



TERMS OF REFERENCE

**APPOINTMENT OF A SERVICE PROVIDER TO PROVIDE AN INDEPENDENT LEGAL
OPINION ON PROCUREMENT RELATED MATTERS**



1. Background

The Council for the Built Environment (CBE) is a statutory body established under the Council for the Built Environment Act (no. 43 of 2000). It is an overarching body that coordinates the six Professional Councils (Architecture, Engineering, Landscape Architecture, Project and Construction Management, Property Valuation and Quantity Surveying – all operating within the Built Environment) for the purpose of promoting good conduct within the Profession, transforming the professions and advising Government on issues relating to the Built Environment. The CBE is a schedule 3(a) public entity and is subject to compliance with the Public Finance Management Act (PFMA) Act No. 29 of 1999 and Treasury regulations.

2. Objectives of the project

The purpose and objective of this assignment is to appoint a professional service provider to provide an independent legal opinion on SCM related matters based on findings raised in a recently issued probity report.

3. Scope of Work

The scope of work will include the following:

1. Review of probity report
2. Research and review of any applicable case law and other relevant Legislation and National Treasury prescripts in respect of findings raised
3. Provide an independent legal opinion on:
 - a. Whether the publishing of scoring guidelines for evaluation criteria is a Legal requirement.
 - b. Whether the non-publishing of scoring guidelines will result in material non-compliance, irregular expenditure or a withdrawal of a bid.
 - c. Disqualification of a bidder due to the non-completion of the Standard Bidding Documents (SBD) specifically SBD 6.1
 - d. Whether the cost for the Audit Risk Committee (ARC) attendance to the due diligence process will constitute fruitless and wasteful expenditure and identify who will be responsible if such cost is considered to be fruitless and wasteful expenditure.
4. The successful supplier will be expected to submit a detailed report to the Chief Finance Officer within 4 days from appointment.

5. Suppliers should also include the price per hour and time estimation for each category of key personnel. **The assignment will be limited to 30 hours and will be conducted in 4 days.**

4. Evaluation Process

The following evaluation process shall be followed:

4.1 Pre-qualification criteria

Bidders will be required to meet the following pre-qualification criteria. Failure to meet these requirements will result in the disqualification of your quotation.

- a) Potential service providers must be registered on the National Treasury Central Supplier Database (CSD); The CSD registration report must be submitted. Prospective bidders must be tax compliant. **This quotation will not be awarded to any bidder who is not registered on the CSD, whose tax matters are not in order and is a restricted supplier.**

4.2 Evaluation Phases:

- Phase 1: Technical Evaluation

The service provider's proposal will be evaluated against the set criteria indicated under paragraph 4.3 below. A form will be used which will reflect the name of the service provider, the different criteria, with space provided to record the points awarded and motivation for points awarded. The allocation of points will not be effected on a basis of consensus.

The following scoring matrix will be used:

Unable to evaluate	Does not comply with the requirements	Partial compliance with requirements	Full compliance with requirements	Exceeds requirements	Exceptionally exceeds requirements
0	1	2	3	4	5

The following formula will be used to convert the points scored against the weight:

$$Ps = \left(\frac{So}{Ms} \right) \times 100$$

Where:

Ps = Percentage scored for functionality by proposal under consideration
 So = Total score of proposal under consideration
 Ms = Maximum possible score

Service providers will be expected to achieve a minimum threshold score of 60% in order to proceed further in the evaluation.

A due diligence process will be conducted in respect of all short-listed bidders to determine the capability and ability of short-listed bidders to execute this contract. This may include a presentation by bidders with pre-determined questions being posed by the CBE, an investigation by the CBE of the bidder's previous contracts carried out, availability of skills or knowledge, existing work load, etc. Should negative feedback be obtained from the aforementioned, that will render the bidder unsuitable to execute the assignment, their proposal will be disregarded at this point and they will not proceed for further evaluation.

Should a presentation be required a set of pre-determined questions based on the submitted proposal will be posed. This will be evaluated based on a grading scheme of either consistent or not consistent with the proposal. Should more than 20% of the responses not be consistent to the bidder's proposal their proposal will be disregarded.

Should the bidder meet the requirements of due diligence, their proposal will proceed to Phase 2.

- Phase 2: Calculation of points

Please note that the 80/20 preference point system will be used where 80 points are allocated for price and 20 points are allocated for the service provider's B-BBEE Level of Contribution.

An original or originally certified copy (it must be fresh ink and not a copy) of a correct and valid B-BBEE certificate (only SANAS accredited certificates will be accepted) OR valid original sworn affidavit (whichever is applicable) must be submitted to confirm your Level 1 or 2 status. Failure to submit a correct and valid certificate or sworn affidavit will result in the forfeiture of B-BBEE points (only points for price will be allocated). Any enquiries in respect of B-BBEE Status Level Verification Certificates may be directed to the Department of Trade and Industry (DTI) at 0861

843 384. Bidders must note that sworn affidavits need to adhere to the requirements set out in The Broad Based Black Economic Empowerment Practice Guide 1 of 2018, Determining the validity of a Broad-based Black Economic Empowerment verification certificate, B-BBEE certificate and sworn affidavit, paragraph 17. (Please ensure that your sworn affidavit complies with the requirements set out under this paragraph. If one or more requirements are not met, it will render the sworn affidavit invalid.

Special note: Bidder must please ensure that sworn affidavits indicate the title of the deponent and the full financial year not only the calendar year.

During phase 2, points for price will be calculated for all shortlisted service providers in accordance with the following formula:

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

Where:

P_s = Points scored for price of proposal under consideration
 P_t = Rand value of proposal under consideration
 P_{\min} = Rand value of lowest acceptable proposal

- The final points will be calculated as follows:

Points for price:	80 points
B-BBEE Status Level of Contribution:	<u>20 points</u>
Final points:	<u>100 points</u>

A recommendation for award will then be formulated for approval by the relevant delegated authority.

4.3 Evaluation Criteria

The following criteria and weights shall apply when considering the proposals:

CRITERIA FOR FUNCTIONALITY	WEIGHT	SCORING
Experience relevant to assignment Provide detailed information on the background of the company in undertaking this type of project.	20	5 = Excellent (Meets and exceeds the expected level in terms of understanding the problem, proposed approach to achieve the end result, and displaying the ability to perform the necessary project administration functions) 4 = Very good (Above average understanding of the technical aspects and proposed solution of the project and displaying the ability to perform the necessary project administration functions) 3 = Good (Satisfactory in terms of understanding the technical requirements and should be adequate to achieve the end result but do not display the ability to perform the necessary project administration functions) 2 = Fair (Compliance with some of the technical and administrative requirements) 1 = Poor (Unacceptable, does not meet set criteria) 0 = No evidence provided
Provide a minimum of three signed referee letters wherein similar projects have been undertaken.	20	5 = 5+ signed referee letters 4 = 4 signed referee letters 3 = 3 signed referee letters 2 = 2 signed referee letters 1 = 1 signed referee letter 0 = No reference letters provided
Minimum of 5 years' experience in the public sector	20	5 = 10 years + 4 = 6 – 9 years 3 = 5 years 2 = 4 years 1 = 3 years or lower



<p>Competency of Key Personnel</p> <p><u>Experience (15)</u></p> <p>Provide short CV's of the key personnel who will be involved in the project including but not limited to:</p> <ul style="list-style-type: none"> • Partner/Engagement Director • Manager <p><u>Qualification (15)</u></p> <p>Provide certified copies of qualifications and Professional memberships of the key personnel who will be involved in the project including but not limited to:</p> <ul style="list-style-type: none"> • Partner/Engagement Director • Manager 	30	<p><u>Experience of key personnel</u></p> <table border="1" data-bbox="846 156 1814 528"> <thead> <tr> <th>Score</th><th>Experience of Engagement Director</th><th>Experience of Manager</th></tr> </thead> <tbody> <tr> <td>0</td><td>No Evidence of experience</td><td>No Evidence of experience</td></tr> <tr> <td>1</td><td>Below 5 years</td><td>Below 3 years</td></tr> <tr> <td>2</td><td>5 – 9 years</td><td>3-4 years</td></tr> <tr> <td>3</td><td>10 years</td><td>5 years</td></tr> <tr> <td>4</td><td>11-14 years</td><td>6-8 Years</td></tr> <tr> <td>5</td><td>15+ years</td><td>9+ years' experience</td></tr> </tbody> </table> <p><u>Qualification of key personnel</u></p> <p>0 = No evidence provided</p> <p>1 = Not registered with a professional body</p> <p>2 = Registered CA(SA) or in possession of a LLB degree</p> <p>3 = Registered ACFE or ICFP member or any other relevant professional body, who is in possession of a LLB degree or a Registered CA(SA)</p> <p>4 = Registered ACFE <u>and</u> ICFP member, who is in possession of a LLB degree or a Registered CA(SA)</p> <p>5 = Admitted Advocate of the High Court <u>and</u> Registered ACFE <u>and</u> ICFP member</p>	Score	Experience of Engagement Director	Experience of Manager	0	No Evidence of experience	No Evidence of experience	1	Below 5 years	Below 3 years	2	5 – 9 years	3-4 years	3	10 years	5 years	4	11-14 years	6-8 Years	5	15+ years	9+ years' experience
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<p>Demonstration of knowledge and understanding of the Public Service Regulatory Framework such as, but not limited to: the Public Finance Management Act(PFMA), Treasury Regulations, South African Constitution, Labour Legislation, Protection of Personal Information (POPI) Act</p>	10	<p>5 = Excellent (Meets and exceeds the expected level in terms of understanding the problem, proposed approach to achieve the end result, and displaying the ability to perform the necessary project administration functions)</p> <p>4 = Very good (Above average understanding of the technical aspects and proposed solution of the project and displaying the ability to perform the necessary project administration functions)</p> <p>3 = Good (Satisfactory in terms of understanding the technical requirements and should be adequate to achieve the end result but do not display the ability to perform the necessary project administration functions)</p> <p>2 = Fair (Compliance with some of the technical and administrative requirements)</p> <p>1 = Poor (Unacceptable, does not meet set criteria)</p>																					
Total	100																						
Threshold Score	60																						

5. Important Conditions

- Please provide a detailed breakdown of the pricing based on the total estimated hours per category of key staff members and their rates per hour. Pricing must be **firm** for the contract duration.
- **The assignment will be limited to 30 hours and will be conducted in 4 days.**
- All Supply Chain Management compliant documents must be completed in full and submitted. These include: SBD 1, 4, 6.1, 8 & 9.
- The General Conditions of Contract (GCC) are to be acknowledged and returned with your proposal.
- All parties forming a Joint Venture/Consortium for the purpose of this assignment must submit a separate CSD report for each party; and all SBD forms and GCC must be completed by each party to the Joint Venture/Consortium and submitted accordingly.
- The CBE reserves the right to disregard a bidders' proposal should it be found that work was previously undertaken for the entity to which poor performance was noted during the execution of such contract in the last five years.
- Pricing must be inclusive of VAT (if VAT registered).
- All eligible service providers to hand deliver their proposals to 169 Corobay Avenue, Corobay Corner (Block A – 2nd Floor), Menlyn, Pretoria and deposit into the bid box, not later than **Wednesday, 11 March 2020 by 11:00AM.**
- It is the responsibility of prospective bidders to ensure that their bid documents are submitted before the closing date and time of the proposal.
- Proposals received after the closing time and date will not be considered for evaluation.
- The CBE reserves the right not to award this contract.
- The CBE will enter into a formal contract with the successful bidder.
- Any change of information provided in the bid document that may affect service delivery by the successful bidder must be brought to CBE's attention as soon as possible. Failure to comply may result in the contract being terminated.
- Should the bidder present information intentionally incorrectly/fraudulently, they will be disqualified.
- Although adequate care has been given in the drafting of this document, errors such as those of a typographical nature may occur which the CBE will not be responsible for.
- It must be noted that payment will be made to the successful bidder upon the satisfactory delivery of the service and receipt of an invoice.
- The invoice will be paid within 30 days of receipt thereof. No deposit and advance payments will be made.

**** Special Note: The CBE reserves the right not to award two contracts that are in direct conflict with each other to the same service provider.**

Enquiries:

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Supply Chain – Sthembile Madonsela: sthembile@cbe.org.za 012 346 3985