



National Empowerment Fund

RFP No: NEF 01/2017

**REQUEST FOR PROPOSAL: A PANEL FOR THE
PROVISION OF LEGAL SERVICES**

CLOSING DATE : 5 July 2017
TIME : 14H00

CONDITIONS AND UNDERTAKINGS BY BIDDERS IN RESPECT OF THIS TENDER

1. Proprietary Information:

The National Empowerment Fund (NEF) considers this tender and all related information, either written or verbal, which is provided to the Bidders, to be proprietary to the NEF. It shall be kept confidential by the Bidders and its officers, employees, agents and representatives. The Bidders 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 names provided below:

Contact person (all questions should be in writing)

Enquiries can be directed to:

Name: Ms Kedibone Mboweni

Head: Supply Chain Management

Telephone Number Office: +27 11 305 8000

Fax Number: +27 11 305 8001

Email address: mbowenik@nefcorp.co.za

Technical Enquiries can be directed to:

Name: Ms. Nthabiseng Ntsele

Legal Manager

Telephone Number Office: +27 11 305 8000

Fax Number: +27 11 305 8001

Email address: ntselen@nefcorp.co.za

3. Medium of Communication

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

CONDITIONS AND UNDERTAKINGS BY BIDDERS IN RESPECT OF THIS TENDER

4. Verification of Documents

Bidders should check the numbers of the pages to satisfy themselves that none are missing or duplicated. The NEF will not be liable for any loss which may occur as a result of any pages or information missing or duplicated from or within the submission.

5. Validity Period

Responses to this Request for Proposal received from Bidders will be valid for a period of **120 days**, calculated from the closing date of the tender.

6. Submission of Tenders

- 6.1 Tenders should be submitted in **duplicate** in a sealed envelope endorsed, “**(TENDER NEF 01/2017 PANEL FOR THE PROVISION OF LEGAL SERVICES)**”. The sealed envelope must be placed in the tender box at the Main Reception area of the NEF West Block, 187 Rivonia Road Morningside by no later than **14h00** on **05 July 2017**.
- 6.2 The closing date, company name and the return address must also be endorsed on the envelope.
- 6.3 If a courier service company is being used for delivery of the tender document, the tender description must be endorsed on the delivery note/courier packaging to ensure that documents are delivered into the tender box. The NEF takes no responsibility of late/lost submission due to delays in postal and courier services used by the applicants.
- 6.4 No tender received by telegram, telex, email, facsimile or similar medium will be considered.
- 6.5 Where a tender document is not in the tender box at the time of the tender closing, such a tender document will be regarded as a late tender. Late tenders will not be considered.

CONDITIONS AND UNDERTAKINGS BY BIDDERS IN RESPECT OF THIS TENDER

- 6.6 In the event that the Bidders wish to amend their submissions once made, an envelope marked "Amendment to tender" together with the other details as required above may be placed in the tender box. Such amendment must reach the NEF before the closing date. No amendment will be accepted after such closing date unless such amendment is as a result of a specific request from the NEF.
- 6.7 The Bidders are responsible for all the costs incurred in relation to the preparation and submission of the tender document including any related amendment, even in the event where such amendment is as a result of a specific request from the NEF.
- 6.8 A list of all references (minimum of 3) with contact details must be included in the tender document.
- 6.9 An original valid Tax Clearance certificate must be included in the tender document. Failure to submit a certificate would render your tender invalid.
- 6.10 A copy/ies of certificates from any professional bodies that you are affiliated to must be attached to the response to this tender.
- 6.11 The following information also needs to be provided with the tender document:
- Names and details of Senior Management.
 - Organogram of your organization.
 - Shareholders Certificate.
 - Details of employees at an Operational Level.
 - Percentage of ownership by:
 1. Black Shareholders
 2. Black Women
 3. White Women
- 6.12 The NEF is entitled to amend any tender conditions, the validity period, any specifications, or extend the closing date of tenders before the closing date. All Bidders, to whom tender documents have been issued, will be advised timeously, in writing, of such amendments.

CONDITIONS AND UNDERTAKINGS BY BIDDERS IN RESPECT OF THIS TENDER

- 6.13 The NEF shall not be obliged to accept the lowest offer or proposal received. The NEF reserves the right to enter into negotiations with a prospective vendor in relation to any terms and conditions, including the price of a prospective contract.
- 6.14 The NEF reserves the right to award this tender to an empowered entity or may award this tender on condition that a joint venture with an empowerment entity is formed.
- 6.15 The NEF may in its sole discretion determine how the tender will be awarded to the successful Bidders. Where the NEF deems fit, the tender may be awarded to Bidders in relation to specific portion of the terms of reference and in certain cases in relation to the entire terms of reference without having to furnish specific reasons. The NEF also reserves the right not to award the tender at all without having to furnish specific reasons.
- 6.16 The Bidders hereby offer 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 bidders. In the event of conflict between such documents, the service level agreement shall take precedence over all other documents.
- 6.17 Bidders submitted must be signed by the duly representative of those Bidders, as evidenced by an authorising resolution or such similar document, a certified copy of which document, must be submitted with the tender.
- 6.18 The Bidders may be required by the NEF to prepare for a possible presentation and the Bidders shall be notified thereof no later than 4 (four) days before the actual presentation date.
- 6.19 The Bidders hereby agree that the offer herein shall remain binding upon them during the validity period. This Proposal and its acceptance shall be subject to the terms and conditions contained in this tender document.

CONDITIONS AND UNDERTAKINGS BY BIDDERS IN RESPECT OF THIS TENDER

- 6.20 The bidder 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.
- 6.21 The bidder 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.
- 6.22 **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

Tenders shall be evaluated in terms of the following parameters and shall be scored on the weightings stated below. Bidders will need to score a minimum of **60 points** in order to be evaluated further.

TECHNICAL	100
<ul style="list-style-type: none"> Relevant experience, understanding legal and commercial principles related to financing transactions, commercial litigation and related services 	70
<ul style="list-style-type: none"> Competitive edge e.g. capacity, track record, include reference 	20
<ul style="list-style-type: none"> Demonstration of understanding of the public sector environment including all applicable legislation 	10

PRICING	80
<ul style="list-style-type: none"> Prices must be quoted in the South African Rand Prices must be VAT inclusive 	
BEE	20
<ul style="list-style-type: none"> BEE scoring will be done in line with the new codes of good practice 	

WEIGHTINGS

80/20 Preference Point System

All tenders that will achieve the minimum qualifying score (acceptable tenders) 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

2. TERMS OF REFERENCE / SCOPE OF SERVICE

2.1 Preamble

The National Empowerment Fund Act No.105 of 1998 established the National Empowerment Fund Trust (NEF), for the purpose of promoting and facilitating economic equality and transformation, by providing development finance for Black empowered South African businesses and by designing investment products in promoting savings and investment activity amongst Black South Africans. The NEF is an agency of the Department of Trade and Industry (**the Dti**) and is committed to the implementation of the Broad Based Black Economic Empowerment Act, Act 55 of 2003, and the Codes of Good Practice.

2.2 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:
 - Companies and Close Corporations;
 - Debt and Equity Finance;
 - Corporate Finance (including mergers, acquisitions and management buy-outs);
 - Trade Finance;
 - Structured and Project Finance;
 - Franchising;

- Taxation;
- Listings, Stock Exchange and Public Documents;
- Conveyancing and Notarial Practice;
- Due Diligence Investigations;
- Insurance;
- Intellectual Property;
- Corporate Governance;
- Regulatory law, especially in light of the NEF's public entity status;
- Insolvency, business rescue and restructuring of corporate entities;
- Criminal law;
- Litigation and/or
- Employment & Labour

Appointments to the panel will be subject to a contract period of two years with an option for up-to one-year contract extension at the NEF's 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

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 (where applicable)

Percentage black women shareholding

Percentage white women shareholding

Do you fall within a gazetted industry charter?

Are you a Qualifying Small Enterprise?
(Annual turnover between R10 million and R50 million)Are you an Exempt Micro Enterprise?
(Annual turnover less than R10 million)**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 (BUT NOT OTHER SUPPORTING DOCUMENTS)

- Original valid Tax Clearance Certificate
- Declaration of Interest form
- Declaration of tenderer's past supply chain management practices
- BEE credentials / rating certificate
- Completed and signed tender document
- A copy/ies of any professional bodies that you are affiliated to
- The following information also needs to be provided with the tender document:
 - Names and details of Senior Management.
 - Shareholders Certificate.
 - Details of employees at an Operational Level.
 - Percentage of ownership by:
 1. Black Shareholders
 2. Black Women
 3. White Women
 - **Bidders are required to register on the National Treasury Database as per National Treasury Circular No 3 of 2015/2016 – Central Supplier Database (CSD).**

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.treasury.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, 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, 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; 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?

YES / NO

2.7.1 If so, furnish the following particulars:

Name of person / director / shareholder/ member:

Name of state institution to which the person is connected:

Position occupied in the state institution:

Any other particulars:

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.....

.....

2.8 Did you or your spouse, or any of the company's directors / **YES / NO**
shareholders / members or their spouses conduct business
with the state in the previous twelve months?

2.8.1 If so, furnish particulars:

.....

.....

.....

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with
a person employed by the state and who may be involved with the evaluation and or adjudication
of this bid? **YES/NO**

2.9.1 If so, furnish particulars.

.....

.....

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 who may be involved with the evaluation and or adjudication of this bid? **YES/NO**

2.10.1 If so, furnish particulars.

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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:

.....

.....

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 NATIONAAL TREASURY OR ANY APPLICABLE LAW SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder