



# **REQUEST FOR PROPOSAL FOR PANEL OF ATTORNEYS**

**RFP reference: VM/09/27**

**Closing date and time: Friday 26 October 2018 at 11h00am**

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## **1 INTRODUCTION**

The National Housing Finance Corporation SOC Limited (“NHFC”) is seeking proposals from qualified attorneys to render legal services to the NHFC for a period of 3 (three) years subject to satisfactory performance.

## **2 PURPOSE**

The purpose of this document is to table the tender specification for the appointment of a panel of attorneys which shall be engaged on a needs basis to the NHFC and its wholly owned subsidiary, Cape Town Community Housing Company (Proprietary) Limited, based in Cape Town. The NHFC promotes development of local talent and expertise and for the purposes of this tender, the NHFC reserves the right to only consider South African based law firms for appointment under this tender.

## **3 TERMS AND CONDITIONS**

- 3.1 The panel will be reviewed on a 3 (three) yearly basis and attorneys on the panel may have to resubmit their proposals in response to specific terms of reference as and when work arises.
- 3.2 Service delivery levels and quality of work will be a measure of appointment and retention on the panel.
- 3.3 There will be no guarantee that attorneys will receive instructions if they are appointed onto the NHFC panel.
- 3.4 The successful bidders will not be entitled to a retainer fee.
- 3.5 The NHFC shall be entitled in its discretion to remove a firm of attorneys from the panel before the expiry of the said 3 (three) years by written notice and recall all the files in the possession of the said law firm.
- 3.6 The firm shall have at least 5 (five) years’ experience. In the case of a new firm, the attorneys who will be dealing with the NHFC matters shall have at least five years’ experience as admitted attorneys.
- 3.7 The identified attorneys will be appointed to the NHFC legal services panel and must be available to start immediately after the panel has been approved by the accounting authority and service providers should be registered on the CSD.
- 3.8 The firms will also be required to ensure transfer of skills to in house legal advisors of the NHFC.
- 3.9 The NHFC reserves the right under exceptional circumstances, to appoint attorneys outside the panel attorneys.

## 4 BACKGROUND

**The National Housing Finance Corporation SOC Limited (NHFC)** was established by the National Department of Human Settlements as a Development Finance Institution (DFI) in 1996, with the principle mandate of broadening access to affordable housing finance for the low- and middle-income households. The company is a Schedule 3A DFI of the National Department of Human Settlements.

NHFC is a registered public company and has been granted the necessary exemption in terms of the Banks Act. As a national public entity, the NHFC adheres to the regulatory framework of the Public Finance Management Act (PFMA) of 1999.

The corporation organogram consists of the following departments, and the total number of employees is approximately 53 in the following functional areas:

- Corporate Strategy;
- Lending;
- Credit;
- Corporate Support Services (which incorporates Information Technology, Legal, Compliance and Risk services);
- Finance (which incorporates a Treasury function);
- Company Secretariat;
- Office of the CEO; and
- Human Resources.

The target market of the NHFC is the low-to-middle income housing market which typically includes households who earn between R3 500 and R15 000 per month which the NHFC provides wholesale funding through various institutions such as social housing institutions, non-banking retail intermediaries and privately owned property investors. The NHFC mandate requires the company to make housing and housing finance accessible and affordable to facilitate this objective.

This is done through:

- providing wholesale funding to housing development projects for ownership, social housing and private rental, including inner cities, and for incremental housing purposes;
- partnering with banks and other non-banking retail financial intermediaries to increase their sustained lending and innovation in the target market served; and
- leveraging private sector funding for the sustainable development of human settlements.

More specifically, NHFC's strategic priorities are to:

- Expand housing finance activities, through the effective provision of housing finance

solutions, enabling low-to-middle income households to have the choice of renting, owning or incrementally building to meet their housing needs;

- Facilitate increased and sustained lending by financial institutions to the affordable housing market;
- Mobilise funding into the human settlements space on a sustainable basis, in partnership with a broad range of institutions;
- Conduct the business activities of the NHFC in an ethical manner that ensures the continued economic sustainability of the NHFC, while promoting sustainable social and environmental development; and
- Stimulate the low-to-middle income housing sector by providing robust, relevant and timely research and market analysis to practitioners and housing customers.

*(As reference and for further information, kindly refer to the NHFC website: [www.nhfc.co.za](http://www.nhfc.co.za))*

## **5 CAPE TOWN COMMUNITY HOUSING COMPANY (PROPRIETARY) LIMITED (“CTCHC”)**

CTCHC was established in 1998 in a 50/50 partnership between the NHFC and the City of Cape Town. The purpose of the company was to be an alternative subsidy housing delivery vehicle.

The City of Cape Town sold its 50% shareholding to NHFC in 2008 and CTCHC has been wholly owned by NHFC ever since.

CTCHC has delivered over 5000 affordable units to date and received various rewards and accolades in doing so. However, the company has not been able to do so in a sustainable fashion and has needed the intervention of NHFC over the years.

CTCHC is currently the subject of a “Restructuring” programme and will going forward have a mandate to only collect and manage current stock. No further new development will be undertaken.

Most of the legal advice work is expected to emanate from the NHFC due to the limited property development activity at CTCHC.

## **6 IMMINENT CONSOLIDATION OF THE HUMAN SETTLEMENTS DFIS’ - ESTABLISHMENT OF HUMAN SETTLEMENTS DEVELOPMENT BANK**

The National Department of Human Settlements (NDOHS) is currently supported by three DFIs, the NHFC, the Rural Housing Loan Fund SOC NPC (RHLF) and the National Urban Reconstruction and Housing Agency SOC NPC (NURCHA).

The drive to scale housing finance provision, to greater leverage private sector contribution and thus significantly grow the human settlement development impact, became the strategic rationale for the consolidation of the three DFIs. The expected consolidation outcome would be such that the whole is greater than the sum of its parts. This strategic rationale is also supported by the National Treasury’s review of the DFIs.

The Ministry of Human Settlements has committed itself to the establishment of a Human Settlements Development Bank (HSDB) in support of the entire human settlements delivery value-chain

The NHFC will serve as a consolidated platform for the establishment of the HSDB. In order to implement the consolidation, NURCHA and RHLF will transfer their respective assets and liabilities to the NHFC at no charge through donation agreements; and thereafter NURCHA and RHLF will be dissolved by way of a winding-up or a deregistration process. It is envisaged that the NHFC will continue in its existing legal format but will change its constitution documents to conform to the HSDB requirements.

The HSDB establishment will include, among others, the Policy, Enabling Legislation, Business Case and Capitalisation, leading to a fully integrated HSDB.

The remaining factors impacting the effective date of the Consolidation are the fulfilment of the various suspensive conditions including obtaining the requisite approvals in terms of the Public Finance Management Act No 1 of 1999 (PFMA) with respect to the first phase of the consolidation. This will allow the NHFC to acquire the assets, and assume the liabilities and staff contracts of RHLF and NURCHA. The second phase will involve the parliamentary legislative process of passing the enabling Act for the HSDB and its capitalisation by the Government in order to achieve the necessary scale.

Every effort is being applied towards completion of all the processes for the earliest effective date for the Consolidation, within the 2018/19 financial year for the first phase of the transaction.

The timeframe for the final integration (HSDB) is likely to extend over the next twelve months due to the legislative process involved.

## **7 SCOPE OF WORK AND TECHNICAL REQUIREMENTS**

The successful attorneys will be required to assist the NHFC with services in the following categories:

### **7.1 Legal Recoveries**

Attorneys will attend to legal recoveries on behalf of the NHFC. Attorneys are required to have an in-depth knowledge of litigation procedures in the High Court and Magistrate's Court as well as the relevant legislation and case law in the recovery process. Practical knowledge is required in all spheres of commercial and banking law including but not limited to National Credit Act, the PFMA and the Consumer Protection Act. A thorough knowledge of the nature and effect of securities documents and the perfection thereof is required.

## **7.2 Insolvency**

Attorneys will be required to assist the NHFC in obtaining legal opinions and/or pursue litigation within the insolvency/business rescue/liquidation process. A thorough knowledge of the nature, effect and experience of insolvency/business rescue/liquidation legislation and case law is required.

## **7.3 Corporate Law and Corporate Finance Transactions**

Practical knowledge is required in all spheres of commercial, finance and banking law including but not limited to knowledge and application of the National Credit Act, the PFMA, the Companies Act (1973 and 2008), Insolvency Act, Deeds Registries Act and Consumer Protection Act. Drafting, negotiation and interpretation of commercial, credit and finance agreements more specifically but not limited to:

- Loan Agreements;
- Security Documents;
- Shareholders Agreements;
- Purchase and Sale Agreements;
- Lease Agreements;
- Service Level Agreements; and
- Memorandum of Understandings.

## **7.4 Conveyancing**

Attorneys will be required to assist the NHFC with respect to conveyancing and related matters.

## **7.5 Labour Law**

Expertise in labour matters are required, more specifically but not limited to:

- Provision of general labour related advice, legal opinions or related services;
- Drafting of relevant labour related documentation;
- Provision of specific labour related advice, legal opinions or related services as it relates to collective bargaining and union related matters, where applicable;
- Provision of labour relations training as and when required; and
- Litigation relating to labour law matters.

# **8 CONTENT OF THE RFP PROPOSAL**

All the tender proposals submitted for the panel of attorneys should include a technical component. The financial/pricing component will only be a requirement in Phase 3 and relevant to the successful bidders.

## 8.1 The Technical Component must include the following:

- Company profile

The company profile must address the following areas/headings in the following order:

### a) History

Provide a brief history of the firm, an outline of the firm's organogram and an outline of the firm's geographic structure (provincial/regional offices within the Republic of South Africa but excluding alliances or affiliations you may have with other law firms).

### b) Client Base

Provide a list of clients for whom legal services were rendered on a regular basis in the past three years. The most recently served clients must be mentioned first and specify the nature of all work done.

### c) Field of Expertise

Each proposal must include the specialist fields of law of the firm, with specific reference to the fields as set out in paragraph 7 above. If a firm of attorneys has expertise in more than one field of law, all relevant fields must be indicated in the proposal together with demonstrated experience in specified areas of law. Clearly indicate for which of the five specialist fields (as set out in paragraph 7) your firm is bidding for.

### d) Your Team

Curriculum Vitae's of the core service team that will be attending to the NHFC work with specific reference to their educational and professional background and their relevant experience.

- Company registered address
- Name of Principal Applicant (Must be authorised to act on behalf of the Company) and contact details including telephone, fax numbers and email address.
- Incorporation documents
- Certified copies of the ID document(s) for the company representative(s)
- Valid Tax Clearance Certificate
- B-BBEE verification certificate indicating the contribution level of the firm
- Submission of proof of registration to the Central Supplier Database
- Submission of a valid letter of good standing issued by the Law Society
- Submission of firm's Indemnity Certificate issued by the Attorneys Insurance Fidelity Fund for the present year
- For firms applying for the category of conveyancing, a certificate of admission as a conveyancer for the individual conveyancer(s) employed on a full time basis must be provided

- Proposed methodology and approach to be used in keeping with the scope of works.
- Full and comprehensive description of similar work undertaken in the past 3 years.
- List of current clients and references
- Please indicate the firm's value proposition and indicate what sets you apart in the legal services fraternity

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

**Note: Failure to comply with the requirements of the Technical Component above, may lead to disqualification of bids.**

## 8.2 Financial/Pricing Component

A financial evaluation will not form part of this RFP as this will be evaluated on the basis of a specific Request For Quotation ("RFQ") sent to the entire panel of the selected panel of attorneys as and when specific legal services are required by the NHFC. At that stage, the attorneys will be evaluated purely on their score achieved on pricing and B-BBEE in accordance with the Preferential Procurement Policy Framework Act and Regulations.

A Pricing Schedule for Phase 3 is provided for illustrative purposes but shall be completed by the appointed panel of attorneys for every round of work for which they will be required to respond to a RFQ. Therefore, at this stage please do **not** complete it.

Such schedule must indicate the proposed fees which gives an indication of the following:

Levels of Staff, broken down into departments if necessary	Rate per Hour (For first 12 months, Year 1) Including VAT	Rate per Hour (month 13 to 24, Year 2) Including VAT	Rate per Hour (month 25 to 36, Year 3) Including VAT
Director/Partner			
Senior Associate (more than 4 years post admission as attorney)			
Professional Associate (admitted attorney with up to 4 years post admission as attorney)			

Candidate Attorney (graduate but not yet admitted as attorney)			
Support staff (non-professional staff)			
Travel and all other reimbursable costs (photocopies, telephone calls, etc)			

All prices must be in South African Rand and inclusive of VAT.

## 9 APPOINTMENT, COMMENCEMENT AND DURATION

The successful service providers will be appointed for a period of 3 (three) years commencing on signature date of a service level agreement.

## 10 EVALUATION CRITERIA

The proposal will be evaluated in terms of the Preferential Procurement Policy Framework Regulations of 2017.

Evaluation of the bid will be conducted in 3 (three) phases as follows:

### Phase 1: Eligibility / Pre-Qualification criteria

Bidders will be evaluated according to pre-qualification requirements which include the submission of mandatory information or documentation. Bidders that fail to meet the pre-qualification requirements of the bid will not be considered further for evaluation on technical requirements i.e. Phase 2. Please refer to section 12.1.1 for the eligibility and pre-qualification criteria.

Category	Criteria	Weighting
1.	<b>Experience and Expertise of Key Personnel</b>	20
2.	<b>Stability and Track Record</b>	20
3.	<b>Approach and Methodology</b>	45
4.	<b>Value Proposition and Skills Transfer</b>	15
	<b>TOTAL</b>	<b>100</b>

## Phase 2: Technical/functional evaluation

The minimum qualifying score for functionality is 70% (70 points). All bids that fail to achieve the minimum qualifying score on functionality shall not be considered for further evaluation in terms of B-BBEE and pricing in Phase 3.

## Phase 3: B-BBEE and Price evaluation

All bids that achieve the minimum qualifying score of 70% (70 points) for Functionality, (acceptable bids) will be evaluated further in terms of the 80/20 preference point system. This evaluation will be based on the pricing and BEE score of the bidders at the point/time of evaluation of a specific Request for Quotation.

B-BBEE score and preference points (Points must be awarded to a tenderer for attaining the 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	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

- A maximum of 20 points may be allocated in accordance with the formula.
- The points scored by a tenderer in respect of the level of B-BBEE contribution must be added to the points scored for price as calculated in accordance with the formula.
- The contract must be awarded to the tenderer who scores the highest total number of points after considering price and B-BBEE.

As noted above the financial/pricing and B-BBEE evaluation will not form part of this RFP as this will be evaluated on the basis of a specific Request or Quotation (“RFQ”) sent to the entire panel of the selected panel of attorneys as and when specific legal services are required by the NHFC. At that stage, the attorneys will be evaluated purely on their financial and B-BBEE score.

The Pricing Schedule for Phase 3 as provided in 8.2 above shall be completed by the appointed panel of attorneys for every round of work for which they will be required to respond to a RFQ. Therefore, at this stage please do **not** complete it.

The NHFC would like to promote B-BBEE based on transformation and development of the EME’s and the QSE’s

## **11 COMMERCIAL OBLIGATIONS**

This section of the document outlines the general commercial process and obligations of the service provider.

### **11.1 Contracting**

A contract will be concluded between NHFC and the successful service provider which will incorporate the following:

- The letter of acceptance to the successful bidder;
- The original tender documents;
- The proposal of the successful service provider, and
- Terms and conditions as stipulated above and general contract terms and conditions.

### **11.2 Material Rights**

The product of this project will be confidential information, and will be the property of the NHFC and no disclosure of information to other parties will be made without prior written approval of the NHFC.

### **11.3 Rules of Bidding**

- The NHFC reserves the right to amend or cancel this RFP at any time, at its sole discretion;
- Tax Clearance certificates submitted with the proposal must be valid at the time of award.
- The NHFC is not bound to accept any of the proposals submitted, and reserves the right to call for best and final offers from the short-listed bidders before final selection;
- The NHFC reserves the right to call for interviews with short-listed bidders before final selection;
- The NHFC reserves the right to negotiate price with the preferred bidder;
- The NHFC reserves the right not to accept the lowest scoring bid (if applicable) or any bid in part or whole. The NHFC would award a contract to a bidder who proves to be fully capable of handling the contract and whose bid is functionally acceptable and/or financially advantageous to the NHFC.

- An eligible Bidder, if requested, could be invited for the presentation session to present evidence of experience, ability, service facilities, and financial standing necessary to satisfactorily meet the requirements set forth or implied in this proposal;
- The NHFC reserves the right to request all relevant information, agreements and other documents to verify information supplied in the bid process. The bidder hereby gives consent to the NHFC to conduct background checks on the bidding entity and any of its directors / partners / trustees / shareholders /members/employees. The NHFC reserves the right to consider the information arising from such background check as part of the tender evaluation process.
- NHFC reserves the right to award a contract in part, to reject any and all quotations in whole or in part, to waive technical defects, irregularities and omissions, at its sole discretion;
- The successful bidder(s) shall be required to sign a Service Level Agreement (SLA), in terms of which the service provider's performance will be measured and managed.
- Late submissions will not be considered.

## **12 PROPOSAL COMPLIANCE REQUIREMENTS**

This section contains the requirements for Proposal Compliance; all submissions must consist of a Technical Proposal as explained below:

### **12.1 Procedural Matters**

- 12.1.1 Documents to be submitted:
- Company profile and Technical Proposal
  - BBBEE Credentials (Separate document)
  - Original Tax Clearance Certificate
  - Copies of any Shareholders agreement
  - ID copies of Shareholder/Directors
  - A copy of the current memorandum and articles of association of the company or constitutional documents of the company
  - Vat registration evidence
  - Declaration of interest
  - Declaration statement

#### 12.1.2 Copies

Three hard copies and a soft copy (CD/USB) must be submitted in a sealed envelope, appropriately addressed.

#### 12.1.3 Submission Address

Proposal, endorsed with **RFP VM/09/27**, must be hand delivered to:

NHFC Tender Box  
The Isle of Houghton  
Old Trafford 3, 1st Floor  
11 Boundary Road  
Houghton  
Johannesburg

Attention Mrs. Pumza Nsukwini

#### 12.1.4 Submission Date

The Proposal (technical) must reach the NHFC **by Friday 26 October 2018 at 11h00am.**

#### 12.1.5 Proposal Cost

The cost of compiling the Proposal (technical and financial) is and remains the prospective service provider's own cost and will not be paid for by NHFC.

#### 12.1.6 Contacts

The contact person for information pertaining to the RFP proposal is Mrs. Pumza Nsukwini, telephone numbers 011-644 9800 fax number 011 484 0204 and e-mail [pumzan@nhfc.co.za](mailto:pumzan@nhfc.co.za).