

REQUEST FOR PROPOSAL

FOR

The provision of legal services regarding migration of contracts from entities into Technology Innovation Agency (“TIA”)

RFP NUMBER: TIA 05/2009



Issue Date:

Response Deadline: 15 January 2010

1. Introduction

The Technology Innovation Agency (TIA) is a public entity of the Department of Science and Technology (schedule 3A of the Public Finance Management Act, 1999) created in terms of the Technology Innovation Agency Act, 2008. The Agency is set up as the public entity with the aim to enhance the country's capacity to translate a greater proportion of local research and development into commercial technology products and services.

2. The Services required

TIA will take over the business activities of the following Department of Science and Technology vehicles ("the entities"):

- LifeLab (www.lifelab.co.za)
- Cape Biotech (www.capebiotech.co.za)
- PlantBio (www.plantbio.org.za)
- Innovation Fund (www.innovationfund.ac.za)
- AMTS (www.amts.co.za)
- Tshumisano Trust (www.tshumisano.co.za)
- BioPad (www.biopad.org.za)

All contracts entered into by the above entities must be migrated into TIA on or before the 1st of April 2010. Simultaneously governing bodies (mainly Boards of trustees created in terms of the Trust Property Control Act, 1988) of the above entities will cease to exist on or before the same date and the Board of TIA will take over. Some of these entities have invested huge amounts of money into companies trading in research, development and technologies taking shares, amongst others.

3. The Services

TIA requires a Service Provider to assist in the following services:

- 3.1 Undertaking risk and liability analysis of all investment contracts entered into by the entities and providing recommendations and risk mitigation strategies vis-à-vis such investments (There are about 98 investment contracts entered into by the entities);
- 3.2 Assist TIA negotiate procurement contracts entered into by the entities where cession thereof is not catered for.
- 3.3 Draft all documentation required for successful migration of all contracts into TIA. These shall include Undertakings to Perform, Cession Agreements and Consent to cede letters.

4. Request for Proposals

- 4.1 The Agency would like to invite service providers to submit proposals for legal services as described in this Terms of Reference (TOR) document.

4.2 Bidders are advised to indicate hourly rates of all people who will work on this project.

5. Proprietary Information

TIA considers this Request for Proposal (RFP) and all related information, either written or verbal, which is provided to the Bidder, to be proprietary to TIA. It shall be kept confidential by the Bidder and its officers, employees, agents and representatives. The Bidder shall not disclose, publish, or advertise this specification or related information in part or as a whole to any third party without the prior written consent of TIA. This applies regardless of whether the recipient of this RFP responds with a proposal or not.

6. Enquiries & Responses

6.1 All communication and attempts to solicit information of any kind relative to this RFP should be channelled to the Contact Person named in the RFP.

6.2 All Enquiries regarding this proposal shall be submitted in writing to Arthur.Maisela@tia.org.za with **“The provision of legal services regarding migration of contracts from entities into TIA”** as the subject.

7. Medium of Communication

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

8. Verification of Documents

Respondents should check the numbers of the pages to satisfy themselves that none are missing or duplicated. No liability will be accepted by TIA in regard to anything arising from the fact that pages are missing or duplicated.

9. Submission of RFPs

9.1 Proposals should be submitted at **TIA Offices, Persequor Park, Meiring Naude Drive, Brummeria**. It is the responsibility of the prospective supplier to ensure that the proposal is deposited at the above address before **12h00 on 15 January 2010**.

9.2 Four copies of each proposal must be submitted, including the original. In the event of a contradiction between the submitted copies, the original shall take precedence. Telegraphic, telefax and e-mail proposals will not be accepted.

9.3 If a courier service company is being used for delivery of the proposal document, the RFP description must be endorsed on the delivery note/courier packaging to ensure that documents are delivered to the correct recipient, as mentioned above.

10. General Terms and Conditions

10.1 The Respondent is responsible for all costs incurred in the preparation and submission of the proposal.

10.2 A copy/s of any affiliations, memberships and/or accreditations that support your submission must be included in the proposal.

10.3 Kindly note that TIA is entitled to:

10.3.1 Amend any RFP conditions, validity period, specifications, or extend the closing date and/or time of RFPs before the closing date. All Respondents, to whom the RFP documents have been issued, will be advised in writing of such amendments in good time;

10.3.2 Verify any information contained in a proposal;

10.3.3. Not to appoint any bidder;

10.3.4 Vary, alter, and/or amend the terms of this RFP, at any time prior to the finalisation of its adjudication hereof;

10.3.5 An omission to disclose material information, a factual inaccuracy, and/or a misrepresentation of fact may result in the disqualification of a proposal, or cancellation of any subsequent contract.

10.3.6 TIA reserves the right not to accept the lowest proposal or any proposal in part or in whole. TIA normally awards the contract to the Bidder who proves to be fully capable of handling the contract and whose Proposal is technically acceptable and/or financially advantageous to TIA. Appointment as a successful contractor shall be subject to the parties agreeing to mutually acceptable contractual terms and conditions. In the event of the parties failing to reach such agreement within 30 days from the appointment date, TIA shall be entitled to appoint the contractor who was rated second, and so on.

10.4 TIA also reserves the right to award this RFP as a whole or in part without furnishing reasons.

10.5 TIA also reserves the right to cancel or withdraw from this RFP as a whole or in part without furnishing reasons and without attracting any liability.

10.6 The Bidder hereby offers to render all of the services described in the attached documents (if any) to TIA on the terms and conditions and in accordance with the specifications stipulated in this RFP documents (and which shall be taken as part of, and incorporated into, this proposal at the prices inserted therein).

10.7 This proposal and its acceptance shall be subject to the terms and conditions contained in this RFP document.

10.8 The Respondent shall prepare for a possible presentation should TIA require such and the Respondent shall be notified thereof no later than 4 (four) days before the actual presentation date.

11. Project Programme

The Project Programme, as currently envisaged, incorporates the following key dates:

11.1 Date of Issue: 04 December 2009

11.2 Submission Date: 15 January 2010

11.3 Completion of Project: 31 March 2010

11.4 Proposals shall be submitted at the address mentioned above **no later than 12h00 on 15 January 2010**. TIA reserves the right to disregard proposals received after the specified due date.

12. Scope Of Work

Successful Bidder's responsibilities will include:

- 12.1 Undertaking risk and liability analysis of all investment contracts entered into by the entities and providing recommendations vis-à-vis such investments (There are about 98 investment contracts entered into by the entities)
- 12.2 Assist TIA negotiate procurement contracts entered into by the entities where cession thereof is not catered for.

The consultants will report to the Manager Legal Services

13. Evaluation Criteria

The following criteria shall be used in the evaluation of proposals:

- 13.1 Composition in terms of race and shareholding;
- 13.2 Representation of expertise;
- 13.3 Performance track record as reflected on projects undertaken;
- 13.4 Capacity building / skills transfer record (if applicable);
- 13.5 Capacity to undertake the job;
- 13.6 Mandatory requirements (14 below).

14. Mandatory Requirements

14.1. Prospective bidders should meet the following requirements:

- Proven experience in commercial law which shall include negotiation and drafting of international commercial agreements, mergers and acquisitions, subscription and shareholders agreements, royalty agreements and license agreements;
- Experience in corporate credit transactions (such as convertible loans);
- Experience in applying the Public Finance Management Act and the Treasury Regulations to contractual transactions;

15. Conclusion

15.1. Failure to comply with any of the terms and conditions as set out above will invalidate the Proposal.

15.2. TIA's decision on proposals received shall be final and binding.