

Request for Proposals (RFP) for

The provision of Legal support to CSIR in terms of Intellectual Property and licensing commercialisation agreements within constraints of IPR Act with international client and local collaboration partners.

RFP No. 3438/05/04/2021

Date of Issue	Friday 19 March 2021	
Closing Date	05 April 2021 at 16h30	
Enquiries and submission of proposals	Strategic Procurement Unit	E-mail: tender@csir.co.za
CSIR business hours	08h00 – 16h30	
Category	Professional Services	

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SECTION A – TECHNICAL INFORMATION

1 INTRODUCTION

The Council for Scientific and Industrial Research (CSIR) is one of the leading African scientific research and technology development organisations. The CSIR's mandate is to undertake directed and multidisciplinary research and technology innovation that contributes to the improvement of the quality of life of South Africans. The CSIR lives and achieves this mandate in partnership with national and international research and technology institutions, parties in the public and private sectors and with civil societies. The CSIR also renders its research and development focus and outputs to drive socioeconomic development and to support a capable state. Intellectual property and knowhow are key outputs of the CSIR's endeavours, which it translates into products, processes and services. The valorisation of intellectual property and know how are critical to the realisation of the CSIR mandate.

2 BACKGROUND

The CSIR is negotiating multi-organisation, international, complex radar development and supply contracts and requires the services of a commercialisation and licensing lawyer to consult on the negotiation, drafting and concluding of: a cross border R&D development contract including future joint commercialisation agreements with the client; a supply contract for future supply of the developed system; the establishment of agreements with partnering organisations to execute the development contract and licensing and commercialisation agreements for the future supply of the system.

As such the following legal expertise is required:

- South African patent attorney with international experience
- Qualified engineer, preferably electrical/electronic engineer
- Experience in regard to the Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008
- Experience in establishing collaboration agreements between development partners
- Experience in cross-border R&D contracts
- Preference for a Certified Licensing Professional or equivalent
- Experience in negotiating licensing and commercialisation agreements, including experience in financial analysis of IP transactions and consequential IP negotiations

- >10 years' experience in negotiating, drafting and concluding R&D development and commercialisation agreements
- Extensive experience (in the past years) in negotiating, drafting and concluding development and licensing agreements for complex electronic systems with a strong preference for experience in radar development contracts.

3 INVITATION FOR PROPOSAL

Proposals are hereby invited for the provision of Intellectual Property Legal support to the CSIR.

4 PROPOSAL SPECIFICATION

All proposals are to be submitted in a format specified in this enquiry.

Bidders are to submit responses in the following format prescribed below. Failure to adhere to this may result in disqualification and the tender may be deemed as non-responsive.

4.1 Technical Proposal

The following must be submitted as part of the **technical** proposal:

- Covering letter;
- Company profile clearly stipulating the number of years rendering similar services;
- Service provider's performance on past and current assignments – Provide not less than five (5) contactable client references for similar services provided, clearly stating the position placed, and ability to complete assignments on time;
- Provide a methodology and approach for delivering the required outcomes as outlined in this enquiry.
- Provide detailed Curriculum Vitae (CV) of individual that will provide the support requested

4.2 Financial Proposal:

The following must be submitted as part of the **financial** proposal:

- Cover letter
- Proposed cost/ commercial offer on official company letterhead.
- The pricing must be firm and inclusive of all costs and disbursements required to render the required services to the CSIR.

- Labour rate per hour
- Provide a valid original or certified copy of B-BBEE certificate or valid sworn affidavit.

5. SCOPE OF WORK AND DELIVERABLES

The CSIR thus requests the services of a competent party to provide support on the negotiation, drafting and concluding of:

- A cross border R&D development contract including future joint commercialisation agreements with the client;
- A supply contract for future supply of the developed system;
- The establishment of agreements with partnering organisations to execute the development contract and licensing and commercialisation agreements for the future supply of the system.

6. FUNCTIONAL EVALUATION CRITERIA

The evaluation of the functional / technical detail of the proposal will be based on the following criteria:

- Firstly, the following requirements are mandatory and any candidate not meeting these requirements will be disqualified from the tender.

Mandatory requirements
Qualified engineer-lawyer
Evidence of experience related to the Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008
Evidence of experience in establishing collaboration agreements between development partners
Evidence of experience in cross-border R&D contracts
Evidence of experience and training in negotiating licensing and commercialisation agreements, including experience in financial analysis of IP transactions and consequential IP negotiations

Availability to provide 160 hours of required support spread over the period March – May 2021

b) Secondly the weighted table below will be used to evaluate remaining candidates.

Criteria	Weight	Score
Qualified engineer, preferably electrical/electronic engineer <ul style="list-style-type: none"> Qualified Engineer = 0 Qualified electrical/electronic engineer = 10 	10%	Out of 10
Qualified South African patent attorney (>5 years) with international experience <ul style="list-style-type: none"> Not a patent attorney = 0 Patent attorney with less than 5 years' international experience = 3 Patent attorney with more than 5 years international experience = 10 	10%	Out of 10
Evidence of specialist (≥ 10 years') experience related to the Intellectual Property Rights from Publicly Financed Research and Development Act 51 of 2008 <ul style="list-style-type: none"> Has no experience in IPR = 0 IPR specialist with less than 10 years' experience = 3 IPR Specialist with 10 year experience in PFRDA on IPR Act = 15 	15%	Out of 15
Evidence of experience (≥ 10 years') in establishing collaboration agreements between development partners <ul style="list-style-type: none"> No experience = 0 <10 years' experience = 3 ≥ 10 years' experience = 10 	10%	Out of 10
Evidence of experience in cross-border R&D contracts <ul style="list-style-type: none"> No experience = 0 <10 years' experience = 3 ≥ 10 years' experience = 10 	10%	Out of 10
Certified Licensing Professional or equivalent <ul style="list-style-type: none"> No = 0 Yes = 10 	10%	Out of 10
Evidence of experience in negotiating licensing and commercialisation agreements, including experience in financial analysis of IP transactions and consequential IP negotiations: <ul style="list-style-type: none"> No experience = 0 Some experience = 3 (< 10 years) Extensive (≥ 10 years) experience = 10 	10%	Out of 10
Extensive experience in negotiating, drafting and concluding R&D development and commercialisation agreements <ul style="list-style-type: none"> 0 – 4.9 years' experience = 0 5 – 9.9 years' experience = 5 10 years or more experience = 15 	15%	Out of 15

Recent experience in negotiating, drafting and concluding development and licensing agreements for complex electronic systems (including radar): <ul style="list-style-type: none"> No recent experience = 0 Have experience in last 2 – 5 years = 5 Recent experience in last year (2020) = 10 	10%	Out of 10
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Proposals with functionality / technical points of less than the pre-determined minimum overall percentage of 70 % and less than 50 % on any of the individual criteria will be eliminated from further evaluation.

7. PRICING SCHEDULE:

Bidders must price as per the below pricing schedule for the purposes of evaluation:

No.	Deliverable / Item Description	Unit of Measure	Estimated Number of hours	Rate per hour (Excl. VAT)	Total Cost (Excl. VAT)
1	The provision of Legal support to CSIR in terms of Intellectual Property and licensing commercialisation agreements within constraints of IPR Act with international client and local collaboration partners.	Hours	160		
				Sub-total	
				VAT	
				Total	

Notes to Pricing:

Bidders are to note that if the price offered by the highest scoring bidder is not market-related, CSIR may not award the contract to that bidder. CSIR may:

- negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;
- if that bidder does not agree to a market-related price, negotiate a market-related price with the bidder scoring the second highest points or cancel the RFP;
- if the bidder scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the bidder scoring the third highest points or cancel the RFP.

- If a market-related price is not agreed with the bidder scoring the third highest points, CSIR may cancel the RFP.

NB: The above cost must be inclusive of all costs required to render the required services as per above scope of work and deliverables;

8. ELIMINATION CRITERIA

Proposals will be eliminated under the following conditions:

- Submission after the deadline;
- Proposals submitted at incorrect location (Bids must be submitted electronically at tender@csir.co.za);
- Failure to provide a minimum of five (05) contactable references
- Non-submission or incomplete SBD 1 form.

9. NATIONAL TREASURY CENTRAL SUPPLIER DATABASE REGISTRATION

Before any negotiations will start with the winning bidder it will be required from the winning bidder to:

- be registered on National Treasury's Central Supplier Database (CSD). Registrations can be completed online at: www.csd.gov.za;
- provide the CSIR of their CSD registration number; and
- provide the CSIR with a certified copy of their B-BBEE certificate. If no certificate can be provided, no points will be scored during the evaluation process. (RSA suppliers only).

SECTION B – TERMS AND CONDITIONS

10. PROCEDURE FOR SUBMISSION OF PROPOSALS

10.1 All proposals must be submitted electronically to tender@csir.co.za.

10.2 Respondents must use the RFP number as the subject reference number when submitting their bids.

10.3 The e-mail and file sizes should not exceed a total of 25MB per e-mail.

10.4 The naming/labeling syntax of files or documents must be short and simple (e.g., Product Catalogues).

10.5 All documents submitted electronically via e-mail must be clear and visible.

10.6 All proposals, documents, and late submissions after the due date will not be evaluated.

NB: NO HARD COPIES OR PHYSICAL SUBMISSIONS WILL BE ACCEPTED

11. TENDER PROGRAMME

The tender program, as currently envisaged, incorporates the following key dates:

- Issue of tender documents: 19 March 2021
- Last date for submission of queries: 29 March 2021
- Closing / submission Date: 05 April 2021

12. SUBMISSION OF PROPOSALS

12.1 All proposals are to be submitted electronically to tender@csir.co.za. No late proposals will be accepted.

12.2 Responses submitted by companies must be signed by a person or persons duly authorised.

12.3 All e-mailed proposal submissions are to be clearly subject-referenced with the RFP number. Proposals must consist of two parts, each of which must be sent in two separate e-mails with the following subject:

PART 1: Technical Proposal RFP No.: 3438/05/04/2021

PART 2: Pricing Proposal RFP No.: 3438/05/04/2021

12.4 The CSIR will award the contract to qualified tenderer(s) whose proposal is determined to be the most advantageous to the CSIR, taking into consideration the technical (functional) solution, price, and B-BBEE.

12.5 Proposals submitted must be in the following file formats:

- PDF

13. DEADLINE FOR SUBMISSION

Proposals shall be submitted at the e-mail address mentioned above no later than the closing date of **05 April 2021**, during CSIR's business hours. The CSIR business hours are between 08h00 and 16h30.

Where a proposal is not received by the CSIR by the due date and stipulated e-mail address, it will be regarded as a late submission. Late submissions will not be considered.

14. AWARDING OF TENDERS

14.1 Awarding of tenders will be published on the National Treasury e-tender portal or the CSIR's tender website. No regret letters will be sent out.

15. EVALUATION PROCESS

15.1 Evaluation of proposals

An evaluation team will evaluate all proposals for functionality, price, and B-BBEE. Based on the results of the evaluation process and upon successful negotiations, the CSIR will approve the awarding of the contract to successful tenderer/s.

A two-phase evaluation process will be followed:

15.1.1 The first phase includes the evaluation of elimination and functionality criteria.

15.1.2 The second phase includes the evaluation of price and B-BBEE status.

Pricing Proposals will only be considered after the functionality phase has been adjudicated and accepted. Only proposals that achieved the specified minimum qualification scores for functionality will be evaluated further using the preference points system.

15.2 Preference points system

The 80/20 preference point system will be used where 80 points will be dedicated to pricing and 20 points to B-BBEE status. If all tenders received are more than R50m, the proposal will be cancelled and re-issued.

16. PRICING PROPOSAL

- 16.1 Pricing proposal must be cross-referenced to the sections in the Technical Proposal. Any options offered must be clearly labelled. Separate pricing must be provided for each option offered to ensure that pricing comparisons are clear and unambiguous.
- 16.2 Price needs to be provided in South African Rand (excl. VAT), with details on price elements that are subject to escalation and exchange rate fluctuations indicated.
- 16.3 Price should include additional cost elements such as freight, insurance until acceptance, duty where applicable.
- 16.4** Only firm prices* will be accepted during the tender validity period. Non-firm prices** (including prices subject to rates of exchange variations) will not be considered.
- 16.5 Bidders must quote as per the pricing schedule.

**Firm price is the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which, in terms of a law or regulation is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;*

***Non-firm price is all prices other than "firm" prices.*

- 16.6 Payment will be according to the CSIR Payment Terms and Conditions.

17. VALIDITY PERIOD OF PROPOSAL

Each **proposal** shall be valid for a minimum period of three (3) months calculated from the closing date.

18. APPOINTMENT OF SERVICE PROVIDER

- 18.1 The contract will be awarded to the tenderer who scores the highest total number of points during the evaluation process, except where the law permits otherwise.
- 18.2 Appointment as a successful service provider 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, CSIR reserves the right to appoint an alternative supplier.
- 18.3 Awarding of contracts will be announced on the National Treasury website, and no regret letters will be sent to unsuccessful bidders.

19. ENQUIRIES AND CONTACT WITH THE CSIR

Any enquiry regarding this RFP shall be submitted in writing to CSIR at tender@csir.co.za with **RFP No: 3438/05/04/2021– “The provision of Intellectual Property Legal support to the CSIR”** subject.

Any other contact with CSIR personnel involved in this tender is not permitted during the RFP process other than as required through existing service arrangements or as requested by the CSIR as part of the RFP process.

20. MEDIUM OF COMMUNICATION

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

21. COST OF PROPOSAL

Tenderers are expected to fully acquaint themselves with the conditions, requirements, and specifications of this RFP before submitting proposals. Each bidder assumes all risks for resource commitment and expenses, direct or indirect, of proposal preparation and participation throughout the RFP process. The CSIR is not responsible directly or indirectly for any costs incurred by tenderers.

22. CORRECTNESS OF RESPONSES

- 22.1 The tenderer must confirm satisfaction regarding the correctness and validity of their proposal and that all prices and rates quoted cover all the work/items specified in the RFP. The prices and rates quoted must cover all obligations under any resulting contract.
- 22.2 The tenderer accepts that any mistakes regarding prices and calculations will be at their own risk.

23. VERIFICATION OF DOCUMENTS

- 23.1 Tenderers should check the numbers of the pages to satisfy themselves that none are missing or duplicated. The CSIR will accept no liability concerning anything arising from the fact that pages are missing or duplicated.
- 23.2 Only one electronic copy of the proposal (Technical and Financial) must be submitted via e-mail to tender@csir.co.za. If the bidder sends more than one proposal, the first submission shall take precedence should it not have been recalled/withdrawn in writing by the bidder.
- 23.3 Pricing schedule and B-BBEE credentials should be submitted with the proposal, but as a separate e-mail and no such information should be available in the technical proposal.

24. SUB-CONTRACTING

- 24.1 A tenderer will not be awarded points for B-BBEE status level if it is indicated in the tender documents that such a tenderer intends sub-contracting more than **25%** of the value of the contract to any other enterprise that does not qualify for at least the points that such a tenderer qualifies for, unless the intended sub-contractor is an exempted micro enterprise that has the capability and ability to execute the sub-contract.
- 24.2 A tenderer awarded a contract may not sub-contract more than **25%** of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an exempted micro enterprise that has the capability and ability to execute the sub-contract.

25. ADDITIONAL TERMS AND CONDITIONS

- 25.1 A tenderer shall not assume that information and/or documents supplied to CSIR, at any time prior to this request, are still available to CSIR, and shall consequently not make any reference to such information document in its response to this request.
- 25.2 Copies of any affiliations, memberships and/or accreditations that support your submission must be included in the tender.
- 25.3 In case of proposal from a joint venture, the following must be submitted together with the proposal:
- Joint venture Agreement including split of work signed by both parties;
 - The original or certified copy of the B-BBEE certificate of the joint venture;
- 25.4 An omission to disclose material information, a factual inaccuracy, and/or a misrepresentation of fact may result in the disqualification of a tender, or cancellation of any subsequent contract.
- 25.5 Failure to comply with any of the terms and conditions as set out in this document will invalidate the proposal.

26. CSIR RESERVES THE RIGHT TO

- 26.1 Extend the closing date;
- 26.2 Verify any information contained in a proposal;
- 26.3 Request documentary proof regarding any tendering issue;
- 26.4 Give preference to locally manufactured goods;
- 26.5 Appoint one or more service providers, separately or jointly (whether or not they submitted a joint proposal);
- 26.6 Award this RFP as a whole or in part;
- 26.7 Cancel or withdraw this RFP as a whole or in part.

27. DISCLAIMER

This RFP is a request for proposals only and not an offer document. Answers to this RFP must not be construed as acceptance of an offer or imply the existence of a contract between the parties. By submission of its proposal, tenderers shall be deemed to have satisfied themselves with and to have accepted all Terms & Conditions of this RFP. The CSIR makes

no representation, warranty, assurance, guarantee or endorsements to tenderer concerning the RFP, whether with regard to its accuracy, completeness or otherwise and the CSIR shall have no liability towards the tenderer or any other party in connection therewith.

DECLARATION BY TENDERER

Only tenderers who completed the declaration below will be considered for evaluation.

RFP No: 3438/05/04/2021

I hereby undertake to render services described in the attached tendering documents to CSIR in accordance with the requirements and task directives / proposal specifications stipulated in **RFP No. 3438/05/04/2021** at the price/s quoted. My offer/s remains binding upon me and open for acceptance by the CSIR during the validity period indicated and calculated from the closing date of the proposal.

I confirm that I am satisfied with regards to the correctness and validity of my proposal; that the price(s) and rate(s) quoted cover all the services specified in the proposal documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.

I accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this proposal as the principal liable for the due fulfilment of this proposal.

I declare that I have no participation in any collusive practices with any tenderer or any other person regarding this or any other proposal.

I accept that the CSIR may take appropriate actions, deemed necessary, should there be a conflict of interest or if this declaration proves to be false.

I confirm that I am duly authorised to sign this proposal.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

WITNESSES

1

2

DATE:

28. SCHEDULE OF BIDDER'S REFERENCE INFORMATION (NB- To be submitted with technical proposal)

The bidder must provide details of the bidder's current experience in providing similar services. Only references for work done in the past 5 years must be provided.

[illegible]

29. ANNEXURE A RETURNABLE CHECKLIST

NOTE: The bidder is required to complete each and every schedule listed below to the best of his ability as the evaluation of tenders and the eventual contract will be based on the information provided by the bidder. Failure of a bidder to complete the schedules and forms to the satisfaction of the CSIR will inevitably prejudice the tender and may lead to rejection on the grounds that the tender is not responsive.

The bidder must complete the following returnable documents:

RETURNABLE DOCUMENTS –			
PART A: TECHNICAL RETURNABLES			
Description:		Included	
		Yes	No
Cover Letter			
Company / Team Leader Experience <ul style="list-style-type: none">Number of years the company has been providing similar servicesTeam Leader's experience (number of years) in managing assignments similar to the scope of this RFPCVs of proposed Team.			
References <ul style="list-style-type: none">A minimum of 5 references are required			
Methodology / Approach and overall technical proposals.			
PART B: PRICING PROPOSAL			
32	Pricing Proposal		
33	B-BBEE Certificate		
34	Completed SBD1 Form		

Any other relevant document may be submitted, to substantiate the bidder's proposal.

30. ANNEXURE B –SBD 1