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| ENGINEERING COUNCIL OF SOUTH AFRICA   |                         | <br><b>E C S A</b><br><small>ENGINEERING COUNCIL OF SOUTH AFRICA</small> |
| REQUEST FOR PROPOSALS (RFP) FOR THE APPOINTMENT OF A SUITABLY QUALIFIED PANEL OF SERVICE PROVIDERS TO PROVIDE SERVICES WITH REGARDS TO THE INDUSTRIAL/LABOUR/ EMPLOYMENT RELATIONS CONSULTING |                         |   |
| UNIQUE IDENTIFIER: ECSA/RFP07/2024  | Date: 04 September 2024 |   |

**(PRIVATE & CONFIDENTIAL)**

**REFERENCE NUMBER: ECSA/RFP07/2024**

**ISSUE DATE: 04 September 2024**

**SUBMISSION CLOSING/DUE DATE: 26 September 2024 (Thursday) Time: 12h00**

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**Request for proposals (RFP) for the appointment of a suitably qualified panel of service providers to provide services with regards to the industrial/labour/ employment relations consulting for a period of 36 months.**

**1. BACKGROUND**

The Engineering Council of South Africa (“ECSA”) is a statutory body established by section 2 of the Engineering Profession Act, Act 46 of 2000 (EPA). ECSA's primary role is the regulation of the engineering profession in terms of the EPA. Its core functions are the accreditation of engineering programs, registration of persons as professionals in specified categories, maintenance of registration through Continuing Professional Development (CPD) and the regulation of the conduct of registered persons.

**1.1. Our mandate**

ECSA operates within the ambit of the Built Environment Profession. ECSA is, therefore, a creature of statute, with its mandate anchored in the EPA. ECSA has a myriad of mandates embedded in the Act, which enables ECSA to, inter alia:

- i. Decide on any applications for registration by applicants;
- ii. Determine and impose fees and charges, including registration fees, application fees, annual fees and appeal fees;
- iii. Conduct accreditation visits to educational institutions and to grant, refuse and withdraw accreditations;
- iv. Establish mechanisms and minimum standards for registration.

**2. PURPOSE OF THE BID**

- 2.1. ECSA would like to invite suitable, qualified, and competent service providers to submit proposals to provide services with regards to the Industrial/ Employee/ Labour Relations Consulting. ECSA would like to invite suitable, qualified and competent firms of attorneys/legal advisors to send proposals to be considered for inclusion on its panel of attorneys, as ‘preferred service providers’. Preferred service providers imply that the selected firms are a pool, not necessarily the only contracted service provider. The panel of labour relations attorneys/legal advisors will be required to provide labour relations services to ECSA on an ad hoc basis.
- 2.2. To be considered for the next steps after the Request for Proposal (“RFP”), suppliers must submit a complete response that substantially satisfies all requirements as stated in this RFP.

**3. TERMS AND CONDITIONS OF CONTRACT**

- 3.1. This RFP, as compiled by ECSA is being made available, on the same basis to all prospective suppliers and a prospective supplier submitting a response thereto will be deemed to do so on the basis that they, with the necessary adaptations, acknowledge and accept the terms and conditions set out below:
  - 3.1.1. Supplier performance management is viewed by ECSA as a critical component in ensuring value for money acquisition and good supplier relations between ECSA and all its suppliers. As a result, the successful prospective suppliers should take note that as and when they are allocated the necessary work by the ECSA they will be required to conclude a Service Level Agreement (SLA) which will detail the scope of work and related obligations, duties and rights of the panellist. The SLA will serve as a tool to measure, monitor, and assess the panelists’ performance and ensure effective delivery of service, quality and value-add to ECSA.
  - 3.1.2. The firms of attorneys/legal advisors will be required to sign confidentiality and/or indemnity agreements with ECSA.
  - 3.1.3. The prospective suppliers undertake, at any time during the term of its

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appointment and after any termination or cancellation thereof, directly or indirectly disclose, or directly or indirectly use, whether for its own benefit or that of any other person any confidential information of ECSA including that of or any information relating to its clients, customers, suppliers, donors, sponsors or agents.

- 3.1.4.** A due diligence review may be conducted at the sole discretion of ECSA at any time prior to the awarding of the contract which may include but is not limited to conducting site visits at prospective suppliers' corporate offices.
- 3.1.5.** Only legal practices established and registered in accordance with the provisions of the Legal Practice Act 28 of 2014 will be considered for this tender.
- 3.1.6.** ECSA does not guarantee that prospective suppliers will receive instructions in the event that they are appointed onto the ECSA panel of attorneys/ legal advisors.
- 3.1.7.** All instructions to selected attorneys/ legal advisors on the panel of attorneys/ legal advisors shall be given, in writing, by the Executive: Corporate Support Services of ECSA being a duly authorised representative of ECSA.
- 3.1.8.** Regular monthly written feedback must be given to ECSA's Executive: Corporate Support Services and Human Capital, or his/her nominee on all matters, received from ECSA with the service provider, at no additional costs to ECSA.
- 3.1.9.** When cases have been postponed at the request of the service provider acting on behalf of ECSA owing to non-compliance with any procedural requirements, the service provider who was negligent in this regard will bear the costs of postponement, and this amount will not be recovered from ECSA.
- 3.1.10.** Service providers may not appoint advocates unless a written instruction to this effect have been received from ECSA.
- 3.1.11.** Payment of legal fees by ECSA will be effected within 30 (thirty) days from date of receipt of an acceptable invoice.
- 3.1.12.** If any conflict of interest is discovered during a particular assignment, ECSA reserves the right to summarily cancel the service level agreement and demand that all information, documents and property of ECSA be returned forthwith.
- 3.1.13.** Where the panel falls short of other fundamental legal aspects, ECSA reserves the right to appoint firms outside of the appointed panel.
- 3.1.14.** Firms of attorneys/ legal advisors must hand over all documents and information in any format, including copies thereof, that it received from ECSA or that it had access to during the assignment immediately after completion of the assignments to ECSA.
- 3.1.15.** Acting in bad faith will lead ECSA to either terminate the brief / instructions given and/or recall the firm from the panel and thus not use them again. To this end, service providers will be regarded as having acted in bad faith in the event that ECSA finds:
  - instructions and/or duties that could be attended to, or executed by junior staff members have been assigned to senior Legal Advisors/ Attorneys and billed for at such senior staff members' rates;
  - multiple Legal Advisors / Attorneys have been assigned to attend to a single instruction without any proper justification, such as the complexity or magnitude of a matter and/or the service provider failed to request ECSA prior permission in writing to appoint multiple Legal Advisors / Attorneys for such an instruction; and
  - unrealistic time billing taking into account the nature (i.e. relative simplicity) of any action performed and/or service rendered by a Legal Advisor / Attorney.
- 3.1.16.** Prospective suppliers must note that transgressions of the above obligations and duties those that will be included in the SLA may lead to the ECSA electing not to make any further use of the services of such legal service provider or removing a firm of attorneys/ legal advisors from the panel before the expiry of the three (3) years period, by written notice and recall all the files in the possession of the said firm of attorneys/ legal advisors, taking into account principles of fairness and the severity of the transgression etc.

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#### **4. SCOPE OF WORKS**

Provision of advice and assistance with regards to the Industrial / Employee/ Labour Relations consultancy as and when required.

##### **4.1. EXPECTATIONS**

To provides a comprehensive, professional labour relations consultancy, advisory and service on a broad range of aspects, including, but not limited to:

- 4.1.1.** Discipline management, including designing/editing/drafting of policies, guidance on counselling, the issuing of warnings, writing of letters, chairing of disciplinary enquiries, appeals, etc.
- 4.1.2.** Dispute resolution, including representation at conciliation, arbitration preparation, etc. at bargaining councils, the CCMA and Labour Court.
- 4.1.3.** Drafting of Employment contracts.
- 4.1.4.** Facilitating Retrenchments and restructuring.
- 4.1.5.** Sick leave and absenteeism management

##### **4.2. KEY DELIVERABLES / EXPECTED RESULTS AND ACTIVITIES**

- 4.2.1.** Hold meetings with their allocated consultant every 3 months. This includes value added visits and consultations launched at the instance of the consultant.
- 4.2.2.** Provide telephonic, electronic and/or face-to-face advice, guidance and assistance.
- 4.2.3.** Furthermore, the client requires responses to legal queries to be tendered in the form of a legal memorandum.
- 4.2.4.** Write legal opinions

#### **5. CONTRACT DURATION**

The contract will be for a period of three (3) years from the date of inception.

#### **6. EVALUATION AND SELECTION CRITERIA**

ECSA has set minimum standards that prospective suppliers must meet to be evaluated and selected as successful suppliers. The received proposals will be evaluated in different phases to arrive at the final phase of the award, and the phases will be as follows:

- i. Administrative Criteria (Phase 1) - Prospective suppliers (s) must submit all required minimum and mandatory documents.
- ii. Technical Evaluation Criteria (Phase 2) - The bids will be evaluated according to the criteria set below.
- iii. A maximum of five (5) service providers who scored the highest points in the technical evaluation criteria will be shortlisted for the panel.

## 6.1. MINIMUM ADMINISTRATIVE REQUIREMENTS – PHASES

### 6.1.1. Minimum Screening Requirements (Phase 1):

*Note: In this phase all proposals received will be verified for compliance and completeness of the submitted documents per the below set of mandatory requirements. Prospective suppliers who fail to comply with the below requirements may be eliminated and prospective suppliers who comply with the below will progress to the next phase of technical evaluation.*

#### 6.1.2. Please adhere to the following instructions

- i. Tick in the relevant block below, the documents and schedules that form part of your response.
- ii. Ensure that the documents are completed and signed where applicable.
- iii. Use the prescribed sequence in attaching the annexes that complete the Bid Document
- iv. Should all of these documents not be included or any part of the bid document not duly-completed, the bidder may be disqualified on the basis of non-compliance/ non-responsiveness.
- v. Please index and paginate your bid documentation.

| Item  | Yes | No |
|---|-----|----|
| Invitation to Bid (SBD 1)   |     |    |
| Bidder`s Disclosure Form (SBD 4)  |     |    |
| CIPC certificate  |     |    |
| A valid SARS tax pin certificate  |     |    |
| A valid B-BBEE certificate issued in accordance with SANAS` requirements or B-BBEE Sworn Affidavit  |     |    |
| Joint Venture Agreement (If applicable)   |     |    |
| Proof of banking details  |     |    |
| Proof of registration with the Legal Practice Council.  |     |    |
| Company Profile - the firm`s profile shall inter alia include a short history of the firm/legal practice and the areas of operations, if applicable and details of the firms` understanding of the requirement of this RFP. The Company profile confirming premises from which firm conducts its business and must include information on the availability of e-mail access, telephone facilities,library/research facilities and information on support staff employed by the firm. The Company profile to also indicate: -<br><input type="checkbox"/> any value-added services that the prospective supplier may be in a position to offer ECSA. |     |    |
| A valid certified copy of the Attorneys/ legal advisors Fidelity Fund Certificate for each member who is a sole practitioner, partner or director of the firm of attorneys/ legal advisors and who will attend to ECSA matters  |     |    |
| Certified valid letter of good standing with the relevant Legal Practice Council, for each attorney who forms part of the team that will attend to ECSA matters, not older than 3 (three) months.   |     |    |
| A Firms Indemnity Certificate issued for the present year   |     |    |
| A minimum of three reference letters  |     |    |
| CVs and proof of qualifications (and completed courses) of the lead attorney/legal advisor as well as the proposed team members   |     |    |

**6.2. Technical evaluation point allocation (phase 2):**

- 6.2.1.** Only prospective supplier(s) that have met the Administrative Criteria in Phase 1 will be evaluated in Phase 2. Technical Evaluation will be out of 100 points.
- 6.2.2.** A maximum of five (5) service providers who scored the highest points in the technical criteria evaluation will be shortlisted for the panel with a minimum threshold of 75 out of 100 points achieved.

The allocation of points for technical evaluation is set out in the Table below:

| <b>TECHNICAL EVALUATION CRITERIA</b>  |                               |                   |
|---|-------------------------------|-------------------|
| <b>CRITERIA</b>   | <b>SUB-CRITERIA</b>           | <b>MAX POINTS</b> |
| <p>Compliance with the requirements of the Legal Practice Council established in terms of the Legal Practice Act, 2014 (Act No. 28 of 2014):</p> <p>a) Certificate of registration with Legal Practice Council;</p> <p>b) Letter of Good Standing from the Legal Practice Council;</p> <p>c) Firms Fidelity Fund Certificate.</p>   | <p>10</p> <p>10</p> <p>10</p> | <p>30</p>         |
| <p>Experience of the Firm (Proof should be in a form of a profile of a firm)</p> <p>d) Relevant experience on similar service (legal services in public sector)</p> <p>0-3 Years :5<br/>3-5 Years :10<br/>6-10 Years:15<br/>More than 10 years: 20</p>  | <p>20</p>                     | <p>20</p>         |
| <p>e) Experience and relevant qualifications; Minimum NQF level 8 of the Lead labour relations Attorneys/ Legal Advisor. (Proof should be the Legal Advisor/ Attorney profile)</p> <p>less than 7 years =0<br/>7-9 years = 5<br/>10 years plus = 10</p> <p>f) Team members profiles<br/>Experience and relevant qualifications; Minimum NQF level 7 of legal advisors in industrial/labour/employment (CCMA and labour courts)</p> <p>More than 5 years = 10<br/>Minimum 5 years = 5<br/>Less than 5 years= 0</p> | <p>10</p> <p>10</p>           | <p>20</p>         |

|   |                     |                   |
|---|---------------------|-------------------|
| <p>g) Portfolio of evidence.<br/> Success rate of the service provider in the following categories:</p> <p>1) Arbitration<br/> Minimum 3- 5 cases = 5<br/> above 5 cases = 10</p> <p>2) Labour courts<br/> Minimum 3 – 5 cases = 5<br/> More than 5 cases = 10</p>  | <p>10</p> <p>10</p> | <p>20</p>         |
| <p>h) Reference letters<br/> Provide minimum three positive written contactable corporate client references for services rendered not older than five years, on the referee’s letter head, related to industrial/labour/employment relations, accompanied by the project details; *Reference check will be conducted. Project references of similar size and scale projects. Please note: Points will be allocated for letters that meet all the following requirements:</p> <ul style="list-style-type: none"> <li>• Entity name;</li> <li>• Contact name and telephone number;</li> <li>• Date when service was rendered;</li> <li>• Description of service;</li> <li>• Duration of the service</li> </ul> <p>3 letters = 5<br/> 4 letters and above = 10</p> | <p>10</p>           | <p>10</p>         |
| <p><b>TOTAL</b></p>   |                     | <p><b>100</b></p> |

**7. PRICING**

The successful panel will be requested to submit quotations as and when services will be required.

**8. LIABILITY**

The successful prospective supplier shall be liable to ECSA for any direct damages and/or losses incurred by ECSA due to failure by the prospective supplier to perform its obligations in the manner required by the Service Level Agreement signed by the parties.

The successful prospective supplier shall further be liable to ECSA for all indirect and consequential or special damages and/or losses suffered by ECSA as a result of gross negligence, willful misconduct, a breach of confidentiality provisions stipulated in the signed Service Level Agreement between the parties, breach of applicable laws, infringement of a third party’s intellectual property rights, or a criminal act committed by the prospective supplier or any employees of the prospective supplier .

**9. PROSPECTIVE SUPPLIER’S OWN TERMS AND CONDITIONS OR BID QUALIFICATIONS**

This document contains the terms and conditions of this bid, and prospective suppliers must not modify / qualify the specifications or come up with their own terms and conditions. ECSA reserves the right to disqualify a bid which seeks to modify or depart from the specified conditions.



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## **10. PREPARATION COSTS**

The prospective supplier will bear all its costs in preparing, submitting and presenting any response 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 ECSA, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the prospective suppliers in the preparation of their response to this bid.

## **11. INDEMNITY**

If a prospective supplier breaches the conditions of this bid and, as a result of that breach, ECSA 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 prospective supplier indemnifies and holds ECSA harmless from any and all such costs which ECSA may incur and for any damages or losses ECSA may suffer.

## **12. LIMITATION OF LIABILITY**

A prospective supplier participates in this bid process entirely at its own risk and cost. ECSA shall not be liable to compensate a prospective supplier on any grounds whatsoever for any costs incurred or any damages suffered as a result of the prospective supplier's participation in this bid process.

## **13. TAX COMPLIANCE**

No bid shall be awarded to a prospective supplier whose tax affairs are not in order. ECSA reserves the right to withdraw an award made, or cancel a contract concluded with a successful prospective supplier in the event that it is established that such prospective supplier was in fact not tax compliant at the time of the award. ECSA further reserves the right to cancel a contract with a successful prospective supplier in the event that such prospective supplier does not remain tax compliant for the full term of the contract.

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## 14. 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 prospective supplier's submission will be disclosed by any bidder or other person not officially involved with ECSA's examination and evaluation of a tender/ bid.

Throughout this bid process and thereafter, prospective suppliers must secure ECSA'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.

No confidential information relating to the process of evaluating or adjudicating tenders or appointing a prospective supplier will be disclosed to a prospective supplier or any other person not officially involved with such process.

## 15. INTELLECTUAL PROPERTY

ECSA retains ownership of all Intellectual Property rights in the bid/ tender information documents that form part of this RFP. Prospective suppliers will retain the Intellectual Property rights in their bid/ tender responses, but grant ECSA the right to make copies of, alter, modify or adapt their responses, or to do anything which in its sole discretion is necessary to do for reasons relating to the RFP process.

## 16. TERMS & CONDITIONS OF THE APPLICATION

- ECSA reserves the right without furnishing any reasons whatsoever, to cancel, withdraw or re-advertise, or to appoint or not to appoint any of the Service Provider.
- ECSA may request clarification or further information regarding any aspect of the prospective supplier. The prospective supplier must provide the requested information within forty-eight (48) hours after the request has been made; otherwise, the prospective supplier may be disqualified.
- The Bid and supporting documents shall be submitted strictly in accordance with the instructions given in these ToR's.
- All prices quoted must be VAT inclusive. ECSA will not provide upfront payments.

## 17. BID SUBMISSION

The Bid/ proposal must be emailed to [ECSA-TENDERS@ECSA.CO.ZA](mailto:ECSA-TENDERS@ECSA.CO.ZA) by no later than **12H00** on 26 September 2024.

Do not send submissions to email addresses other than [ecsa-tenders@ecsa.co.za](mailto:ecsa-tenders@ecsa.co.za)

- The completed bid must be attached to the email, any text included in the body will not be evaluated.
- The email subject should clearly indicate the name of the service provider and the bid reference number. If amending a submission, the title of the email should also include the word amendment.
  - Example: Company ABC, ECSA/RFP07/2024
  - Example: Company ABC, Amendment to ECSA/RFP07/2024
- If the submission is larger than 20 MB, please zip the folder to reduce size, and or submit in parts referencing each submission accordingly.

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- Where a response is not submitted at the time of the bid closing date, such submission will not be evaluated.
  - Submissions must be made in PDF format only; no editable documents will be accepted.
  - PDF documents submitted must not be protected.
  - Failure to adhere to the above submission rules may lead to disqualification.

ECSA is entitled to amend any application condition, validity period, specification, or extend the return date of such an application before the closing date. All applicants to whom the application documents have been issued will be advised in writing of such amendment or of extensions, promptly.

## **18. RETENTION OF APPLICATIONS**

All applications submitted shall become the property of ECSA. ECSA will make all reasonable efforts to maintain applications in confidence. Proprietary information should be identified in each application.

## **19. CANCELLATION AND RE-INVITATION OF BIDS**

The decision to cancel a bid will be published in the same media in which the original bid invitation was advertised.

## **20. VENDOR COMMUNICATIONS**

During the application period, communications between applicants and ECSA will only be in writing through email for any queries and questions. All communications, correspondence, documentation, manuals, applications, presentations, demonstrations etc., must be in English.

All questions concerning the Application must refer to the Application page number, section and paragraph. All questions and correspondence must only be directed to the authorized ECSA Application Representatives, listed below:

## **21. General Enquiries:**

Supply Chain Management:  
Ms. Nthabiseng Somoro  
Telephone number:(011) 607 9534  
Email address: [nthabiseng@ecsa.co.za](mailto:nthabiseng@ecsa.co.za)