

Request for proposals for Legal Support to the National Energy Crisis Committee

Introduction

The National Business Initiative (NBI) is a voluntary group of leading national and multi-national companies, working together towards sustainable growth and development in South Africa through partnerships, practical programmes and policy engagement. Since its establishment in 1995, the NBI has been an advocate for the collective role of business in support of a stable democracy, growing economy and healthy natural environment.

To this end, the NBI has been appointed by the Resource Mobilisation Fund (RMF) to assist in the provisioning of resources to the Presidency, for use in the National Energy Crisis Committee (NECOM).

Project Background

President Ramaphosa established NECOM to oversee the implementation of an Energy Action Plan to end load shedding and achieve energy security. NECOM is chaired by the President and includes the Minister in the Presidency, the Minister of Mineral Resources and Energy, the Minister of Public Enterprises, the Minister of Finance, the Minister of Forestry, Fisheries and the Environment, and the Minister of Trade, Industry and Competition.

A technical secretariat has been established to support NECOM, including senior officials in various government departments and state agencies. The secretariat is chaired by the Director-General in the Presidency and comprises nine workstreams to coordinate the implementation of interventions to reduce load shedding and achieve energy security. Details of the workstreams are provided in Table 1 below.

Table 1: NECOM workstreams

Overview of workstream focus area	Departments/ Entities represented
<p>Workstream 1: Improving Eskom Plant Performance and Strengthening the Grid</p> <p>Workstream 1 will focus on two areas. First, it will oversee improvements in the performance and availability of existing Eskom plant, working closely with Eskom. This will include an independent review of plant performance to identify improvements in operating practices, skills and other factors. Second, it will focus on expanding and strengthening transmission infrastructure to enable the connection of new generation capacity, including large-scale renewables.</p>	<p>DPE DMRE Eskom</p>

<p>Workstream 2: Regulatory and Legal</p> <p>Workstream 2 will focus on cross-cutting policy, legal, regulatory issues and decision-making processes. It will also provide support to other work streams where legal issues arise. The immediate focus is to consider the tabling of special legislation to reduce or remove red tape for energy projects for a period of two years. The existing Embedded Generation Intervention Task Team will form part of the Regulatory and Legal Workstream and will work towards the establishment of a one-stop shop for energy-related applications.</p>	<p>DFFE , DMRE DALRRD DOT, DWS DPWI, DOJ&CD DTIC (InvestSA) National Treasury NERSA, SALGA Eskom</p>
<p>Workstream 3: New Generation Capacity</p> <p>Workstream 3 will focus on expediting the connection of additional generation capacity from existing and future procurement rounds as well as emergency procurement. In addition, it will focus on measures to ensure private investment in new generation capacity as well as to facilitate commercial and residential installations of small-scale embedded generation. This will include implementing a feed-in tariff structure and expanding or reinstating tax incentives for Small-scale Embedded Generation (SSEG).</p>	<p>DMRE Eskom National Treasury NERSA SALGA</p>
<p>Workstream 4: Procurement and Financing</p> <p>Workstream 4 will focus on providing exemptions from the PFMA to enable emergency procurement of electricity and maintenance, as well as determining any cost and the deployment of financial resources in implementing the Action Plan to End Load Shedding.</p>	<p>National Treasury Eskom DPE</p>
<p>Workstream 5: Demand Side Management</p> <p>Workstream 5 will develop a detailed plan to improve demand management and ensure implementation of energy efficiency and customer response measures.</p>	<p>DMRE DPWI Eskom</p>
<p>Workstream 6: Safety and Security</p> <p>Workstream 6 will focus on ensuring that the Security Cluster implements a coordinated plan by law enforcement agencies to address sabotage, theft and fraud at Eskom as well as cable theft and illegal connections. A further critical area is to ensure that our intelligence capability addresses ongoing economic sabotage and protects critical infrastructure.</p>	<p>SANDF SAPS SSA DOJ&CD NPA Eskom</p>
<p>Workstream 7: Data Analytics and Research</p> <p>Workstream 7 will provide ongoing data and research support to inform decision making, including modelling the impact of measures to address the energy shortfall.</p>	<p>DSI , DPME DMRE, CSIR SANEDI, Eskom</p>

<p>Workstream 8: Communication</p> <p>Workstream 8 will focus on communicating the strategy to the public in a coherent and effective manner, including providing regular progress updates, as well as on ensuring active and continuous stakeholder engagement.</p>	<p>GCIS Eskom DMRE</p>
<p>Workstream 9: Distribution</p> <p>Workstream 9 will focus on addressing distribution challenges, enabling all South Africans to benefit from new generation capacity.</p>	<p>NERSA, ESKOM DMRE SALGA AMEU</p>

Purpose

The overarching objectives of the Energy Action Plan are to restore security of electricity supply and reduce the risk of load shedding. Delivering on these objectives requires an enabling legal and regulatory framework. The current legal and regulatory environment is not designed to facilitate the rapid addition of new generation capacity or enable an effective response to the energy crisis. In particular, energy projects must undergo a complex and lengthy regulatory process which, if not expedited, will limit the potential of adding capacity to the grid in the near term. In addition, legal and regulatory reform is required to enable certain interventions contemplated in the plan, including the implementation of a feed-in tariff, a national framework for wheeling of electricity and other measures. Such reforms must be implemented in the context of a rapidly evolving energy landscape.

Legal expertise is required to advise NECOM on regulatory changes that will facilitate successful implementation of the Energy Action Plan. Specifically, input is required to:

- Advise decision-makers on changes to existing legislation and on new legislation which should expedite procurement of new generation capacity and support other initiatives contained in the plan;
- Identify potential legal risks to activities implemented under the Energy Action Plan; and
- Support the development and drafting of legislation and/or regulations as required.

Scope of work

The appointed experts will work closely with the legal and regulatory workstream of NECOM. The scope of work should include but not be restricted to the overview described in table 2 below.

Table 2: Overview of scope of work

Activity area	Issues to be addressed in the activity area
<p>Developing an Omnibus Bill to support implementation of the Energy Action Plan and accelerate the addition of new generation capacity</p>	<ul style="list-style-type: none"> • Reviewing available materials and plans developed by the NECOM • Identifying and specifying where legislative changes will be required to enable implementation of the plan • Preparing draft legislation under the guidance of the NECOM to address the legal and regulatory obstacles to new generation capacity for a limited period, including, for example, providing for streamlined regulatory processes, waivers from certain approvals required, and implementation of a feed-in tariff and other proposed measures
<p>Identifying risks & implementing risk mitigation approaches</p>	<ul style="list-style-type: none"> • Identifying legal risks in the plan and its implementation which threaten the outcomes to be achieved in the plan • Proposing, and where applicable, implementing risk mitigation approaches with the support of key stakeholders
<p>Providing advice where required to support the activities of the legal and regulatory workstream</p>	<ul style="list-style-type: none"> • Providing written reports outlining legal advice in response to requests received from the NECOM secretariat and/or the legal and regulatory workstream, on issues such as: <ul style="list-style-type: none"> ○ Reviewing regulations on new generation capacity and clarifying the need for section 34 determination or Ministerial approval for municipal procurement ○ Advising on approvals and/or exemptions required from the PFMA, PPPFA and procurement regulations to enable procurement of new generation capacity, maintenance and other requirements

The legal and regulatory workstream has already commenced work in many of its focus areas and it will be important for the legal team to familiarise itself with the progress to date, to ensure that momentum is maintained. This will require detailed engagement with key officials leading work on various activities in addition to reviewing the materials that have already been produced.

Project deliverables and contractual period

Legal expertise is required over at least **12 months**, on a retainer basis, to provide legal advice and support for the implementation of the Energy Action Plan. During this period, several deliverables will be submitted in response to the scope of work. These deliverables include:

- Reports based on briefs provided by the NECOM secretariat and/or the legal and regulatory workstream from time to time;
- Participation in meetings of the NECOM secretariat and/or the legal and regulatory workstream as required; and
- Draft legislation developed for consideration by the NECOM based on a detailed brief from the legal and regulatory workstream.

Reporting requirements

The Director-General in the Presidency will provide oversight of tasks carried out while day-to-day management will be the responsibility of the Project Management Office (PMO) in the Presidency, as part of the NECOM secretariat. The secretariat will supply all reasonable, relevant, available data and information required and requested by the successful project managers for the proper execution of the services. This day-to-day engagement will include weekly planning meetings with the secretariat to support project delivery.

Qualifications and experience

Applicants should be from a registered firm of attorneys with appropriate qualifications and experience. This should include specific expertise and experience in researching and drafting policy, legislation, and regulations for public sector institutions. The successful team should also have substantial experience working in South Africa's energy sector and knowledge of the prevailing legal and regulatory framework in the energy sector. Additionally, experts in the team should possess sufficient knowledge and proven experience, in:

- Various regulations governing the procurement of new generation capacity by public and private actors;
- The regulatory framework and processes of the National Energy Regulator of South Africa;
- Key public and private sector stakeholders in the South African energy sector; and
- The legislative process.

Proposal and Project Timelines

Proposal Due Date:	22 nd March 2023
Project Commencement:	3 rd April 2023
Project Duration:	The project will end after 12 months unless extended by mutual consent

Proposal Requirements

Please ensure that your Proposal specifically includes:

- Your proposed methodology including:
 - Organisation information (including governance structure, core business, contact details)
 - Exposure to the public sector
- Proposed budget:
 - an **all-inclusive hourly rate** per resource, per area
- Evidence of relevant experience including:
 - The suitability of your firm/team to complete this project
 - Short summaries of the relevant capabilities and experiences of each individual assigned, showing an ability to understand the content area
 - Indicate similar work your organisation has undertaken and outcomes achieved
 - Contact details of project references
- Your tax compliance certificate.
- Your broad-based black economic empowerment status.

It is envisaged that the support will mostly be offered via virtual platforms. All proposed resources should be readily available to start on the proposed date as indicated below.

Your proposal should not exceed seven pages in Microsoft Word (pdf), excluding Annexures.

Please email your proposal and relevant supporting documents to Mandyp@nbi.org.za by 12h00 on 22nd March 2023. No late submissions will be considered.

Evaluation Criteria

Criteria	Weight
Functionality (Capability and track record)	80%
Cost	10%
BBBEE	10%
Total	100%

Important dates

Deadline for clarification questions to rutht@nbi.org.za	16th March 2023
Deadline for submission of proposals to mandyp@nbi.org.za	By 12h00 on 22nd March 2023 <u>No late submissions will be considered</u>

CHECKLIST OF DOCUMENTS TO BE SUBMITTED

A checklist below which is not mutually exclusive has been provided in order to highlight some of the important documents which must be included/ submitted with the Request for Proposal (RFP):

	DESCRIPTION	Y/N
1	A signed Bid submission in response (responsive) to requirements stated in the Tender Terms of Reference and Evaluation Criteria	
2	Cost proposal / Budget	
3	Bank Details (verified by bank)	
4	Company Profile	
5	Valid B-BBEE Status Level Certificate / Sworn Affidavit, where all copies provided MUST be authenticated as true copies of the original document/s by a registered Commissioner of Oaths	
6	Proof of registration on National Treasury's Central Supplier Database (CSD) [Recommended]	
7	Tax Clearance Certificate (pin) - companies OR Sworn Affidavit – individuals	
8	Curriculum Vitae (CVs) of resources proposed in the Bid Submission	
9	Certified copies of Academic and Professional documents of each proposed resource	
10	Project Reference Contact Details	
11	Registration and Good standing with Compensation Fund, Department of Labour, or private insurance. This must be attached.	
12	Professional Liability Insurance Certificate	

NOTE:

- Ensure that all document attachments are clearly marked and the tender proposal is submitted in a clear, logical and well-marked sequence together with an index of documents.
- Only one submission is required.