

**ANNEXURE A**



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**REQUEST FOR PROPOSAL (RFP) FOR THE  
APPOINTMENT OF A PANEL OF LEGAL SERVICE  
PROVIDERS TO PROVIDE LEGAL  
ASSISTANCE/SERVICES TO FP&M SETA.**

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**LEGAL/FPM/09-19**

**Date Issued: 04 October 2019**

**Compulsory Briefing Session: 10 October 2019**

**Closing Date and Time: 25 October 2019 at  
11:00am**

**Bid Validity Period: 120days**

**TENDER BOX ADDRESS:**

FP&M SETA office,  
1 Newtown Avenue,  
Old Nedbank Building,  
3rd Floor,  
Killarney,  
2169.

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## **1. INTRODUCTION**

The Fibre Processing and Manufacturing (FP&M) SETA was established in terms of the Skills Development Act of 1998.

The FP&M SETA is accredited as a quality assuring body by the South African Qualification Authority, in terms of regulation R1127 wherein the FP&M SETA is required to perform the following functions:

- a. accredit constituent providers for specific standards or qualifications registered on the National Qualifications Framework;
- b. promote quality amongst constituent providers;
- c. monitor provision by constituent providers;
- d. evaluate assessment and facilitation of moderation among constituent providers;
- e. register constituent assessors for specified registered standards or qualifications in terms of the criteria established for this purpose;
- f. take responsibility for the certification of constituent learners;
- g. develop a sector skills plan within a framework of the National Skills Development Strategy
- h. plan and report on the implementation of its SSP and service level agreement
- i. approve Workplace Skills Plans
- j. disburse mandatory and discretionary grants.

## **2. PURPOSE OF THIS REQUEST FOR PROPOSAL (RFP)**

The purpose of this Request for Proposal (RFP) is to solicit proposals from potential bidder(s) for the appointment of a panel of legal service providers to provide legal assistance/services to FP&M SETA.

This RFP document details and incorporates, as far as possible, the tasks and responsibilities of the potential bidder required by the FP&M SETA appointment of a panel of legal service providers to provide legal assistance/services to FP&M SETA.

This RFP does not constitute an offer to do business with the FP&M SETA, but merely serves as an invitation to bidder(s) to facilitate a requirements-based decision process.

## **3. LEGISLATIVE FRAMEWORK OF THE BID**

### **3.1. Tax Legislation**

- 3.1.1. Bidder(s) must be compliant when submitting a proposal to FP&M SETA and remain compliant for the entire contract term with all applicable tax legislation,

including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

- 3.1.2. It is a condition of this bid that the tax matters of the successful bidder be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.
- 3.1.3. The Tax Compliance status requirements are also applicable to foreign bidders / individuals who wish to submit bids.
- 3.1.4. It is a requirement that bidders grant a written confirmation when submitting this bid that SARS may on an ongoing basis during the tenure of the contract disclose the bidder's tax compliance status and by submitting this bid such confirmation is deemed to have been granted.
- 3.1.5. Bidders are required to be registered on the Central Supplier Database and the National Treasury shall verify the bidder's tax compliance status through the Central Supplier Database.
- 3.1.6. Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

### 3.2. **Procurement Legislation**

The FP&M SETA has a detailed evaluation methodology premised on Treasury Regulation 16A3 promulgated under Section 76 of the Public Finance Management Act, 1999 (Act, No. 1 of 1999), the Preferential Procurement Policy Framework Act 2000 (Act, No.5 of 2000) and the Broad-Based Black Economic Empowerment Act, 2003 (Act, No. 53 of 2003).

### 3.3. **Technical Legislation and/or Standards**

Bidder(s) should be cognisant of the legislation and/or standards specifically applicable to the services.

## 4. **BRIEFING SESSION**

A **compulsory briefing** and clarification session will be held at the FP&M SETA office, 1 Newtown Avenue, Old Nedbank Building, 3rd Floor, Killarney, 2169, on the **10 October 2019 at 10:00am** to clarify to bidder(s) the scope and extent of work to be executed.

***NB: It is highly recommended that bidders attend the briefing session.***

## **5. TIMELINE OF THE BID PROCESS**

The period of validity of tender and the withdrawal of offers, after the closing date and time is **120** days. The project timeframes of this bid are set out below:

<b>Activity</b>	<b>Due Date</b>
Advertisement of bid on Government e-tender portal	03 October 2019
Compulsory briefing and clarification session	10 October 2019 at 10:30 am
Questions relating to bid from bidder(s)	24 October 2019
Bid closing date	25 October 2019 at 11:00 am
Notice to bidder(s)	FP&M SETA will endeavour to inform bidders of the progress until conclusion of the tender.

All dates and times in this bid are South African standard time.

Any time or date in this bid is subject to change at the FP&M SETA's discretion. The establishment of a time or date in this bid does not create an obligation on the part of the FP&M SETA to take any action, or create any right in any way for any bidder to demand that any action be taken on the date established. The bidder accepts that, if the FP&M SETA extends the deadline for bid submission (the Closing Date) for any reason, the requirements of this bid otherwise apply equally to the extended deadline.

## **6. CONTACT AND COMMUNICATION**

- 6.1. A nominated official of the bidder(s) can make enquiries in writing, to the specified person, **Ms Marjorie Dzimiri** via email [MARJORIED2@FPMSETA.ORG.ZA](mailto:MARJORIED2@FPMSETA.ORG.ZA) and/or **011 403 1700**. Bidder(s) must reduce all telephonic enquiries to writing and send to the above email address.

- 6.2. The delegated office of the FP&M SETA may communicate with Bidder(s) where clarity is sought in the bid proposal.
- 6.3. Any communication to an official or a person acting in an advisory capacity for the FP&M SETA in respect of the bid between the closing date and the award of the bid by the Bidder(s) is discouraged.
- 6.4. All communication between the Bidder(s) and the FP&M SETA must be done in writing.
- 6.5. Whilst all due care has been taken in connection with the preparation of this bid, the FP&M SETA makes no representations or warranties that the content of the bid or any information communicated to or provided to Bidder(s) during the bidding process is, or will be, accurate, current or complete. The FP&M SETA, and its employees and advisors will not be liable with respect to any information communicated which may not accurate, current or complete.
- 6.6. If Bidder(s) finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this bid or any other information provided by the FP&M SETA (other than minor clerical matters), the Bidder(s) must promptly notify the FP&M SETA in writing of such discrepancy, ambiguity, error or inconsistency in order to afford the FP&M SETA an opportunity to consider what corrective action is necessary (if any).
- 6.7. Any actual discrepancy, ambiguity, error or inconsistency in the bid or any other information provided by the FP&M SETA will, if possible, be corrected and provided to all Bidder(s) without attribution to the Bidder(s) who provided the written notice.
- 6.8. All persons (including Bidder(s)) obtaining or receiving the bid and any other information in connection with the Bid or the Tendering process must keep the contents of the Bid and other such information confidential, and not disclose or use the information except as required for the purpose of developing a proposal in response to this Bid.

## **7. LATE BIDS**

Bids received after the closing date and time, at the address indicated in the bid documents, will not be accepted for consideration and where practicable, be returned unopened to the Bidder(s).

## **8. COUNTER CONDITIONS**

Bidders' attention is drawn to the fact that amendments to any of the Bid Conditions or setting of counter conditions by Bidders or qualifying any Bid Conditions will result in the invalidation of such bids.

## **9. FRONTING**

9.1. Government supports the spirit of broad based black economic empowerment and recognizes that real empowerment can only be achieved through individuals and businesses conducting themselves in accordance with the Constitution and in an honest, fair, equitable, transparent and legally compliant manner. Against this background the Government condemn any form of fronting.

9.2. The Government, in ensuring that Bidders conduct themselves in an honest manner will, as part of the bid evaluation processes, conduct or initiate the necessary enquiries/investigations to determine the accuracy of the representation made in bid documents. Should any of the fronting indicators as contained in the Guidelines on Complex Structures and Transactions and Fronting, issued by the Department of Trade and Industry, be established during such enquiry / investigation, the onus will be on the Bidder / contractor to prove that fronting does not exist. Failure to do so within a period of 14 days from date of notification may invalidate the bid / contract and may also result in the restriction of the Bidder /contractor to conduct business with the public sector for a period not exceeding ten years, in addition to any other remedies the FP&M SETA may have against the Bidder / contractor concerned.

## **10. SUPPLIER DUE DILIGENCE**

The FP&M SETA reserves the right to conduct supplier due diligence prior to final award or at any time during the contract period. This may include site visits and requests for additional information.

## **11. SUBMISSION OF PROPOSALS**

11.1. Bid documents must be placed in the tender box at **The FP&M SETA Offices, Reception Area, 1 Newtown Avenue, Old Nedbank Building, 3rd Floor, Killarney, 2169** on or before the closing date and time.



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11.2. Bid documents will only be considered if received by the FP&M SETA before the closing date and time.

11.3. The bidder(s) are required to submit **Five (4)** copies of **file 1: one (1)** original and **Three (4)** duplicate and submit One (1) original copy of File 2 (sealed separately), and one (1) CD-ROM with content of each file by the Closing date **25 October 2019** at **11:00am**. Each file and CD-ROM must be marked correctly and sealed separately for ease of reference during the evaluation process. Furthermore, the file and information in the CD-ROM must be labelled and submitted in the following format:

<b>FILE 1 (TECHNICAL FILE)</b>	<b>FILE 2 (PRICE &amp; BBBEE)</b>
<p><b>Exhibit 1:</b>                      Pre-qualification documents  <i>(Refer to Section 15.1 - Gate 0: Pre-qualification Criteria (Table 1))</i></p>	<p><b>Exhibit 1:</b>                      Pricing Schedule  <i>(Refer to Section 16 – Pricing Proposal)</i></p>
<p><b>Exhibit 2:</b></p> <ul style="list-style-type: none"> <li>• Technical Responses and Bidder Compliance checklist for Technical Evaluation</li> <li>• Supporting documents for technical responses.  <i>(Refer to Section 15.2 - Gate 1: Technical Evaluation Criteria)</i></li> </ul>	
<p><b>Exhibit 3:</b></p> <ul style="list-style-type: none"> <li>• General Conditions of Contract (GCC)</li> </ul>	
<p><b>Exhibit 4:</b></p> <ul style="list-style-type: none"> <li>• Company Profile</li> <li>• Any other supplementary information</li> </ul>	

11.4. Bidders are requested to **initial each page** of the tender document on the top right hand corner.

## **12. PRESENTATION / DEMONSTRATION**

The FP&M SETA reserves the right to request presentations/demonstrations from the short-listed Bidders as part of the bid evaluation process.

## **13. DURATION OF THE CONTRACT**

The successful bidder will be appointed for a period of three (3) years with an option to

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renew in the FP&M SETA's sole discretion for an additional 12 (twelve) months on the same terms and conditions unless the parties agree otherwise.

## **14. TERMS OF REFERENCE**

### **14.1. PURPOSE OF THE BID**

The Fibre Processing and Manufacturing Sector Education and Training Authority (hereinafter referred to as “the FP&M SETA”) seeks to appoint panel of legal service providers to provide legal assistance/services to the Fibre Processing and Manufacturing Sector Education and Training Authority (“FP&M SETA”) for a period of three (3) years with the option to extend the appointment with additional twelve (12) months on 80/20 PPPFA. FP&M reserves the right to appoint a maximum number of about eight (8) companies to this panel, based on highest points on functionality.

### **14.2. BACKGROUND**

The Fibre Processing and Manufacturing Sector Education and Training Authority (“FP&M SETA”) was established by the Minister of Higher Education and Training on 01 April 2011 to 31 March 2016 with the license extended further until 31 March 2020.

FP&M SETA is mandated to implement the objectives of the National Skills Development Strategy III and to ensure that both the employed and unemployed are upskilled to address the scarce and critical skills priorities to build the capacity of the sector to become economically sustainable and globally competitive in the medium to long term.

### **14.3. SCOPE OF WORK**

The service providers will be required to render services for FP&M SETA on a wide range of legal issues pertaining to, inter alia, the following area of specialisation:

- 1) Information Technology Law;
- 2) Labour and Employment Law;
- 3) Property Law;
- 4) Corporate Governance;
- 5) Contract Law;
- 6) General SETA Legal Matters.

The successful service provider(s) will be expected to provide services in any of the above areas as and when required and to provide advice to ensure its communications are not inflammatory while conveying the intended message.

#### 14.4. SCOPE OF WORK

- 1) Proposals must demonstrate knowledge of relevant legislations in relation to the above, by show casing:
  - Experience in research
  - Experience in translating legislation to policy; and
  - Understanding regulatory functions and requirements
  
- 2) Service providers must provide evidence of previous work experience — at least five (5) years' experience is required. References of work done must be listed. Further, evidence of quality of work rendered in similar projects must be provided in:
  - Number of assignments awarded;
  - Number of successful awarded assignments;
  - Complexity of matter(s);
  - Extend of engagement;
  - Litigation Skills;
  - SETA experience will be an added advantage.
  
- 3) Technical Proposal:  
Each proposal must include the specialist field of law. Where a service provider has expertise in more than one field of law, all relevant fields must be indicated in the proposal together with demonstrated experience in the specified areas of law.
  
- 4) Information Technology Law:  
Provides extensive expertise in information communications and technology law and, as such, having experience in dealing with legal issues arising from the use of IP within information technology, advising on Information Technology (IT) contracts; issues impacting upon online transactions and copyright; and draft website usage and privacy agreements. Have proven expertise in the interpretation and application of Electronic Communications and Transactions Act (No. 25 of 2002) as well as regulation of Interception of Communications and Communication-related Information Act (No. 70 of 2002), the Electronic Communications Act (No. 36 of 2005), and Telecommunications Law.

- 5) Labour and Employment Law:  
Must have a Labour Law Department with expertise in all aspects of Employment/Labour Law, which includes the drafting of employment contracts; the Chairing of, or participation as committee member in, Disciplinary Enquiries; Labour Litigation (CCMA and Labour Court); provision of advice on labour implications of mergers and acquisitions; provision of advice on the restructuring of businesses and transfers or sale of businesses as a going concern; provision of advice on retrenchments and rationalizations; as well as a sound knowledge of and the provision of advice in respect of all employment related legislation.
  
- 6) Property Law;  
Must have Property law department with all expertise in all aspect of properties (various forms of ownership and tenancy in real property (land as distinct from personal or movable possessions) within the common law legal system and in the civil law system.
  
- 7) Corporate Governance;  
Must be all to advice on all matters of corporate governance.
  
- 8) Contract Law;  
Must have Contract Management department will expertise in all areas of contract management to vet, review and advice on contractual transactions with real estate, services, insurance, intangible assets and employment, and contractual transaction with goods and tangible objects.
  
- 9) Draft Legal Opinions;
- 10) Service providers should be able to capacitate the FP&M SETA's Legal Services officials and advisory capacity.

#### 14.5. BRIEFING SESSION

FP&M SETA officials will conduct a compulsory briefing session on **10 October 2019** at **10:30am**. No bidder will be allowed to bid if they did not attend the briefing session.

## 15. EVALUATION AND SELECTION CRITERIA

The FP&M SETA has set minimum standards (Gates) that a bidder needs to meet in order to be evaluated and selected as a successful bidder. The minimum standards consist of the following:

Pre-qualification Criteria (Gate 0)	Technical Evaluation Criteria (Gate 1)	Price and B-BBEE Evaluation (Gate 2)
Bidders must submit all documents as outlined in paragraph 15.1 (Table 1) below. Only bidders that comply with ALL these criteria will proceed to Gate 1.	Bidder(s) are required to achieve a minimum of <b>75</b> points out of <b>100</b> points to proceed to Gate 2 (Price and BEE).	Bidder(s) will be evaluated out of 100 points and Gate 2 will only apply to bidder(s) who have met and exceeded the threshold of <b>75</b> points.

### 15.1. Gate 0: Pre-qualification Criteria

Without limiting the generality of the FP&M SETA's other critical requirements for this Bid, bidder(s) must submit the documents listed in **Table 1** below. All documents must be completed and signed by the duly authorised representative of the prospective bidder(s). During these phase Bidders' responses will be evaluated based on compliance with the listed administration and mandatory bid requirements. The bidder(s) proposal may be disqualified for non-submission of any of the documents.

**Table 1: Documents that must be submitted for Pre-qualification**

Document that must be submitted	Non-submission may result in disqualification?	
<b>Invitation to Bid – SBD 1</b>	<b>YES</b>	Complete and sign the supplied pro forma document
<b>Tax Status SBD 1</b>	<b>YES</b>	i. Written confirmation that SARS may on an ongoing basis during the tenure of the contract disclose the bidder's tax compliance status.  ii. Proof of Registration on the Central Supplier Database  iii. Vendor number

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<b>Declaration of Interest – SBD 4</b>	<b>YES</b>	Complete and sign the supplied pro forma document
<b>Preference Point Claim Form – SBD 6.1</b>	<b>NO</b>	Non-submission will lead to a zero (0) score on BBBEE
<b>Declaration of Bidder’s Past Supply Chain Management Practices – SBD 8</b>	<b>YES</b>	Complete and sign the supplied pro forma document
<b>Certificate of Independent Bid Determination – SBD 9</b>	<b>YES</b>	Complete and sign the supplied pro forma document
<b>Registration on Central Supplier Database (CSD)</b>	<b>NO</b>	The Service Provider must be registered as a service provider on the Central Supplier Database (CSD). If you are not registered proceed to complete the registration of your company prior to submitting your proposal. Visit <a href="https://secure.csd.gov.za/">https://secure.csd.gov.za/</a> to obtain your vendor number. Submit proof of registration.
<b>Pricing Schedule</b>	<b>YES</b>	Submit full details of the pricing proposal <b>in a separate envelope</b>
<b>Letter of Good Standing</b>	<b>YES</b>	The Bidders must provide a valid letter of good standing issued by the Law Society
<b>References</b>	<b>NO</b>	Bidder should provide three Contactable references letters.
<b>Curriculum Vitae and Qualification</b>	<b>NO</b>	The Bidders must provide a personnel profile (Curriculum Vitae) with experience in at least three (3) of the categories (focus areas), and include other pertinent credentials that will be deployed to execute these services;

**15.2. Gate 1: Technical Evaluation Criteria = 100 points**

Only Bidders that have met the Pre-Qualification Criteria in (Gate 0) will be evaluated in Gate 1 for functionality. Functionality will be evaluated as follows:

- i. Functional Evaluation – Bidders will be evaluated out of **100** points and are required to achieve minimum threshold of **75** points of **100** points.
- ii. The overall score must be equal or above **75** points in order to proceed to Gate 2 for Price and BBBEE evaluations.

As part of due diligence, FP&M SETA will conduct a site visit at a client of the Bidder (reference) for validation of the services rendered. The choice of site will be at FP&M SETA's sole discretion.

The Bidder's information will be scored according to the following points system:

No	CRITERIA	WEIGHT
1	Experience and Qualification of team providing professional legal services. The team must consist of maximum of three (3) team members i.e. Director, Associate and Candidate Attorney.	40
2	Experience in working with SETAs on similar services	20
3	Trade reference: <ul style="list-style-type: none"> <li>• referral letters from companies where this service was provided highlighting the extent, quality and capacity of bidder in providing services, over the last 3 to 5 years</li> </ul>	15
4	Area of Specialization: <ul style="list-style-type: none"> <li>1) Information Technology Law;</li> <li>2) Labour and Employment Law;</li> <li>3) Property Law;</li> <li>4) Corporate Governance;</li> <li>5) Contract Law.</li> </ul>	25
<b>TOTAL POINTS</b>		<b>100</b>



15.2.1. **Rubrics for Evaluation Criteria or Scoring Ranges**

The above evaluation criteria on paragraph **15.2** would be evaluated/scored using below rubrics or scoring ranges:

<b>Scoring Ranges</b>						
<b>Criterion</b>	<b>Range 1</b>	<b>Range 2</b>	<b>Range 3</b>	<b>Range 4</b>	<b>Range 5</b>	<b>Range 2</b>
<b>1</b> Experience and Qualification of team providing professional legal services. The team must consist of maximum of three (3) team members i.e. Director, Associate and Candidate Attorney	<b>10+ Years</b>	<b>8-9 Years</b>	<b>6-7 Years</b>	<b>4-5 Years</b>	<b>1-3 Years</b>	<b>No Response</b>
	40	32	24	16	8	0
<b>2</b> Experience in working with SETAs on similar services	<b>5 Year</b>	<b>4 Years</b>	<b>3 Years</b>	<b>2 Years</b>	<b>1 year</b>	<b>No Response</b>
	20	14	12	8	4	0
<b>3</b> Trade reference: • Three (3) Reference letters from companies where this service was provided highlighting the extent, quality and capacity of bidder in providing services, over the last 3 to 5 years	<b>3 Reference</b>	<b>2 Reference</b>		<b>1 Reference</b>		<b>No Response</b>
	15	10		5		0
<b>4</b> Area of Specialization: •Information Technology Law; •Labour and Employment Law; •Property Law; •Corporate Governance; •Contract Law.	<b>All Area of Specialisation</b>	<b>Four Area of Specialisation</b>	<b>Three Area of Specialisation</b>	<b>Two Area of Specialisation</b>	<b>One Area of Specialisation</b>	<b>No Response</b>
	25	20	15	10	5	0

**15.3. Gate 2: Price and BBEE Evaluation (80+20) = 100 points**

Only Bidders that have met the **75**points threshold in Gate 1 will be evaluated in Gate 2 for price and BBEE. Price and BBEE will be evaluated as follows:

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)
- B-BBEE status level of contributor (maximum **20** points)

**i. Stage 1 – Price Evaluation (80 Points)**

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

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

**ii. Stage 2 – BBEE Evaluation (20 Points)**

**a. BBEE Points allocation**

A maximum of **20** points may be allocated to a bidder for attaining their B-BBEE status level of contributor in accordance with the table below:

B-BBEE Status Level of Contributor	Number of Points
1	20
2	18
3	14

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4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

B-BBEE points may be allocated to bidders on submission of the following documentation or evidence:

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

**b. Joint Ventures, Consortiums and Trusts**

A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.

Bidders must submit concrete proof of the existence of joint ventures and/or consortium arrangements. The **FP&M SETA** will accept signed agreements as acceptable proof of the existence of a joint venture and/or consortium arrangement.

The joint venture and/or consortium agreements must clearly set out the roles and responsibilities of the Lead Partner and the joint venture and/or consortium party. The agreement must also clearly identify the Lead Partner, who shall be given the power of attorney to bind the other party/parties in respect of matters pertaining to the joint venture and/or consortium arrangement.

***iii. Stage 3 (80 + 20 = 100 points)***

The Price and BBEE points will be consolidated

**16. PRICING PROPOSALS**

The FP&M SETA requires bidders to propose a rate for the provision of Legal Services to the FP&M SETA.

**Pricing Proposal:**

Levels	Rates per Hours (VAT Inclusive)
Directors	
Associates	
Candidate Attorneys	

Bidders are required to indicate rate per each level inclusive of all applicable taxes for the legal services.

Bidders are required to indicate if prices are fixed or not, If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.

**NOTES REGARDING PRICING**

*The rates **MUST** be all inclusive. This means, all direct and indirect related cost must be included. Note that failure to propose the rates will render the entire bid as non-responsive and will result in the bidder scoring zero out of 80 points achievable on the price criteria*

**17. GENERAL CONDITIONS OF CONTRACT**

Any award made to a bidder(s) under this bid is conditional, amongst others, upon –

- a. The bidder(s) accepting the terms and conditions contained in the General Conditions of Contract as the minimum terms and conditions upon which FP&M SETA is prepared to enter into a contract with the successful Bidder(s).
- b. The bidder submitting the General Conditions of Contract to the FP&M SETA together with its bid, duly signed by an authorised representative of the bidder.

**18. CONTRACT PRICE ADJUSTMENT**

Contract price adjustments will be done annually on the anniversary of the contract start date. The price adjustment will be based on the Consumer Price Index Headline Inflation

STATS SA P0141 (CPI), Table E	Table E - All Items
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## **19. SERVICE LEVEL AGREEMENT**

- 19.1. Upon award the FP&M SETA and the successful bidder will conclude a Service Level Agreement regulating the specific terms and conditions applicable to the services being procured by the FP&M SETA, more or less in the format of the draft Service Level Indicators included in this tender pack.
- 19.2. The FP&M SETA reserves the right to vary the proposed draft Service Level Indicators during the course of negotiations with a bidder by amending or adding thereto.
- 19.3. Bidder(s) are requested to:
- a. Comment on draft Service Level Indicators and where necessary, make proposals to the indicators;
  - b. Explain each comment and/or amendment; and
  - c. Use an easily identifiable colour font or “track changes” for all changes and/or amendments to the Service Level Indicators for ease of reference.
- 19.4. The FP&M SETA reserves the right to accept or reject any or all amendments or additions proposed by a bidder if such amendments or additions are unacceptable to the FP&M SETA or pose a risk to the organisation.

## **20. SPECIAL CONDITIONS OF THIS BID**

The FP&M SETA reserves the right:

- 20.1. To award this tender to a bidder that did not score the highest total number of points, only in accordance with section 2(1)(f) of the PPPFA (Act 5 of 2000)
- 20.2. To negotiate with one or more preferred bidder(s) identified in the evaluation process, regarding any terms and conditions, including price without offering the same opportunity to any other bidder(s) who has not been awarded the status of the preferred bidder(s).
- 20.3. To accept part of a tender rather than the whole tender.
- 20.4. To carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the services offered by the bidder(s), whether before or after adjudication of the Bid.

- 20.5. To correct any mistakes at any stage of the tender that may have been in the Bid documents or occurred at any stage of the tender process.
- 20.6. To cancel and/or terminate the tender process at any stage, including after the Closing Date and/or after presentations have been made, and/or after tenders have been evaluated and/or after the preferred bidder(s) have been notified of their status as such.
- 20.7. Award to multiple bidders based either on size or geographic considerations.

## **21. The FP&M SETA REQUIRES BIDDER(S) TO DECLARE**

In the Bidder's Technical response, bidder(s) are required to declare the following:

- 21.1. Confirm that the bidder(s) is to: –
  - a. Act honestly, fairly, and with due skill, care and diligence, in the interests of the FP&M SETA;
  - b. Have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of the services;
  - c. Act with circumspection and treat the FP&M SETA fairly in a situation of conflicting interests;
  - d. Comply with all applicable statutory or common law requirements applicable to the conduct of business;
  - e. Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with the FP&M SETA;
  - f. Avoidance of fraudulent and misleading advertising, canvassing and marketing;
  - g. To conduct their business activities with transparency and consistently uphold the interests and needs of the FP&M SETA as a client before any other consideration; and
  - h. To ensure that any information acquired by the bidder(s) from the FP&M SETA will not be used or disclosed unless the written consent of the client has been obtained to do so.

## **22. CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

22.1. The FP&M SETA reserves its right to disqualify any bidder who either itself or any of whose members (save for such members who hold a minority interest in the bidder through shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange), directors or members of senior management, whether in respect of FP&M SETA or any other government organ or entity and whether from the Republic of South Africa or otherwise ("Government Entity")

- a. engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid;
- b. seeks any assistance, other than assistance officially provided by a Government Entity, from any employee, advisor or other representative of a Government Entity in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;
- c. makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of the FP&M SETA's officers, directors, employees, advisors or other representatives;
- d. makes or offers any gift, gratuity, anything of any value or other inducement, to any Government Entity's officers, directors, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to a Government Entity;
- e. accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to a Government Entity;
- f. pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or results from, the award of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to a Government Entity;
- g. has in the past engaged in any matter referred to above; or

- h. has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such bidder, member or director's name not specifically appearing on the List of Tender Defaulters kept at National Treasury.

### **23. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT**

- 23.1. The bidder should note that the terms of its Tender will be incorporated in the proposed contract by reference and that the FP&M SETA relies upon the bidder's Tender as a material representation in making an award to a successful bidder and in concluding an agreement with the bidder.
- 23.2. It follows therefore that misrepresentations in a Tender may give rise to service termination and a claim by the FP&M SETA against the bidder notwithstanding the conclusion of the Service Level Agreement between the FP&M SETA and the bidder for the provision of the Service in question. In the event of a conflict between the bidder's proposal and the Service Level Agreement concluded between the parties, the Service Level Agreement will prevail.

### **24. PREPARATION COSTS**

The Bidder will bear all its costs in preparing, submitting and presenting any response or Tender to this bid and all other costs incurred by it throughout the bid process. Furthermore, no statement in this bid will be construed as placing the FP&M SETA, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the bidder(s) in the preparation of their response to this bid.

### **25. INDEMNITY**

If a bidder breaches the conditions of this bid and, as a result of that breach, the FP&M SETA incurs costs or damages (including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations), then the bidder indemnifies and holds the FP&M SETA harmless from any and all such costs which the FP&M SETA may incur and for any damages or losses the FP&M SETA may suffer.\\



## **26. PRECEDENCE**

This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

## **27. LIMITATION OF LIABILITY**

A bidder participates in this bid process entirely at its own risk and cost. The FP&M SETA shall not be liable to compensate a bidder on any grounds whatsoever for any costs incurred or any damages suffered as a result of the Bidder's participation in this Bid process.

## **28. TAX COMPLIANCE**

No tender shall be awarded to a bidder who is not tax compliant. The FP&M SETA reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award, or has submitted a fraudulent Tax Clearance Certificate to The FP&M SETA, or whose verification against the Central Supplier Database (CSD) proves non-compliant. The FP&M SETA further reserves the right to cancel a contract with a successful bidder in the event that such bidder does not remain tax compliant for the full term of the contract.

## **29. TENDER DEFAULTERS AND RESTRICTED SUPPLIERS**

No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. The FP&M SETA reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another government institution.

## **30. GOVERNING LAW**

South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African courts in any dispute of any kind that may arise out of or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

### **31. RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL**

A bidder is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors and other representatives), its sub-contractors (if any) and personnel of its sub-contractors comply with all terms and conditions of this bid. In the event that The FP&M SETA allows a bidder to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the bidder and the FP&M SETA will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

### **32. CONFIDENTIALITY**

Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s) will be disclosed by any bidder or other person not officially involved with the FP&M SETA's examination and evaluation of a Tender.

No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a Tender. This bid and any other documents supplied by the FP&M SETA remain proprietary to the FP&M SETA and must be promptly returned to the FP&M SETA upon request together with all copies, electronic versions, excerpts or summaries thereof or work derived there from.

Throughout this bid process and thereafter, bidder(s) must secure the FP&M SETA's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this bid relates; or (ii) the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

### **33. THE FP&M SETA PROPRIETARY INFORMATION**

Bidder will on their bid cover letter make declaration that they did not have access to any the FP&M SETA proprietary information or any other matter that may have unfairly placed that bidder in a preferential position in relation to any of the other bidder(s).

### **34. AVAILABILITY OF FUNDS**

Should funds no longer be available to pay for the execution of the responsibilities of this bid (RFP: **LEGAL/FPM/09-19**), the FP&M SETA may terminate the Agreement at its own

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discretion or temporarily suspend all or part of the services by notice to the successful bidder who shall immediately make arrangements to stop the performance of the services and minimize further expenditure: Provided that the successful bidder shall thereupon be entitled to payment in full for the services delivered, up to the date of cancellation or suspension.

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