



The Public Service Bargaining Councils (PSCBC) established in terms of Section 35 of the Labour Relations Act 66 of 1995, is responsible for the following: • The maintenance and promotion of labour peace. • The prevention and resolution of labour disputes • The promotion of collective bargaining in the Public Service.

REQUEST FOR PROPOSALS

CONSULTANT: RESEARCH

The Public Service Bargaining Councils seeks to appoint a Research Consultant/Firm with a proven record in the field of research ▪ A sound knowledge of Labour Relations and different factors of the labour market in South Africa ▪ Be conversant with the interpretation of collective agreement, policies and legislative framework in the Public Service Labour Relations environment ▪ Have extensive understanding of the Dispute Resolutions processes & functions in the Public Service and Private Sector ▪ Knowledge of research methodologies and techniques ▪ Ability of creating, synthesis and analysis of data ▪ Strong project management skills.

Scope of the research study:-

Study the legislation and the policies which govern the current implementation of the required efficiencies and arbitration cases of each Bargaining Council in the Public Service. The sample must balance the following:

- The minimum of 20% of conducted cases over a specified period for each bargaining Council in the Public Service.
- Matters involving a trade union and those where individuals were not represented by a trade union and attorneys.
- The nature of dispute referred, i.e. matters relating to unfair dismissals, unfair labour practices, interpretation of collective agreements and mutual interest matters.
- Each matter must be explored to access the challenges delaying the finalization of arbitrations within the set turnaround times that can be considered as inherent to the dispute resolution process.
- Identify events that are recurrent within disputes of a particular nature with an intention to determine whether there ought to be different targets for different types of matters.
- Taking into account special events which require special consideration as such events cannot reasonably have been expected or adequately dealt with by any of the persons involved in the dispute resolution process. The intention in this regard is to determine whether any

events necessitate an exemption from the prescribed targets upon evaluating efficiencies in respect of that matter.

Desired Outputs:-

- Major obstacles experienced in the Public Service in achieving the current non-statutory efficiencies.
- Design customised dispute management efficiencies that are realistic, implementable, measurable and achievable in the public service taking into consideration the diversity and distinctiveness of all sectors in the Public Service Bargaining Councils.

Requirements

Proven experience in research projects. The consultancy and/ or individual consultants must at least have ten (10) years' experience in industrial relations preferably in the Public Service. Leading consultant should preferably be in possession of LL.M in Labour law or Master's degree in labour relation (PHD candidates have an added advantage).

Duration of the Project

The successful consultant/candidate must be able to complete the project within **six (06) months** from the date of the appointment, unless agreed to by the PSCBC and the consultant.

The following must be included in the proposal:

- Company profile with all statutory information and summative curriculum vitae of key personnel
- Tax clearance certificates
- B-BBEE rating certificates
- A minimum of three references from current clients.

The Council will conduct interviews with the short-listed applicants and may be required to make a presentation on the proposal submitted. Correspondence will be conducted with short-listed consultancies only. If you have not been contacted within 60 days you may assume that you have not been shortlisted and are hereby thanked for submitting your proposals.

Enquiries for the abovementioned proposal must be directed to: **Me. Petunia Bhengani**, the Acting Manager: Dispute Resolution (PSCBC) on Tel: **(012) 644-8100**.

Proposals must be submitted to the General Secretary of the PSCBC, Mr. Frikkie De Bruin, at **PO Box 3123, Lyttelton South 0176** or hand-delivered at the **PSCBC Offices, Block B, 260 Basden Avenue, Lyttelton, Centurion** or emailed to **research@pscbsc.org.za**

Late submissions will not be considered. The closing date for applications is 16:00 on Friday, 09 March 2018

Terms of Reference: Review of Non-Statutory/Internal Efficiency Measures

Contents

1.	Background	4
2.	Problem Statement	5
3.	Objectives.....	7
4.	Scope of Service	7
5.	Expected Outputs.....	8
6.	Qualifications/ Special Skills or Knowledge Required of the Service Provider	8
6.1	Competencies	8
6.2	Qualifications and Experience.....	9
6.3	Duration of the Project	9

1. Background

Public Service Bargaining Councils (“PSBCs”) are established in terms of section 35 read together with section 37 of the Labour Relations Act No.66 of 1995 (“the LRA”). As creatures of statute, they derive their powers and functions from section 28 of the LRA. Section 28¹ subsections (1)(c), (d) and (e) empowers bargaining councils to perform, inter alia, dispute resolution functions. Parallel to bargaining councils, section 112 of the LRA establishes the Commission for Conciliation, Mediation and Arbitration (“the CCMA”) to deal with dispute resolution.

The CCMA is empowered by section 127 of the LRA to, amongst other functions, accredit councils and private agencies to perform dispute resolution functions of certain cases and grant such councils or agencies, upon application, a subsidy for performing such functions. Section 132², subsection (5) (a) of the LRA makes accreditation one of the consideration for granting of a subsidy. The foregoing requirement, is one of the reasons why it is important to apply for accreditation. In terms of section 27³, subsections (4)(a) and (b), applicants for accreditation ought to meet the CCMA standards and efficiencies.

Pursuant to the above provisions, the CCMA introduced the accreditation policy to promote and facilitate effective dispute resolution both by its own Commissioners, accredited Councils and Agencies. In the accreditation policy, the CCMA utilises measures that have been implemented to measure its own efficiency as a basis for evaluating whether Councils meet the accreditation criteria set out in section 127(4) of the LRA.

The table below sets out both the internal and statutory efficiencies that the CCMA set out for Bargaining Councils to ensure its optimal performance. A weighting formula has also

¹ “28(1) The powers and functions of a bargaining council in relation to its registered scope include the following-

(c) to prevent and resolve labour disputes;

(d) to perform the dispute resolution functions referred to in section 51;

(e) to establish and administer a fund to be used for resolving disputes;”

² “132(5)(a) A subsidy granted in terms of subsection (4)(a) –

(a) may not be paid to a council or private agency unless it has been accredited;”.

³ “127(4) The governing body may accredit an applicant to perform any function for which it seeks accreditation, after considering the application, any further information provided by the applicant and whether

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(a) the services provided by the applicant meet the Commission’s standards;

(b) the applicant is able to conduct its activities effectively;”

been implemented which ensures that statutory requirements as well as other key performance areas are weighted higher than the other efficiencies.

OPERATIONS EFFICIENCIES – 2012/13

EFFICIENCY/MINIMUM REQUIREMENT	APPROVED	WEIGHTING	NOTES
Pre-conciliations heard of jurisdictional cases	10%	3.75%	Hear 10% or more of all jurisdictional referrals using the pre-conciliation process
Pre-conciliations settled of jurisdictional cases	7%	3.75%	Settle 7% or more of all jurisdictional referrals using the pre-conciliation process
Conciliations heard outside 30 days	0%	20%	Statutory requirement
Conciliations heard & closed	90%	3.75%	Close 90% or more of all conciliations heard (includes all 'con' type processes)
Con/arbs finalised of jurisdictional cases	50%	15%	Finalise 50% or more of con/arb cases in a single event. Includes 'settled' and 'award rendered'
Settlement rate	70%	15%	Settle 70% or more cases across all processes
Arbitrations finalised of heard	90%	3.75%	Finalise 90% or more arbitration of arbitrations heard
Late Awards	0%	20%	Statutory requirement
Adjournments (of events heard)	1%	3.75%	Allow for the maximum of 1% adjournment of all processes heard
Postponements/adjournments (of events heard)	5%	3.75%	Allow for the maximum of 5% postponement of all processes heard
Turnaround times conciliation (days)	30	3.75%	Conciliation process to take place from 'activation' to 'closed' within a maximum of 30 days
Turnaround times arbitration (days)	60	3.75%	Arbitration process to take place from arb referral date to 'closed' within a maximum of 60 days

Consequently, all bargaining councils and private agencies are expected to meet the above operations efficiencies.

2. Problem Statement

The rationale and the principle of having efficiencies is undoubtedly and unequivocally supported and endorsed by all and sundry; however, the effectiveness of such operational efficiencies is, by all intents and purposes, supposed to be informed by the environment and the value chain within which it has to apply. The PSBCs have been experiencing challenges on the implementation of some of the operations efficiencies and/or criteria in the policy. One of the challenges is that the operations efficiencies were set out for Bargaining Councils

in general, without taking into account the environment within which these Councils are operating i.e. public versus private sector.

The one shoe fits all approach does not seem to be practical given the constraints that are visited by the different environments to the process. For example, the size of the public service, with the State as an employer, is massive compared to the private sector employers. The public service employs more than 1.3million employees. The other challenge is that, over and above the general application of labour laws, the public service has to also cope with its own laws, like the Public Service Act, Public Finance Management Act, Promotion of Administrative Justice Act and many more others. Therefore, the decision-making process is not as cut and dry as would be in the private sector, a lot of considerations have to be given due regard before a matter can be finalised.

The above is also compounded by the structural arrangement of the public service which is predominantly federal, hierarchical and beaurocratic. Power and authority is vested with the Executing Authorities and the Accounting Officers at different spheres of government. This compound the process of soliciting mandates which impacts negatively on the issues like settlement rate because more often than not, the functionaries who must handle cases do not have a mandate to settle the case at conciliation. The absence of mandates also has a domino effect to the expeditious resolution of disputes at arbitration within sixty (60) days.

When the time comes for PSBCs to apply for accreditation, they find themselves having to write comprehensive motivations trying to explain and justify why they failed to meet some of the efficiencies. In some instances, even with those justifications and motivations, accreditation is either granted with a limited period and/or it comes with special conditions that have to be met and/or it comes after an appeal has been lodged to challenge the outcome.

It is apparent from the above hypothesis that there is a need for further investigation to better understand this phenomenon. Therefore, it has become necessary for the PSBCs to conduct a scientific study to determine the practicality of the CCMA operations efficiencies within the public service and make recommendations.

3. Objectives

The objectives of the research study will be:

- 3.1 To determine whether the PSBCs have been able to meet the non-statutory/internal efficiency targets set by the CCMA.
- 3.2 If the answer to 3.1 above is to the negative, to expose the major obstacles/root causes to meeting the current targets; as such hindrances may adversely impact the efficient administration of employment related disputes in the public service; thus, rendering these targets as unrealistic and unreasonable.
- 3.3 To measure how the Bargaining Councils fair against the minimum requirements.
- 3.4 To make recommendations on what could be the practical and realistic non-statutory/internal operations efficiencies for the PSBCs.

4. Scope of Service

- 4.1 The service provider shall study the legislation and the policies that governs the current implementation of the CCMA efficiencies.
- 4.2 The service provider must study the collective agreements regulating the dispute resolution processes in the public service.
- 4.3 The service provider shall study and sample the three (03) years cycle (2015/2016, 2016/2017 and 2017/2018) arbitration cases of the Public Service Bargaining Councils.
The sample must balance the following:
 - 4.3.1 Matters involving a trade union and those where individuals were not represented by a trade union and attorneys.
 - 4.3.2 The nature of dispute referred, i.e. matters relating to unfair dismissals, unfair labour practices, interpretation of collective agreements and mutual interest matters.
 - 4.3.3 To identify events that are recurrent within disputes of a particular nature with an intention to determine whether there ought to be different targets for different types of matters.
 - 4.3.4 The study must take into account special events which require special consideration as such events cannot reasonably have been expected or adequately dealt with by any of the persons involved in the dispute resolution process. The intention in this

regard is to determine whether any events necessitate an exemption from the prescribed targets upon evaluating efficiencies in respect of that matter.

5. Expected Outputs

5.1 The service provider shall provide a scientific research report/study detailing, but not limited the following:

- 5.1.1 Findings on whether the PSBCs have been able to meet the CCMA operations efficiencies.
- 5.1.2 Findings on major obstacles experienced in the public service in achieving the current non-statutory efficiencies set by the CCMA.
- 5.1.3 Findings must demonstrate the Bargaining Council's average performance on operations efficiencies deemed to be of non-competency.
- 5.1.4 Recommendations on what needs to be done to address the challenges (Design customised dispute management efficiencies that are realistic, implementable, measurable and achievable in the public service. Taking into consideration the diversity and distinctiveness of all sectors in the Public Service Bargaining Councils).

6. Qualifications/ Special Skills or Knowledge Required of the Service Provider

6.1 Competencies

- 6.1.1 Sound knowledge and experience in labour relations, labour economics, labour dispute resolution and understanding of the different factors of the labour market in South Africa.
- 6.1.2 Conversant with the interpretation of collective agreements, policies and legislative framework that governs the Public Service Labour Relations arena.
- 6.1.3 Understand the operations of the Public Service Bargaining Councils dispute resolution functions.
- 6.1.4 Ability to analyze large amounts of case data, referrals and awards of complex nature to discover underlying patterns and trends.
- 6.1.5 Ability to articulate statistical data including varying variables, entities, and events to determine probabilistic or statistical relationships in quantitative and qualitative data.
- 6.1.6 Extensive knowledge and ability to conduct large scope research within set time lines.

6.1.7 Excellent written and spoken communication skills in English.

6.2 Qualifications and Experience

The project leader of the service provider must have the following qualifications:

- 6.2.1 LLM in labour law or Master's degree in labour relations (PHD will be an added advantage).
- 6.2.2 Proven Experience in large scope research projects.
- 6.2.3 A minimum of ten (10) years' experience in labour relations and dispute resolution in the Public Service in South Africa.

6.3 Duration of the Project

- 6.3.1 The successful service provider must be able to complete the project within **six (06) months** from the date of the appointment.