

**THE NATIONAL CREDIT REGULATOR**

**NOVEMBER 2018**

**TERMS OF REFERENCE-**

**request for PROPOSALS**

**APPOINTMENT TO THE ncr’S pANEL OF LAW FIRMS TO PROVIDE LEGAL SERVICES ON the nca FOR A PERIOD OF THREE (3) YEARS**

**ncr547/11/2018**

**closing date: 27 november 2018**

**11h00 sharp**

**SECTION 1**

**APPOINTMENT TO THE ncr’S pANEL OF ATTORNEYS AND LAW FIRMS TO PROVIDE LEGAL services on the nca FOR A PERIOD OF THREE (3) YEARS.**

1. **Background**

The National Credit Regulator (NCR) was established in terms of section 12(1) of the National Credit Act, Act 34 of 2005 (the Act) and came into being on 1 June 2006. The NCR must enforce the Act by promoting informal resolution of complaints, monitoring the consumer credit market, investigating alleged non-compliance with the Act and taking the necessary enforcement action for any incidence of non-compliance identified. The Legal Services team is further responsible for contract management. To this end, the NCR seeks to establish a panel of external attorneys and law firms from whom assistance shall be sought on a need basis to provide legal opinions and legal services.

This RFP is issued in terms of the Public Finance Management Act 1 of 1999 (PFMA), the Preferential Procurement Policy Framework Act 5 of 2000 (PPPFA), the Preferential Procurement Regulations, 2001 (PPR), Supply Chain Management Regulations issued by the National Treasury and BBBEE Act. The NCR will determine which bidding organization (“bid participant”), if any, is appointed in response to this request for submission of an **RFP.**

* 1. **The Proposal Format**
* **Economy of proposal preparation**

The proposal should be prepared simply and economically, providing a straightforward and concise description of the bid participant’s ability to meet the requirements of the proposal request.

Clear factual responses are required. The content of the proposals shall determine the merit of each participant, not brochures or other marketing material. To facilitate the review of proposals, participants are required to organise their responses according to the format presented below. Should a participant wish to provide additional information, that information should be referred to and provided in a file of annexures.

* **Validity of proposals**

The proposals must include a statement as to the period for which the proposal remains valid. The proposal must be valid for at least ninety (90) days from the due date for the submission of all bids. Refer to the quarters in the terms of reference (TOR).

* **Number of proposals**

Each bid participant must provide three **(3) hard copies and 1 CD/memory** of their entire proposal, including all the documentation referred to in 1.4 below, in the format specified in that section. All submitted proposals will become the property of the NCR, and will not be returned. Receipt of all proposals will be recorded in a register at the point of receipt. One copy of the proposal must be signed and dated in black ink by the bidder or authorized representative of the bidder and initialed on each page.

* 1. **Submission of proposals**
     1. Proposals must reach the offices of the NCR before 11:00 on **27 November 2018** and must be enclosed in a sealed envelope which must have been clearly inscribed on the outside:

1. **REFERENCE NUMBER: NCA LEGAL PANEL**
2. **Closing date: 11h00, 27 november 2018**
   * 1. Proposals are to be submitted in the marked tender box, in the reception area, National Credit Regulator, 127-15th Road, Randjiespark, Halfway House, Midrand. The tender box will **only** be available for the depositing of proposals between 08h00 and 16h30 on weekdays (excluding public holidays).
     2. Please note that this RFP closes punctually at 11h00 on **27 November 2018**. No late submissions will be considered under any circumstances.
     3. All the documentation referred to in Section 1.4 below must be submitted. Failure to submit all the documentation referred to in this section may result in a submission being discarded, and not considered for evaluation.
     4. If responses are not delivered as stipulated in this Section 1.3, such responses will be considered **“late”**, and will not be considered for evaluation.
     5. The NCR shall not disclose any details pertaining to the responses received, to any other participant, as this is regarded as confidential information.
     6. Envelopes must not contain documents relating to any RFP other than the one referred to in this RFP no. NCR 547/10/2018
     7. The responses to the RFP will be opened as soon as is practical after the expiry of the time advertised for receiving them.
     8. Only the participants that are short-listed after the evaluation process will be informed of the results of the submission adjudication process.
   1. **Timetable**

|  |  |
| --- | --- |
| **Date** | **Activity** |
| **02/11/2018** | Advertisement of the RFP |
| **27/11/2018** | Closing date @ 11h00 |
| **27/11/2018** | Preliminary evaluation |
| **29/11/2018** | Evaluations by the Evaluation Committee |
| **03/12/2018** | Consolidation of scores |
| **14/12/2018** | Adjudication Committee meeting |
| **14/12/2018** | Appointment of the panel |

The National Credit Regulator reserves the right to determine the structure of the process, the right to determine the number of short-listed participants, the right to withdraw from the process, and the right to change this timetable at any time without notice.

* 1. **Documentation to be submitted-**

**Please Note**

All of the documentation described below must be submitted, with no omissions whatsoever. Where a particular form or format of documentation is stipulated, this is the **only** form or format in which these documents must be submitted. Failure to adhere to these requirements may result in the rejection of the entire submission.

|  |
| --- |
| All of the documentation referred to below (in Parts One – Ten) must be submitted. For ease of reference and to facilitate the evaluation process, you are requested to clearly mark each part of the submitted documentation as it is referred to below. |

**1.4.1. Proposal drafted in response to Terms of Reference**

**Section 2 of this document below**, contains the terms of reference (TOR) for the above mentioned tender. Bid participants are required to draft a proposal that will clearly indicate to the Evaluation Committee how they will fulfill the requirements as set out in the TOR.

**1.4.2. Pricing Proposal/ hourly rates**

The pricing proposal should contain sufficient information to allow the Evaluation Committee to estimate the cost of the service, to a high degree of accuracy.

Please note that a financial rate must be submitted in a sealed envelope together with your submission. Bidders pricing proposal must be linked to the attached pricing schedule provided by the NCR. **All prices provided must be inclusive of Value-Added Tax (VAT)**.

**Compliance documents**

**1.4.3. General Conditions and Procedures of the NCR**

See **Annexure B.** Bid participants must indicate clearly that they have read this document, and have no objections to being bound by its contents. Where any provisions of the General Conditions and Procedures conflict with this General Information for Bidders and/or Terms of Reference, the latter will take precedence over the General Conditions of Contract. **Annexure B1 must be signed off.** There is no need to submit the GCP.

**1.4.4. Tax Compliance status**

See **Annexure D** – Bids participants must submit the latest tax compliance status as per CSD report.

**1.4.5. Preference Points Claim Form**

See **Annexure E** – form SBD 6.1. Bid participants must complete Sections 8 and 9 in full. **DO NOT RETYPE THESE FORMS**. They must be completed on the original and signed, all in black ink. Forms with photocopies and/or other reproductions of signatures may be rejected.

**1.4.6. Declaration of Interest**

See **Annexure F** – form SBD 4. **DO NOT RETYPE THESE FORMS**. They must be completed on the original and signed, all in black ink. Forms with photocopies and/or other reproductions of signatures may be rejected.

**1.4.7. Declaration of past Supply Chain Management Practices**

See **Annexure G** – form **SBD 8**. **DO NOT RETYPE THESE FORMS**. They must be completed on the original and signed, all in black ink. Forms with photocopies and/or other reproductions of signatures may be rejected.

**1.4.8. Non-Disclosure Agreement**

See **Annexure H** – Non-Disclosure Agreement. Participants must indicate clearly that they have read this agreement, and have no objections to signing it, as is.

**1.4.9. Certificate of Independent Bid Determination**

See **Annexure I** – Certificate of Independent Bid Determination Participants. They must be completed on the original and signed, all in black ink. Forms with photocopies and/or other reproductions of signatures may be rejected.

***## Please note that a certified BBBEE certificate must also be attached to the bid documents. None submission will result in zero scoring in this competitive bidding process.***

***1.4.10 Reviewed Draft SLA***

See **Annexure j** – Bids participants need to indicate if they have read the Draft SLA/contract and clearly mark areas of concern if any.

* 1. **Conflict of interest**

Service providers are required to provide services that are professional, objective and impartial. Service providers must ensure that there is no conflict of interest between existing assignments, obligations and responsibilities to other clients and the services set out in the TOR. In the event of any uncertainty in this regard, full disclosure in the submitted proposal should be considered. Non-disclosure of a conflict of interest may be grounds for termination of any contract.

* 1. **Confidentiality agreement**

The successful service provider may have access to confidential data or information. The appointment of a successful bidder is subject to that bidder agreeing to the contents of, and signing, the NCR’s standard Non-Disclosure Agreement.

* 1. **Contact details**

The no-contact policy does not apply to any information deemed to be in the public domain, or which is readily available from organs of State, which are repositories of such information.

All communications and enquiries/requests for clarification relating to this proposal should be directed to [procurement@ncr.org.za](mailto:procurement@ncr.org.za)

* 1. **References**

A list of all references including reference letters (maximum of 5) must be included in the bid response.

* 1. **Affiliation certificates**

A copy(s) of valid and current certificates from the professional organizations/ bodies that the bidder is affiliated to or a member of, must be included in the bid response as detailed in section 2 of the bid document.

* 1. **Supplier Performance Management**

Supplier Performance Management is viewed by the NCR as a critical component in ensuring value for money acquisition and good supplier relations between the NCR and all its suppliers.

The successful bidder shall upon receipt of written notification of an award, be required to conclude a Service Level Agreement (SLA) with the NCR, which will form an integral part of the supply agreement. The SLA will serve as a tool to measure, monitor and assess the supplier ‘s performance and ensure effective delivery of service, quality and value-add to NCR’s business.

Successful bidders will be required to comply with the above condition, and also provide a scorecard on how their service offering is being measured to achieve the objectives of this condition.

* 1. **Reasons for disqualification**
* Proposal which does not have NCA knowledge or understanding or experience;
* Bidders who do not submit an original valid Tax Clearance Certificate or proof pin endorsed by SARS on the closing date and time of the bid submission;
* Bidders who are not Tax compliance as per the CSD at the time of appointment of the panel;
* Bidders who submit incomplete information and documentation according to the requirements of this RFP document;
* Bidders who do not comply with mandatory requirements stipulated in the RFP document.
  1. **Response Format (Returnable Schedules)**

Bidders shall submit their bid responses in accordance with the response format specified below (each schedule must be clearly marked):

**Schedule 1**

* + 1. Cover Page: (the cover page must clearly indicate the RFP reference number, bid description and the bidder’s name)
    2. Executive Summary (explaining how you understand the requirements of this RFP and the summary of your proposed solution)
    3. SBD 1 of this RFP document (duly completed and signed)

**Schedule 2**

* + 1. **Standard returnable bidding documents** 
       1. Original and valid Tax Clearance Certificate(s) (TCC);
       2. Latest CSD report
       3. Certified copies of bidder’s Companies and Intellectual Property Commission (CIPC) company registration documents listing all members with percentages, in case of a CC.
       4. Originally certified copy of ID document for the Company Representative
       5. All SBD documents required under this RFP document (duly completed and signed); check clause 1.4 above
       6. Confidentiality agreement – of this RFP document (duly completed and signed);
       7. General terms and condition of this RFP document (duly completed and signed annexure B1);
       8. B-BBEE verification certificate or sworn affidavit for EME indicating the contribution level of the bidding entity

**Schedule 3:**

* + - 1. Response/ proposal to Section 2 of this document, in line with the format indicated in this RFP document.
      2. Duly completed and signed, experience and proposed team with short CV’s.

**Schedule 4: Separate envelope**

* + - 1. Pricing Schedule
      2. One (1) CD with all Schedules listed above, also included in the sealed envelope of the bid
      3. SBD 3.3 with detailed rates on the company’s letterhead.

**Section 2**

**TERMS OF REFERENCE**

1. **Background**

National credit regulator seeks to appoint various legal firms to be on the panel to provide legal services on the NCA as will be required by the NCR for a period of three (3) years.

1. **Scope of Services** 
   1. The firms will be required to render services to the NCR by providing legal services on the National Credit Act and its regulations.
   2. The firms will attend to Civil Litigation on behalf of the NCR in various courts and Tribunals.
   3. The firms are required to have knowledge of litigation procedures and rules of the respective courts;
   4. The firms may need to conduct investigations into areas of non-compliance with the National Credit Act and its regulations.
   5. The firms who are already performing legal services on behalf of NCR should also submit their proposals.
2. **Terms and Conditions**

This Request for Proposal (henceforth referred to as RFP) has been compiled by the NCR. It is being made available, on the same basis, to all bidders. Bidders submitting a Bid in response to this RFP will be deemed to do so on the basis that they acknowledge and accept the terms set out below:

* 1. The NCR reserves the right to amend, modify or withdraw this RFP or amend, modify or terminate any of the procedures or requirements set out herein at any time and from time to time, without prior notice and without liability to compensate or reimburse any person.
  2. The NCR reserves the right to carry out site inspections or call for supporting documentation in order to confirm any information provided by a Bidder in its RFP Bid.
  3. A Bid submitted in response to this RFP will constitute a binding offer which will remain binding and irrevocable for a period of three (3) months from the date of submission to the NCR. The offer constituted by the Bid will be deemed not to have been accepted and no agreement will be deemed to be reached with any Bidder, unless and until a definitive Agreement and other related transaction documents are concluded between the NCR and the Preferred Bidder.
  4. NCR considers this Request for Proposal (RFP) and all related information, either written or verbal, which is provided to the respondent, to be proprietary to NCR. It shall be kept confidential by the respondent and its officers, employees, agents and representatives. The respondent shall not disclose, publish, or advertise this RFP or related information to any third party without the prior written consent of NCR Recipients of this RFP document may only distribute it to other parties whom they wish to involve as part of their Bidder consortium in submitting a Bid.
  5. Neither the NCR nor any of their respective directors, officers, employees, agents, representatives or advisors will assume any obligation for any costs or expenses incurred by any party in or associated with preparing or submitting a Bid in response to the RFP.
  6. Any requirement set out in this RFP that stipulates the form and/or content of any aspect of a Bid, is stipulated for the sole benefit of the NCR, and save as expressly stated to the contrary, may be waived by the NCR in its sole discretion at any stage in the RFP process.
  7. All Bids submitted to the NCR will become the property of the NCR and will as such not be returned to the Bidder. The NCR will make all reasonable efforts to maintain proposals in confidence. Proprietary information should be identified as such in each proposal.
  8. If the NCR amends this RFP, the amendment will be sent to each Bidder in writing. No oral amendments by any person will be considered or acknowledged.
  9. Only firms established and registered in accordance with the provisions of the attorneys Act, 1979 (Act No. 53 of 1979 as amended) will be considered for this RFP.
  10. The firms will be required to sign confidentiality agreements with the NCR.
  11. The firms may not cede or assign any part of its agreement with the NCR nor subcontract any part of the work assigned to them without the prior written authorization of the NCR.

1. **Special Conditions** 
   1. Service delivery levels and quality of the work will be a measure of appointment and retention in the panel;
   2. A firm assigned any work may not cede, assign or sub-contract any part thereof to any person unless with the written consent of the NCR or as may be required by the applicable laws, for instance, in cases where correspondent attorneys may be necessary;
   3. There will be no guarantee that attorneys will receive instructions if they are appointed onto the NCR’s panel;
   4. A firm found to have engaged in collusive tendering, Fronting or similar conduct will immediately be removed from the NCR’s panel;
   5. The panel will be reviewed on a three (3) year basis and the firm on the panel may have to resubmit their proposals;
   6. The NCR reserves the rights to update the list of panel members prior to the expiry of the 3-year period.
   7. The NCR shall be entitled in its discretion to remove a firm of attorneys from the panel before the expiry of the said 3 years’ period by written notice and recall all the files in the possession of the said law firm.
   8. The firm should have at least 5 years’ experience.
   9. In the case of a firm with less than 5 years’ experience, the attorneys who will be dealing with the NCR’s matters should have at least five years’ post admission experience.
   10. The NCR reserves the right, under exceptional circumstances, to appoint attorneys outside the panel attorneys.
2. **Technical Requirements**

Your company profile must be a maximum of 4 pages and address the below points in the following order: -

* 1. **The Firm**

Provide a brief history of the firm and an outline of the firm’s organogram, indicating names of resources and geographic structure (provincial/regional offices within the Republic of South Africa). The firm must be registered with the Law Society; proof of registration as well fidelity fund certificate must be provided. The firms ’s team must include, professional staff and candidate attorneys.

* 1. **Client Base**

The firm must provide at least 5 list of clients for whom legal services were rendered on a regular basis in the past 3 years and specify the nature of work performed.

The Firm must provide reference/ recommendation letter(s) from a maximum of 5 clients where the firm has recently provided legal services. The letters must the relevant contact details.

* 1. **Field of Expertise**

The NCR reserves the right to consider experiences of law firms that have done work for the NCR in the past. The required minimum expertise should be in the following:

* + 1. Litigations with a minimum of 20 matters being handled by the firm
    2. Court appearances with the minimum number of 20 appearances handled by the firm
    3. Legal drafting and opinions with minimum number of 20 cases.
  1. **Team**

Brief CV’s with maximum of 2 pages of your core service team that will be attending to the NCR work with specific reference to their educational/ professional background and their relevant experience.

* 1. **Conflict of interest management process**

Bidders are required to declare any conflict of interest before and during the course of the appointment as part of the panel.

1. **Evaluation Criteria and Weightings**

**Bids shall be evaluated in terms of the following process:**

* 1. **Phase 1: Initial Screening Process**:

During this phase, bid responses will be reviewed for purposes of assessing compliance with RFP requirements including the general bid conditions, which requirements include the following:

* + - CSD registration and recent tax compliant status report
    - Fidelity fund certificate
    - Proof of registration with law society
    - Submission of Company Registration Forms
    - Submission of ID copies for the Company Directors/partners
    - Certified BBBEE Certification / sworn affidavit for EME’s
    - Completion of all Standard Bidding Documents and other requirements
    - Shareholders’ Information/ Group Structure as per appendix 2

**Failure to comply with the requirements assessed in Phase 1 (compliance), may lead to disqualification of bids**.

* 1. **Phase 2: Technical/ Functionality Evaluation**

Bid responses will be evaluated in accordance with the Functional criteria as follows:

**Evaluation Criteria and weighting**

|  |  |
| --- | --- |
| **ELEMENT** | **WEIGHT** |
| **Litigation experience** | 20 |
| **Court appearances experience** | 20 |
| **Legal document drafting experience** | 20 |
| **Research and provision of legal opinions experience** | 15 |
| **General understanding of the NCA**   * Firms to provide specific cases where they have dealt with the NCA * Or an affidavit indicating their understanding of the NCA | 15 |
| **5 years’ experience for partners and directors**  Firms to indicate the number of years they have operating including those of the partners and or directors | 10 |

**Bidders are required to achieve a minimum score of 70 points in order for them to be considered for BBBEE and pricing.**

* 1. **Phase 3: Reference checks** 
     1. Firms are required to submit at least 5 reference letters where they handled matters similar to the areas on the evaluation criteria above. The letter should have contact details of the relevant/involved individual who was dealing with the matter**.**

1. **BBBEE and Pricing** 
   1. BBBEE
      1. Bidders are required to submit their Valid Certified BBBEE certificate together with the detailed report on each level.
         1. We also need the detailed report to accompany the Sworn affidavit
         2. Certified ID copies of directors must be submitted
   2. **Bidders are required to outline their hourly rate in respect of the following:**

|  |  |
| --- | --- |
| **POSITION** | **HOURLY RATE inclusive of VAT** |
| Director/partner |  |
| Senior Associate attorney |  |
| Associate |  |
| Candidate attorneys |  |
| Senior counsel |  |
| Junior counsel |  |

**The basis of charging other costs and disbursements must also be outlined in details.**

**Appendix 1 – Acceptance of Bid Conditions and Bidder’s Details**

**Request for Proposal No: Name of Bidder: Authorized signatory:**

**Name of Authorised Signatory**

**Position of Authorised Signatory**

**By signing above the bidder hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on him/her under this RFP.**

**BIDDING STRUCTURE**

|  |  |
| --- | --- |
| **Indicate the type of Bidding Structure by marking with an ‘X’:** | |
| **Individual Bidder** |  |
| **Joint Venture/ Consortium** |  |
| **Prime Contractor with Sub Contractors** |  |
| **Other** |  |

|  |  |
| --- | --- |
| **REQUIRED INFORMATION If Individual Bidder:** | |
| **Name of Company** |  |
| **Registration Number** |  |
| **Vat registration Number** |  |
| **Contact Person** |  |
| **Telephone Number** |  |
| **Cellphone Number** |  |
| **Fax Number** |  |
| **Email address** |  |
| **Postal Address** |  |
| **Physical Address** |  |

**Appendix 2 – Shareholders’ Information**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Name of the shareholder** | **ID Number** | **Race** | **Gender** | **% shares** |
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**Note: The bidder must also attach the detailed Company/ Group Structure where relevant.**

I, THE UNDERSIGNED (NAME)………………………………………………………………………

CERTIFY THAT THE INFORMATION FURNISHED ABOVE IS CORRECT.

**………………………………….. …………………… Signature Date**

**…………………………………. …………………**

**Position Name of bidder**

**Appendix 3 – Experience – (20 cases minimum)**

**Example on how firm should submit their information on the number of cases handled as per clause 6.3 above.**

**Details of the bidder's current and past experience in legal services as per RFP requirements:**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **No** | **Matter**  **Description** | **Litigations** | **Court appearances** | **Drafting of legal documents** | **Research and provision of legal opinions** |
| **1.** | **NCR V the DTI** | **√** | **√** | **√** | **√** |
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