERTIFICATE ISSUED BY?					
AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA) AND NAME THE APPLICABLE IN THE TICK BOX	<input type="checkbox"/>	AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA)			
	<input type="checkbox"/>	A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS)			
	<input type="checkbox"/>	A REGISTERED AUDITOR			
		NAME:			
[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/SWORN AFFIDAVIT(FOR EMEs& QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]					

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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]	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]
SIGNATURE OF BIDDER	.....	DATE	
CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)			
TOTAL NUMBER OF ITEMS OFFERED		TOTAL BID PRICE (ALL INCLUSIVE)	
BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO:		TECHNICAL INFORMATION MAY BE DIRECTED TO:	
DEPARTMENT/ PUBLIC ENTITY		CONTACT PERSON	
CONTACT PERSON		TELEPHONE NUMBER	
TELEPHONE NUMBER		FACSIMILE NUMBER	
FACSIMILE NUMBER		E-MAIL ADDRESS	
E-MAIL ADDRESS			

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**PART B
TERMS AND CONDITIONS FOR BIDDING**

1. BID SUBMISSION:	
1.1.	BIDS MUST BE DELIVERED BY THE STIPULATED TIME TO THE CORRECT ADDRESS. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
1.2.	ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR ONLINE
1.3.	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 TO BIDDING INSTITUTION.
1.4.	WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.
1.5.	THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.
2. TAX COMPLIANCE REQUIREMENTS	
2.1	BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
2.2	APPLICATION 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 WWW.SARS.GOV.ZA.
2.3	BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
2.4	IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER.
2.5	WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD Printout from CSD indicating compliance must be provided).
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS	
3.1.	IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.2.	DOES THE BIDDER HAVE A BRANCH IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.3.	DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
3.4.	DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> YES <input type="checkbox"/> NO
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.	

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

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SBD 3.1

PRICING SCHEDULE – FIRM PRICES (PURCHASES)

NOTE: ONLY FIRM PRICES WILL BE ACCEPTED. NON-FIRM PRICES (INCLUDING PRICES SUBJECT TO RATES OF EXCHANGE VARIATIONS) WILL NOT BE CONSIDERED

IN CASES WHERE DIFFERENT DELIVERY POINTS INFLUENCE THE PRICING, A SEPARATE PRICING SCHEDULE MUST BE SUBMITTED FOR EACH DELIVERY POINT

Name of bidder.....	Bid number.....
Closing Time 11:00	Closing date.....

OFFER TO BE VALID FOR.....DAYS FROM THE CLOSING DATE OF BID.

ITEM NO.	QUANTITY	DESCRIPTION	BID PRICE IN RSA CURRENCY ** (ALL APPLICABLE TAXES INCLUDED)
-	Required by:	.....
-	At:	.....
-	Brand and model	.....
-	Country of origin	.....
-	Does the offer comply with the specification(s)?		*YES/NO
-	If not to specification, indicate deviation(s)	.....
-	Period required for delivery	.....	*Delivery: Firm/not firm
-	Delivery basis	.....

Note: All delivery costs must be included in the bid price, for delivery at the prescribed destination.

** "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies.

*Delete if not applicable

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-
 - the bidder is employed by the state; and/or
 - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.
2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**
 - 2.1 Full Name of bidder or his or her representative:
 - 2.2 Identity Number:
 - 2.3 Position occupied in the Company (director, trustee, shareholder²):
 - 2.4 Company Registration Number:
 - 2.5 Tax Reference Number:
 - 2.6 VAT Registration Number:
 - 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

¹"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature; national Assembly or the national Council of provinces; or Parliament.
- (d) ELRC

²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

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2.7 Are you or any person connected with the bidder **YES / NO**
presently employed by the state?

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

Name of state institution at which you or the person connected to the bidder is employed :
.....

Position occupied in the state institution:

Any other particulars:
.....
.....
.....

2.7.2 If you are presently employed by the state, did you obtain **YES / NO**
the appropriate authority to undertake remunerative
work outside employment in the public sector?

2.7.2.1 If yes, did you attached proof of such authority to the bid **YES / NO**
document?

(Note: Failure to submit proof of such authority, where
applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:
.....
.....
.....

2.8 Did you or your spouse, or any of the company's directors / **YES / NO**
trustees / shareholders / members or their spouses conduct
business with the state in the previous twelve months?

2.8.1 If so, furnish particulars:
.....
.....
.....

2.9 Do you, or any person connected with the bidder, have **YES / NO**
any relationship (family, friend, other) with a person
employed by the state and who may be involved with

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the evaluation and or adjudication of this bid?

2.9.1 If so, furnish particulars.

.....
.....
.....

2.10 Are you, or any person connected with the bidder, **YES/NO**
aware of any relationship (family, friend, other) between
any other bidder and any person employed by the state
who may be involved with the evaluation and or adjudication
of this bid?

2.10.1 If so, furnish particulars.

.....
.....
.....

2.11 Do you or any of the directors / trustees / shareholders / members **YES/NO**
of the company have any interest in any other related companies
whether or not they are bidding for this contract?

2.11.1 If so, furnish particulars:

.....
.....
.....

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3 Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Reference Number	Tax State Number / Employee Peral Number

4 **DECLARATION**

I, _____ THE _____ UNDERSIGNED
(NAME).....

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

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....

Signature

Date

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.....
Position

Name of bidder

May 2011

SBD 6.1

**PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL
PROCUREMENT REGULATIONS 2017**

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- 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

- a) The value of this bid is estimated to **exceed/not exceed** R50 000 000 (all applicable taxes included) and therefore the **.....** preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender (*delete whichever is not applicable for this tender*).

1.3 Points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contributor.

1.4 The maximum points for this bid are allocated as follows:

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	POINTS
PRICE	
B-BBEE STATUS LEVEL OF CONTRIBUTOR	
Total points for Price and B-BBEE must not exceed	100

- 1.5 Failure on the part of a bidder to submit proof of B-BBEE Status level of contributor together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.6 The purchaser 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 purchaser.

2. DEFINITIONS

- (a) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
- 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;

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- 3) Any other requirement prescribed in terms of the B-BBEE Act;**
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$P_s = 80 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{min}}{P_{min}} \right)$$

Where

P_s = Points scored for price of bid under consideration

P_t = Price of bid under consideration

P_{min} = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18
3	6	14
4	5	12

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5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5. BID DECLARATION

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

6.1 B-BBEE Status Level of Contributor: . =(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

7. SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted?

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

7.1.1 If yes, indicate:

i) What percentage of the contract will be subcontracted.....%

ii) The name of the sub-contractor.....

iii) The B-BBEE status level of the sub-contractor.....

iv) Whether the sub-contractor is an EME or QSE

(Tick applicable box)

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME √	QSE √
Black people		

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Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name _____ of
company/firm:.....

8.2 VAT _____ registration
number:.....

8.3 Company _____ registration
number:.....

8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....

8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional service provider

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- Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contributor indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we 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 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have –
 - (a) disqualify the person from the bidding 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 bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury 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.

WITNESSES	
1.
2.

.....	
SIGNATURE(S) OF BIDDERS(S)	
DATE:
ADDRESS

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SBD 8

**DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT
PRACTICES**

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-

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- a. abused the institution's supply chain management system;
- b. committed fraud or any other improper conduct in relation to such system; or
- c. failed to perform on any previous contract.

4 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>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? (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>The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.</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>The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		

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4.3	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?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	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?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

CERTIFICATION

I, THE UNDERSIGNED (FULL NAME).....

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.

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- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.

- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.

 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.

- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

SBD 9

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf

Of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:

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- (a) has been requested to submit a bid in response to this bid invitation;
- (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
- (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

SBD 9

6. 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 consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. 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.

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10. 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.

.....

.....

Signature

Date

.....

Position

.....

Name of Bidder

³ 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.