



REPUBLIC OF NAMIBIA

MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT CREATION

LABOUR ADVISORY COUNCIL

CALL FOR PROPOSALS FOR INDIVIDUAL CONSULTANT TO CONDUCT AN ASSESSMENT OF THE ALTERNATIVE DISPUTE PREVENTION AND RESOLUTION SYSTEM ADMINISTERED BY OFFICE OF THE LABOUR COMMISSION (OLC)

A. Background

The Committee for Dispute Prevention and Resolution (CDPR) is a statutory Committee under the Labour Advisory Council established under section 97(1) (a) of the Labour Act 11 of 2007.

The functions of the CDPR as set out in section 100 of the Labour Act are to:

- (a) *recommend to the Labour Advisory Council -*
 - (i) *rules for the conduct of conciliation and arbitration in terms of this Act;*
 - (ii) *policies and guidelines on dispute prevention and resolution for application by the Labour Commissioner and the users of the Labour Commissioner's services;*
 - (iii) *the code of ethics for conciliators and arbitrators appointed in terms section 82 and 85;*
 - (iv) *the qualifications and appointments of conciliators and arbitrators in terms of section 82 and 85;*
- (b) *review the performance of dispute prevention and resolution by the Labour Commissioner on a regular basis and to report thereon to the Labour Advisory Council;*
- (c) *report to the Labour Advisory Council on the activities of the Labour Commissioner as and when required to do so by the Council; and*
- (d) *perform any other function assigned to it by this Act or by the Labour Advisory Council.'*

It is clear from section 100(a) (ii) that the committee has a role in recommending policies and guidelines on dispute prevention and resolution for application by the Office of the Labour Commission' (OLC)'s services. It is furthermore clear that the CDPR under section 100(b), is also required to play a proactive role through its function of reviewing the performance of the dispute prevention and resolution system by the Office of the Labour Commissioner (OLC) on a regular basis and report thereon to the Labour Advisory Council (LAC). In the furtherance of this mandate, the CDPR, in the past, conducted various regional visits for the purposes of engaging stakeholders on perceptions around the OLC services.

B. Objectives

The above--described assessment or research aims to build on the ILO study conducted in 2015 which examined the Alternative Dispute Resolution System in Namibia and assessed if the original objectives of the system introduced in 2008 was met, and will in particular examine the following:

1. Do Namibian employers conduct grievance and disciplinary proceedings and what are the general practices in this regard?
2. What is the current relationship between the OLC and the Labour Institutions/directorates e.g., Labour Advisory Council, Labour Inspectorate and Labour Court?
3. Compile numerically/statistics/the types of disputes referred to the OLC;
4. Establish whether parties were represented by lawyers or labour consultants or any other person in the proceedings;
5. Establish and analyse the rate of settlement at conciliation and the nature of settlement agreements;
6. In terms of conciliation, how long does it take for the case to be settled from the date of referral up to the date of settlement;
7. In terms of arbitration, how long does it take on average for the arbitration hearing to be concluded before the issuance of the award (pointing out delays including postponements by whoever and for whatever reason)?
8. What are the timeframes for issuing awards and how many awards were issued outside the prescribed period of 30 days?
9. Are the content and the quality of awards able to stand the legal (soundness) challenges in the Labour Court?
10. Establish and confirm whether arbitration awards are complied with mainly by the employers?
11. To what extent is the system of conciliation/arbitration before the OLC a) accessible; b) respected by employers and workers;
12. How can the effectiveness of the OLC's services over time be ranked in promoting sound industrial relations through alternative dispute resolution in Namibia?
13. Establish the extent of postponements and other delays in the progress of cases before the OLC, and the reasons thereof, in respect of parties and/or their representatives, arbitrators or other personnel in the OLC; and
14. Conduct an analysis of the impacts of the representation of parties by a) legal practitioners; b) labour consultants/experts before arbitration tribunals. Should the statutory provisions with respect to representation be reconsidered and revised? Are labour consultants academically qualified to competently represent parties at conciliation and arbitration;

C. Methodology for Data Collection

For the collection of the data, qualitative and quantitative methods will be used. Primary data will be collected through key informant interviews. Secondary data will be gathered through desk review of the hard copy files at the OLC as well as the Case Management System in addition to the electronic judgements available from the Labour Court, High Court and Supreme Court.

It is estimated that on average, 3000 labour disputes are registered per year at the OLC. About 40 Labour cases per year are being determined through appeals or reviews by the Labour Court including High Court and Supreme Court.

The cases to be assessed must also include a consideration of those that went ahead to the Labour Court and Supreme Court.

Considering the study by the ILO which looked at the Alternative Dispute Resolution System administered by OLC which was done in 2015, the proposed study will only consider a 5-year period from 1 April 2015 to 31 March 2019. In so doing a total period of 10 years will have been considered by the two studies starting from establishment of the Alternative Dispute Resolution System in 2008 to end of Financial Year 2018/2019.

D. The Project Scope

The Consultant shall:

- a) Lead the process of data collection on the labour disputes at the OLC and judgements of the Labour Court, High Court and Supreme Court in close coordination with the Labour Advisory Council's Secretariat and under the direct supervision of CDPR;
- b) Prepare his/her work plan and data collection tools in line with the Terms of Reference for the study;
- c) Conduct a comprehensive stakeholder analysis to determine perception on the landscape of dispute resolution system;
- d) Attend and present the comprehensive study report within the high-level validation workshop organized by CDPR; and
- e) Prepare and submit the drafts and final report as per agreed time frame.

E. Expected Consultancy Outputs/ Deliverables

The Consultant will produce the following outputs:

- a) Inception Report that included the draft work plan detailing the activities to be undertaken to gather information. The draft work plan shall include tripartite validation workshop/s with constituents where findings and recommendations of the assessment report will be discussed.
- b) Final Work Plan
- c) Validation Workshop Draft Report; and
- d) Final Consultancy Report.

F. Timelines

The Consultant shall deliver the Outputs within the following deadlines for which FINAL Approval lies with the Labour Advisory Council.

NO	OUTPUTS/ DELIVERABLES	Deadlines	# of contract days
1	Submission of Draft Inception Report	10 working days after entering into an agreement	3 days
2	Submission of Draft Work Plan	3 working days after submission of inception report	1 day
3	Submission of Draft Report	30 working days after submission of final work plan	20 days
4	Validation Workshop on the Draft Report	10 working days after the Draft Report	2 days
5	Submission of Final Report, incorporating inputs from the Validation Workshop	10 working days after Validation workshop	10 days
	Total contract days 36		

G. Payment Schedule

The Ministry of Labour, Industrial Relations and Employment Creation will process payments in accordance with the payment schedule, upon confirmation of satisfactory delivery and approval of deliverables by the LAC

Payment	Stage
10%	Approved Inception Report
20 %	Approved Work Plan
20 %	Approved Draft Report
15 %	Approved Validation Workshop report
35 %	Final Report
100 %	

H. Minimum requirements

The successful proposal must be the following minimum requirements:

- a) LLB degree and admission as a lawyer in the High Court of Namibia
- b) Labour law background and experience in research
- c) Sound knowledge of the Alternative Dispute Resolution System
- d) Excellent writing, communication and presentation skills
- e) Experience in drafting/preparing assessment reports
- f) Experience in designing, organizing and facilitating workshops, consultations and meetings
- g) Availability and ability to complete the exercise within the prescribed timeframe
- h) Not conflicted, in any form, to conduct this consultancy or part thereof.

NB: CVs' of the team members who will be part of the consultancy shall accompany the project proposal.