

TERMS OF REFERENCE FOR THE APPOINTMENT OF A PANEL OF ATTORNEYS FOR THE MQA UNTIL 31 MARCH 2025

Mining Qualifications Authority
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1. INTRODUCTION OF THE MINING QUALIFICATIONS AUTHORITY

The Mining Qualifications Authority (MQA) is a public entity established in terms of section 45 of the Mine Health and Safety Act, No. 29 of 1996, as amended (MHSA) and regarded as a Sector Education and Training Authority (SETA) in terms of paragraph 4A to the second schedule of the Skills Development Act, Act no. 97 of 1998, as amended (SDA).

The MQA is listed as a schedule 3(a) public entity in terms of the Public Finance Management, Act no. 1 of 1999 (PFMA) and has an Accounting Authority (the Board) that is constituted in terms of the MHSA, the SDA and its constitution.

2. BACKGROUND

One of the strategic objectives of the MQA is to ensure that it complies with all applicable laws and that it manages its legal risks efficiently. The Legal and Governance Unit of the MQA is responsible for the provision of legal and governance services to the organisation. The matters and enquiries that the unit receives sometimes require expert legal opinion on some matters and that the organisation is defended in the courts and in various other quasi-judicial forums.

3. OBJECTIVE

The objective is the appointment of a suitable service providers to provide legal advisory services to the MQA in line with the request of a duly authorised MQA official and the scope of work in these terms of reference.

The MQA hereby invites bids for the provision of legal services in accordance with MQA's requirements from qualified and experienced service providers of good standing within the legal fraternity to submit proposals to assist MQA's Legal and Governance Unit with legal services on an adhoc basis for specific assignments.

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The Preferred Bidder(s) will be appointed as part of a panel of law firms and will be obliged to conclude a Service Level Agreement (SLA) with the MQA until **31 March 2025** on the terms and conditions as stated in these terms of reference.

3.1 Skills Transfer

The firms of attorneys will also be required to ensure transfer of skills to relevant units of the MQA on a specific instruction. Such transfer of skills include advice on how to avoid similar legal risks and a report on what is best practice on similar matters.

3.2 Reporting

The respective firms of attorneys will report to the Legal and Governance Unit and any other unit relevant for the specific instruction.

4. SCOPE OF WORK

4.1 The successful bidders shall be required to assist MQA's Legal and Governance Unit with the legal advisory services in the following categories. The tasks under listed under each category are not exhaustive:

4.1.1 Alternative Dispute Resolution and Litigation;

- Commercial , Criminal and Civil Litigation
- Provision of legal opinions.
- Extensive knowledge and expertise in litigation matters is required, more specifically:
- Ability to draft letter of demand ;
- Ability to draft summons and notices;
- Execution of judgments and rulings
- Ability to represent the MQA at various judicial and quasi-judicial forums including arbitration hearings , Magistrate Court, High Court , Supreme Court of Appeal and the Constitutional Court; and
- Advise on various rules of arbitration proceedings, Magistrate Court Rules, Uniform Court Rules, Criminal Procedure Act, and judicial and quasi- judicial forum practice manual, processes and procedures.

4.1.2 Labour and Employment law

- Extensive knowledge and expertise in labour related matters, more specifically:
- Expert knowledge of both collective and individual labour and employment law
- Knowledge and expertise in liaising with relevant organs of state such as Department of Labour
- Ability to be the initiator in disciplinary hearings;

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- Ability to chair disciplinary hearings ;
- Advise on procedural and substantive issues relating to disciplinary hearings conducted;
- Advise on disciplinary codes, policies and governing legislation;
- Representation at the CCMA, Labour Court and Labour Appeal Court;
- Advise and assist with processes and compliance with South African Labour Law and procedures;
- Negotiation and settlement of labour disputes whether with individual employees or the bargaining unit represented by a union;
- Provision of legal opinions; and
- Investigation of alleged misconduct and other labour relations disputes.

4.1.3 Constitutional Law and Administrative Law;

- Advising on the the Constitution of the Republic of South Africa; Skills Development Act; Promotion of Administrative Justice Act; Preferential Procurement Policy Framework Act and Public Finance Management Act (including all relevant practice notes and regulations);
- Advising on tender procedures and legislative framework.
- Advise on administrative action.
- Furnishing opinions on constitutional, administrative and local government issues.
- Advising on judicial reviews and litigation.
- Structuring public-private partnership transactions.
- Drafting and commenting on national, provincial and local government legislation.
- Lobbying/submissions to Parliament and all levels of government regarding legislative changes.
- Accessing information from public bodies.

4.1.4 Corporate Governance;

- Extensive knowledge and expertise in governance related matters with regards to public entities,
- Extensive knowledge and expertise in the MQA's Constitution, Companies Act , the Skills Development Act, Mine Health Safety Act, King Code and Report on Corporate Governance, and all other relevant and applicable corporate governance prescripts
- Provide guidance and oral and written advice to the MQA's Board, Board Committees, EXCO, standing committees, prescribed officers and any other official with guidance as to their duties, responsibilities and powers
- Provision of legal opinions;

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- Experience in induction, orientation, ongoing training and education to all members of Board, Board Committees, EXCO, standing committees including assessing the specific training needs of the officials in their fiduciary and other corporate governance responsibilities
- Experience in advising if Board and committees’ charters and terms of reference are kept up to date and are in line with all the relevant prescripts and providing guidance and advice on the charters and terms of reference
- Review and design of internal documents, systems and processes to ensure corporate governance compliance.

4.2 Furthermore the services that may be required from the service providers also include but are not limited to the following:

4.2.1 Drafting of legal opinions on various legal aspects pertaining to the mandate of MQA, performance and related matters.

4.2.2 Attending to any other matters related to legal issues relevant to the execution of the mandate of MQA.

4.2.3 Extensive knowledge and expertise of the entire spectrum of Public Sector law, and the related regulatory environment; including the Constitution of the Republic of South Africa; Skills Development Act; Promotion of Administrative Justice Act; Preferential Procurement Policy Framework Act and Public Finance Management Act (including all relevant practice notes and regulations); and

4. 2.4 Draft agreements for the MQA and give advice on agreements.

Bidders must tick and /or indicate on their submitted proposal which of the below categories they are bidding for and ensure that all relevant documents are submitted for each category.

SPECIALISED PRACTICE AREAS	TICK CATEGORY BIDED FOR
Alternative Dispute Resolution and Litigation	
Labour and Employment law	
Constitutional Law and Administrative Law	
Corporate Governance	

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5. DURATION

The Service Provider should provide the services from the date of signature until 31 March 2023.

6. PAYMENT

The amount quoted must be denominated in South Africa Rand value, and should include VAT. Hourly rate quoted by the bidders should take into account paragraph 4.5 – 4.12 of the National Treasury Instruction Note No. 2 of 2017/2018. Payment conditions will be stipulated in the SLA. The amount quoted should include all the expenses related to this project, including disbursements. No additional fees will be entertained thereafter.

Bidders take note and comply with the following in particular of the following;

“ Accounting officers and accounting authorities must adopt a fair and reasonable remuneration framework for consultants, taking into account – (a) The “Guideline on Fees for Audits done on behalf of the Auditor-General of South Africa (AGSA)1 ” as issued by the South African Institute of Chartered Accountants (SAICA); (b) The “Guide on Hourly Fee Rates for Consultants”, as issued by the Department of Public Service and Administration (DPSA); and/or (c) Remuneration guidelines issued by professional service organisations or regulatory bodies, as may be relevant.”

7. INTERGRITY AND CONFLICT OF INTEREST

The service providers shall, at all times, exhibit the highest level of integrity in performing all professional assignments, and will accept only assignments for which there is a reasonable expectation that the assignment will be completed with professional competence. The successful service providers will be required to conduct the assignment and compile the required reports with the utmost integrity, honesty and collect sufficient, appropriate evidence to ensure that they assist the MQA to achieve its business objectives.

8. EVALUATION CRITERIA

Proposals for the appointment of the service providers will be evaluated in four (4) phases. The first two phases will be compliance and mandatory requirements, the third phase will be functionality, and the fourth phase will be BBBEE and pricing in accordance with the Supply Chain Management Procurement policies (Preferential Point System) shall be done on when there is a specific instruction and/or assignment that the MQA wants to be undertaken. A bidder will only go to the next phase of evaluation if they have met the requirements of the previous phase of evaluation.

8.1.1 PHASE ONE (1): RETURNABLE DOCUMENTS TO BE SUBMITTED

8.1.2 RETURNABLE DOCUMENTS TO BE SUBMITTED

- a. Proof of registration on Central Supplier Database System (CSD)

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- b. Valid Tax Clearance Certificate (Refer to SBD 2: Tax Clearance Certificate Requirements) or Tax PIN;
- c. B-BBEE Certificate of Measured Entity (if no certificate is received, a score of zero will be allocated for evaluation purposes);
- d. SBD 1: Invitation to Bid fully completed and appropriately signed;
- e. SBD 3.3: Pricing Schedule fully completed and appropriately signed;
- f. SBD 4: Declaration of Interests Form fully completed and appropriately signed;
- g. SBD 5: The National Industrial Participation Programme (if applicable);
- h. SBD 6.1: Preference Points Claim Form, fully completed and appropriately signed;
- i. SBD 8: Abuse of Supply Chain Management System, fully completed and appropriately signed; and
- j. SBD 9: Certificate of Independent Bid Determination, fully completed and appropriately signed.

NB: *Bidders who fail to submit the above documents will be disqualified and will not be evaluated further, however, to the extent that the applicable laws and regulations permit, bidders will be contacted to address outstanding information within a reasonable timeline as determined by the MQA. The request of such outstanding information will not be information that affect the substance of the bid or give a bidder unfair advantage to the other bidders.*

PHASE TWO (2) MANDATORY REQUIREMENTS

- Certified copies of Fidelity Fund Certificate for the directors of bidder.

NB:

- **Bidders who fail to meet the mandatory requirements will be disqualified and will not be evaluated further.**
- **All certified copies must have been certified within a period of six (6) months prior to the closing date of the bid.**

PHASE THREE (3): TECHNICAL EVALUATION CRITERIA

Bids will be evaluated individually on score sheets by a representative evaluation panel according to the evaluation criteria indicated below.

These functionality criteria will be broken down into a rating of no submission, poor, fair, satisfactory, very good and excellent.

The proposals will be evaluated on a five point scale as follows:

0 = Required documents not submitted.

1 = Poor, does not meet criteria.

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2 = Fair, less than acceptable. Not sufficient for performance requirements.

3 = Satisfactory, adequate for the performance requirements.

4 = Very Good, above the average compliance to the requirement.

5 = Excellent, exceptional mastery of the requirement.

The minimum technical score for eligibility for third phase evaluation, functionality is 70 points.

Bidders must obtain a minimum threshold of 70 out of 100 points to be shortlisted to be part of the panel.

Bidders must ensure that they insert documentation which is relevant and applicable for each scope of works and service as set out in section 4 which such bidder is bidding for.

CRITERIA FOR FUNCTIONALITY	SCORING CRITERIA	WEIGHT
<p>1. Certified proof of registration of the Law firm with the Law Society of South Africa (LSSA). and/or Legal Practice Council (LPC)</p> <p>This registration must be in the form of certificate and it must show that as at close of bid the law firm was registered and for how long law firm has been registered with LSSA and/or LPC</p>	<p>0 = No evidence of registration with relevant professional bodies</p> <p>1.= (Poor) - Evidence of application for certificate of registration from LSSA or LPC</p> <p>2 = (Fair) : Certificate of registration with LSSA and/or LPC I for a period of 1 day to under 3 years</p> <p>3 = (Satisfactory): Certificate of registration with LSSA and/or LPC for a period of three (3) years</p> <p>4 = (Very Good): Certificate of registration with LSSA and/or LPC for a period of three (3) years and one (1) day to five (5) years</p> <p>5 = (Excellent): Certificate of registration with LSSA and/or LPC for a period of five (5) years and one (1) day or more</p>	20
<p>2. Experience of the firm (reference letter)</p> <p>Three (3) reference letters from clients to whom the service provider has provided services similar to ones listed in the identified scope of work. Bidders must provide three reference letters for each specific area of expertise that they bid for as set out in scope of work contained herein. The scope of services and work done must be specific to what type of services were provided and letters which are generic and simply state phrases like “the bidder provided legal services” are not</p>	<p>0 = No compliant reference letters attached</p> <p>1 = (Poor) :1 compliant reference letters attached</p> <p>2 = (Fair): 2 compliant reference letters</p> <p>3 = (Satisfactory): 3 compliant reference letters.</p> <p>4 = (Very Good): 4 compliant reference letters.</p> <p>5 = (Excellent): 5 compliant reference letters.</p>	25

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<p>compliant. It is up to the bidders to ensure that reference letter(s) where possible are aligned to the scope of work and the wording of such scope of work as set out in these Terms of Reference.</p> <p>These reference letters must be on client's letterhead and the services must have been rendered in the last five (5) years prior to the closing date of these terms of reference (indicate date when the services were rendered). The reference letter must be dated.</p> <p>Reference letter must further include the name of the organisation, contact person, contact details and details of the work done and be signed by the relevant official of the organisation.</p> <p>The MQA reserves the right to contact the provided reference clients via their provided contact details and should such reference clients not confirm the work and services as in the reference letter , the MQA shall consider such provided letter to not be compliant.</p>		
<p>3. Institutional capacity and experience of professional legal advisory members to be allocated. When bidders are bidding for specific scope of work they must show that the attorney of such team has the requisite experience in that scope of work.</p> <p>Curriculum vitae (CV) of Associate = 1day -3 years of post- admission experience incorporating:</p> <ul style="list-style-type: none"> a. Certified proof of qualifications this must be Bachelor of Laws (NQF level 8) or equivalent qualification ; b. Certified Admission as an attorney; and c. Years of post-admission experience <p>NB The proposal must indicate the name of the person to be evaluated for Associate, failure which will result in a</p>	<p>0= no submission of relevant CV or no indication in the proposal for a person to be evaluated for this section.</p> <p>1= (Poor) CV submitted for an individual studying towards a Bachelor of Laws (NQF level 8) or equivalent qualification, no admission certificate and no relevant post admission experience.</p> <p>2= (Fair) CV submitted for an individual with a Bachelor of Laws (NQF level 8) or equivalent qualification, with an admission certificate and no relevant post admission experience.</p> <p>3= (Satisfactory): CV submitted for an individual with Bachelor of Laws (NQF level 8) or equivalent qualification , with an admission certificate and between 1 day to 3 years relevant post admission experience.</p> <p>4= (Very Good) CV submitted for an individual with Bachelor of Laws (NQF level 8) or equivalent qualification , with an admission certificate and more than 3 years relevant post admission experience.</p> <p>5= (Excellent): 2 or more CVs submitted for two of more individuals with Bachelor of Laws (NQF level 8) or equivalent qualification , with admission certificates and more than 3 years relevant post</p>	<p>10</p>

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<p>score of zero (0) will be awarded.</p> <p>CV must also indicate where the experience was acquired and certified copies of qualifications must be attached</p>	<p>admission experience.</p>	
<p>4. Institutional capacity and experience of professional legal advisory members to be allocated. When bidders are bidding for specific scope of work they must show that the attorney of such team has the requisite experience in that scope of work.</p> <p>Curriculum vitae (CV) of Senior Associate = 5 years of relevant post-admission experience incorporating:</p> <ul style="list-style-type: none"> a. Certified proof of qualifications this must be Bachelor of Laws (NQF level 8) or equivalent qualification ; b. Certified Admission as an attorney; and c. Years of post-admission experience <p>NB The proposal must indicate the name of the person to be evaluated for Senior Associate, failure which will result in a score of zero (0) will be awarded.</p> <p>CV must also indicate where the experience was acquired and certified copies of qualifications must be attached</p>	<p>0= no submission of relevant CV or no indication in the proposal for a person to be evaluated for this section.</p> <p>1= (Poor) CV submitted with a Bachelor of Laws (NQF level 8) or equivalent qualification, an admission certificate and no relevant post admission experience.</p> <p>2= (Fair) CV submitted with a Bachelor of Laws (NQF level 8) or equivalent qualification, an admission certificate and less than 5 years relevant post admission experience.</p> <p>3= (Satisfactory): CV submitted with a Bachelor of Laws (NQF level 8) or equivalent qualification, an admission certificate and 5 years relevant post admission experience.</p> <p>4= (Very Good) CV submitted with a Bachelor of Laws (NQF level 8) or equivalent qualification, an admission certificate and more than 5 years relevant post admission experience.</p> <p>5= (Excellent): 2 or more CVs submitted for two of more individuals with Bachelor of Laws (NQF level 8) or equivalent qualification , with admission certificates and more than 5 years relevant post admission experience.</p>	<p>10</p>
<p>5. Institutional capacity and experience of professional legal advisory members to be allocated. When bidders are bidding for specific scope of work they must show that the attorney of such team has the requisite experience in that scope of work.</p>	<p>0= no submission of relevant CV or no indication in the proposal for a person to be evaluated for this section.</p> <p>1= (Poor) CV submitted with a Bachelor of Laws (NQF level 8) or equivalent qualification, an admission certificate and no relevant post admission experience.</p> <p>2= (Fair) CV submitted with a Bachelor of Laws (NQF level 8) or equivalent qualification, an</p>	<p>10</p>

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<p>Curriculum vitae (CV) of Partner = 8 years of relevant post-admission experience incorporating:</p> <p>a. Certified proof of qualifications this must be Bachelor of Laws (NQF level 8) or equivalent qualification ;</p> <p>b. Certified Admission as an attorney; and</p> <p>c. Years of post-admission experience</p> <p>NB The proposal must indicate the name of the person to be evaluated for Partner, failure which will result in a score of zero (0) will be awarded.</p> <p>CV must also indicate where the experience was acquired and certified copies of qualifications must be attached</p>	<p>admission certificate and less than 8 years relevant post admission experience.</p> <p>3= (Satisfactory): CV submitted with a Bachelor of Laws (NQF level 8) or equivalent qualification, an admission certificate and 8 years relevant post admission experience.</p> <p>4= (Very Good) CV submitted with a Bachelor of Laws (NQF level 8) or equivalent qualification, an admission certificate and more than 8 years relevant post admission experience.</p> <p>5= (Excellent): 2 or more CVs submitted for two of more individuals with Bachelor of Laws (NQF level 8) or equivalent qualification , with admission certificates and more than 8 years relevant post admission experience.</p>	
<p>6. A record of attendance and a brief summary of three (3) matters attended to by the lead attorney(s) under the identified area(s) of service/scope of work in the last five (5) years prior to the closing date of this request for proposal.</p> <p>Proof of attendance would be notice of set down and other documents showing that the law firm was instructed and was a duly appointed representative on the matter may also be attached.</p>	<p>0= No record attached.</p> <p>1 = (Poor): 1 relevant and compliant record attached</p> <p>2 = (Fair): 2 relevant and compliant record attached.</p> <p>3 = (Satisfactory): 3 relevant and compliant record attached</p> <p>4 = (Very Good): 4 relevant and compliant record attached</p> <p>5 = (Excellent): 5 relevant and compliant record attached</p>	25
		100

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PHASE FOUR (4): BBBEE AND PRICE

The shortlisted or appointed bidders will only be evaluated on price and B-BBEE as and when they are requested to submit proposals/quotation for services. They will be evaluated using 80/20 points principle, where 80 points will be allocated price and 20 points for B-BBEE.

Bidders take note the National Treasury Instruction Note No. 2 of 2017/2018 and comply with the prescripts thereof applicable to professional service providers (consultants) and in particular the following;

“ Accounting officers and accounting authorities must adopt a fair and reasonable remuneration framework for consultants, taking into account – (a) The “Guideline on Fees for Audits done on behalf of the Auditor-General of South Africa (AGSA)1 ” as issued by the South African Institute of Chartered Accountants (SAICA); (b) The “Guide on Hourly Fee Rates for Consultants”, as issued by the Department of Public Service and Administration (DPSA); and/or (c) Remuneration guidelines issued by professional service organisations or regulatory bodies, as may be relevant.”

10. TERMS AND CONDITIONS OF THE PROPOSAL

- a. Awarding of this contract will be subject to the service provider’s acceptance of the Supply Chain Management’s general conditions of contract.
- b. The appointed service provider will enter into a service level agreement with the MQA, which will include amongst others:
 1. Period of agreement;
 2. Project objectives and scope;
 3. Method of communication;
 4. Disputes; and
 5. Termination of contract and other specific matters will be agreed upon to form part of the service level agreement.
- c. The MQA reserves the right to terminate the contract in the event that there is clear evidence of non-performance.
- d. The MQA reserves the right to appoint one service provider or more than one.
- e. The basis of engaging service providers will be on an assignment basis.
- f. In the event where there are more than one service provider accredited on the bid, and they have the necessary skills that are required to render a specific service, the MQA will issue out the Terms of Reference/Specifications to call for proposals and award the work accordingly.
- g. The MQA reserves the right to interview service provider(s) that are short listed for a specific assignment (meaning that service providers may be requested to do a presentation for a specific project / assignment).

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- h. The MQA may at its sole discretion award an assignment or any part thereof to more than one service provider(s).
- i. Payments will only be made for acceptable work completed and delivered.
- j. Any deviation from the project plan should be put in writing and signed by the project manager.
- k. Any suggestions during the progress meetings, once accepted by both parties, shall form part of the contract.

11. CONTACT PERSON FOR ENQUIRIES

All enquiries related to this bid call must be forwarded to:

Supply Chain Management Enquiries

Ms Tsholo Dilape

(011) 547 2628

E-mail Address: TsholoD@mqa.org.za

AND

Technical enquiries related to this bid must be forwarded to:

Mr Songezo Maqubela

Legal and Governance Unit

Tel: (011) 547 2681

E-mail Address: SongezoM@mqa.org.za