

TERMS OF REFERENCE
BID NUMBER: TENDER-/INS/2023/24/004

APPOINTMENT OF A PANEL OF LEGAL SERVICES PROVIDERS TO INSETA FOR A PERIOD OF (3 YEARS)

NB: INSETA WILL ONLY INCLUDE A MAXIMUM OF THIRTY (30) LEGAL SERVICE PROVIDERS IN THE PANEL.

THE LEGAL SERVICE PROVIDER MUST INDICATE ATLEAST THREE FIELDS OF SPECIALIZATION.

FINAL

1. BACKGROUND

The Insurance Sector Education and Training Authority (INSETA) is a public entity listed in schedule 3A of the PFMA and was established in March 2000. The INSETA must, perform in accordance with the Constitution, Skills Development Act (SDA), the Skills Development Levies Act (SDLA), the Public Finance Management Act (PFMA), any other relevant legislation.

2. PURPOSE

The Insurance Sector Education and Training Authority (INSETA) hereby invites interested qualified, independent, and experienced legal services providers to provide legal services as and when required for a period of 36 months **(3 YEARS)**

The main objective of the Terms of reference is to source legal firms to assist the INSETA in managing its reputational risk together with legal interpretation of law, statutes and practices impacting public sector institutions as well as to defend or institute litigation and to provide conflict and dispute resolution services for INSETA.

2.1 SCOPE OF WORK/DELIVERABLES

- 2.1.1 To provide legal opinion on matters that may have impact to INSETA
- 2.1.2 Defending or instituting litigation, attending court appearances and managing the entire litigation process for INSETA
- 2.1.3 To represent INSETA at public forums including CCMA and Labour court in disciplinary proceedings and labour matters
- 2.1.4 To draft/ review and vet various contracts, agreements that INSETA enters in with various stakeholders as and when required
- 2.1.5 To provide INSETA with policy review
- 2.1.6 Advising on applicable rule of practices and relevant legislations by which INSETA is governed.
- 2.1.7 Liaising with training providers statutory or regulatory bodies, suppliers, employers and other stakeholders.
- 2.1.8 Provision of Legal services such as issue of legal letters, letters of demand, conflict and dispute resolution, mediation and arbitration services within agreed upon timelines stipulated.

3. SERVICE PROVIDERS MUST HAVE THE FOLLOWING EXPERTISE:

No	Service Category	Tick whichever applicable
1.	Commercial Law, Contract Law, Public-Private Partnerships,	
2.	Procurement Law	
3.	Administrative Law	
4.	Constitutional Law	
5.	Intellectual Property Law	
6.	Labour Law and alternative dispute resolution	
7.	Criminal Law	
8.	Debt Collection	
9.	Litigation (Lower, high, supreme and constitutional court)	

4 .

4.1 ADDITIONAL COSTS:

In addition to the tariff set out above the INSETA shall pay the bidder for disbursements incurred in providing the Services, subject to the following provisions:

- 4.1.1 All disbursements shall be charged at actual costs without any margin or mark-up
- 4.1.2 No travelling expenses may be charged for travel within 30km of the INSETA office in that particular Province unless prior approval is obtained in writing by the INSETA.
- 4.1.3 Where travelling may be required with the prior written approval of the Delegated Official of the INSETA, expenses may be charged subject to the following limitations:
 - 4.1.4 Airfare (domestic) - economy class tickets;
 - 4.1.5 Airfare (international) – economy class tickets;
 - 4.1.6 Car hire – Group B vehicles;
 - 4.1.7 Own vehicle – cost per kilometer calculated in accordance with the SARS rates in respect of a petrol vehicle with an engine capacity of 1600 cc; and 59
 - 4.1.8 Accommodation – shall be charged for bed-and-breakfast establishments with a maximum of a three-star rating.
 - 4.1.9 INSETA will pay only for one resource unless prior approval is obtained in writing by the INSETA.
 - 4.1.10 Attendance per day capped at 8 (eight) hours unless prior approval is obtained in writing by the INSETA.
 - 4.1.11 The INSETA will only pay for delivery, service and filing of documents at the kilometer rate as detailed above.
 - 4.1.12 The INSETA will only pay a maximum of half the hourly rate spent on travelling time (this counsel and expert as approved by the INSETA).
 - 4.1.13 The above Pricing Schedule for the appointed Bidder for the provision of legal services shall be for the initial year of services, thereafter, it shall be negotiated annually three (3) months prior to the anniversary of the contract

5. EVALUATION CRITERIA

- Phase 1 : Administrative evaluation (Completeness of SBD`S documents)
- Phase 2 : Mandatory requirements
- Phase 3 : Functional criteria – Minimum of 80 points
- Phase 4 : Specific Goals (80/20 Principle:
 - 80 on fixed rate per hour)
 - 10 For black owned enterprise.
 - 10 for woman owned enterprise.

NB: INSETA will only appoint a maximum of thirty (30) bidders who scored the highest points on evaluation criteria

5.1 PHASE 1: PREQUALIFICATION CRITERIA

Returnable Documents / Information:

- 5.1.1 SBD 1: Completed, attached and signed
- 5.1.2 SBD 3.1 or 3.2 or 3.3 Completed, attached and signed
- 5.1.3 SBD 4: Completed, attached and signed
- 5.1.4 SBD 6.1: Completed, attached and signed
- 5.1.5 General Condition of contract: Initialed GCC
- 5.1.6 In bids where Consortia/Joint Ventures/Sub-contractors are involved, each party must

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submit a separate Tax Clearance Certificate.

5.1.7 If the bidder is a joint venture, consortium or other unincorporated grouping of two or more persons/ entities, a copy of the joint venture agreement between the members should be provided.

5.1.8 Registered on the Central Supplier Database of National Treasury. (For registration information, go to <https://secure.csd.gov.za/>)

PHASE 2: MANDATORY REQUIREMENTS

Mandatory criteria description	Comply	Do not comply
Bidders must be law firms registered with the Legal Practice Council (“LPC”) and or Society of Advocates (SOC)-A proof must be submitted with the bid		
legal firms established in accordance with the provisions of the Attorneys Act, 1979 (Act No. 53 of 1979 as amended) will be considered for this tender.		
Bidder/s must attach the Fidelity Fund Certificate where applicable and letter of good standing.		
Letter of good standing for all team members		

PHASE 3 : FUNCTIONAL EVALUATION CRITERIA

Responses will be evaluated using a predetermined set of evaluation criteria. The evaluation criteria is designed to reflect the INSETA’s requirements in terms of identifying a suitable service provider and ensure the selection process is transparent and affords all the bidders a fair opportunity for evaluation and selection

Evaluation Area	Functional Criteria	Max Points
Company experience	<p>The bidder must provide a company profile detailing the number of years of experience in the provision of legal services within the public sector.</p> <p>Points allocation matrix:</p> <ul style="list-style-type: none"> ▪ Company profile attached detailing the number of years in legal service within the public sector. <p>20 years and above = (15 Points)</p> <ul style="list-style-type: none"> ▪ Company profile attached detailing the number of years in legal service. <p>15 – 19 years = (12 Points)</p> <ul style="list-style-type: none"> ▪ Company profile attached detailing number of years in legal service 11-14 years = (10 Points) ▪ Company profile attached detailing number of years in legal service. <p>05 -10 years’ = (8 Points)</p>	15



<p>Proposal</p>	<p>Requirements of the proposal</p> <ul style="list-style-type: none"> ▪ A proposal (Maximum 10 Pages) is to be submitted outlining the bidder’s response to the scope of work as issued. The proposal should detail the legal process flow including: <ul style="list-style-type: none"> ▪ initiation phase ▪ Implementation phase ▪ And resolution phase <p>to be utilized during the provision of services required by the INSETA: Proposal must include organogram</p> <p>The proposal is to include a table detailing the type of the service offered, duration, category of law, client name, client contact person, contact person telephone and email address.</p> <p>Points allocation matrix:</p> <ul style="list-style-type: none"> • Proposal submitted is adequate and complies with all requirements inclusive of response to the scope of work as listed above = (25 Points) • Proposal submitted partially addresses (2 of 3 requirements) the requirements as detailed in the scope of work = (15 Points) • Proposal submitted partially addresses (1 of 3) the requirements as detailed in the scope of work = (5 Points) • Proposal submitted does not address any of the requirement as detailed in the scope of work (0 Points) 	<p style="text-align: right;">25</p>
<p>Reference letters</p>	<p>Bidders Clients reference letters (the reference letters must be aligned to the category that the service provider is bidding for)</p> <p>Service providers are requested to attach to their RFQ response at least (05) five reference letters for the past five years (5) where similar services were rendered within the public sector.</p> <p>Service providers must make sure that the reference letter is signed and entails the following but is not limited to:</p> <ul style="list-style-type: none"> ✓ The name of the entity providing reference letters in the form of letterhead. ✓ The full contact details of the entity where services were rendered ✓ The reference letters must be duly signed and dated. ✓ A brief description of the project completed by the services provider, detailing the following: <ol style="list-style-type: none"> 1) nature of service rendered; 2) period of the project and 3) deliverables within the project time lines. <p>Points allocation matrix:</p> <p>5 and above Reference Letters = (30 points) 3 to 4 Reference Letters = (20 points) 1 to 2 Reference Letters = (5 points) Non submission = (0 points)</p>	<p style="text-align: right;">30</p>

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Human Resources	<p>Bidder must submit comprehensive CVs of the lead team member and other team members as per the organogram outlining qualifications and work experience.</p> <p>Bidders must attach Certified copies of qualifications, proof of registration with the relevant council, and certified ID copies (the certified copies must not be older than 3 months)</p> <p>Points will be allocated as follows:</p> <ul style="list-style-type: none"> •Submission of a comprehensive CV, certified copies of legal qualifications, and a valid attorney certificate for the lead team member. LLM or equivalent plus 10 and above years of experience = (30 points) • Submission of a comprehensive CV, certified copies of legal qualifications and a valid attorney certificate for lead team member LLB or equivalent plus 10 and above years experience = (20 points) • Submission of a comprehensive CV, certified copies of legal qualifications and a valid attorney certificate for lead team member LLB or equivalent plus 05 to 09 years' experience = (10 points) • Non-compliance with the minimum requirement = (0 point) 	30
TOTAL		100

NB: Bidders who obtain less than the minimum threshold of **75 points** will be declared non-responsive and therefore will not be eligible for **evaluation of Specific Goals & Price Preference**.

6. ADJUDICATION USING A POINT SYSTEM

INSETA will only appoint five bidders who scored the highest points on evaluation criteria and specific goals for each category.

Should two or more bids be equal in all respect, the award shall be decided by the drawing of lots.

7. POINTS AWARDED FOR PRICE

The **80/20** preference point system

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

$$Ps = 80 \{1 - (Pt - P \text{ min})\}$$

P min

Where:

Ps = Points scored for comparative price of bid under Consideration

Pt = Comparative price of bid under consideration

Pmin = Comparative price of lowest acceptable bid

The specific goals allocated points in terms of this tender	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (80/20 system) (To be completed by the tenderer)
Enterprise with ownership 100% black owned-: Ownership	10	
Enterprise with ownership 100%black woman owned-: Ownership	10	

8. DURATION OF THE CONTRACT:

The duration of the contract will be for a period of **3 years as per the SLA**

9. CONTRACTUAL OBLIGATION

- 9.1.1 All bidders must complete SBD 3.1 as well as the applicable annexure (Pricing schedule). Annual escalation is subject to claims history/experience
- 9.1.2 The bidders are required to provide a dedicated Account Manager upon contracting.
- 9.1.3 In the case of the service provider using sub-contractors, the former will be responsible for ensuring delivery of services from any such sub-contractors and for making any payments to such sub-contractors.
- 9.1.4 Unsatisfactory performance can result in INSETA invoking its right to terminate the contract.
- 9.1.5 For the fairness within this process, INSETA will issue the RFQ to the panel as and when the services are required to allow price and specific goals competition
- 9.1.6 The contract is for a period of 3 years .

10. ABSENCE OF OBLIGATION & CONFIDENTIALITY

- 10.1.1 No legal or other obligation shall arise between the service provider and INSETA unless/until both parties have signed a formal contract or Service Level Agreement.
- 10.1.2 The Contract site is at **INSETA (as and when required)**.

11. WORKMEN AND SUPERVISION ON SITE

- 11.1.1 The service provider shall be held responsible for the conduct of its employees and the conduct of its sub-contractor's employees for the full duration of the contract.

12. COMMUNICATION

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Respondents are warned that a response will be disqualified should any attempt be made by a bidder either directly or indirectly to canvass any officer(s) or employees of INSETA in respect of BID process, between the closing date and the date of the award of the business.

All enquiries relating to this BID should be emailed **three days before the closing date**.

13. CONDITIONS TO BE OBSERVED WHEN BIDDING

- 13.1.1 The organization does not bind itself to accept the lowest or any BID, nor shall it be responsible for or pay any expenses or losses which may be incurred by the bidder in the preparation and delivery of his BID submission. The organization also reserves the right to withdraw or cancel the BID at any stage.
- 13.1.2 No BID shall be deemed to have been accepted unless and until a formal contract / letter of award is prepared and executed.
- 13.1.3 The competitive bid shall remain open for acceptance by the Organization for a period of **120 days** from the closing date of the BID Enquiry.

14. INSETA RESERVES THE RIGHT TO:

Not evaluate and award a bid that do not comply strictly with this BID document.

- 14.1.1 Make a selection solely on the information received in the Bid Document and Enter into negotiations with any one or more of preferred bidder(s) based on the criteria specified in the terms of reference.
- 14.1.2 Contact any bidder during the evaluation process, in order to clarify any information, without informing any other bidders. During the evaluation process, no change in the content of the BID shall be sought, offered or permitted.
- 14.1.3 Cancel this BID at any time as prescribed in the PPPFA regulation.
- 14.1.4 Should bidder(s) be selected for further negotiations, they will be chosen on the basis of the of cost effectiveness and the principal of value for money not necessarily on the basis of the lowest costs.

15. COST OF BIDDING

The bidder shall bear all costs and expenses associated with preparation and submission of its BID submission and the INSETA shall under no circumstances be responsible or liable for any such costs, regardless of, without limitation, the conduct or outcome of the bidding, evaluation, and selection process.

END OF TERMS OF REFERENCE DOCUMENT