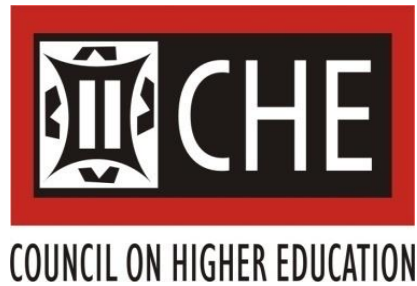


**ANNEXURE A**



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**REQUEST FOR PROPOSAL (RFP) FOR  
APPOINTMENT OF A PANEL OF LAW FIRMS FOR  
PROVISION OF LEGAL SERVICES TO THE  
COUNCIL ON HIGHER EDUCATION (CHE)**

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**CHE/CS/05/01/2018**

**Date Issued: 26 January 2018**

**Closing Date and Time: 16 February 2018 at  
11:00am**

**Compulsory Briefing Session: 01 February 2018**

**Bid Validity Period: 90 days**

**TENDER BOX ADDRESS:**

The Council on Higher Education (CHE)  
Reception Area  
No.: 1 Quintin Brand Street  
Persequor Technopark  
Brummeria  
Pretoria East  
0020

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## **1. INTRODUCTION**

The Council on Higher Education (CHE) is an independent statutory body established by the Higher Education Act, No 101 of 1997, as amended. The CHE as the Quality Council for Higher Education advises the Minister of Higher Education and Training on all higher education policy issues, and is responsible for quality assurance and promotion through the Higher Education Quality Committee (HEQC). More information on the CHE can be obtained from the website <http://www.che.ac.za>

## **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 law firms for provision of legal services to the CHE.

This RFP document details and incorporates, as far as possible, the tasks and responsibilities of the potential bidder required by the CHE appointment of a panel of law firms for provision of legal services.

This RFP does not constitute an offer to do business with the CHE, 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 CHE 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 CHE 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 CHE, Auditorium, No.: 1 Quintin Brand Street, Persequor Technopark, Brummeria, Pretoria East, 0020, on the **01 February 2018 at 10:00 am** 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 **90** 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	26 January 2018

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Compulsory briefing and clarification session	01 February 2018 at 10:00 am
Questions relating to bid from bidder(s)	15 February 2018
Bid closing date	16 February 2018 at 11:00 am
Notice to bidder(s)	CHE 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 CHE's discretion. The establishment of a time or date in this bid does not create an obligation on the part of the CHE 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 CHE 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, **Mr Maeta Thobane** via email [Thobane.M@che.ac.za](mailto:Thobane.M@che.ac.za) and/or **012 349 3903**. Bidder(s) must reduce all telephonic enquiries to writing and send to the above email address.
- 6.2. The delegated office of the CHE 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 CHE 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 CHE must be done in writing.
- 6.5. Whilst all due care has been taken in connection with the preparation of this bid, the CHE 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 CHE, 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 CHE (other than minor clerical matters), the Bidder(s) must promptly notify the CHE in writing of such discrepancy, ambiguity, error or inconsistency in order to afford the CHE 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 CHE 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 CHE may have against the Bidder / contractor concerned.

## **10. SUPPLIER DUE DILIGENCE**

The CHE 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 CHE, Reception Area, No.: 1 Quintin Brand Street, Persequor Technopark, Brummeria, Pretoria East, 0020** on or before the closing date and time.
- 11.2. Bid documents will only be considered if received by the CHE before the closing date and time.
- 11.3. The bidder(s) are required to submit **Five (5)** copies of **file 1: one (1)** original and **Four (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 **16 February 2018 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:



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FILE 1 (TECHNICAL FILE)	FILE 2 (PRICE & BBEE)
<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> <li>• Draft Service Level Agreement  <i>(Refer to Section 19 – Service Level Agreement)</i></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 CHE 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 36 (thirty six) months with an option to renew in the CHE’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 Council on Higher Education (hereinafter referred to as “the CHE”) seeks to appoint a panel of legal firm to provide legal assistance/services to the CHE for a period of thirty-six (36) months with the option to extend the appointment with additional twelve (12) months on 80/20 PPPFA. CHE reserves the right to appoint a limited number of about five (5) law firms to this panel, based on highest points achieved.

### **14.2. BACKGROUND**

The Council on Higher Education is a statutory body established under the Higher Education Act (101 of 1997), as amended. The mandate of the CHE includes the following:

- To provide advice to the Minister of Higher Education and Training on all higher education matters on request and proactively;
- To promote quality and quality assurance in higher education through its permanent committee, the HEQC, including auditing the quality assurance mechanisms of, and accrediting programmes offered by higher education institutions;
- To monitor the state of higher education and publishing information regarding developments in higher education on a regular basis, including arranging and coordinating conferences on higher education issues.

In the course of its work, the CHE occasionally finds itself in litigations instituted by itself, stakeholders or its employees. This makes it necessary to have a panel of law firms with various degrees of speciality and experience in the legal field to provide legal services to the CHE as and when required.

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

The successful bidder(s) will be required to assist with handling litigation matters for and against the CHE, and will be required to provide general legal services for a period of thirty-six (36) months in, amongst others, the following areas:

- (a) Education Law;
- (b) Labour Law;
- (c) Commercial law;
- (d) Legislative drafting;
- (e) Administrative Law;

- (f) Competition Law;
- (g) Corporate Governance;
- (h) Litigation;
- (i) Constitutional Law;
- (j) Contract Law;
- (k) Legal interpretation;
- (l) Any other matter requiring the provision of legal services.

The successful service provider(s) will also be expected to provide advice to ensure its communications are not inflammatory while conveying the intended message.

#### **14.3.1. Litigation strategy or methodology**

The CHE has to ensure due diligence and act in the best public interest in the execution of all its functions. Above all, it should act without fear, favour or prejudice. As an example, a plethora of review proceedings have been instituted by disgruntled institutions where outcomes of quality assurance processes undertaken by CHE have not been in their favour. In such cases, the CHE has an obligation to defend such review proceedings in a belief that the appropriate accreditation processes have been followed.

The prospective bidder must provide evidence to demonstrate how it prepares a litigation strategy or what methodology it uses, that may assist the CHE in dealing with legal issues and handling its court cases in a cost-effective, pragmatic and efficient manner.

#### **14.3.2. Pro-active measures / Analysis of short-comings and inadequacies**

Prospective bidders must demonstrate an understanding of the nature of the business of the CHE, possible litigation risks and experience in legal services relating to the core business of the CHE. The CHE would like to see a profound improvement in terms of success rate in its litigations and matters related thereto. When dealing with litigations, the bidders will be expected not to only identify problem areas but also make propositions as to how the CHE may improve in dealing with litigations and/or potentially litigious issues with a view to mitigating the risk.

Bidders would be expected to inform the CHE about new relevant developments in law that may have an impact on the mandate of the CHE.

#### **14.3.3. Communication plan and reporting strategy**

Although the communication plan and reporting strategy will be agreed with each selected panel, prior to the finalisation of the contract, the Bidder must provide a communication plan and reporting strategy with the relevant stakeholders of the case and indicate how new relevant developments in law would be communicated to the CHE.

#### **14.4. KEY CRITERIA**

##### **14.4.1. Personnel profiles of members of staff that will render the legal services to the CHE**

In order to have a sense of the calibre, areas of expertise and relevant experience of the individual members of the legal team, the bidders are expected to provide the CHE with a detailed personnel profiles for each member of the legal team that will be deployed to render the legal services to the CHE and/or handle litigation matters. Emphasis must be placed on the experience, skills-base, prominent cases handled by the member of the legal team, other relevant experience as well as the academic qualifications.

Bidders are allowed to subcontract certain expert skills, however, a document indicating a detailed profile, academic qualifications and experience must be provided for each expert to be subcontracted. In this case, a subcontractor's agreement that illustrates the immediate availability of such experts, as and when required, must be submitted with this bid.

##### **14.4.2. Focus areas**

Potential bidders must provide a clear indication of the bidder's preferred focus area(s) from the specialised areas listed in paragraph 1.3 which should align with the personnel profiles provided.

##### **14.4.3. Three (3) years of operation**

Potential bidders must indicate the period they have been in operation. Bidders who have been in operation for a minimum of three (3) years will have an advantage. Bidders must provide evidence for the period of the company's existence as well as its number of years in operation.

#### 14.4.4. **Administrative and Constitutional Law experience**

Potential bidders must demonstrate that the entity has participated/advised on Administrative and Constitutional law in the higher education sector, and provide details regarding the relevant legal issues dealt with (no confidential information is required).

#### 14.5. **CHE REQUIREMENTS FOR BIDDERS**

Service Providers are required to submit a detailed business proposal consisting of a technical and financial proposal.

##### **1. The technical proposal should contain the following information:**

- (a) The experience and qualifications of the personnel proposed to provide the legal services to the CHE. CVs of the legal team members will be analysed for the legal services expertise;
- (b) Provide certified proof of registration with the Law Society;
- (c) Provide proof of the Fidelity Fund Insurance Cover. In addition, the individual director/ partner/ attorney/s that will attend to CHE's matters must provide Fidelity Fund Certificate to the CHE;
- (d) Provide company registration documents, board of directors and management and copy of identity documents and CSD Registration Information;
- (e) Provide original or certified copy of BBBEE Certificate or sworn affidavit;
- (f) Provide three (3) reference letters from previous clients where a similar project was completed; and
- (g) Full completion of the attached SBD Forms.

*\* **NB:** CHE will conduct on screening of mandatory documents to check whether bidders meet compliance requirements. Not providing these documents may result in the bidder being disqualified from bid evaluation process.*

##### **2. Briefing Session**

CHE officials will conduct a compulsory briefing session on **01 February 2018** at **10:00am**. No bidder will be allowed to bid if they did not attend the briefing session.

#### **15. EVALUATION AND SELECTION CRITERIA**

The CHE 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:

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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>70</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>70</b> points.

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

Without limiting the generality of the CHE'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 this 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
<b>Declaration of Interest – SBD 4</b>	<b>YES</b>	Complete and sign the supplied pro forma document

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<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>Bidder Compliance form for Functional Evaluation</b>	<b>NO</b>	Complete
<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>Fidelity Fund Insurance Cover</b>	<b>NO</b>	Submit proof of the cover

**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 **70** points of **100** points.
- ii. The overall score must be equal or above **70** points in order to proceed to Gate 2 for Price and BBBEE evaluations.

As part of due diligence, CHE 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 CHE's sole discretion.

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

Criterion	Maximum Points to be awarded	Reference page in Proposal ( <i>Please insert page number, where possible</i> )
<b>Functionality</b>		
<b>1.1 Work Methodology</b> The Bidder must: <ul style="list-style-type: none"> <li>• be able to demonstrate an understanding of the nature of the business of the CHE, possible litigation risks and experience in legal services related to the core business of the CHE; and</li> <li>• prepare a detailed litigation strategy and demonstrate how such approach will assist the CHE in achieving its business objectives and ensure cost efficiency.</li> </ul>	<b>30</b>	



<p><b>1.2 Value Adding Services</b></p> <ul style="list-style-type: none"> <li>The Bidder must indicate what types of proactive measures would be put in place to assist CHE in achieving its business objectives as an advisor in the Higher Education Sector.</li> </ul>	<b>5</b>	
<p><b>1.3 Legal Team Experience</b></p> <p>The Bidder must:</p> <ul style="list-style-type: none"> <li>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;</li> <li>indicate if sub-contractors may be utilised as experts in certain instances, and add the credentials and profiles of such experts; and</li> <li>include examples of any matter(s) raising public interest that the bidder participated/advised in, and provide a reference for such matter (confidential information not required).</li> </ul>	<b>21</b>	
<p><b>1.4 Communication Plan</b></p> <p>The Bidder must:</p>	<b>10</b>	

<ul style="list-style-type: none"> <li>• provide a communication plan and reporting strategy with the relevant stakeholders of the case; and</li> <li>• indicate how new relevant developments in law would be communicated to the CHE.</li> </ul>		
<p><b>1.5 Firm's Experience</b> The Bidder must indicate:</p> <ul style="list-style-type: none"> <li>• the period the law firm been in existence;</li> <li>• the period the law firm been in operation; and</li> <li>• the rate for successful cases it handled.</li> </ul>	<b>15</b>	
<p><b>1.6 Administrative and Constitutional law</b></p> <ul style="list-style-type: none"> <li>• The Bidder must provide an indication of any significant Administrative and Constitutional law related cases the bidder has participated in the higher education sector.</li> </ul>	<b>5</b>	
<p><b>1.7 Reference Letters</b> The Bidder must:</p> <ul style="list-style-type: none"> <li>• provide three (3) Written and Contactable References.</li> <li>• references must not be more than six (6) months old from the closing date of this bid.</li> </ul>	<b>9</b>	
<p><b>1.8 Letter of Good Standing</b> The Bidders must provide a valid letter of good standing issued by the Law Society.</p>	<b>5</b>	
<b>Total Points for Functionality</b>	<b>100</b>	

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

Only Bidders that have met the **70** point 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 **CHE** 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 CHE requires bidders to propose two pricing proposals being for the Appointment of a Panel of Law Firms for Provision of Legal Services to the Council on Higher Education (CHE). Pricing Proposal must be submitted in separate sealed file (File 2). The file must clearly marked "Pricing Proposals" and the in file there must be a detail price breakdown per below categories:

### 16.1. 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

1. 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 CHE is prepared to enter into a contract with the successful Bidder(s).
- b. The bidder submitting the General Conditions of Contract to the CHE 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 CHE and the successful bidder will conclude a Service Level Agreement regulating the specific terms and conditions applicable to the services being procured by the CHE, more or less in the format of the draft Service Level Indicators included in this tender pack.
- 19.2. The CHE 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 CHE 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 CHE or pose a risk to the organisation.

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

The CHE 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.
- 20.8. to allocate specific case/s to one of the 5 appointed legal firms based on the expertise of the firm or its capacity to handle the case

## **21. The CHE 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 CHE;
  - 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 CHE 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 CHE;
- 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 CHE as a client before any other consideration; and
- h. To ensure that any information acquired by the bidder(s) from the CHE 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 CHE 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 CHE 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 CHE'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 CHE 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 CHE against the bidder notwithstanding the conclusion of the Service Level Agreement between the CHE 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 CHE, 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 CHE 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 CHE harmless from any and all such costs which the CHE may incur and for any damages or losses the CHE 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 CHE 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 CHE 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 CHE, or whose verification against the Central Supplier Database (CSD) proves non-compliant. The CHE 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 CHE 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 CHE allows a bidder to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the bidder and the CHE 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 CHE'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 CHE remain proprietary to the CHE and must be promptly returned to the CHE 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 CHE'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 CHE PROPRIETARY INFORMATION**

Bidder will on their bid cover letter make declaration that they did not have access to any the CHE 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: CHE/CS/05/01/2018), the CHE may terminate the Agreement at its own 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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