
TERMS OF REFERENCE

BIDDERS ARE HEREBY INVITED TO SUBMIT BIDS IN RESPECT OF THE FOLLOWING SERVICE:

**TERMS OF REFERENCE FOR THE APPOINTMENT OF FIRMS OF ATTORNEYS
TO SERVE ON THE NATIONAL CONSUMER COMMISSION (NCC)'S PANEL OF
ATTORNEYS FOR A PERIOD OF THIRTY-SIX (36) MONTHS**

Reference: NCC/ 02 /2024/2025

Date issued: 30 August 2024

Compulsory briefing session: 6 September 2024 @ 11h00 (MS TEAMS)

Closing date and time: 23 September 2024 @ 11h00

Bid validity period: 90 days after closing date

ADDRESS:

**National Consumer Commission
SABS Campus, Building C,
1 Dr. Lategan Road
Groenkloof, Pretoria**

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1. PURPOSE

- 1.1. To appoint suitable, reputable and well-established firms of attorneys to serve on the NCC's panel of attorneys for a period of thirty-six (36) months.

2. OBJECTIVE

- 2.1. To invite the firms of attorneys who have offices/operations within Gauteng Province to assist the Commission, as attorneys of records in litigation matters that are presented in various courts of law and the National Consumer Tribunal, to provide legal opinions in various fields of law as and when requested by the Commission.

3. BACKGROUND

- 3.1. The National Consumer Commission is a juristic person established as an organ of state within the public administration in terms of section 85 of the Consumer Protection Act; No 68 of 2008 ("Act"). The NCC is listed as a schedule 3A entity in terms of the Public Finance Management Act, 1999 (PFMA).
- 3.2. The Core Functions of the NCC are, inter alia, to:
 - 3.2.1. Facilitate an environment that enables resolution of disputes between consumers and suppliers that is expedient, cost effective, fair and transparent.
 - 3.2.2. Analyse and refer complaints to alternative dispute resolution agents or issue non-referrals on complaints received.
 - 3.2.3. Conduct inspections and investigations so as to enforce the provisions of the Consumer Protection Act thereby ensuring compliance.
 - 3.2.4. Make applications to the National Consumer Tribunal for declaration of various conduct as prohibited conduct.
 - 3.2.5. Facilitate, conduct and monitor product recalls.
 - 3.2.6. Conduct targeted consumer- and business-focused education initiatives aimed at facilitating a better understanding of the rights, roles and obligations of consumers and suppliers (within the entire value chain) of good and services.

- 3.2.7. Conduct research and propose policy changes to the Minister in relation to any matter affecting the supply of goods and services that would improve the realization and full enjoyment of consumer rights.
- 3.2.8. Advise Minister on matters relating to consumer protection and on the determination of national norms and standards regarding consumer protection in terms of the CPA that should apply generally, throughout the Republic.
- 3.2.9. Identify legislation that affects the welfare of consumers, which is inconsistent with the purposes of the CPA. Develop proposals and recommendations to the Minister for reform of practices that are inconsistent with the CPA.
- 3.3. Whilst carrying out its core functions, the NCC now and again requires the services of the firm of attorneys who will act on its behalf, to handle litigation instituted by or against it. The NCC will use the firms of attorneys who are appointed in such NCC's Panel of attorneys to defend or institute any litigation by or against the NCC, including request for Legal opinions and prosecution of Consumer matters.

4. COMPOSITION OF THE PANEL AND NATURE OF SERVICE

- 4.1. More than one service provider will be appointed to supply the required service to the Commission. These service providers will consist of firms of attorneys and may be required to transfer skills to less experienced attorneys in terms of a skills transfer plan where a combination of service providers are appointed.
- 4.2. The appointed panel of attorneys will be responsible for the handling of complex legal matters within their area of expertise and jurisdiction across the country. The firm's experience and the complexity of each matter will be considered when appointing any firm of attorneys. The prospective legal firms will be required to provide their profile clearly outlining their staff composition, their exposure, expertise and professional legal experience in the nature of service they are sought for.
- 4.3. The firm of attorneys in the process of executing their duties will be required to report progress at certain intervals, such as monthly progress reports on each matter assign to that firm and on the final outcome for that matter providing a

clear analysis on how improvements should be made on challenges and shortcomings encountered during the execution of their given task.

4.4. **Civil Law**, this includes previous experience and expertise in the Magistrate's Court and High Court for commercial litigation, resolution of disputes, and collection.

4.5. **Labour Law**, this includes, but is not limited to drafting and vetting of and advising on various labour related documents, legislation and policies. Service providers must also indicate experience on any dispute resolution, including representation at various dispute resolution forums in industrial relations

4.6. **Consumer Law**, this includes, but is not limited to assessing investigation report so as to determine whether sufficient evidence has been included therein to prove alleged transgressions of the CPA, identification of parties, legal principles involved, drafting Tribunal application and presenting NCC's case at the Tribunal.

4.7. **The panel of attorneys will be limited to not more than eight (8) firms of attorneys.**

5. **INVITATION**

Firms of attorney are invited to send their proposals to the NCC that address the elements of Evaluation Criteria, stipulated in these Terms of Reference.

6. **SCOPE OF WORK**

6.1. Each appointed firm of attorneys will be required to act as attorneys of record in a specific matter whose scope of work may include but not be limited to:

6.1.1. Briefing counsel, when required

6.1.2. Drafting or settling pleadings

6.1.3. Attending all consultations (with Counsel when required).

6.1.4. Handling trial of the matter before the Labour Court or High Court

6.1.5. Analysis of investigation reports and referral of such matter to National Consumer Tribunal (NCT).

6.1.6. Provision of legal opinions on issues relating to various fields of law, including but not limited to consumer law, labour law, law of contract, law of delict, regulatory, compliance and administrative law upon request.

6.1.7. Enforcement of NCT judgements/collection.

6.2. Transferring skills to NCC's internal legal team involved in the matter by working with a designated member/s of the NCC's legal team.

7. REPORTING REQUIREMENTS

- 7.1. The appointed firm of attorneys will report to the Commissioner/Deputy Commissioner of the National Consumer Commission, in consultation with or through the NCC's Head of Legal Services.
- 7.2. The appointed firm of attorneys shall report after each, and every court document has been filed in court (hereinafter referred to as periodical report) and submit a statement of account for such step taken.
- 7.3. The appointed firm of attorneys shall in its periodical report include the skills relating to drafting, legal research, negotiation skills, court / tribunal presentation of the matter, or identification of legal principles involved in such matter which were transferred to the designated internal legal team of NCC that is handling such matter.
- 7.4. In the final report, the appointed firm of attorneys will provide, in a summary format type of skills as mentioned above that were transferred to NCC's internal legal team that was handling such matter.

8. EVALUATION CRITERIA

The NCC will evaluate all proposals in terms of the Preferential Procurement Policy Framework Act. No.5 of 2000 (PPPFA). A copy of the PPPFA regulations can be downloaded from www.treasury.gov.za. In accordance with the PPPFA, submissions will be adjudicated on 80/20 points system and the evaluation criteria.

8.1. PHASE 1: ADMINISTRATIVE AND MANDATORY COMPLIANCE

- 8.1.1. Without limiting the generality of the Commission's other critical requirements for this Bid, bidders must submit the documents listed in Phase 1 below. All documents must be completed and signed by the duly authorized representative of the prospective bidders. During this phase, bidders' responses will be evaluated based on compliance with the listed administration and mandatory bid requirements. The bidders' proposals may be disqualified for non-submission of some of the documents.

Administrative Compliance Documents	Guideline	Consequence of Non-submission of Information:
		Disqualification?
Invitation to Bid – SBD 1	Complete, sign and submit the provided pro forma document.	NO
Tax status – Compliant	<ul style="list-style-type: none"> i. Tax Compliance will be verified on the Central Supplier Database (CSD). ii. Supplier to be Tax-Compliant before an award is made and throughout the contract period. iii. CSD Supplier number will be used to verify Tax Compliance. 	NO
Bidder's Disclosure– SBD 4	Complete and sign the supplied pro forma document.	YES
Preference Point Claim Form – SBD 6.1	Complete and sign the supplied pro forma document. Preference points will be verified using the CSD.	NO

Registration on Central Supplier Database (CSD)	The Service Provider must be registered as a service provider on the Central Supplier Database (CSD). If not registered, the service provider must visit https://secure.csd.gov.za/ to register on the CSD. An award will not be made to any bidder who is not registered on the CSD. Furthermore, no preference points will be	NO
Pricing Schedule – SBD 3 and Annexure A	Submit full details of the pricing proposal in a separate envelope ONLY and not as part of the proposal.	YES
A fidelity fund certificate	A valid original / certified copy of the original certificate must be attached.	YES
Established in accordance with the provisions of the Attorneys Act, 1979 (Act no. 53 of 1979 as amended)	A valid proof of registration with the Legal Practice Council (LPC) must be attached.	YES
Compulsory Briefing Session 6 September 2024 @ 11h00	You may use this Meeting ID and Passcode to join the meeting on MS Teams : Meeting ID: 389 507 963 572 Passcode: Zzagjy	YES

8.2. PHASE 2: FUNCTIONAL CRITERIA:

Only Bidders that have met the Pre- qualification criteria in Phase 1 will be evaluated in Phase 2 for functionality. Functional totalling out of 100 with a minimum qualification threshold of **70%** for further consideration on the third phase.

Criteria for measuring functionality	Total weight
<p>Team capacity</p> <p>The service provider should demonstrate the competencies of the team to carry out the tasks required in the project.</p> <ul style="list-style-type: none"> Qualification in Law, attach copy of qualification <ul style="list-style-type: none"> NQF 9 and above = 15 NQF 8 = 10 NQF 7=5 No qualification = 0 <p>NB: Only the highest qualified partner / director will be evaluated.</p>	15
<ul style="list-style-type: none"> Experience of the lead partner/ director in Civil Law, which will be assigned to the NCC. Attach CV <ul style="list-style-type: none"> 5 years and above = 15 4 years = 12 3 years = 9 2 years = 6 1 year and less = 3 Zero experience = 0 	15
<ul style="list-style-type: none"> Experience of the lead partner/ director in Labour Law which will be assigned to the NCC. Attach CV <ul style="list-style-type: none"> 5 years and above = 15 4 years = 12 3 years = 9 2 years = 6 1 year and less = 3 Zero experience = 0 	15
<ul style="list-style-type: none"> Experience of the lead partner/ director in Consumer Litigation which will be assigned to the NCC. Attach CV <ul style="list-style-type: none"> 5 years and above = 15 	15

<ul style="list-style-type: none"> ○ 4 years = 12 ○ 3 years = 9 ○ 2 years = 6 ○ 1 year and less = 3 ○ Zero experience = 0 	
<p>Experience/ Track Record</p> <p>This refers to the service provider's demonstrable experience in conducting and completing civil, labour and/ or consumer litigation on behalf of a private or public entity in the past five (5) years. This must be supported by contactable reference letters from previous clients or attach case numbers and court details which the service provider has handled/ represented</p> <p>(Name of the organization, contact details and field of the matter(s) handled- e.g. civil/ labour/ consumer law).</p> <p>-Five or more reference letters with case numbers and court details of assigned matter completed in the past five (5) years = 30</p> <p>-Four reference letters with case numbers and court details of assigned matter completed in the past five (5) years = 24</p> <p>-Three reference letters with case numbers and court details of assigned matter completed in the past five (5) years = 18</p> <p>-Two reference letters with case numbers and court details of assigned matter completed in the past five (5) years = 12</p> <p>None to One reference letter with case numbers and court details of assigned matter completed in the past five (5) years = 6</p> <p>No submission = 0</p> <p>NB: Only reference letters issued under the firm/ company will be evaluated.</p>	<p>30</p>

Attach proof in a form of certificate of registration of a candidate attorney(s) with the firm issued by Legal Practice Council (LPC) (either presently doing articles or previously registered as such) Five and above candidate attorneys = 10 Four candidate attorneys = 8 Three candidate attorneys = 6 Two candidate attorneys = 4 One candidate attorney = 2 Zero candidate attorney = 0	10
TOTAL POINTS	100

8.3. PHASE 3: PRICE AND PREFERENCE POINTS

8.1.2. Only Bidders that have met the 70 points threshold for functionality will be evaluated in phase 3 for price and preference points.

8.1.3. In terms of regulation 6 of the Preferential Procurement Regulations pertaining to the Preferential Procurement Policy Framework Act, 2000 (Act 5 of 2000), responsive bids will be adjudicated on the 80/20-preference point system in terms of which points are awarded to bidders on the basis of:

- The bid price (maximum 80 points)
- Specific Goals (maximum 20 points)

a) Stage 1 - Price Evaluation (80 Points)

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

The following formula will be used to calculate the points for price:

Where;

P_s = Points scored for comparative price of bid under consideration

P_t = Comparative price of bid under consideration

P_{\min} = Comparative price of lowest acceptable bid

b) Stage 2 – Specific Goals Evaluation (20 Points)

Specific Goals Points allocation

A maximum of 20 points may be allocated to a bidder for attaining the specific goals in accordance with the table below:

Specific Goals	Number of Points
100% Black owned	6
51-99% Black owned	4
100% women-owned	6
51% to 99% women-owned	4
5% Youth Ownership	2
2% Owned by persons with disabilities	1
Exempt Micro Enterprise (EME)	5
Qualifying Small Enterprise (QSE)	3
Large Enterprise	0

Points for Specific Goals may be allocated to bidders on the submission of the following documentation or evidence:

- A duly completed Preference Point Claim Form: Standard Bidding Document (SBD 6.1)
- B-BBEE Certificate
- CSD Report
-

9. GENERAL CONDITIONS OF CONTRACT

9.1. The bidder(s) accepting the terms and conditions contained in the General Conditions of Contract as the minimum terms and conditions upon which National Consumer Commission is prepared to enter into a contract with the successful Bidder(s).

9.2. The bidder submitting the General Conditions of Contract to National Consumer Commission together with its bid, duly signed by an authorised representative of the bidder.

9.3. NCC reserves the right to negotiate the assignment fee where the fees are likely to exceed the budgeted amount by the NCC.

9.4. The successful Service Provider will be required to enter into a binding written Service Level Agreement/Contract. The mere award of the bid will not

constitute a binding contract between the Commission and the Service Provider.

9.5. The NCC reserves the right to refuse the lowest quote and elements outlined in the evaluation criteria above will play a major role when evaluating the requested proposals. Similarly, the NCC is not bound to select any of the entities or individuals submitting proposals.

10. PAYMENT STRUCTURE

10.1. Payment will be made upon submission of invoice(s), accompanied with an itemised statement of account, covering all services rendered. Such payment will be effected within thirty (30) days from date of receipt of undisputed invoice.

11. CONFIDENTIALITY

11.1. The NCC will treat all relevant and available data and/or information provided by the Service Provider with confidentiality. The Service Provider is not to allowed to discuss or make any information available to any member of the public, press or other service provider/consultant or any other unauthorized person(s) except as authorized by the Commissioner or his delegate.

12. SUBMISSION OF PROPOSALS

12.1. Proposals should be submitted on the closing date of the **23rd of September 2024** at **11h00** am at the reception area of the National Consumer Commission to the following address:

**THE NATIONAL CONSUMER COMMISSION
SOUTH AFRICAN BUREAU OF STANDARDS CAMPUS
MAIN RECEPTION NCC TENDER BOX
1 DR LATEGAN ROAD
GROENKLOOF
PRETORIA**

13. CONTACT NUMBERS

- 13.1. For any further technical enquiries, the following persons can be contacted at the National Consumer Commission:

Mr. Jabulani Mbeje

Telephone number: 012 428 7759

Email address: J.Mbeje@thencc.org.za

- 13.2. For any further SCM enquiries, the following persons can be contacted at the National Consumer Commission

Ms Margery Mouton

Telephone: 012 428 7730

E-mail: M.Mouton@thencc.org.za