

QUESTION AND ANSWERS

SPECIAL INVESTIGATING UNIT (SIU)

RFP:02/06/2022/CL

APPOINTMENT OF A PANEL OF ATTORNEYS/LAW FIRMS/LEGAL PRACTITIONERS FOR GENERAL ASSISTANCE, ADMINISTRATIVE LAW AND CIVIL LITIGATION ON AN “AS-AND-WHEN REQUIRED” BASIS FOR A PERIOD OF 36 MONTHS.

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Closing date : Friday 15 July 2022

Closing time: 11:00am

No	Questions from Bidders	Answers
1.	<ul style="list-style-type: none"> Will the Briefing session Presentation be shared with the interested parties? 	Yes, the Presentation session(s) (keeping in mind that the session was interrupted twice) and the PowerPoint Presentation will be available on the SIU Website.
2.	<ul style="list-style-type: none"> Page 1 of 59 of the Terms of Reference (“ToR”): Is the Briefing session mandatory, or will a screenshot of the briefing session be sufficient proof that the bidder attended the briefing session, keeping in mind that load-shedding and breaks in the Zoom session caused interested parties to link in and out from time to time? 	The Briefing session is <u>not</u> mandatory (non-compulsory). As such, no bidder will be disqualified for not attending the briefing session.
3.	<ul style="list-style-type: none"> Page 8 of 59 of the ToR: Will bidders be allowed to tender, if they do not have any office within the Gauteng Province 	<ol style="list-style-type: none"> No, this is a minimum requirement that the bidder must meet to be evaluated further. The SIU will only accept bid proposals from bidders who have, and can prove, that they have an office in the Gauteng Province. Considering the fact that the SIU’s Head Office and its biggest Provincial Office are both situated in Pretoria (i.e. within the Gauteng Province) and that the entire Civil Litigation Unit (CLU) of the SIU is currently also stationed at the SIU’s Head office, this is required to facilitate efficient, speedy and cost-effective meetings between the SIU and the successful bidders.
4.	<ul style="list-style-type: none"> Page 8 of 59 of the ToR: If a bidder has many directors/partners (e.g. 50), would all such Directors/Partners be required to submit Letters of Good Standing and Fidelity Fund Certificates? 	<ol style="list-style-type: none"> No, the ToR states that if a company has more than 2 Directors, then at least the Letters of Good Standing and Fidelity Fund Certificates of at least two (2) of such Directors must be provided.

		2. Although the ToR refers to Companies and Directors, the same principle will also apply to Partnerships (i.e. the Letters of Good Standing and Fidelity Fund Certificates of at least two (2) of such Partners must be provided)
5.	<ul style="list-style-type: none"> Is the Right of Appearance in the High Court a minimum requirement (i.e. will bidders without such right be disqualified) 	No, in most instances counsel are briefed, who would be able to co-sign certain court papers (e.g. Particulars of Claim) with the Attorney (without the Right of Appearance in the High Court). As such, the right of appearance in the High Court is <u>not</u> a disqualifying criterion
6.	<ul style="list-style-type: none"> Page 11 of 59 of the ToR: Internal Integrity Unit (“IIU”) and State Security Agency (“SSA”) vetting/screening. Will bidders who were disqualified based on IIU / SSA vetting of screening be informed of the outcome of such vetting/screening 	<p>1. First, accept that such vetting and screening would in all likelihood only be done in respect of bidders who successfully passed through all 3 stages of the bid evaluation process and were finally shortlisted for the award. Second, if a shortlisted bidder should be disqualified based on the outcome of a vetting/screening process, then that bidder will be informed that it was so disqualified, but the specific detail concerning its vetting/screening and the negative outcome thereof will most probably not be provided to the bidder.</p> <p>2. Reasons: Because the work of SSA is secret and because any unfettered access to IIU/SSA vetting/screening processes and outcomes may <i>inter alia</i> potentially prejudice on-going investigations, endanger witnesses, and would disclose the methodologies used in such exercises, which (if known) could potentially allow people to subvert such exercises.</p>

7.	<ul style="list-style-type: none"> If a bidder does not have or cannot show experience in respect of all three (3) fields of law (i.e. General Legal Assistance, Administrative law and Civil litigation), would such bidders be disqualified? 	No, but they could potentially score very poorly in the evaluation process where previous 'relevant' experience in all three fields of law (i.e. General Legal Assistance, Administrative law and Civil litigation) will be evaluated.
8.	<ul style="list-style-type: none"> Page 30 of 59 of the ToR: Will the SIU not score any time of a junior associate, if that junior has less than a full 1 year of experience 	No, the scoring start from 1 years' experience and above therefore no points will be allocated if it's less than a year.
9.	<ul style="list-style-type: none"> Page 26 of 59 of the ToR: What if a bidder has a different naming convention as that used by the SIU to define Partner/Director, Senior Associate and Junior Associate, may the bidder then propose a differently titled person for evaluation purposes (e.g. submit two partners/directors for evaluation) 	<ol style="list-style-type: none"> The SIU will not discriminate against bidders based on a naming convention, but the bidder would have to make it clear which person the SIU must evaluate as a Partner/Director, and which as a Senior Associate (even if he may be a Partner/Director etc.), and such persons must at least meet the minimum requirements to be deemed as such (i.e. cannot submit a person with the equivalent experience of a Junior Associate as a Senior Associate for purposes of the bid). However keep in mind that the people evaluated will be the preferred people to be assigned to SIU work, and the SIU will not easily allow a change in persons when it comes to the allocation of work, especially not where such identified persons were also subjected to IIU/SSA vetting/screening. As such, the bidder can then find that it must use two Directors/Partners on the project (and for the duration of the 3 year contract term), while one of the

		Directors/Partners (who were evaluated as a Senior Associate for bid purposes) would only be allowed to invoice for his/her services up to the level of a Senior Associate.
10.	<ul style="list-style-type: none"> Can the bidder provide the details for evaluation purposes of more than one Lead Director/Partner, Senior Associate and Junior Associate? 	<p>It is recommended that the bidder submits:</p> <ul style="list-style-type: none"> (a) the best qualified and experienced; and (b) those who are available and will be remain available to actually do the work for the SIU (keeping in mind that these persons would most probably be screened and vetted and that the SIU would be slow to allow for their later substitution when work is actually allocated to the successful bidders), <p>persons in its practice for each of the three positions (i.e. as Lead Director/Partner, Senior Associate and Junior Associate for SIU evaluation purposes</p>
11.	<ul style="list-style-type: none"> How does this the tender address the problem of different company/practice/business sizes (i.e. that a small practice would still be able to compete with a big practice)? 	<p><u>The SIU evaluates:</u></p> <ul style="list-style-type: none"> (a) The company based on years of experience, and not the number of staff; and (b) The relevant experience of persons specifically identified by the bidder in its bid proposal (who would then also be the preferred persons to actually do the work on SIU matters) and does not count the staff of the practice.

		As such, a small practice who identifies those staff members with excellent previous relevant experience would easily be able to compete even with big practices.
12	<ul style="list-style-type: none"> Page 27 of 59 of the ToR: Reference Letters from clients: Would the SIU also accept a reference letter which deals with a matter, but where that matter is still on-going and has not yet been finalized? 	<p>No, for a reference letter to be acceptable it <u>must</u> deal with:</p> <ul style="list-style-type: none"> (a) Dates of appointment and end date of the contract; (b) Mention cause of action; (c) Complexity of the case; and (d) Final outcome. <p>So if there is no final outcome yet, the reference letter will be rejected as non-compliant</p>
13	<ul style="list-style-type: none"> Page 27 of 59 of the ToR: Reference Letters from clients: Since the Reference letter must come from the client, and the bidder cannot control or dictate to the client, will the SIU accept a Reference Letter that perhaps does not address the causes of action or complexity of the matter. 	<p>The SIU must draw a line in the sand to ensure comparability of bid proposals. As such, the SIU must be pedantic in what the reference letters must deal with, before such reference letters would be accepted. The Bidder is advised to submit the request for the letter to the client and specifically ask the client to speak to each of the 4 requirements under headings. Alternatively, the bidder can prepare draft letters for the client to consider and later transfer to the client's letterhead, which drafts would include all four aspects in detail. However, the letter must be signed by the client and the client must ultimately confirm that the contents of the letter is true and correct in all respects.</p>

14	<ul style="list-style-type: none"> Page 27 of 59 of the ToR: Reference Letters from clients: Must the Reference letters speak to all three the relevant fields of law (i.e. General Legal Assistance, Administrative law and Civil litigation) 	<ol style="list-style-type: none"> No, each letter need <u>not</u> speak to all three (3) fields of law (i.e. General Legal Assistance, Administrative law and Civil litigation), because the bidder may not have done work for that specific client in respect of all three fields of law. However, the bidder is advised to try to ensure that Reference letters are obtained from clients that collectively speak to all three fields of law (i.e. General Legal Assistance, Administrative law and Civil litigation), in order to give a clear indication that the bidder has relevant previous experience in all three fields of law.
15	<ul style="list-style-type: none"> Page 27 of 59 of the ToR: Reference Letters from clients. Let's assume a bidder only has one major client, would that bidder be allowed to submit reference letters from that one client, instead of from various clients? 	<ol style="list-style-type: none"> If the bidder did work for that single client that are relevant to all three fields of law (i.e. General Legal Assistance, Administrative law and Civil litigation), the bidder would be allowed to submit letters from that very same client in order to address all three fields of law. However, only having one or two clients (unless they are major businesses with a lot of legal work) could potentially create the perception of a potential lack of capacity or experience in the bidder's practice. The SIU deals with highly complex matters, involving hundreds of millions of rand, and even billion (the SIU has one case involving R 54 billion). As such, the bidders must be truthful with themselves and about their capacity, experience and skill, and they must walk with eyes wide open into this tender. They should not tender if they

		<p>are not 100% convinced that they have the capacity, experience and skill to do the SIU's work.</p> <p>4. As such, all bidders are strongly encouraged to rather submit reference letters from different and multiple clients – just to ensure that the reference letters, as a whole, show the true ambit of the bidder's practice.</p>
16	<ul style="list-style-type: none"> Is the SIU dictating prescribed rates/tariffs/fees? 	<p>No, Schedule A to the ToR (the Pricing Schedule) is based on the rates/tariffs set out in the Uniform Rules of Court, and the SIU is merely using these descriptions and tariffs for benchmarking purposes and to ensure that it receives comparable bid proposals (i.e. apples for apples). The bidders are allowed to submit rates/tariffs below or above the rates/tariffs set out in Schedule A.</p>
17	<ul style="list-style-type: none"> Schedule A to the ToR (Pricing): Will the Excel spreadsheet be provided? 	<ol style="list-style-type: none"> The Excel Spreadsheet has been provided along with the ToR, uploaded from the SIU website. The bidder must submit schedule A with the bid proposal both in hard copy of the bid proposal both in hard copy (after it has been completed by the bidder) signed by the bidder and also in electronic Excel format by means of a USB.
18	<ul style="list-style-type: none"> Is there a limit on the maximum percentage that a bidder can charge above the rates/tariffs set out in Schedule A to the ToR 	<ol style="list-style-type: none"> No. Bidders are allowed to charge as far below or as far above the benchmark rates as the bidder prefers to do. However, the bidders must keep in mind that the 90/10 principle will be applied, where price will count 90. As such, a lower bid price will

		allow bidders to score higher in final evaluation, and the top four (4) ranked bidders will be preferred.
19	<ul style="list-style-type: none"> Page 35 of 59 of the ToR: How is that (SBD 3.1) supposed to be completed? 	The Excel or electronic version Schedule A to the ToR (the Pricing Schedule) will automatically calculate a final total, based on the rates/tariffs that the bidder completed on the Schedule. The bid price total must be written into SBD 3.1 as the total and VAT must be added to get the final bid price
20	<ul style="list-style-type: none"> What are the reasons for the re-advertising of this bid? 	The decision to cancel the tender was informed of potential material irregularity in the tender process.
21	<ul style="list-style-type: none"> Under Special Conditions (page 11) of the bid, please can you clarify point a). <i>“If the contract is awarded to the bidder, then the bidder must (at its sole expense) ensure that it has or can provide an address for service of Court/Special Tribunal papers within a 15 km radius (compliant with the Uniform Rules of the High Court) from the Gauteng Local Division in Johannesburg, the Gauteng Provincial Division in Pretoria and the Special Tribunal, which is situated at the Booysens Magistrates’ court in Johannesburg”.</i> 	<ol style="list-style-type: none"> The SIU will only accept bid proposals from bidders who have, and can prove, that they have an office in the Gauteng Province. Considering the fact that the SIU’s Head Office and its biggest Provincial Office are both situated in Pretoria (i.e. within the Gauteng Province) and that the entire Civil Litigation Unit (CLU) of the SIU is currently also stationed at the SIU’s Heas office, this is required to facilitate efficient, speedy and cost-effective meetings between the SIU and the successful bidders. Furthermore, since the Uniform Rules of Court require litigating parties to provide addresses where court papers can be delivered within a radius of 15 km of the Court in which the matter is held, <u>the SIU requires from the successful bidders to ensure that they do the necessary (after the award of the contracts – as such, this is not a</u>

		<p><u>disqualifying criterion during bid evaluation, but a requirement that will come-in later at contract stage)</u> to ensure that they can provide such addresses (at no additional cost for the SIU – as such, if there will be cost implications for the bidder, then the bidders must provide for such costs as part of the calculation of the rates/tariffs that the bidders submit on Schedule A (Pricing) to the ToR) for the receipt of court papers within a 15 km radius of the Johannesburg High Court, the Pretoria High Court and the Special Tribunal – where the majority of the SIU's cases are currently being conducted.</p>
22	<ul style="list-style-type: none"> Kindly advise with respect to the reference letters required, can we get separate reference letters for each category from the same Company / Client. For an example we may have done matters for the same client in all categories that were finalised. Is it 7 or more reference letters required in all categories together or in each specific category. Please confirm if envelope 1 is too thick and to put envelope 1 and envelope 2 into one big envelope may not work, what are other options 	<ol style="list-style-type: none"> 1. Already answered – see paragraph/item 15 above. 2. See page 27 of 59 of the ToR: To achieve the maxim score of 30 points in this regard, six (6) or more reference letters and above must be attached to the bid proposal. Since the bid involves three (3) fields of law (i.e. General Legal Assistance, Administrative law and Civil litigation), the bidders are encouraged to ensure that they submit such reference letters for each of the three (3) fields of law (e.g. 18 letters, if each letter only addresses one field of law). 3. Using lever arch files or bound bundles will be allowed, but then each such file or bundle must be clearly mark (e.g. “File/Bundle 1 of 3 iro Envelope 1”, “File/Bundle 2 of 3 iro Envelope 1”, “File/Bundle 3 of 3 iro Envelope 1”, and “File/Bundle 1 of 1 iro Envelope 2”)

23	<ul style="list-style-type: none"> Is the Bid only open to firms based in Gauteng? <p>Our offices are based in Pietermaritzburg however there's a firm of attorneys which our offices are affiliated with who are based in Gauteng. What would the requirements of that firm be should we be able to proceed to tender?</p>	<ol style="list-style-type: none"> 1. Already answered – see paragraphs/items 3 and 21 above. 2. Affiliation or association etc. is <u>not</u> sufficient. This requirement to have an office in the Gauteng Province cannot be sub-contracted, and it remains a requirement to be met by the bidder itself.
24	<ul style="list-style-type: none"> Will the reference letters only be in respect of finalised matters and individual matters ? <p>We are in possession of general reference letters from our client's which specify the type of work we are handling for them, would that be sufficient ?</p>	<p>Already answered – see paragraphs/items 12, 13 and 14 above.</p>
25	<ol style="list-style-type: none"> 1. We have reference letters from clients that clearly states the similar projects listed a-d on pages 26 and 27. 2. However, the reference letters do not list the matters as described on page 27, that is the date of appointment etc. 3. Since we handled a number of matters, should we then submit the reference letters as they are, supplemented by an attachment that include the dates of appointment and end date, cause of action, complexity of the case and final outcome. 4. Will the above be considered to meet this evaluation criteria? 	<ol style="list-style-type: none"> 1. Already answered – see paragraphs/items 12, 13, 14 and 24 above. 2. Any omissions or defects in the reference letters will result in such letters being rejected/disqualified, and such omissions or defects cannot be addressed or corrected by the submission of further clarifying information or documents. 3. It is recommended that the bidder seeks revised or new Reference Letters from its clients, where each individual reference letter will fully meet the requirements of the ToR (<i>prima facie</i> from the letter itself, without having to look at or consider any other/additional documents).
26	<ol style="list-style-type: none"> 1. Pricing 	<p>Already answered – see paragraph/item 19 above.</p>

	<p>We are required to complete SBD 3.1 as per the RFP, this requires an indication of total costs over a 3 year period. To confirm, the amount should be reflective of the total amount reflected in Annexure A once this is completed?</p>	
27	<p>1. Compliance Administrative Requirements</p> <p>Please confirm that we can submit the below documents (<i>Legal Practice Council (“LPC”) Letter of Good standing and Fidelity Fund certificates</i>) for our two lead partners:</p> <p>We are a partnership firm and therefore do not have directors. We can submit this for our two main partners that we are including on our bid submission – please advise/confirm if this will be considered as compliant?</p>	<p>Already answered – see paragraph/item 4 above</p>
28	<ul style="list-style-type: none"> Kindly advise if we are eligible to submit the Financial Statements that are only signed off by an accountant with turnover of less than R 2 million or if it's a must for them to be audited or reviewed 	<p>1. See paragraph (f) on page 11 of 59 of the TOR, which states that “<i>The SIU requires the last three (3) years Audited Financial Statement (“AFS”) of the bidders. If AFS are not available or not fully available, then the bidder should provide justifiable reasons and provide the SIU with a copy of the latest Unaudited AFS / Management Accounts signed off by the directors/members/ management "certifying accuracy and completeness of the said AFS / Management Accounts"</i>”.</p>

		<p>2. If the relevant accounting standards and the LPC do not required from a legal practice to have its annual financial statements audited based on only having a turn-over of less than R 2 million, then the bidder concerned can:</p> <p>2.1 submit such unaudited annual financial statements, which must be signed off by the directors/members/ management "certifying accuracy and completeness of the said AFS / Management Accounts"; and</p> <p>2.2 must provide justifiable reasons (i.e. refer to the accounting standard that is aplicable) for not being able to provide the audited financial statemenys</p>
29	<ul style="list-style-type: none"> Can we submit Legal Practice Council (LPC) Certificates for the director/s in the proposed team ONLY? Can we submit Fidelity Fund Certificates for the director/s in the proposed team ONLY? 	<p>1. Already answered – see paragraph/item 4 above.</p> <p>2. In order for the bidder not to be disqualified it must provide such Legal Practice Council Certificates and Fidelity Fund Certificates for all its Director/s or Partners, or if the practice has more than 2 Directors/Partners, then at least the said Certificates for two (2) of its Directors or Partners must be provided.</p> <p>3. Since the ToR only requires the proposed team to include at least one (1) Director/Partner, one (1) Senior Associate and one (1) Junior Associate, only providing the said Certificates of these three (3) proposed team members will <u>not</u> be sufficient to meet</p>

		the requirement of providing at least the Certificates of two (2) of the practice's Directors/Partners.
30	<ul style="list-style-type: none"> As per the tender requirements, bidders must provide demonstrable experience of similar projects in general legal assistance, administrative law and civil litigation. Kindly advise if a reference table with dates of appointment and end date of the contract, cause of action, complexity of the case and final outcome together with reference letters outlining the dates of appointment, area of law and ratings of the services provided suffice 	Already answered – see paragraphs/items 12, 13, 14, 24 and 25 above.
31	Please advise if only the detailed pricing schedule to be submitted on the USB and on the Excel format provided or PDF.	<ol style="list-style-type: none"> The entire/complete bid proposal (<u>including</u> Schedule A (Pricing) to the ToR) must be completed in hard (paper format) copy, printed and signed. The signed hard copy must be submitted to the SIU. In addition to the submission of the hard copy, the bidder must also provide the Excel electronic copy of Schedule A (Pricing) to the ToR by means of a USB. The USB must at least contain the Excel electronic version of Schedule A (Pricing) to the ToR – we require the Excel format <i>inter alia</i> to facilitate our own calculations etc. In addition to the Excel electronic version of Schedule A (Pricing) to the ToR, which must be on the USB, the bidder <u>may</u> also

		provide a PDF version of the entire bid proposal (i.e. a copy of the hard copy documents) on the USB.
32	Would it be possible if we submit a bid document as we did not attend a briefing session?	Yes, the briefing was non-compulsory therefore bidder who did not attend the briefing will not be disqualified.