

REFERENCE: RFP 13/2020
REQUEST FOR PROPOSAL

DESCRIPTION:

APPOINTMENT OF A PANEL OF ATTORNEYS

DATE ISSUED: 30 October 2020

CLOSING DATE: 02 December 2020, 11H00

TENDER BOX:

GROUND FLOOR, LINTON HOUSE
BROOKLYN BRIDGE
570 FEHRSEN STREET
BROOKLYN
PRETORIA

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1. INTRODUCTION

The South African Revenue Service (SARS) is uniquely placed to contribute to government's plan of action to address socio-economic growth and development, poverty alleviation and job creation. Through the vital role of providing the revenue to fund the full spectrum of initiatives, plans, programmes and strategies of national and provincial government departments, SARS plays a crucial enabling role in government delivery.

2. OVERVIEW OF SARS

Our Mandate

The SARS Act, 1997, enables SARS to:

- Collect all revenue due;
- Ensure optimal compliance with Tax and Customs legislation; and
- Provide a Customs service that optimises revenue collection, protect our borders and facilitate legitimate trade.

The primary legislation that SARS administers includes:

- Income Tax Act, 1962;
- Customs and Excise Act, 1964;
- Value-Added Tax Act, 1991;
- Tax Administration Act, 2011; and
- Employment Tax Incentive Act, 2013.

SARS Higher Purpose

Our work enables Government to build a capable State, to foster sustainable economic growth and social development that serves the wellbeing of all South Africans.

Our Strategic Intent

Our mandate is to collect all revenue due; ensure optimal compliance with tax and customs legislation; provide a customs service to optimise revenue, border protection and facilitate legitimate trade. To give effect to our mandate, our Strategic Intent is to develop a Tax & Customs system based on Voluntary Compliance.

Our Vision

It is our Vision to build a smart modern SARS with unquestionable integrity that is trusted and admired.

Our Strategic Objectives

In support of our Strategic Intent and to give effect to our compliance philosophy, we have identified and committed to achieving nine (9) Strategic Objectives to guide and inform our efforts and decisions and focus our resources over the course of this planning cycle. Our nine (9) Strategic Objectives are as follows:

- Provide Clarity and Certainty for taxpayers and traders of their obligations;
- Make it easy for taxpayers and traders to comply with their obligations;
- Detect taxpayers and traders who do not comply, and make non-compliance hard and costly;
- Develop a high performing, diverse, agile, engaged and evolved workforce;
- Increase and expand the use of data within a comprehensive knowledge management framework to ensure integrity, derive insight and improve outcomes;
- Modernise our systems to provide digital and streamlined online services;
- Demonstrate effective resource stewardship to ensure efficiency and effectiveness in delivering quality outcomes and performance excellence;
- Work with and through stakeholders to improve the tax ecosystem; and
- Build public trust and confidence in the tax administration system.

Our Values

Endeared by a sense that we serve a Higher Purpose in the service of South Africans, and committed to the fulfilment of our Mission & Mandate, we hold the following values dear:

- Uncompromising regard for Taxpayer Confidentiality;
- Unquestionable Integrity, Professionalism and Fairness;
- Exemplary Public Service; and
- Incontestable insights from Data & Evidence.

3. PURPOSE OF THIS REQUEST FOR PROPOSAL (RFP)

The purpose of this Request for Proposal (RFP) is to solicit proposals from potential Service Provider(s), with a **minimum B-BBEE status level 3**, to be appointed to the **SARS Panel of Attorneys**.

This RFP document details and incorporates, as far as possible, the tasks and responsibilities of the potential Service Provider(s) required by SARS.

This RFP does not constitute an offer to do business with SARS, but merely serves as an invitation to bidders to facilitate a requirements-based decision process.

4. LEGISLATIVE FRAMEWORK OF THE BID

4.1 TAX LEGISLATION

When submitting a bid to SARS, Service Provider(s) must be compliant and remain compliant with all applicable tax legislation for the entire contract term, including but not limited to the Tax Administration Act, 2011 (Act No. 28 of 2011), Income Tax Act, 1962 (Act No. 58 of 1962) and Value-Added Tax Act, 1991 (Act No. 89 of 1991).

4.2 PROCUREMENT LEGISLATION

SARS 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 its regulations, as well as the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

4.3 TECHNICAL LEGISLATION AND/OR STANDARDS

Bidders should be cognisant of all legislation and/or standards specifically applicable to the services.

5. BRIEFING SESSION

A non-compulsory virtual briefing session will be facilitated, to clarify to Bidder(s) the scope and extent of work to be executed. Bidders must refer to paragraph 8 of the RFP document for the date and time of the briefing session. Join Zoom Meeting:

<https://zoom.us/j/97941548603?pwd=NDNxUC9zV3hpZTY0QWhzN0V5VWJwUT09>

Meeting ID: 979 4154 8603

Passcode: 018518

6. DURATION OF CONTRACT

The successful Bidders appointed will remain pre-approved on the panel for a period of sixty (60) months, during this period.

7. APPOINTMENT TERMS

SARS does not guarantee that successful Bidders will receive work during their appointment term. Service Requests will be used on an *ad hoc* basis, as and when required by SARS. The principle of rotation to ensure equitable distribution will be applied and due diligence conducted to ensure that no conflict of interests exist prior to the allocation of work.

8. TIMELINE OF THE BID PROCESS

The validity period of the tender and the withdrawal of offers, after the Closing Date and time, is one hundred and eighty (180) days. SARS reserves the right to extend the validity period.

The project timeframes of this Bid are set out below:

Activity	Date Due
Advertisement of Bid in the: - Government Tender Bulletin; and - National Treasury Tender Portal.	30 October 2020
Distribution of Bid documents on SARS website	02 November 2020
Non-compulsory virtual briefing session	05 November 2020 at 14H00
Last date for questions relating to the bid from Service Provider(s)	21 November 2020
Bid Closing Date	02 December 2020 at 11H00
Notice to Service Provider(s)*	March 2021 / April 2021
Contract commencement date*	May 2021

All the times given in this bid are South African Standard Time.

Any time or date in this bid is subject to change at SARS' discretion. A reference to a time or date in this bid does not create an obligation on the part of SARS to take any action, or create any right in any way for any Bidder to demand that any action be taken on that specific date or at that specific time. The Bidder accepts that, if SARS extends the deadline for bid submission (the Closing Date) for any reason, the requirements of this Bid will otherwise apply equally to the extended deadline.

9. CONTACT

A nominated official of the Bidder(s) can make enquiries only in writing, to the specified person, Mr Andre Taljaard (Procurement Tender Office) via email TenderOffice@sars.gov.za and copy rft-professionalservices@sars.gov.za. Bidders must make all enquiries in writing and send them to the email addresses listed above.

10. SCOPE OF WORK

10.1 BACKGROUND

SARS may from time to time utilise the services of admitted Attorneys to provide legal services to SARS. These services may include the provision of legal opinions to SARS and/or instituting or defending legal actions on behalf of SARS and/or its employees in accordance with its internal policy and procedures

Bidders should note that SARS also makes use of the legal services of the State Attorney.

10.2 EXPERTISE REQUIRED

SARS requires the services of a Bidder who possesses skills, expertise and knowledge in the various legal fields / categories listed herein below. This includes successfully disposing of litigious matters in the relevant sphere of law and endeavouring to achieve either a win or a favourable outcome for SARS.

The Specialised Litigation Units regularly receives (or even launches) matters on an urgent basis and, as such, there is a need for Bidders to expeditiously deal with instructions received from SARS. The Bidder will also be required to provide legal opinions, exchange correspondence on instructions and brief counsel where necessary. When carrying out these functions, Bidders are encouraged to support the development and employment of Historically Disadvantaged (including counsel) personnel. SARS also requires the services to be rendered in the most professional and cost efficient manner possible. For this reason, SARS requires Bidders who are both skilled in and knowledgeable about all types of tax legislation.

The Customs and Excise Litigation Unit of SARS requires Bidders to timeously and effectively handle notices of intended litigation, as well as subsequent litigation instituted against the Commissioner of SARS in respect of determinations and decisions made in terms of the Customs and Excise Act, 1964 (Act No. 91 of 1964). The Unit will require Bidders to provide legal opinions to the Commissioner, exchange correspondence on instruction, brief counsel and experts, and all matters relating thereto.

The Corporate Legal Services and Employee Relations Units of SARS deal with all non-tax related matters. To be of assistance to these Units, the Bidder will be expected to advise SARS on commercial matters such as contract drafting, contract negotiations and contractual disputes; intellectual property rights and information technology law; procurement processes and tender compliance; administrative justice and labour law. Bidders will further be expected to assist the aforesaid Units with damages claims or other claims sounding in money, including debt collection and/or any related legal services. Bidders with a strong background in commercial law, company law, banking law, intellectual property law, information technology law, constitutional law, administrative law, public procurement law, labour law, insolvency law, property law and/or damages claims are required. Bidders must be willing and/or capable of enforcing and/or protecting SARS's rights and interests in any appropriate forum and be prepared to do so on an urgent basis, if necessary.

10.3 BIDDERS RESPONSES / DOCUMENTATION REQUIRED

Bidders may submit proposals in respect of any one (1) or more of the eight (8) legal service categories listed below.

Bidders must complete **Annexure A0** and clearly indicate the categories they are tendering for.

Bidders must submit all the required information for each category they are tendering for. Each category will be evaluated independent of each other, and it is therefore important that Bidders respond to all the required information separately should they be submitting proposals in one (1) or any combination of the eight (8) categories.

Bidders must refer to the following Annexures in their response to the documentation required for each category:

- **ANNEXURE A:** All Categories - Bidders **must** complete Annexure A once;
- **ANNEXURE A1:** CATEGORY 1 - Tax Law;
- **ANNEXURE A2:** CATEGORY 2 - Commercial Law; Company Law and/or Banking Law;
- **ANNEXURE A3:** CATEGORY 3 - Constitutional Law; Administrative Law and/or Public Procurement Law;
- **ANNEXURE A4:** CATEGORY 4 - Information Technology Law and/or Intellectual Property Law;
- **ANNEXURE A5:** CATEGORY 5 - Customs & Excise Law;
- **ANNEXURE A6:** CATEGORY 6 - Property Law; Mining Law and/or Insolvency Law;
- **ANNEXURE A7:** CATEGORY 7 - Labour Law; and
- **ANNEXURE A8:** CATEGORY 8 - General Legal Assistance

10.3.1 COMPANY PROFILE

Bidders are required to submit a company profile, including detailed CVs of all Key Personnel set out as follows [*Refer to relevant Annexure as outlined above] :

- 10.3.1.1 The history of the legal practice and experience of Key Personnel in practice management;
- 10.3.1.2 The respective backgrounds, fields of specialisation and relevant experience of all Key Personnel;
- 10.3.1.3 The background and experience of staff members who assist such Key Personnel (i.e. secretaries, candidate attorneys, professional assistants and/or associates);
- 10.3.1.4 A matrix indicating the names of all professional staff members, who will be attending to SARS matters, and their applicable attorney tier and an indication as to whether they are previously disadvantaged individuals;
- 10.3.1.5 Information on support staff [i.e. administrative staff (i.e. filing clerks), messengers and/or drivers;
- 10.3.1.6 Information in respect of resources and infrastructure available (e.g. computers, internet, email, research resources, phone, printing & photocopying facilities, software utilised in the firm, information security safeguards, company vehicles etc.);
- 10.3.1.7 Business references. SARS reserves the right to verify information provided; and
- 10.3.1.8 Location of the legal practice, including distance (measured in kilometres) from the closest court(s).

The proposals submitted by Bidders must be as comprehensive as possible.

10.3.2 REFERENCES

Bidders are required to provide the name(s) of at least three (3) current clients to whom similar legal services are being provided. Alternatively, if the name of a former client/s is furnished to SARS as a reference but are no longer current, Bidders must indicate the reason for termination of their mandate.

Bidders are obliged to include for each reference: the name of the company, the name of the contact person, the company's business address, phone number/s, the duration of the Bidder's contract with the company and a brief description of all services provided to such company.

10.4 FEES & DISBURSEMENTS

- 10.4.1 For pricing purposes, Attorneys employed by the Bidder will be divided into five tiers.

- **Tier 1:** Trainees/Candidate Attorneys
- **Tier 2:** Attorneys with 3 (three) years or less relevant post-article experience;
- **Tier 3:** Attorneys with more than 3 (three) years, but equal to or less than 7 (seven) years' relevant post-article experience;
- **Tier 4:** Attorneys with more than 7 (seven) years but equal to or less than 15 (fifteen) years' relevant post-article experience; and
- **Tier 5:** Attorneys with more than 15 (fifteen) years' relevant post-article experience.

10.4.2 The Bidder must propose a tariff that is not more than the maximum percentage allowed for the SARS Proposed Tariffs, which is provided in **Annexure B**. The maximum percentage that can be applied to such tariff must be calculated with reference to the base fee proposed for such line item as indicated below:

- Tier 1: Tariff fixed, as indicated in Annexure B;
- Tier 2: A maximum up to 25% of the SARS Proposed Tariff;
- Tier 3: A maximum up to 30% of the SARS Proposed Tariff;
- Tier 4: A maximum up to 30% of the SARS Proposed Tariff; and
- Tier 5: A maximum up to 50% of the SARS Proposed Tariff.

10.4.3 The title of an Attorney i.e. director, associate or professional assistant will thus not determine the fee which may be charged by such director, associate or professional assistant. The Bidder's Proposed Tariff to be charged may not exceed the tariffs stipulated in SARS's Schedule of Proposed Tariffs in respect of each tier, as set out above. A director with 3 (three) years or less post-article experience and who qualifies as a tier 2 Attorney, may thus not charge a fee equivalent to that of a tier 5 Attorney.

10.4.4 SARS reserves the right to indicate the level of Attorney that is required to render the specific legal services to SARS, with reference to the aforesaid tiers. Should a Bidder choose to assign an Attorney who falls in a higher tier to attend to the instructions, such Bidder may not charge the higher fee.

10.4.5 Where the instructions are to be attended to by a candidate attorney he/she shall work under the supervision of a tier 3, 4 or 5 Attorney, who will sign-off the work produced.

10.4.6 In the event that SARS has not prescribed the level of Attorney required for a specific instruction, the Bidder must in good faith appoint an Attorney with suitable experience and qualifications.

10.4.7 In the event that an Attorney moves to a new tier during the service provider's appointment term, the Bidder shall notify SARS accordingly in writing within thirty (30) days prior to such move and SARS shall have the right to request another Attorney from the Bidder, who is at the same tier previously occupied by the Attorney who has moved to a higher tier, to replace him/her before such Attorney renders his/her next account to SARS.

- 10.4.8 The Bidder will charge fees as proposed in its proposal and/or as accepted by SARS.
- 10.4.9 In no event should a Bidder increase their proposed tariffs to SARS. Nonetheless, SARS may at its discretion and subject to SARS policies and procedures, approve a request from a Bidder for an increase of the fees before commencement of the work, under the circumstances outlined below:
- 10.4.9.1 Where instructions are received from SARS to attend to a very urgent matter on extremely short notice;
 - 10.4.9.2 Where instructions are received from SARS to attend to a highly complex matter; or
 - 10.4.9.3 The services of a specific, highly skilled attorney are requested by SARS (i.e. by name).
- 10.4.10 SARS reserves the right not to utilize the services of a legal service provider on the SARS Panel of Attorneys who seeks to increase their fees contrary to paragraph 10.4.9 above.
- 10.4.11 SARS will reimburse Bidders for travel expenses in line with the tariffs as stipulated in the Annexure to Transport Circular No 1 of 1977 (Transport Handbook of Tariffs for the use of Motor Transport as amended; and Private) issued by the Department of Transport.
- 10.4.12 Accommodation will be reimbursed in line with the National Treasury rates and SARS Travel Policy (to be provided at the contracting stage).
- 10.4.13 SARS will pay for actual disbursement costs of photocopying, printing and other related stationery.

10.5 WITHDRAWAL OF INSTRUCTIONS AND TERMINATION OF AGREEMENT

- 10.5.1 A Bidder will be regarded as having acted in bad faith and SARS shall reserve the right to withdraw instructions in the event SARS finds that:
- 10.5.1.1 there is poor performance by the Bidder and non-compliance with the service levels;
 - 10.5.1.2 there was failure to monitor and sign-off work performed by junior attorneys;
 - 10.5.1.3 instructions and/or duties that could be attended to, or executed by junior staff members have been assigned to senior Attorneys and billed for at such senior Attorneys' rates;
 - 10.5.1.4 multiple 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 Bidder failed to request SARS's prior permission in writing to appoint multiple Attorneys for such an instruction;
 - 10.5.1.5 unrealistic time billing taking into account the nature (i.e. relative simplicity) of any action performed and/or service rendered by an Attorney; and
 - 10.5.1.6 failure to comply with any terms of this RFP, as well as the MSA entered into between SARS

and the Service Provider.

The aforesaid list is not exhaustive and SARS will have the right to withdraw instructions in accordance with the provisions contained in the, MSA and in any event that it is legally entitled to do so.

SARS reserves the right to terminate the MSA if the bidder fails to meet the service levels or any other terms in the MSA.

10.6 CONDITIONS APPLICABLE TO APPOINTMENT

- 10.6.1 SARS reserve the right to request one panellist to work with another panellist where the circumstances permit and in order to transfer skills and assist with transformation, on terms and conditions determined by SARS at the time through a Service Request.
- 10.6.2 Bidders are encouraged to support the development and employment of Historically Disadvantaged People (including counsel).
- 10.6.3 SARS will require the Successful Bidders to disclose any conflict of interests when required by SARS.
- 10.6.4 Monthly written reports of all Service Requests received from SARS must be provided at no additional cost to SARS. Such reports must be sent to the relevant instructing SARS official, or his/her nominee on a specific matter, per email.
- 10.6.5 When cases have been postponed at the request of the Bidder acting on behalf of SARS, or due to any action or non-action of such Bidder, including non-compliance with any procedural requirements, the Bidder will bear the costs of postponement, and this amount will not be recovered from the SARS.
- 10.6.6 In the event that a firm of attorneys merges with a firm which is not on SARS's Panel of Attorneys:
- The Bidder shall give SARS at least thirty (30) days' written notice to this effect;
 - The inclusion of such merged firm on the SARS's Panel will be subject to the written approval of SARS and it will further be subject to the condition that the merged firm submit a letter of acceptance of SARS's tender conditions and MSA;
 - A profile as per paragraph 10.3 of this specification must be submitted;
 - The merged firm must meet the pre-qualification and mandatory requirements as per paragraphs 12.1 and 12.2. Such merged firm shall not execute any of SARS instructions without the Bidder having obtained written approval from SARS; and
 - Should SARS not approve the merged firm, SARS shall reserve the right to terminate the MSA it has entered into with the Bidder, in which case the Bidder will finalise pending Service Requests

at the discretion of SARS.

- 10.6.7 Successful Bidders will be required to negotiate fees with advocates before a brief is finalised. Bidders may not appoint Counsel, Experts, External Service Providers or any Third Party unless written instructions to this effect have been received from SARS.
- 10.6.8 In the event that Bidders make use of a Correspondent, which is not on SARS's Panel of Attorneys, such Correspondent will be subject to SARS's approval. A Bidder may be instructed to appoint a Correspondent from SARS' Panel of Attorneys.
- 10.6.9 Payment of legal fees by SARS will be effected within 30 (thirty) days from date of receipt of an acceptable invoice.
- 10.6.10 SARS further reserves the right during the term of the MSA, if necessary, to appoint a firm of attorneys outside the approved Panel of Attorneys for purposes of rendering the services to SARS, subject to the necessary procurement processes being followed.
- 10.6.11 Successful Bidders must enter into a MSA with SARS. For the sake of consistency and fairness, the terms and conditions of the MSA will be binding on the Bidder and will not be subject to negotiation.

10.7 CONFIDENTIALITY

- 10.7.1 The Bidder will be expected to sign the SARS Oath / Affirmation of Secrecy.
- 10.7.2 The Bidder and all Key Personnel that will be working on SARS matters undertake, at all times during the existence of the MSA or after termination thereof, not to reveal any confidential or sensitive information or knowledge concerning SARS or clients of SARS.

11. INSTRUCTIONS TO BIDDER(S)

11.1 Registration on Central Supplier Database

Bidders who have no presence in South Africa currently are not required to register on CSD, however should such entities be successful in winning the award, and they will be expected to register on the Central Supplier Database. All other local Bidders or foreign Bidders that have local presence at the time of tendering are expected to abide by these provisions. CSD can be accessed via the following link: <https://secure.csd.gov.za/>

Bidders who wish to render services to SARS will no longer register at SARS directly. Bidders will have

to register on National Treasury Central Supplier Database (CSD) as per National Circular No. 4A of 2016/2017 – Central Supplier Database.

National Treasury will maintain the database for all suppliers for Government and its institutions; and all existing and prospective suppliers are requested to register on the CSD by accessing the National Treasury website at www.CSD.gov.za.

- 11.2** Bids must be properly packaged and deposited in the below mentioned tender box on or before Closing Date and time at the SARS Tender Office situated at:

Linton House - Ground Floor
 Brooklyn Bridge
 570 Fehrsen Street
 Brooklyn
 Pretoria

- 11.3** Bid documents may also be couriered to the Tender Office - SARS Procurement Department, Linton House, Brooklyn Bridge, 570 Fehrsen Street, Brooklyn, Pretoria, 0181.

- 11.4** Bid documents will only be considered if received by SARS before the Closing Date and time, regardless of the method used to send or deliver such documents to SARS.

- 11.5** Late bids will not be accepted and shall be returned to the Bidder(s).

- 11.6** The Bidder(s) are required to submit one (1) copy of each file (original and duplicate) and one (1) USB with the contents of each file by the Closing Date and time.

- 11.7** Each file and USB must be **marked correctly and sealed separately** for ease of reference during the evaluation process. Pricing information should not be included in the Technical file. Furthermore, the proposal and information in the USB must be labelled and submitted in the following format:

FILE 1 (ONLY TECHNICAL PROPOSAL)	
Exhibit 1 <ul style="list-style-type: none"> Pre-qualification documents (SBD documents) Proof of Central Supplier Database (CSD) Registration Report (preferably the CSD 	Exhibit 2 <ul style="list-style-type: none"> Mandatory Documents, as per Table 12B List of Categories Bidding for (Annexure A0) Company profile (Annexure A) Technical Response to Annexure A1-A8 for

FILE 1 (ONLY TECHNICAL PROPOSAL)	
report in PDF format) from National Treasury	each category as follow: <ul style="list-style-type: none"> ▪ References ▪ Supporting documents for technical response
Exhibit 3 <ul style="list-style-type: none"> • Signed General Conditions of Contract (GCC) • Draft Master Services Agreement 	
FILE 2 (PRICE, BEE & FINANCIAL STATEMENTS)	
Exhibit 1 <ul style="list-style-type: none"> • B-BBEE Certificate • SBD 6.1 	Exhibit 2 <ul style="list-style-type: none"> • Pricing Schedule – Annexure C
Exhibit 3 Three (3) years audited / reviewed financial statements	
Note: SARS requests that Bidders use Lever Arch files to package their proposals.	

12. EVALUATION AND SELECTION CRITERIA

SARS has set minimum standards (Gates) that Bidders must meet in order to be evaluated and selected as a Successful Bidder. The minimum standards consist of the following Gates:

- **Pre-Qualification Criteria (Gate 0)** – Bidder(s) must submit all Standard Bidding Documents as outlined in paragraph 12.1.
- **Pre-technical (Mandatory) Criteria (Gate 1)** – The proposed resource(s) must meet the mandatory requirements in each role as outlined in paragraph 12.2.
- **Technical Evaluation Criteria (Gate 2)** – Bidder(s) will be evaluated out of one hundred (100) points during Technical Evaluations and the minimum threshold of seventy-five points (75) must be achieved. The process is outlined in paragraph 12.3.

12.1 PRE-QUALIFICATION CRITERIA – GATE 0

Without limiting the generality of SARS' other critical requirements for this Bid, a Bidder must submit the documents listed in **Table 12A** below. Documents must be completed and signed by the duly authorised representative of the prospective Bidder. The Bidder's proposal may be disqualified for non-submission

of any of the documents.

Table 12A: Documents that must be submitted for Pre-Qualification

Name of the document that must be submitted	Non-submission may result in disqualification
Central Registration Report (Central Database System) from National Treasury	YES – Bidders must register on the Central Database System and submit the Report as confirmation of registration.
Tax Compliance status pin	YES – Submit Tax Compliance status pin.
SARS' s Oath / Affirmation of Secrecy	YES – Complete and sign the supplied pro forma document in the presence of a Commissioner of Oaths and initial every page.
Invitation to Bid – SBD 1	YES – Complete and sign the supplied pro forma document.
Pricing Schedule	YES – Submit full details of the pricing proposal to SARS in Annexure C.
Declaration of Interest – SBD 4	YES – Complete and sign the supplied pro forma document.
Preference Point Claim Form – SBD 6.1	NO – Non-submission will lead to a zero score on B-BBEE.
General Conditions of Contract (GCC)	YES – Sign the supplied GCC.
Declaration of Bidder's Past Supply Chain Management Practices – SBD 8	YES – Complete and sign the supplied pro forma document.
Certificate of Independent Bid Determination – SBD 9	YES – Complete and sign the supplied pro forma document.
A complete set of audited or reviewed annual financial statements for three (3) most recent financial periods in the name of the bidding entity	NO – Please submit.

12.2 MANDATORY REQUIREMENTS - PRE-TECHNICAL (GATE 1)

Only Bidder(s) that have met the pre-qualification criteria mentioned in Table 12A will be evaluated for compliance with the Mandatory Requirements.

In line with the Government's objectives for the advancement of SMMEs and certain designated groups, pre-qualification criteria have been introduced for preferential procurement. The pre-qualification criteria may stipulate that only one or more of the following tenderers may respond to this bid:

- a) A tenderer having a stipulated minimum B-BBEE status level of contributor;
- b) An EME or QSE;
- c) A tenderer subcontracting a minimum of 30% to-
 - i. An EME or QSE which is at least 51% owned by black people;
 - ii. An EME or QSE which is at least 51% owned by black people who are youth;
 - iii. An EME or QSE which is at least 51% owned by black people who are women;
 - iv. An EME or QSE which is at least 51% owned by black people with disabilities;
 - v. An EME or QSE which is at least 51% owned by black people living in rural or underdeveloped areas or townships;
 - vi. A cooperative which is at least 51% owned by black people;
 - vii. An EME or QSE which is at least 51% owned by black people who are military veterans; and
 - viii. An EME or QSE.

12.2.1 In respect of this RFP, the minimum B-BBEE status level of Bidder must be level 3, as appears in Table 12B.

12.2.2 Bidders must also meet all of the following mandatory requirements:

- 12.2.2.1 A Bidder must hold a Fidelity Fund Certificate/s (if a practising Attorney);
- 12.2.2.2 Be an admitted Attorney, who is in good standing with the Legal Practice Council of South Africa; and
- 12.2.2.3 The legal practice must have been established for a minimum period of five (5) years. Alternatively, at least one (1) of the directors or partners of the legal practice or the sole proprietor has at least five (5) years post-article experience as a qualified practising Attorney.

A tender that fails to meet any mandatory criteria stipulated in the tender documents is **NOT** an acceptable tender and will result in the **immediate disqualification** of a Bidder.

Table 12B: Mandatory Requirements

Mandatory Requirements	Non-submission WILL result in disqualification
Minimum B-BBEE status level 3	YES – Submit a valid B-BBEE status level verification certificate or sworn affidavit (whichever applicable according to SBD 6.1) with minimum B-BBEE status level 3.
Fidelity Fund Certificate	YES – Certified copy of Valid Fidelity Fund Certificate/s of the sole practitioner or directors or partners of the bidding entity.
Letter of Good Standing	YES – Certified copies of valid Letter of Good Standing with Legal Practice Council of South Africa for all the Attorneys of the bidding entity.
Company profile demonstrating five (5) years of existence or one (1) of the directors or partners of the legal practice or the sole proprietor has at least five (5) years post-article experience	YES – Company profile that indicates that the company has been established for a minimum period of five (5) years or one (1) of the directors or partners of the legal practice or the sole proprietor has at least five (5) years post-article experience.

The Bidders must meet the mandatory requirements as stated above to proceed to Gate 2.

12.3 TECHNICAL EVALUATION (GATE 2)

Only Bidder(s) that have met the Mandatory Criteria in Gate 1 will be evaluated in Gate 2, as per Annexure A and A1 – A8. Functionality (Technical Evaluation) will be out of 100 points.

Bidder(s) that achieve a minimum threshold of **75** points out of **100** points for technical capabilities **for each category** will proceed to Gate 3.

The table below illustrates the summary for the technical evaluation.

Table 12C: Technical evaluation Criteria

Technical Capabilities	Points
All categories – Annexure A <ul style="list-style-type: none"> Available Resources and Infrastructure Support Staff 	25
Category 1 – 8 (Annexure A1 – A8) <ul style="list-style-type: none"> Background, fields of specialisation and relevant experience of Key Personnel Backgrounds and experience of staff members assisting Key Personnel References from clients 	75

Note: Bidders should refer to Annexure A and Annexure A1 – A8 for the detailed technical evaluation criteria.

12.4 PRICE AND B-BBEE EVALUATION (GATE 3)

12.4.1 Stage 1 – Price Evaluation

12.4.1.1 A Schedule of SARS's Proposed Tariffs is attached as **Annexure B** to give Bidders guidance on SARS's acceptable rates.

12.4.1.2 Bidders must clearly indicate their respective proposed tariffs in the Pricing Schedule attached as **Annexure C**, taking into account SARS's Schedule of Proposed Tariffs. The Pricing Schedule submitted by Bidders will be used for internal analysis, and will form part of the MSA for future engagement with the Successful Bidders as and when the services are required.

12.4.1.3 Bidders must complete the Pricing Schedule in full, regardless of whether the Bidder employs Attorneys who fall in each tier or not. Should a Bidder fail to provide SARS with a 100% completed Pricing Schedule [i.e. in respect of all 5 (five) attorney tiers], the SARS Proposed Tariffs will be applicable to all cells left blank in such Bidder's Pricing Schedule.

12.4.1.4 Where "N/A" appears in any cells in SARS's Proposed Schedule of Tariffs, the Bidder is not allowed to charge more than the maximum fee proposed for such line item, despite the Attorney attending to such item perhaps falling in a higher attorney tier.

12.4.1.5 Bidders proposed tariff must be applied per line item. The Bidders tariff may thus not be

calculated based on the total fees payable in terms of a specific attorney tier, nor on the total overall fees payable in terms of such bidder's Pricing Schedule.

12.4.1.6 Bidders must note that tariffs stipulated in their Pricing Schedule will be reviewed in line with the amendments of the Rules issued in terms of section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985) at the discretion of SARS, and if necessary, after thorough consultation with the service provider(s).

12.4.1.7 Bidders that meet the technical threshold and whose fees are aligned to SARS acceptable rates will be considered for appointment to the SARS Panel of Attorneys, to be utilised according to the SARS internal Utilisation Guideline and Standard Operating Procedures.

12.4.2 Stage 2 – B-BBEE Evaluation (10 points)

Bid Evaluation Process Gate 3: B-BBEE EVALUATION

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.

Adjudication Criteria	Points
A duly completed Preference Point Claim Form: Standard Bidding Document (SBD 6.1) and a B-BBEE Certificate.	10

The checklist below indicates the B-BBEE documents that must be submitted for this tender. Failure to submit the required documents will result in scoring zero for B-BBEE.

Table 12D: B-BBEE Checklist

Classification	Turnover	Submission Requirement
Exempted Micro Enterprise (EME)	Below R10 million p.a.	A sworn affidavit (Preferably a Department of Trade and Industry [DTI] Affidavit) or a Certificate from the Companies and Intellectual Property Commission (CIPC) or a B-

		BBEE Rating Certificate from a SANAS Accredited Rating Agency.
Qualifying Small Enterprise (QSE)	Between R10 million and R50 million p.a.	Certified copy of B-BBEE Rating Certificate from a SANAS Accredited Rating Agency, or a sworn affidavit (Preferably a DTI Affidavit). This is only applicable to QSEs with 51% Black Ownership and above.
Large Entity (LE)	Above R50 million p.a.	Certified copy of B-BBEE Rating Certificate from a SANAS Accredited Rating Agency.

Failure on the part of a Bidder to submit a B-BBEE Verification Certificate from a verification agency accredited by the South African Accreditation System (SANAS), a Certificate from the Companies and Intellectual Property Commission (CIPC) or a sworn affidavit confirming annual turnover and level of black ownership in case of an EME and QSE together with the bid, will be interpreted to mean that preference points for B-BBEE status level of Bidder are not claimed.

Use and acceptance of Affidavits

Please note that sworn affidavits must be signed by the Bidder's representative and attested to by a Commissioner of Oaths.

SARS reserves the right to request that Bidders submit their Black ownership and turnover information in support of their Affidavits.

Joint Ventures and Consortiums

A trust, consortium or joint venture (including unincorporated consortia and joint ventures), will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their consolidated B-BBEE status level Verification Certificate scorecard and that such a consolidated B-BBEE scorecard is prepared for every separate bid.

a. Joint Ventures (JVs) and Consortiums

Incorporated JVs must submit the B-BBEE status of the entity. Unincorporated JVs must submit a consolidated B-BBEE scorecard as if they were a group structure for every separate tender.

Proof of Existence: Joint Ventures

Bidders must submit concrete proof of the existence of joint ventures. SARS will accept signed agreements as acceptable proof of the existence of a joint venture.

The joint venture agreements must clearly set out the roles and responsibilities of the Lead Partner and the joint venture 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.

13. FINANCIAL STATEMENTS

Bidders are required to submit complete sets of audited or reviewed annual financial statements for the three (3) most recent financial periods in the name of the bidding entity. The financial statement analysis will be conducted on the shortlisted bidders.

- The annual financial statements must contain:
 - Statement of Financial Performance;
 - Statement of Financial Position;
 - Cash Flow Statement; and
 - Notes to the Financial Statements.
- Bidders(s) which are trading for less than three (3) financial periods should provide:
 - A letter detailing that fact, signed by a duly authorised representative of the entity; and
 - Any other information or documentation, which would provide more clarity on the financial history of the Bidder.
- In the event that the subsidiary is the bidding entity and submits the financial statements of the holding company for financial evaluation purposes, the holding company must furnish a Performance Guarantee that is signed by a duly authorised representative of the entity.
- In the event of the bid being in the form of a JV, the following is required:
 - Annual financial statements of the JV; and
 - A JV legal agreement detailing the percentage ownership of each entity.

SARS reserves the right to request further information with regards to the annual financial statements of a Bidder at a later stage.

14. AGREEMENTS

14.1 GENERAL CONDITIONS OF CONTRACT

Any award made to a Bidder under this bid is conditional, amongst others, upon:

- 14.1.1 such Bidder, as a minimum, accepting the terms and conditions set out in the General Conditions of Contract (GCC), which forms part of this tender pack;
- 14.1.2 such Bidder accepting all terms and conditions applicable to the provision of legal services as set out in this RFP document; and
- 14.1.3 such Bidder accepting the terms and conditions of the MSA proposed by SARS.

14.2 MASTER SERVICES AGREEMENT

- 14.2.1 The draft MSA constitutes the specialised terms and conditions upon which SARS is prepared to contractually engage the prospective Bidder(s) to render the services under this bid.
- 14.2.2 Bidders are requested to indicate their acceptance of the terms and conditions set out in the draft MSA.

14.3 INSURANCE

The Successful Bidder shall on or before the effective date and for the duration of the MSA -

- 14.3.1 be in possession of a valid and current Fidelity Fund certificate; and
- 14.3.2 have adequate professional indemnity insurance to cover any claims, losses and/or damages for which it may be liable in terms of this Agreement.

14.4 LIABILITY

- 14.4.1 The Successful Bidder shall be liable to SARS for any direct damages and/or Losses incurred by SARS due to failure by the Bidder to perform its obligations in the manner required by the MSA signed by the Parties.
- 14.4.2 The Successful Bidder shall further be liable to SARS for all indirect and consequential or special damages and/or Losses suffered by SARS as a result of gross negligence, wilful misconduct, a breach of

confidentiality provisions stipulated in the signed MSA between the Parties, breach of Applicable Laws, infringement of a third party's intellectual property rights, or a criminal act committed by the Bidder or any employees of the Bidder.

15. SPECIAL CONDITIONS OF THIS BID

15.1 SARS reserves the right:

- 15.1.1 Not to award or to cancel this bid at any time and shall not be bound to accept the lowest or any bid;
- 15.1.2 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);
- 15.1.3 To accept part of a Bid rather than the whole Bid;
- 15.1.4 To cancel and/or terminate the Bid process at any stage, including after the Closing Date and/or after presentations have been made, and/or after Bids have been evaluated. To correct any mistakes at any stage of the Bid that may have been in the Bid documents or that occurred at any stage of the Bid process; and/or
- 15.1.5 To disqualify a Bidder whose bid contains a misrepresentation, which is materially incorrect or misleading.

15.2 SARS requires Bidder(s) to declare

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

Confirm that the Bidder(s) is to:

- 15.2.1 Act honestly, fairly, and with due skill, care and diligence, in the interests of SARS;
- 15.2.2 Have and employ effectively the resources, procedures and appropriate technological systems for the proper performance of professional activities;
- 15.2.3 Act with circumspection and treat SARS fairly in a situation of conflicting interests;
- 15.2.4 Comply with all applicable statutory or common law requirements applicable to the conduct of business;
- 15.2.5 Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with SARS;
- 15.2.6 Avoid fraudulent and misleading advertising, canvassing and marketing;
- 15.2.7 Conduct its business activities with transparency and consistently uphold the interests and needs of SARS

as a client before any other consideration; and

- 15.2.8 Ensure that any information acquired by the Bidder(s) from SARS will not be used or disclosed unless the written consent of the client has been obtained to do so.

15.3 CONFLICT OF INTEREST, CORRUPTION AND FRAUD

SARS reserves its right to disqualify any Bidder who either itself or any of whose members, directors or members of senior management, whether in respect of SARS or any other government organ or entity and whether from the Republic of South Africa or otherwise ("Government Entity"):

- 15.3.1 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;
- 15.3.2 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;
- 15.3.3 Makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of SARS' officers, directors, employees, advisors or other representatives;
- 15.3.4 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;
- 15.3.5 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;
- 15.3.6 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;
- 15.3.7 Has in the past engaged in any matter referred to above; or
- 15.3.8 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.

15.4 BIDDER'S OWN TERMS AND CONDITIONS OR BID QUALIFICATIONS

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

15.5 MISREPRESENTATION DURING THE TENDER PROCESS AND LIFECYCLE OF THE CONTRACT

The Bidder should note that the terms of its accepted Tender will be incorporated in the proposed MSA by reference and that SARS 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.

It follows therefore that misrepresentations in a Tender may give rise to service termination and a claim by SARS against the Bidder notwithstanding the conclusion of the MSA between SARS and the Bidder for the provision of the services in question.

15.6 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 SARS, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the Bidders in the preparation of their response to this Bid.

15.7 INDEMNITY

If a Bidder breaches the conditions of this Bid and, as a result of that breach, SARS 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 SARS harmless from any and all such costs which SARS may incur and for any damages or losses SARS may suffer.

15.8 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.

15.9 LIMITATION OF LIABILITY

A Bidder participates in this Bid process entirely at its own risk and cost. SARS 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.

15.10 TAX COMPLIANCE

No tender shall be awarded to a Bidder whose tax affairs are not in order. SARS 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. SARS 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.

15.11 NATIONAL TREASURY

No tender shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appears on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. SARS 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.

15.12 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.

15.13 RESPONSIBILITY FOR BIDDER'S PERSONNEL

A Bidder is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors and other representatives) comply with all terms and conditions of this Bid.

15.14 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 Bidder's Tender(s) will be disclosed by any Bidder or other person not officially involved with SARS' examination and evaluation of a Tender.

Throughout this Bid process and thereafter, Bidders must secure SARS' 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 Bidder will be disclosed to a Bidder or any other person not officially involved with such process.

15.15 INTELLECTUAL PROPERTY

SARS retains ownership of all Intellectual Property rights in the tender information documents that form part of this RFP. Bidders will retain the Intellectual Property rights in their tender responses, but grant SARS 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.

15.16 SARS PROPRIETARY INFORMATION

A Bidder must make a declaration on their Bid covering letter that they did not have access to any SARS proprietary information or any other matter that may have unfairly placed that Bidder in a preferential position in relation to any of the other Bidders.

15.17 SCREENING AND VETTING OF SERVICE PROVIDER

Acceptance of this tender is subject to the condition that both the successful Bidder and its personnel providing the service must be screened and cleared by the appropriate authorities to the grade of clearance in line to classified information, intelligence in the possession of SARS and areas designated as National Key points that they may have. Obtaining a positive recommendation is the responsibility of the Successful Bidder concerned.

- 16. ANNEXURE A0 – LIST OF CATEGORIES BIDDING FOR**
- 17. ANNEXURE A – TECHNICAL EVALUATION CRITERIA COMPANY PROFILE**
- 18. ANNEXURE A1 – A 8 – TECHNICAL EVALUATION CRITERIA PER CATEGORY**
- 19. ANNEXURE B – SARS PROPOSED TARIFFS**
- 20. ANNEXURE C – PRICING SCHEDULE**