



TERMS OF REFERENCE

REQUEST FOR PROPOSALS FOR

APPOINTMENT OF THE ELRC FIRM/S OF

ATTORNEYS

TENDER: ELRC-T04 (2022/23)

APPOINTMENT OF FIRM/S OF ATTORNEY: ELRCT04 (2022/23)

TERMS OF REFERENCE FOR APPOINTMENT OF THE ELRC FIRM OF ATTORNEYS

1. BID SUBMISSION

- 1.1.** The EDUCATION LABOUR RELATIONS COUNCIL hereby invites suitably qualified bidders to submit tenders for travel management services.
- 1.2.** Completed tender submissions must be hand delivered / deposited into the Tender Box at the reception area of Education Labour Relations Council Building, located at 261 West Avenue, Centurion, Pretoria for the attention of: "Charles Mokoena, Manager: Supply Chain Management.
- 1.3.** All enquiries are to be directed to Supply Chain Management Office. Contact Details: Email: Tenders@elrc.org.za

NB: Questions must be e-mailed to tenders@elrc.org.za as indicated above; Subject: Enquiry Tender (T04 -2022-23). This until the 10th February 2023 (12:00pm)
- 1.4.** Closing date and time for submission of tenders 20th February 2023 at 11:00 am.

The Tender Box will be accessible as from 30 January 2023 -20th February 2023.
- 1.5.** No submissions sent by e-mail or facsimile will be accepted, and no late submissions will be accepted.
- 1.6.** Bidders are requested to submit five submissions marked "Technical or/and Financial Proposal" (one original and four copies).
- 1.7.** Bidders should ensure that Bids are delivered in time to the correct address. If the bid is late, it shall not be accepted for consideration.
- 1.8.** The ELRC Tender Box is accessible (08h00 to 15h00); 5 days a week (Monday to Friday) excluding Public Holidays.
- 1.9.** NB: Bidders must ensure that they **sign the register** at the reception when delivering Bids. Bidders must advise their couriers of the instruction above to avoid misplacement of bid responses.
- 1.10.** ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – **(NOT TO BE RE-TYPED)**.

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1.11. Bidding Documents must be the original submission, clearly marked "Original" and the remaining hardcopies can be a copied version of the original.

1.12. Service providers should take particular care to ensure that there are no discrepancies on hardcopy submissions of the proposed solution.

1.13. Responses to this RFP must follow a two-envelope approach where service providers' pricing and technical response must be submitted in separate sealed envelopes. 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 BID number.

1.14. Each individual envelope must be clearly marked with the following information:

- Name of the RFP,
- RFP Number
- ORIGINAL or COPY 1 or COPY 2 etc.
- Return address label indicating the name and address of the Service Provider.

1.15. Submissions that are received open or that fail to indicate the RFP number will be rejected.

2. INTRODUCTION, BACKGROUND AND OVERALL OBJECTIVES

This is to invite qualifying service providers to submit proposals to provide Legal Services at the Education Labour Relations Council

2.1. OBJECTIVES

The Education Labour Relations Council (ELRC) wishes to appoint a firm/s of attorneys to provide legal and litigation services to the Council at the following areas:

- a. Durban
- b. Port Elizabeth
- c. Cape Town
- d. Johannesburg

2.2. BACKGROUND

ELRC is a bargaining council established in terms of section 37 of the Labour Relations Act 55 of 1996 as amended. One of the strategic objectives of the ELRC is to provide efficient dispute resolution functions to the parties to the Council. The

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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. The Firm must specialize in labour law matters and with capacity for Commercial and Contract Law also see 4 below.

3. PROJECT PROPOSAL

The ELRC requests suitable service providers of good standing within the legal fraternity to submit proposals to assist the Council on legal matters as highlighted under background paragraph 2 and 4 as indicated herein.

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. Labour and Employment Law- focusing on dispute resolutions, unfair dismissals, Labour Relations Act 66 of 1995, and condition of service of educators.

4.1.2. Commercial law- commercial law transactions

4.1.3. Civil litigation- Magistrate Court, High Court, CCMA, etc

4.1.4. Law of contract- drafting and vetting of contracts.

4.1.5. Public Law- Constitutional and administrative law- inter alia the Constitution of the Republic of South Africa, 1996, Promotion of Access to Information Act of 2000, the Prevention of Organised Crime of 1998, the Promotion of Administrative Justice 3 of 2000, Public Finance Management Act, Treasury Regulations and Directives.

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)

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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. The firm of Attorney must be able to conduct detailed and credible research which includes identifying and applying the applicable laws and international regulatory instruments to given set of facts and providing solutions thereto.

N.B. The phrase 'lead attorney' refers to a legal practitioner who will be primarily responsible for carrying out the work assigned to the bidder by ELRC as per the identified area (s) of service in paragraph 4 hereof.

5. Submission Requirements

To be considered for evaluation, a bidder's proposal must comply with the following minimum requirements:

5.1. Proof that the bidder has been in existence and practice for a period of at least five (5) years prior to the closing date of this request for the proposals. (CIP

5.2. Valid Fidelity certificate issued in terms of the Attorneys Act, 1979.

5.3. Current -Letter of good standing with the relevant Legal Practice Council.

5.4. Bidder's Company Profile.

5.5. Record of Infrastructure: confirmation of the premises from which the bidder conducts its business, the bidder's communication and documents service facilities (i.e. the lead attorney and his support staff's e-mail address, telephone and facsimile number) and computer systems used by the bidder.

5.6. Proof (Certificate of Admission) that the lead attorney (s) has at least seven (7) years' post admission experience in the identified area (s) of service referred to in paragraph 4 hereof.

5.7. Curriculum vitae of the lead attorney (s) reflecting the following:

- Qualifications.
- Area (s) of service and years of experience in the identified area (s) of service as referred to in paragraph 4 hereof.
- Summary of five (5) labour law/employment matters attended to by the lead attorney (s) under the identified areas of service as referred to in paragraph 4

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hereof in the last three (3) years prior to the closing date of this request for proposals.

5.8 Bidders to provide a valid SARS Tax Pin

5.9 Submit Audited Financial Statements for the past 3 years.

5.10 Five reference letters from clients whom the bidder has provided services similar to the ones

listed in the identified areas of service as stated in paragraph 4 hereof.

ELIMINATION CRITERIA: Failure to submit completed, signed and dated Bidding documents and those indicated above on paragraph 5 from 5.1 to 5.3 and 5.6 will result in disqualification.

6. SPECIAL CONDITIONS

The following are the special conditions applicable to this request for proposals:

6.1. The appointment of legal firm (s) will be for a period of 5 years reckoned from the date of signing a services agreement with ELRC.

6.2. The successful firm (s) of attorneys may be assigned work as and when required.

6.3. For every assignment, an assignment letter will be issued to the assigned firm of attorneys.

6.4. ELRC may, in respect of any assignment, negotiate fees with any successful firm of attorneys.

6.5. A firm of Attorney so 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.

6.6. Fees shall be charged in accordance with the Council's Service Level Agreement. The Service Level Agreement will be signed with the successful bidders.

6.7. There will be no guarantee that the Law Firm will receive instructions if they are appointed on the Council's database.

6.8. The appointed Law firm will be reviewed on annual basis.

6.9. 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.

6.10. The bidders should meet the following requirements:

- The law firm must be in existence for 5 years
- Leading attorney must have 7 years' experience post admission

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- His/her team must have 5 years' experience post admission those that will be handling ELRC matter except their administrators

6.11. The successful firm of attorneys shall report directly to the Senior Manager: Dispute Management Services or any person delegated by ELRC in respect of any engagement (instructions, case management etc.) and for the receipt and handling of all forms of reports and all administration pertaining to any assignment.

6.12. No Law Firm associated with ELRC stakeholders may not tender a proposal refer to Website for additional information on stakeholders.

7. Intellectual property rights

7.1.1. All copyright and intellectual property rights that may result as consequences of the work to be performed will become the property of the Council.

7.1.2. 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.

7.1.3. 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.

7.1.4. The Council reserves the right, under exceptional circumstances, to appoint attorneys outside the panel attorneys.

8. COMPANY PROFILE/PROPOSAL

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

8.1. HISTORY

Provide a brief history of the firm and an outline of the firm's organisational structure (provincial/regional offices within the Republic of South Africa), or organogram, record of infrastructure (confirmation of premises from which the bidder conducts its business, the bidder's communication and documents service facilities (i.e. the lead attorney and his/her support staff's email address, telephone and facsimile number) and computer systems used by the bidder. structure

8.2. CLIENT BASE

Provide a list of clients for whom legal services were rendered on a regular basis in the past 3 years. The most recently served clients must be mentioned first and specify the nature of all work done.

8.3. FIELD OF EXPERTISE

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

8.4. YOUR TEAM

8.4.1. Curriculum Vitae 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. A contingency plan for any instances when identified team members may not be available for a specific requirement at a specific time. A list of Junior and Senior Counsel who are associated with the firm of attorneys and their track records in line with the requirements of the Council. Preference will be given to Counsel who have experience and/or knowledge in the selected categories.

8.5. PRICING SCHEDULE

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

8.5.1. Travel and all other reimbursable costs.

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

9. 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. The ELRC pays invoices within 30 days of receiving valid invoices as per the SLA/

10. EVALUATION CRITERIA

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

10.2. These functionality criteria will be broken down into a rating of poor, fair, good, very good and excellent.

10.3. The following criteria will be used, as the criteria for appointment. Bids will be evaluated individually on score sheets by a representative evaluation panel according to the evaluation criteria indicated below

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1=poor 2=fair 3=good 4=very good 5=excellent

ITEM	DESCRIPTION	DETAILS	DOCUMENTS TO PROVIDE	SCALE	WEIGHT
1	Capacity	The bidder's infrastructure resources and proof of existence	Company profile incorporating proof that the bidder has been in existence and in practice for a period of at least five (5) years at the closing date of this request for proposal;	10	25
			Record of infrastructure: confirmation of the premises from which the bidder conducts its business, the bidder's communication and documents service facilities (maximum points allocation= providing the bidder's fixed address, lead attorney's email address, telephone and facsimile number and computer system being used by the bidder and fleet/means of transport.	15	
2	Knowledge and expertise	Area(s) of speciality of the lead attorney(s) as	Curriculum vitae of the lead attorney(s) incorporating: ➤ Proof of		60

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		<p>per the areas of the law listed in paragraph 4 hereof. Demonstrate experience in the identified area(s) of the law and ability to conduct research and provide solutions</p>	<p>qualifications and admission as an attorney</p> <ul style="list-style-type: none"> ➤ A record of attendance and a summary of five (5) labour law/employment matters attended to by the lead attorneys(s) under the identified area(s) of service in the last three years prior to the closing date of this request for proposal ➤ Proof of the lead attorneys' seven (7) years' post admission experience in the identified area(s) of service 	<p>15</p> <p>20</p> <p>15</p>	
			<p>His/her team must have 5 years' experience post admission those that will be handling ELRC matter except their administrators</p>	10	
3	Going concern	Financial standing	Provide Financial Statements for the past 3 years	5	5

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4	Track record	References	Five reference letters from clients to whom the bidder has provided services similar to ones listed in the identified area of service and a letter of good standing with the Legal Practice Practice. These reference letters must be on the client's letterhead and the service must have been rendered in the last three years prior to the closing date of this request for proposals (maximum points allocation=at least three references)	10	10
TOTAL					100

The minimum threshold is 70 points

10.5. All bidders who will score less than 70 out of 100 points for functionality will not be considered further and will be regarded as submitting a non-responsive proposal. Short-listed bidders may be required to do a presentation in person to the Council.

10.6. The Council is an equal opportunity, affirmative action employer.

11. TERMS AND CONDITIONS OF THE BID

11.1. Awarding of the contract will be subject to the service provider's acceptance of the Council's Service Level Agreement (SLA).

11.2. The appointed service provider will enter into a service level agreement with the ELRC, which will include but not limited to:

11.2.1. Period of agreement

11.2.2. Project objectives and scope.

11.2.3. Method of communication.

11.2.4. Disputes.

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11.2.5. Termination of contract and other specific matters that will be agreed upon.

12. CONTACT PERSON FOR ENQUIRIES

All enquiries related to this bid call must be forwarded to: Tenders@elrc.org.za

Not later than the 10th February 2023. (No enquiries will be attended to after this date.)

Queries will be consolidated and published on the Website.

NB: Any changes, Cancellation and Award will be also place on the Website.

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13. Validity of Bids

- a) Bids must be valid for 90 days.

14. Closing Date and Time

- Date: 20th February 2023
- Time: 11:00
- Delivery address:
Education Labour Relations Council

261 West Avenue
Centurion
Pretoria
(Opposite Gautrain Station)

Submissions that are faxed, sent via electronic mail delivery will not be accepted!

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PART A

INVITATION TO BID

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

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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]			
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)? NO	<input type="checkbox"/> YES <input type="checkbox"/>
3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA? NO	<input type="checkbox"/> YES <input type="checkbox"/>
3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? NO	<input type="checkbox"/> YES <input type="checkbox"/>
3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? NO	<input type="checkbox"/> YES <input type="checkbox"/>
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)
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- 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

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SBD 4

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 interest¹ 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

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**

¹ 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.

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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 consortium² 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 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.
- 3.6 I am aware that, in addition and without prejudice to any other remedy

² 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.

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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

APPOINTMENT OF FIRM/S OF ATTORNEY: ELRCT04 (2022/23)

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:

	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

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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;
 - 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;

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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:

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

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
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)

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(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"/>
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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"/>
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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		
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

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- 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
- 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;

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- (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

