



National Empowerment Fund

RFP No: NEF 08/2022/23

**REQUEST FOR PROPOSAL:
PROVISION OF LEGAL SERVICES**

CLOSING DATE: 13 January 2023
TIME: 14H00

1. Proprietary Information:

The National Empowerment Fund (NEF) considers this Tender and all related information, either written or verbal, which is provided to the respondent, to be proprietary to NEF. It shall be kept confidential by the respondent and its officers, employees, agents and representatives. The respondent shall not disclose, publish, or advertise this specification or related information in part or as a whole to any third party without the prior written consent of NEF.

2. Enquiries

All communication and attempts to solicit information of any kind relative to this Tender should be channeled to the officials named below:

Contact persons (all questions should be in writing)

Commercial

Kedibone Mboweni
Supply Chain Management: Head
Tel: +27 11 305 8000
Email: mbowenik@nefcorp.co.za

Technical

Sonwabo Mnyanda
Legal Services Manager
Tel: +27 11 305 8000
mnyandas@nefcorp.co.za

3. Medium of Communication

All the documentation submitted in response to this tender must be in English.

4. Verification of Documents

Tenderers should check the numbers of pages to satisfy themselves that none are missing or duplicated. No liability will be accepted by the NEF in regard to anything arising from the fact that pages are missing or duplicated.

5. Validity Period

Responses to this tender received from tenderers will be valid for a period of **150** days counted from the closing date of the tender.

6. Submission of Tenders

- 6.1. All responses to this tender must be submitted via email to the email address, **tenders@nefcorp.co.za** by no later than **14h00 on 13 January 2023**. No tenders for “(TENDER RFP NEF 08/2022/23, Provision of Legal Services)” will be accepted after cut-off time. All enquiries regarding this RFP should also be directed to the following email addresses, tenders@nefcorp.co.za; mnyandas@nefcorp.co.za; mbowenik@nefcorp.co.za and tofilex@nefcorp.co.za. All questions will be responded to bidders within seven working (07) days from the date of issue, no questions will be responded after this cut-off time.
- 6.2. No tender received by telegram, telex, facsimile or similar medium will be considered.
- 6.3. Where a tender document is not received at the time of the tender closing, such a tender document will be regarded as a late tender. Late tenders will not be considered.
- 6.4. The tenderer is responsible for all the costs that shall be incurred in relation to the preparation and submission of the tender document.
- 6.5. A list of all references (minimum 3) with contact details must be included in the tender document.
- 6.6. Copies of qualifications, identity documents (IDs) and the curricula vitae (CVs) of persons who will be involved in the execution of this tender should the tenderer be successful must be attached to the proposal.
- 6.7. The following information also needs to be provided with the tender document:
- Names and details of senior management
 - Employment equity details of employees at an operational level
 - Percentage of ownership by number of:
 - Black ownership
 - Black women ownership
 - Youth ownership

- Percentage of ownership by profit share of:
 - Black ownership
 - Black women ownership
 - Youth ownership
- 6.8. An original valid SARS Tax Compliance Status PIN must be included in the tender document. Failure to submit a certificate would render your tender invalid.
- 6.9. Copy/ies of any affiliations that you may have must be attached to the response to this tender.
- 6.10. Kindly note that the NEF is entitled to amend any tender conditions, validity period, specifications, or extend the closing date of tenders before the closing date. All tenderers, to whom the tender documents have been issued, will be advised in writing of such amendments within reasonable time after they are made.
- 6.11. The NEF reserves the right not to accept the lowest tender or any tender in part or in whole.
- 6.12. The NEF reserves the right to award this tender to a black empowered firm.
- 6.13. The NEF also reserves the right to award this tender to any party whom it decides as a whole or in part without furnishing reasons. The NEF reserves the right to withdraw this tender at any stage with or without giving reasons.
- 6.14. The tenderer hereby offers to render all or any of the services described in this tender document to the NEF on the terms and conditions and in accordance with the specifications stipulated in this tender document. This tender document and the tenderer's response thereto shall form part of any service level agreement that may be concluded between the NEF and the tenderer. In the event of conflict between such documents, the service level agreement shall take precedence over all other documents.
- 6.15. Tenders submitted by juristic persons or partnerships must be signed by a person or persons duly authorized thereto by a resolution of a board of such juristic person, a copy of which resolution, duly certified be submitted with the tender.

- 6.16. The tenderer shall prepare for a possible presentation should NEF require such and the tenderer shall be notified thereof no later than 4 (four) days before the actual presentation date.
- 6.17. The tenderer hereby agrees that the offer herein shall remain binding upon him/her and will be open for acceptance by the NEF during the validity period indicated herein.
- 6.18. The tenderer furthermore confirms that he/she has satisfied himself/herself as to the correctness and validity of his/her tender response, that the price(s) and rate(s) quoted cover all the work/item(s) specified in the tender response documents and that the price(s) and rate(s) cover all his/her obligations under a resulting contract and that he/she accepts that any mistakes regarding price(s) and calculations will be at his/her risk.
- 6.19. The tenderer hereby accepts full responsibility for the proper execution and fulfillment of all obligations and conditions devolving on him/her under this tender as the principal(s) liable for the due fulfillment of this tender and any contract that might be concluded pursuant hereto.
- 6.20. The NEF will treat your personal information as confidential and take all necessary steps to protect your information as required by the Protection of Personal Information Act of 2013. The NEF will only process your information (which involves but is not limited to collecting, collating, organising, disseminating and destroying) in the following circumstances:
- where you have granted the necessary consent;
 - where we are required to do so by law;
 - where processing is necessary to protect our legitimate interests;
 - where it is necessary for the conclusion or performance of a contract to which you are party; or
 - where it is in the public interest to do so.

By signing this tender document (RFP), the bidder hereby consents to the use of their personal information which forms part of the tender process and as may be discovered by the NEF and confirm that the information is supplied voluntarily without undue influence from any party. Tenderers acknowledge that they are aware of their

right to access the information at a reasonable time for purposes of rectification or object to the processing of the information.

6.21. Bidders are required to register on the National Treasury Database as per National Treasury Circular No 3 of 2015/2016 – Central Supplier Database (CSD).

CONDITIONS AND UNDERTAKINGS BY BIDDERS IN RESPECT OF THIS TENDER

| | |
|---|--|
| Name of your Company (in block letters) | |
| Signature(s) of the Bidders | |
| Name of person signing (in block letters) | |
| Capacity | |
| Are you duly authorized to sign this tender? | |
| Company Registration Number | |
| VAT Registration Number | |
| Postal address (in block letters) | |
| Physical address (in block letters) | |
| <i>Domicillium citandi et executandi</i> in RSA (full) street address) (in block letters) | |
| Contact Person | |
| Telephone Number | |
| Fax Number | |
| Cell Number | |
| E-mail | |

***Failure to comply with any of the terms and conditions as set out above will invalidate the tender.**

7. EVALUATION CRITERIA

PHASE 1: FUNCTIONALITY: Tenderers will need to score a minimum of **70 points** in their technical assessment to qualify for the next phase.

0 = Did not submit 1 = poor, 2 = below satisfactory, 3 = satisfactory, 4 = good, 5 = excellent

Note that the total maximum score that any prospective service provider can achieve is a 5.

| Criteria | Weighting |
|--|-----------|
| Relevant experience, understanding legal and commercial principles related to financing transactions, commercial litigation and related services | 70 |
| Competitive edge e.g. capacity, track record, include reference | 20 |
| Demonstration of understanding of the public sector environment including all applicable legislation | 10 |

Phase 2: 80/20 Preference Point System

All tenders that will achieve the minimum qualifying score for technical will be evaluated further in terms of the preference point system as follows:

| CRITERIA | POINTS |
|--------------|-------------------|
| Price | 80 |
| BEE | 20 |
| TOTAL | 100 points |

SECTION: 2

TERMS OF REFERENCE /

SCOPE OF SERVICE

7. PREAMBLE

The National Empowerment Fund Act No.105 of 1998 established the National Empowerment Trust (NEF), for the purposes of promoting and facilitating economic equality and transformation, by providing development finance for Black Economic Empowerment (BEE) empowered South African businesses. The NEF operates under the umbrella of the Department of Trade and Industry (DTI) and is committed to the Broad-Based Black Economic Empowerment Act 55 of 2003 and the Codes of Good Practice on BEE.

Scope of the Services

The law firms appointed to the legal panel to be established will serve as the primary panel for the NEF's legal requirements. This is an appointment onto a panel of law firms.

The law firms appointed to the legal panel will be expected to render legal advice and provide services in relation to a range of matters, as determined by activities in the NEF's operating divisions, namely Fund Management (i.e Strategic Projects, Imbewu, Umnotho, Rural and Community Development, Post Investments and Pre-Investment) and Asset Management. Legal assistance may also be required on matters falling outside these divisions, being matters arising from the CEO's office, and the entire NEF support divisions. Overall specialist expertise to render legal advice and services in the greater area of Corporate/Commercial law is required, but specific competency may be required in the following areas:

1. Corporate and Commercial Law:

- Banking and Finance;
- Franchising;
- Taxation;
- Listings on the Stock Exchange;
- Insurance;
- Intellectual Property;
- Corporate Governance.

2. Conveyancing:
 - Conveyancing and Notarial Practice;
 - Registration of securities.

3. Public Law:
 - Advice on Regulatory laws applicable to the NEF as a public entity.

4. Insolvency and Business Rescue:
 - Insolvencies;
 - Business Rescues;
 - Restructures and turnarounds of corporate entities.

5. Employment & Labour Law

6. Litigation:
 - Commercial Litigation and Debt Collections.

7. Criminal Law
 - Fraud related matters

Appointment to the panel will be on a 3 (three) year contract period with an option to extend the term for up to 12 (twelve) months at the NEF's sole discretion. It is at the sole discretion of the NEF to review any contract of appointment on an annual basis or at any point, if deemed necessary. The NEF reserves the right on a specific case basis to use alternate legal counsel. The appointment in terms of this tender will therefore not be exclusive and will not be a guarantee that the NEF will provide work to any law firm.

- **Supervision Arrangements**

Services to and by the legal counsel panel will be provided under the supervision of the NEF's Legal Manager and General Counsel.

- **Fees**

Bidders are required to include in their responses, fee proposals in respect of the amount and nature of their expected remuneration for the services to be provided by them. In this regard, Bidders are to indicate specific billing arrangements, hourly rates per professional level, details of any proposed discounts and whether the rates are negotiable. It should be noted that successful Bidders appointed to the panel will be expected to furnish an estimated quote prior to commencing work on an instruction.

SECTION: 3

PRICING

Pricing (Attach price schedule, stating all pricing information including levels of seniority, hourly rates, costs, fees, etc)

SECTION: 4
BLACK ECONOMIC EMPOWERMENT

BBBEE Supplier Assessment Form

Trading name of entity _____

Contact person _____

Physical Address _____

Contact telephone number _____

Fax number _____

Cell phone _____

Email address _____

Percentage black shareholding _____

Percentage black women shareholding _____

Percentage youth shareholding _____

Do you fall within a gazetted industry
charter? _____

Are you a Large/Generic Enterprise? _____

Are you a Qualifying Small Enterprise? _____

Are you an Exempt Micro Enterprise? _____

Please attach the BBBEE rating / scorecard certificate.

I, the undersigned, certify that the information contained in this document is accurate and correct. I am fully responsible for any misrepresentation in this document and am aware of the repercussions that may arise as a result of such a misrepresentation.

Name: _____ ID Number/Passport Number: _____

Signed: _____ Date: _____

Position: _____

LIST OF TENDER RETURNABLES

- Cover Page: (the cover page must clearly indicate the RFP reference number, bid description and the bidder's name)
- RFP document (duly completed and signed)
- Declaration of Interest form (duly completed and signed)
- Declaration of tenderer's past supply chain management practices (duly completed and signed)
- Original valid SARS Tax Compliance Status document
- Proof of registration on the National Treasury Central Supplier Database
- A copy/ies of any professional bodies that you are affiliated to
- B-BBEE credentials / rating certificate

Bidders must submit a B-BBEE verification certificate indicating the contribution level of the bidding entity. For Exempted Micro Enterprises (EME) with an annual revenue of less than R10 million and Qualifying Small Enterprises (QSE) with an annual revenue of between R10 million and R50 million per annum, a sworn affidavit confirming the annual total revenue and level of black ownership may be submitted. Any misrepresentation in terms of the declaration constitutes a criminal offence as set out in the B-BBEE Act as amended.

Note: If a bidder is a Consortium, Joint Venture or Prime Contractor with Subcontractor(s), the documents listed above must be submitted for each Consortium/ JV member or Prime Contractor and Subcontractor(s)

- Copy of Joint Venture/ Consortium/ Subcontracting Agreement duly signed by all parties (if applicable)
- The following information also needs to be provided with the tender document:
 - Names and details of Senior Management.
 - Details of employees at an Operational Level
 - Shareholders Certificate.
 - Breakdown of shareholders as per the below:
 1. Shareholder's name
 2. Identity Number
 3. Race
 4. Gender
 5. % Shares

Failure to submit the required documents will result in the proposal being non-compliant and will be disqualified.

Declaration of tenderer's past supply chain management practices

1 This tender may be disregarded if the tenderer, or any of its directors have:

- Abused the institutions supply chain management systems;
- Committed fraud or any other improper conduct in relation to such a system; or
- Failed to perform on any previous contract

2 In order to give effect to the above, the following questionnaire may be completed and submitted with the tender

| Item | Question | Yes | No |
|-------|--|-----|----|
| 4.1 | Is the bidder or any of its directors listed on the National Treasury's database as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the <i>audi alteram partem</i> rule was applied). | | |
| 4.1.1 | If so, furnish particulars | | |
| 4.2 | Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? To access this Register enter the National Treasury's website, www.treasuy.gov.za . click on the icon "Register for Tender Defaulters" or submit your written request for a hard copy of the Register to facsimile number (012) 326 5445 | | |
| 4.2.1 | If so, furnish particulars | | |
| 4.3 | Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years? | | |
| 4.3.1 | If so, furnish particulars | | |
| 4.4. | Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract? | | |
| 4.4.1 | If so, furnish particulars | | |

I, THE UNDERSIGNED (FULL NAME) CERITFY
THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST
ME SHOULD THIS DECLARTION PROVE TO BE FALSE.

Signature Date

Position Name of bidder

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state*, or persons having a kinship with persons employed by the state/NEF, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state/NEF, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest, where-

- the bidder is employed by the state/NEF; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

2.1 Full Name of bidder or his or her representative:
.....

2.2 Identity Number:
.....

2.3 Position occupied in the Company (director, shareholder etc):
.....

2.4 Company Registration Number:
.....

2.5 Tax Reference Number:
.....

2.6 VAT Registration Number:
.....

* "State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

2.7 Are you or any person connected with the bidder presently employed by the state/NEF?

2.7.1 If so, furnish the following particulars **YES / NO**

Name of person / director / shareholder/ member:

.....

Name of state institution OR department to which the person is connected:

.....

Position occupied in the state institution/NEF:

.....

Any other particulars:

.....
.....
.....

2.8 Did you or your spouse, or any of the company's directors / shareholders / members or their spouses conduct business with the state/NEF in the previous twelve months?

2.8.1 If so, furnish particulars **YES / NO**

.....
.....
.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state/NEF and who may be involved with the evaluation and or adjudication of this bid?

2.9.1 If so, furnish particulars **YES/NO**

.....
.....

2.10 Are you, or any person connected with the bidder, Aware of any relationship (family, friend, other) between the bidder and any person employed by the state/NEF who may be involved with the evaluation and or adjudication of this bid?

2.10.1 If so, furnish particulars. **YES/NO**

.....
.....

2.11 Do you or any of the directors /shareholders/ members of the company have any interest in any other related companies whether or not they are bidding for this contract? **YES/NO**

2.11.1 If so, furnish particulars:

.....
.....
.....

3 Full details of directors / trustees / members / shareholders.

| Full Name | Identity Number | Personal Income Tax ReferenceNumber | State Number Number | Employee / Persal Number |
|------------------|------------------------|--|----------------------------|---------------------------------|
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DECLARATION

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT ALL THE INFORMATION FURNISHED IN THIS TENDER SUBMISSION IS CORRECT.

I ACCEPT THAT THE STATE/NEF MAY ACT AGAINST ME IN TERMS OF THE GENERAL CONDITIONS OF CONTRACT ISSUED BY NATIONAL TREASURY OR ANY APPLICABLE LAW SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder