

**Terms of reference (ToRs) for the procurement of services below the EU threshold**

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<b>PROVISION OF LEGAL SERVICES FOR GIZ OFFICE PRETORIA</b>	<b>Project number/ cost centre: 96.9250.0-001.00</b>
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**0. List of abbreviations**

AG	Commissioning party
AN	Contractor
GTCC	General Terms and Conditions of Contract for supplying services and work
FK	Expert
FKT	Expert days
KZFK	Short-term expert
ToRs	Terms of reference

## 1. Context

As a federally owned enterprise of the German Government, The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH supports the South African Government in terms of sustainable development. GIZ operates in more than 120 countries around the globe. It has been present in South Africa since 1993.

Bilateral programmes and projects in the areas of Governance and Administration, Green Economy, Skills Development as well as HIV and AIDS prevention in South Africa are complemented by Regional, Pan-African and global projects. There are approximately 270 people currently working for GIZ in South Africa, Lesotho, and Eswatini.

The GIZ Office Pretoria intends to conclude a contract with a legal firm registered in South Africa to provide legal services for its operations.

GIZ is involved in multiple fields of development, across various sectors and often faces complex legal questions. Therefore, GIZ is seeking legal advisory services to bolster its project operations. The aim of this assignment, for the contractor, is to provide professional legal advisory services and to ensure a functional legal capacity of GIZ as an employer and legal entity in South Africa.

The GIZ Office Pretoria seeks to conclude a contract with a service provider for its operations in South Africa and its joint programmes from a panel of selected Legal firms. Firms will be appointed per matter based on their respective areas of expertise and GIZ's legal needs.

The services shall be carried out in close cooperation with the Country Director, Head of Finance and Administration, Programme and Component Managers, and Unit Heads of the GIZ office.

**The contract will be for two (2) years with the possibility of extension for another two (2) years.**

## 2. Tasks to be performed by the contractor

The contractor is responsible for providing the following services:

Subject to the other provisions herein appearing, the Legal firm shall render legal services including but not limited to all matters of general labour practice (including tax law) as well as contract law, in line with South African, Lesotho and eSwatini laws, tax and financial matters.

Legal services shall include written and verbal professional advice, online or in-person consultations, provision of legal opinions, legal representation in any forum, tribunal or court as may be required, negotiation of settlements, review of documents, contracts and/or other material, drafting of legal documentation or any other professional as may require by GIZ Pretoria Office of a legal nature. Examples of matters that require legal professional support are listed below:

- The legal firm shall provide **legal services** and where applicable also draft letters of a legal nature in an efficient, reliable, and cost-effective manner. These span specialisation areas including and not limited to Commercial Law, Trade Law, Criminal Law, Civil Law, Administrative Law, Property Law, Human Rights Law, Labour Law, etc. Examples of matters where services could be rendered, are:
  - Analysis of legal disputes and provision of legal strategy and opinions
  - Labour contracts and extra contractual liabilities
  - Civil and criminal cases and matters
  - Vehicle accident-related matters
  - Commercial and Financing contract terms and conditions, non-performance, disputes and terminations
  - Contract template assessment and confirmation for compliance with national laws, frameworks, guidelines, and codes of good practice
  - Customs laws (importation/ exportation of goods)
  - Transportation, damage, and loss of goods (materials and equipment)
  - Procurement of goods, services (e.g., consultants, works, private sector partnerships) through compliant tendering processes and procedures
  - Construction contracts and Rental agreements
  - Liability claims and matters
  - Insurance matters
  - Tax and financial matters
  - Handling of court cases and commercial litigation
  - Support and facilitation of legal registrations
  
- **Labour Relations matters**
  - Advising GIZ on legal requirements on recruitment and employer / employee relations.
  - Advising GIZ on legal guidelines regarding appropriate disciplinary measures, i.e. warnings, severe warnings, reprimands, demotion, terminations, etc.

- Updating GIZ on current legal development in the field of labour management, Human Resources and Industrial Relations in general.
  - Reviewing of labour documents, including contracts and Human Resource Manuals, policies, Forms and Correspondence that requires legal opinion.
  - The legal firm shall conduct litigation on behalf of GIZ either as a plaintiff and / or defendant and shall represent GIZ, its employees and agent in criminal proceeding.
  - The legal firm shall give guidance, advice and any other assistance in connection with any issue involving interpretation and / or implementation of employment contracts.
  - Assist in preparing disciplinary charges as per the labour law.
  - Supply new labour laws and policies development information to the company e.g. labour law amendments, new enactments, new wage orders, Rules and Regulations, advise on minor matters, preparation and attestation of affidavit.
  - Provide support in labour law and verification of local employment contracts.
  - Provide legal advice on tax and labour related matters.
  - Provide alternative dispute resolutions like conciliation, arbitration and mediation (CCMA or Labour Court).
- **Attending scheduled meetings with the client to discuss issues of concern**
    - To support and advice on ongoing regulatory law issues relating processes in question.
    - To be on call and attend to GIZ timely as may be required.
    - To provide legal opinions and advises on labour and general legal issues as may be required by GIZ.
    - The legal firm shall comply with the reasonable directions of GIZ and use its best endeavours to promote the interests of GIZ.
    - On request interact with the legal department at GIZ Headquarters in Germany.
    - The legal firm reports regularly to GIZ in accordance with the current AVB of the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.
    - Contributions to reports to GIZ's commissioning party
    - The Legal firm should have an understanding of General Data Protection Regulation, a set of EU rules on data protection and privacy as well as the Protection of Personal Information Act 4 of 2013

Brief quarterly or half-yearly reports on the status of requests (Certain milestones, as laid out in the table below, are to be achieved during the contract term):

<b>Milestones/process steps/partial services</b>	<b>Deadline/place/person responsible</b>
The legal firm is expected to respond to requests from GIZ on demand and provide a written quotation for the assignment within 5 business days.	From 5 to 15 business days from Inquiry date
The legal firm will deliver on each assignment (brief) within the agreed timeframe that will be set prior to the commencement of the task.  Produce and submit written legal opinions upon request	Up to 6 business days from date of brief  Up to 10 business days.
The legal firm shall provide GIZ information on any updates of South African law which could affect GIZ as a whole	Up to 15 business days from date of request.
Prompt investigations of complaints and reports to GIZ Country Office.	Per brief from 3 to 10 business days.
Training of GIZ staff or new or specific aspects of South African law, e.g. Data Protection regulation, or climate change mitigation impact in the context of COP21, etc.	Per brief up to 35 business days.

Period of assignment: from **01 August 2024** until **31 June 2028**.

### **3. Concept**

In the tender, the tenderer is required to show how the objectives defined in Chapter 2 (Tasks to be performed) are to be achieved, if applicable under consideration of further method-related requirements (technical-methodological concept). In addition, the tenderer must describe the project management system for service provision.

Note: The numbers in parentheses correspond to the lines of the technical assessment grid.

#### **Technical-methodological concept**

**Strategy (1.1):** The tenderer is required to consider the tasks to be performed with reference to the objectives of the services put out to tender (see Chapter 1 Context) (1.1.1). Following this, the tenderer presents and justifies the explicit strategy with which it intends to provide the services for which it is responsible (see Chapter 0 Tasks to be performed) (1.1.2).

The tenderer is required to present the actors relevant for the services for which it is responsible and describe the **cooperation (1.2)** with them.

The tenderer is required to present and explain its approach to **steering** the measures with the project partners (1.3.1) and its contribution to the **results-based monitoring system** (1.3.2).

The tenderer is required to describe the key **processes** for the services for which it is responsible and create an **operational plan** or schedule (1.4.1) that describes how the services according to Chapter 0 (Tasks to be performed by the contractor) are to be provided. In particular, the tenderer is required to describe the necessary work steps and, if applicable, take account of the milestones and **contributions** of other actors in accordance with Chapter 2 (Tasks to be performed) (1.4.2).

The tenderer is required to describe its contribution to knowledge management for the partner (1.5.1) and GIZ and to promote scaling-up effects (1.5.2) under **learning and innovation**.

### **Project management of the contractor (1.6)**

The tenderer is required to explain its approach for coordination with the GIZ project/s and country office requesting services. In particular, the project management requirements specified in Chapter 2 (Tasks to be performed by the contractor) must be explained in detail.

The tenderer is required to draw up a **personnel assignment plan** with explanatory notes that lists all the experts proposed in the tender; the plan includes information on assignment dates (duration and expert months) and locations of the individual members of the team complete with the allocation of work steps as set out in the schedule.

The tenderer is required to describe its backstopping concept. The following services are part of the standard backstopping package, which (like ancillary personnel costs) must be factored into the fee schedules of the staff listed in the tender in accordance with Section 3.3.1 of the GIZ AVB:

- Service-delivery control

- Managing adaptations to changing conditions
- Ensuring the flow of information between the tenderer and GIZ
- Assuming personnel responsibility for the contractor's experts
- Process-oriented steering for implementation of the commission
- Securing the administrative conclusion of the project

### **Further requirements (1.7)**

#### **4. Personnel concept**

The tenderer is required to provide personnel who are suited to filling the positions described, on the basis of their CVs (see Chapter 7), the range of tasks involved and the required qualifications.

The below specified qualifications represent the requirements to reach the maximum number of points in the technical assessment.

#### **Team leader**

##### Tasks of the team leader

- Overall responsibility for the advisory packages of the contractor (quality and deadlines)
- Coordinating and ensuring communication with GIZ, partners, and others involved in the project/ brief
- Personnel management, in particular identifying the need for short-term assignments within the available budget, as well as planning and steering assignments and supporting local and international short-term experts
- Ensuring any gaps of legal representation and expertise are covered across South Africa, Lesotho, and Eswatini
- Regular reporting in accordance with deadlines

##### Qualifications of the team leader

- Education/training (2.1.1): university degree 'Diploma'/Master) in Law or equivalent
- Language (2.1.2): C2-level language proficiency in English and German
- General professional experience (2.1.3): 20 years of professional experience in the Social Sciences, Economic/Commercial Law Management, Labour Law, and Tax law sectors
- Specific professional experience (2.1.4): in advising and representing organisations in legal affairs for 20 years +



- Leadership/management experience (2.1.5): 20 years of management/leadership experience as senior manager in a company, legal counsel, or owner of a law firm
- Regional experience (2.1.6): 15 years of experience in SADEC (region), of which 10 years is in South Africa, Lesotho, and/or Eswatini
- Development cooperation (DC) experience (2.1.7): 7 - 10 years of experience working with International Development Cooperations

#### Tasks of key expert 1

- Provide specialised insights for the advisory packages of the appointed legal firm
- Coordinating and ensuring communication with GIZ, partners and others involved in the project/ brief
- Supporting local and international appointed short-term experts
- Ensure timely and effective legal representation and coordination of matters in compliance with applicable laws
- Regular reporting and providing deliverables in accordance with deadlines

#### Qualifications of key expert 1

- Education/training (2.2.1): university degree 'Diploma'/Master) in Law or equivalent
- Language (2.2.2): C2 -level language proficiency in English
- General professional experience (2.2.3): 15 years of professional experience Economic/Commercial Law Management, Labour Law, and Tax law sectors
- Specific professional experience (2.2.4): in advising and representing organisations in legal affairs for 15 years +
- Leadership/management experience (2.2.5): 15 years of management/leadership experience as manager in a company
- Regional experience (2.2.6): 10 years of experience in SADC (region), of which 5 years is in South Africa, Lesotho, and/or Eswatini
- Development Cooperation (DC) experience (2.2.7): 5 years of experience in working with DCs

#### **Short-term expert pool with minimum 2 maximum 5 members**

For the technical assessment, an average of the qualifications of all specified members of the expert pool is calculated. Please send a CV for each pool member (see below Chapter 7 Requirements on the format of the bid) for the assessment.

#### Tasks of the short-term expert pool

- Support the development of focused opinions of complex matters as legal experts in highly specialised or niche markets (in line with GIZ thematic areas)
- Consult with industry experts and referencing of updated international/ national laws where applicable
- Ensure the mitigation of legal risks and exposure for GIZ when dealing with different stakeholder types across public, private, and third sectors
- Drafting of legal correspondence, and the accurate and timely filing of relevant documentation
- Regular reporting and providing deliverables in accordance with deadlines.

#### Qualifications of the short-term expert pool

- Education/training (2.6.1): 2 experts with university qualification (German 'Diploma'/Master) in Law, Human Resources, Commerce, or International Relations German 'Diploma'/Master)
- Language (2.6.2): 2 experts with C2-level language proficiency in English.
- General professional experience (2.6.3): 2 experts with 5 years of professional experience in the Legal sector
- Specific professional experience (2.6.4): 1 expert with 3 years of professional experience in Corporate Law
- Regional experience (2.6.5): 1 expert with 3 years of experience in SADEC (region),
- Development cooperation (DC) experience (2.6.6): 1 expert with 3 years of experience in DC.

The tenderer must provide a clear overview of all proposed short-term experts and their individual qualifications.

## **5. Costing requirements**

### **Fees**

GIZ and the legal firm will agree on a fixed daily rate (excluding VAT) for the proposed services. This fee will be indicated in the budget template provided as part of quotation . Fees will be reviewed on an annual basis.

The legal firm is responsible for:

- Selecting, preparing, training and steering the international and national, short and long-term experts it assigns to perform the advisory tasks.
- Providing their own equipment and supplies (consumables) and assumes the associated operating and administrative costs.
- Managing costs and expenditures, accounting processes and invoicing in line with the requirements of GIZ.

**Please place your price quotation in a separate, PDF document, enclosing it with your bid**

### **Assignment of personnel and travel expenses**

Per-diem and overnight accommodation allowances are reimbursed as a lump sum up to the maximum amounts permissible under tax law for each country as set out in the country table in the circular from the German Federal Ministry of Finance on travel expense remuneration (downloadable at <https://www.bundesfinanzministerium.de>).

Accommodation costs which exceed this up to a reasonable amount and the cost of flights and other main forms of transport can be reimbursed against evidence

All business travel must be agreed in advance by the officer responsible for the project.

### **Sustainability aspects for travel**

GIZ would like to reduce greenhouse gas emissions (CO<sub>2</sub> emissions) caused by travel. When preparing your tender, please incorporate options for reducing emissions, such as selecting the lowest-emission booking class (economy) and using means of transport, airlines and flight routes with a higher CO<sub>2</sub> efficiency. For short distances, travel by train (second class) or e-mobility should be the preferred option.

If they cannot be avoided, CO<sub>2</sub> emissions caused by air travel should be offset. GIZ specifies a budget for this, through which the carbon offsets can be settled against evidence.

There are many different providers in the market for emissions certificates, and they have different climate impact ambitions. The [Development and Climate Alliance \(German only\)](#) has

published a [list of standards \(German only\)](#). GIZ recommends using the standards specified there.

#### Specification of inputs

Fee days	Number of experts	Number of days per expert	Total	Comments
Designation of TL/key expert/short-term expert pool	1			
Designation of TL/key expert/short-term expert pool	2-3			
Travel expenses	Quantity	Number per expert	Total	Comments
Per-diem allowance in country of assignment				
Overnight allowance in country of assignment				
Transport	Quantity	Number per expert	Total	Comments
<b>International flights</b> <i>Enter destination country</i>				Travel to the place of service delivery
<b>Domestic flights</b>				Flights within the country of assignment during service delivery
<b>CO<sub>2</sub> compensation for air travel</b> <i>Link to <a href="#">working aid and table for determining the budget and Guidance for GIZ service providers on avoiding, reducing and offsetting GHG emissions on setting the budget.</a></i>				A fixed budget of EUR is earmarked for settling carbon offsets against evidence.
<b>Travel expenses (train, car)</b> • •				Travel within the country of assignment, transfer to/from airport etc.
<b>Other travel expenses</b>				e.g. visa costs

<i>Please describe in more detail which costs will be reimbursed</i>				
<p><b>Alternatively: Fixed travel budget</b></p> <p><i>GIZ may set a fixed amount. This option is used if there is uncertainty regarding the specific travel plans during the tender procedure. However, the tenderer should describe the number of trips, travel destinations and time periods as best as possible.</i></p>				<p>A budget is earmarked for travel to the following countries: South Africa.</p> <p>A fixed budget of EUR <b>3000</b> is earmarked for settling travel expenses against evidence.</p> <p>You can find further information on the travel expense budget in the 'Price schedule' document. Please use the 'Explanations' column in the price schedule to break down the individual items. Settlement is possible only until the budget is depleted.</p>
<b>Other costs</b>	<b>Number</b>	<b>Price</b>	<b>Total</b>	<b>Comments</b>
<b>Flexible remuneration</b>				<p>A budget of EUR            is foreseen for flexible remuneration. Please incorporate this budget into the price schedule.</p> <p>Use of the flexible remuneration item requires prior written approval from GIZ.</p>
<b>Workshops</b>				<p>The budget contains the following costs            .</p> <p><i>Alternatively:</i> Please calculate a budget for workshops taking the following cost items into account:</p>
<b>Subcontracts</b>				<p>The budget contains the following costs            .</p>
<p><b>Procurement of materials and equipment</b></p> <p><i>Please note: The procurement of medicines or chemicals and of materials and equipment whose value exceeds EUR 50,000 requires the prior approval of the person responsible for procurement of materials and equipment.</i></p>				<p>The budget contains the following costs            .</p>

<p><b>Local contributions</b></p> <p><i>Local subsidies should be administered only by service providers in rare exceptional cases because the administrative effort and financial risk are very high. Please clarify with the country office in advance.</i></p> <p><i>Please give the description in accordance with Section 2.7 AVB and comply with P+R Rule 104; see also guidelines on local contributions</i></p>				<p>The contractor administers the following local contributions in accordance with Section 2.7 AVB:</p>
<p><b>Other costs</b></p> <p><i>Please explain here in more detail which costs are to be reimbursed, assuming they do not fall under the budget item described above.</i></p>				<p>The budget contains the following costs</p>

## Workshops and training

Please describe in your concept how you implement GIZ's minimum standards for sustainable event management (see annexes to the terms of reference).

The contractor implements the following workshops/study trips/training courses:

### 6. Inputs of GIZ or other actors

GIZ and/or other actors are expected to make the following available:

- Transportation on site with own project vehicle
- Logistics for workshops:

### 7. Requirements on the format of the tender

The structure of the tender must correspond to the structure of the ToRs. In particular, the detailed structure of the concept (Chapter 3) should be organised in accordance with the positively weighted criteria in the assessment grid (not with zero). The tender must be legible (font size 11 or larger) and clearly formulated. It must be drawn up in English (language). The complete tender must not exceed 10 pages (excluding CVs).

If one of the maximum page lengths is exceeded, the content appearing after the cut-off point will not be included in the assessment. External content (e.g. links to websites) will also not be considered. The CVs of the personnel proposed in accordance with Chapter **Error! Reference**

**source not found.** of the ToRs must be submitted using the format specified in the terms and conditions for application.

The CVs of the personnel proposed in accordance with Chapter **Error! Reference source not found.** of the ToRs must be submitted using the format specified in the terms and conditions for application. The CVs shall not exceed 4 pages each. They must clearly show the position and job the proposed person held in the reference project and for how long.

Please calculate your financial tender based exactly on the parameters specified in Chapter 5 Quantitative requirements. The contractor is not contractually entitled to use up the days, trips, workshops or budgets in full. The number of days, trips and workshops and the budgets will be contractually agreed as maximum limits. The specifications for pricing are defined in the price schedule.

## **8. Outsourced processing of personal data**

If the processing of protected personal data is outsourced to a third party, please contact Data Protection Management via the portal and seek advice before finalising the terms of reference. The Data Protection Management team may provide additional text blocks for the terms of reference.

**Please note:** The officer responsible for the commission is responsible for assessing data protection topics.

## **9. Additional Requirements**

- Please submit your proposal (technical and price proposal) in separate files/folder to [ZA\\_Quotation@giz.de](mailto:ZA_Quotation@giz.de) no later than **30<sup>th</sup> September 2024** all documents must be in PDF.
- **Submission to any other email address may invalidate your bid.**
- Please do not mention any price for this measure on your cover letter/Technical proposal.
- Please submit your tax clearance certificate with the bidding documents.
- Please submit your price proposal in **ZAR**.
- Our General Terms of Conditions (attached) shall not be changed/amended should you be the winner of this tender. These General Terms and Conditions will form part of the contract should you be awarded this contract. By submitting

your proposal, we will conclude that you have read and accepted these terms and conditions.

- Participating more than once in same tender is not allowed and it will lead to your proposal as well as that of the company where you appear more than once being disqualified. The responsibility rests with the companies to ensure that their partners/experts are not bidding/participating more than once in same tender.
- **Bidders are not allowed to communicate directly with any other person regarding this bid other than the procurement official/s. Failure to comply with this requirement may lead to your bid being disqualified.**
- Bidders must strictly avoid conflicts with other assignments or their own interests. Bidders found to have a conflict of interest shall be disqualified. Without limitation on the generality of the above, Bidders, and any of their affiliates, shall be considered to have a conflict of interest with one or more parties in this EOI and tender process, if they:
  - a) are or have been associated in the past, with a firm or any of its affiliates which have been engaged by GIZ or the Interim Supply Chain Management Council to provide services for the preparation of the design, specifications, Terms of Reference, cost analysis/estimation, and other documents to be used for the procurement of the services in this selection process;
  - b) were involved in the preparation and/or design of the programme/project related to the services requested under this EOI and tender;
  - c) are serving or have been serving in the past three months in the structures of the Interim Supply Chain Management; or
  - d) are found to be in conflict for any other reason, as may be established by, or at the discretion of GIZ.

#### Scientific data

In the event of any uncertainty in the interpretation of a potential conflict of interest, Bidders must disclose to GIZ, and seek GIZ's confirmation on whether or not such a conflict exists.

- Similarly, the Bidders must disclose in their proposal their knowledge of the following:
  - a) if the owners, part-owners, officers, directors, controlling shareholders, of the bidding entity or key personnel are family members of GIZ staff involved in the procurement functions and/or the Interim SCM Council or any Implementing partner receiving services under this EOI or tender; and
  - b) all other circumstances that could potentially lead to actual or perceived conflict of interest, collusion or unfair competition practices.
- **Failure to disclose such an information may result in the rejection of the proposal or proposals affected by the non-disclosure.**

**Bids sent via Dropbox and WeTransfer will not be accepted.**



