



***Terms of Reference: Appointment of a service provider to conduct a bankable feasibility study for the Department of Public Works and Infrastructure (DPWI) Sustainable Building Rating Tool for rating the use of innovative building materials, technologies, and Socio-Economic Impact in green building Projects***

Quotation Number	ASA 07/ 01/2021
Date of issue	30/ 03/ 2022
Bid Closing date	12/04/2022 at 12:00 pm Mid-day
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## PART 1: DEFINITIONS & INVITATION FOR REQUEST FOR APPOINTMENT TO CONDUCT A FEASIBILITY STUDY FOR A DPWI GREEN BUILDING RATING TOOL

### DEFINITIONS

<b>ASA</b>	means Agrément South Africa.
<b>All applicable taxes</b>	include value-added tax, pay as you earn, income tax, unemployment insurance, fund contributions and skills development levies.
<b>B-BBEE</b>	means broad-based black economic empowerment as defined in section 1 of the Broad Based Black Economic Empowerment Act.
<b>B-BBEE status level of contributor</b>	means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act.
<b>Bid</b>	means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals.
<b>Comparative price</b>	means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration.
<b>Consortium or joint venture</b>	means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.
<b>Contract</b>	means the agreement (including a service level agreement) that results from the acceptance of a bid by Agrément South Africa;
<b>EME</b>	means Emerging Micro Enterprise.
<b>Firm price</b>	means 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 the 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.
<b>Functionality</b>	means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or

	operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder.
<b>Rand value</b>	means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.
<b>State</b>	means any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act No. 1 of 1999, any municipality or municipal entity, provincial legislature, National Assembly or the National Council of provinces; or Parliament.
<b>Service Provider or bidder</b>	(used interchangeably) means any individual or entity that has the potential to be contracted by Agrément South Africa to render goods/services.
<b>Sub-contract</b>	means the primary service provider/contractor's assigning, leasing, making out work to, or employing, another person to support such primary service provider/contractor in the execution of part of a project in terms of the contract. In the event that the primary contractor/service provider is purchasing or renting goods from another entity for the purposes of rendering the services required in respect of this tender the latter shall be deemed not to be a 'sub-contractor'.
<b>Trust</b>	means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another.
<b>Designated sector</b>	means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content.
<b>Duly sign</b>	means a Declaration Certificate for Local Content that has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility (close corporation, partnership or individual).
<b>Imported content</b>	means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors)

	and which costs are inclusive of the costs abroad, plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry.
<b>Local content</b>	means that portion of the bid price, which is not included in the imported content, provided that local manufacture does take place.
<b>Stipulated minimum threshold</b>	means that portion of local production and content as determined by the Department of Trade and Industry.

**QUOTATION NUMBER:** ASA 07/01/2021

**The Tender consists of the following documents:**

Part 1 – Letter of Invitation

Part 2 – Instructions

Part 3 – Qualifications and Evaluation Criteria

Part 4 – Tender Requirements

Part 5 – Required Contract Documentation and Attachments

- B-BBEE Verification Certificates/ BBBEE Sworn Affidavit. (Certified copies)
- Declaration of Interest (SBD 4).
- Preference Points Claims Form in terms of the Preferential Procurement Regulations 2017 (SBD 6.1).
- Declaration Certificate for Local Production and Content (SBD 6.2).
- Declaration of Bidder’s Past SCM Practices (SBD 8); and
- Certificate of Independent Bid Determination (SBD 9).

**Note: Failure to provide any one of the documents required in Part 5 above will lead to an immediate disqualification of the service provider from the tender process.**

## **CONDITIONS OF QUOTATIONS**

- a) The quotation is open strictly to B-BBEE level 1 and 2 compliant service providers
- b) Proposal must be submitted in the company letterhead.
- c) Proposal should be hand delivered to our offices placed in an envelope clearly marked with Quotation Number and name submitted to the above-mentioned address.
- d) All service providers must submit their Sworn Affidavit or B-BBEE Verification Certificates from Verification Agencies accredited by the South African Accreditation System or a Registered Auditor approved by the Independent Regulatory Board of Directors (IRBA) OR AN Accounting Officer as contemplated in the Close Corporation Act (CCA) in to order to claim preference points.
- e) Evaluation criteria: 80/20 Preference Points System as presented in the preferential procurement regulations of 2017.
- f) Late and incomplete submissions will not be accepted.

## **PART 2: INSTRUCTIONS**

### **2.1. Agrément South Africa**

Agrément South Africa was established in 1969 and has been operating within the CSIR under the auspices of its Built Environment Unit. In December 2015, Agrément South Africa was recognised an independent agency to bring an impartial judgement to the evaluation of innovative construction products and systems in the interest of the consumer and the construction industry at large.

The Agrément South Africa Act was accented to by the Honourable President of the Republic of South Africa as Act No 11 of 2015 from 1 April 2017. Agrément South Africa being established as a Schedule 3A entity from 1 April 2017, were previously it was managed by the CSIR being a Schedule 3B entity with a staff compliment of 26 employees. The entity operates under a delegation of authority from the Minister of Public Works.

**The main objects of ASA are:**

- To provide assurance of fitness-for-purpose of non-standard construction related products and systems to specifiers and users.
- To support and promote the process of integrated socio-economic development in the Republic as it relates to the construction industry.
- To support and promote the introduction and use of certified non-standardised construction related products or systems in the local or international market.
- To support policy makers in minimizing the risk associated with the use of non-standard construction related product or system; and
- To be an impartial and internationally acknowledged South African centre for assessment and confirmation of fitness-for-purpose of non-standard construction related products or systems.

**2.2. Purpose of the Quotation**

Agrément South Africa extends an invitation, for a proposal and quotation, to green building professionals, to conduct a feasibility study for a DPWI Rating Tool, for rating the use of innovative building materials and technologies in green building projects.

The main objective of the study is to assess the practicality of developing and implementing a DPWI Rating Tool, to uncover the potential strengths and weaknesses of such a tool, objectively and rationally, uncover potential opportunities and threats present in the natural environment, the resources required, and legislative or accreditation requirements (if any), to develop and implement the tool.

**2.3. Scope of work**

The successful service provider will be expected to:

1. Review various Green Building tools used in South Africa and their inclusion of assessment to measure the use of innovative building materials and technologies in green building projects (its strengths, weaknesses, opportunities and threats)
2. Review gaps that exist in the sector i.e. innovation, socio-economic development, technology, and indigenous knowledge which can be practically be incorporated and

customised as a Sustainable/Green Building tool for use DPWI in all government buildings (new and existing; conventional and innovative) and make recommendations accordingly;

3. Review resources the DPWI would require in implementing a government owned tool and partnerships thereto;
4. Review legislative and accreditation requirements for DPWI to implement the tool.
5. Review pricing structure and self-sustainability of the tool.

The successful service provider will be expected to compile a commercially viable or bankable feasibility study on behalf of Agrément SA (full ownership of the report is to remain with the Department of Public Works & Infrastructure, managed by Agrément SA).

#### **2.4. Cancellation of Quotation**

ASA may cancel this tender any time prior to the formal written agreement being executed by or on behalf of ASA. ASA reserves the right at its sole discretion, and at any time, to amend, deviate from, postpone, discontinue, or terminate the transaction/procurement process without incurring any liability whatsoever to any other party.

ASA reserves the right not to award this tender to the highest ranked or highest scoring bidder, as it needs to align its procurement practices to governance practices that are in line with its own growth path. These may include but are not limited to driving socio-economic development objectives that are enshrined in various government policies.

#### **2.5. Confidentiality**

All bidders to this tender will be required to sign the confidentiality and non-disclosure agreement outlined on Annexure A in this document.

#### **2.6. Minimum Requirements and Documentation**

**In order to be considered for selection, the bidder must meet the following minimum criteria:**

- Pricing Schedule.
- Submit a company profile, highlighting expertise, track record, previous work, capacity and capability
- Signed SBD 4, 6.1, 8 & 9.



- BBBEE Certificate or Sworn Affidavit (if copy it must be certified and failure to submit you will not be awarded BBBEE points however you will not be disqualified)
- A company must be registered on CSD.
- Signed General Conditions of Contract.

**The successful bidder will be required to maintain all the above throughout the duration of the appointment as a condition of appointment.**

## **2.7. Submission Format**

All bidders are required to submit a comprehensively/detailed proposal including the following components:

- Company profile including history, group structure, operations, logistics and related companies and service.
- Documents outlining the business requirements, technical requirements and other information required by the Bidder to submit a Tender response.
- Response templates. Templates that are required to form part of the Bidder's Tender response.
- The proposed agreement under which ASA wishes to contract the services.
- A detailed ASA-specific proposal showing activities and timeframes.

**The proposal and all written material and attachments must be submitted in English. All price values must be stated in South African Rand values. Bidders are requested to submit 1 original copy of their printed proposals. The printed bid/proposal must not exceed 150 (one hundred and fifty) A4 pages (including front page, table of contents, main proposal, reference pages, annexures and excluding completed SBD forms).**

## **2.8. Automatic Disqualification**

If ever it is found that the interested party or person(s) acting on behalf of the interested party has, in the Tender or during the whole process of evaluation, selection, etc.:

- Misrepresented or altered material information in whatever way or manner.
- Promised offered or made gifts, benefits to any ASA employee.
- Canvassed, lobbied in order to gain unfair advantage.

- Committed fraudulent acts; and
- Acted dishonestly and/or in bad faith.

Such interested party and/or person(s) shall automatically be disqualified from further participation in this process.

Any attempts by the bidders to canvas any member of ASA’s personnel directly or indirectly for support will result in disqualification of their bid/proposal.

## 2.9. Organisation of a Quotation Response

Irrespective of whether the Bidder is responding to portions of the quotation, or the quotation as a whole, the Bidder will be required to submit the following:

<b>FILE 1</b>	<p><b>Section 1</b></p> <ul style="list-style-type: none"> <li>• Pre-qualification documents (SBD documents)</li> </ul> <p><b>Section 2</b></p> <ul style="list-style-type: none"> <li>• Mandatory &amp; Technical Requirement</li> <li>• Technical Responses</li> <li>• Supporting documents for technical responses</li> </ul> <p><b>Section 3</b></p> <ul style="list-style-type: none"> <li>• Initialled General Conditions of Contracts (GCC)</li> </ul>
<b>FILE 2</b>	<p><b>Section 1</b></p> <ul style="list-style-type: none"> <li>• BEE Certificate</li> </ul> <p><b>Section 2</b></p> <p>The completed pricing schedule must be submitted in Microsoft Excel format</p>

## 2.10. Financial Proposal

Bidders are required to provide a comprehensive/detailed fee structure. The prices must be **VAT inclusive (15%)**. This will assist us in comparing the pricing.

## 2.11. Submission of Quotation

The closing date for the submission of proposals/quotation is **12 April 2022** Duly completed proposals must be sealed in an envelope that is endorsed with the words **“QUOTATION NO. ASA 07/01/2021: APPOINTMENT OF A SUITABLE SERVICE PROVIDER FOR A FEASIBILITY STUDY FOR A DPWI GREEN BUILDING RATING TOOL”**.

#### **2.12. Queries and Clarifications**

Any additional information required which is not clarified in the specifications must be addressed in writing to [Mmosha@agrement.co.za](mailto:Mmosha@agrement.co.za) Cell no: [063 792 6824](tel:0637926824) and for Technical queries write to [mmahlaule@agrement.co.za](mailto:mmahlaule@agrement.co.za) Cell no: 063 792 8105

Additional information may be provided at ASA’s discretion, who reserves the right to provide the same information to all other interested parties, should this enhance the submission. ASA reserves the right to request meetings with Bidders to clarify responses or seek additional information to refine assessments.

ASA reserves the right to conduct supplier due diligence prior to final award or any time during the contract period. This may include site visits and requests for additional information.

#### **2.13. Quotation preparation costs**

All costs and expenses incurred by the bidder relating to their participation in, and preparation of this quotation/proposal process shall be borne by the bidder exclusively.

#### **2.14 Validity period**

The proposals/quotations should remain valid for at least Ninety (90) working days after the closing date.

**ASA reserves the right to amend any date specified above. Any changes will be communicated to the interested parties.**

### **PART 3: QUALIFICATION AND EVALUATION CRITERIA**

#### **3.1 Qualification**

Only bidders who have submitted compliant Quotations/proposals pursuant to Part 2 above will be evaluated in accordance with the Qualification and Evaluation Criteria set out in Part 3.

### **3.2 Evaluation of Quotation**

The purpose of the Quotation/Proposal is to obtain a complete set of salient information pertaining to the bidding parties. The quotations/proposals will accordingly be used to evaluate whether, at ASA's discretion, an interested party qualifies to proceed to the next stage of this procurement process. All bidding parties will be advised in writing of ASA's decision, which will be final. No correspondence will be entered into pertaining to the evaluation process, the decisions taken and reasons thereof.

### **3.3 Qualification Criteria**

- All bidders must demonstrate that they have the required competencies in their core teams.
- The quotation/proposal must include all required documentation as requested in the quotation; and
- All bidders are required to meet the minimum specifications of compliance, technical expertise and experience.

### 3.4 Evaluation Criteria

#### Stage 1: Governance Verification

The evaluation during this stage is to ensure that all required documentation are received and duly completed and that all minimum requirements are complied with. Bidders that did not achieve the requirements will be disqualified.

#### Stage 2: Technical Evaluation

The evaluation during this stage is based on technical criteria (Functionality). Only bidders achieving a minimum score of 60% will be shortlisted and evaluated further in Stage 3.

Bidders will be evaluated as indicated below:

The following values will be applicable when evaluating the bid.

**5=Excellent 4=Very good 3= Good 2= Average 1= Poor 0= Non-compliance**

No.	Evaluation Criteria	Requirements	Weight
1	<b>Expertise and Experience</b> For the requirements, the bidder must demonstrate experience competence in the area of green building tools development, review and application	<ul style="list-style-type: none"> <li>➤ The service provider must have been involved in research and development of Green Building tools or instruments.</li> <li>➤ The service provider must have experience with either developing or peer reviewing custom tools on projects (for example custom hotel, custom industrial etc)</li> <li>➤ The service provider must have completed 3 or more certified Green Building projects (using any recognised tool across a range of tools), 1 of which is for an Office Project and another 1 for a Public and Education Buildings project.</li> <li>➤ The service provider must have experience with development of any green building rating tool, including experience with international green building organisations, either as a lead technical consultant or as a member of a Technical Working Group (TWG);</li> <li>➤ Service provider must have demonstrable experience with working with African indigenous knowledge systems in context of green/sustainable building and alternative building technologies.</li> </ul> <p><u>Rating Scales</u></p> <p>Meets 0 requirements = 0 Points</p> <p>Meets 1 requirement = 1 point</p> <p>Meets 2 requirements = 2 Points</p> <p>Meets 3 requirements = 3 Points</p> <p>Meets 4 requirements = 4 Points</p> <p>Meets 5 requirements = 5 Points</p>	50%
2	<b>Understanding of Scope of Work</b> For the requirements, the bidder must	<ul style="list-style-type: none"> <li>➤ The service provider must demonstrate understanding of the project requirements</li> <li>➤ The service provider must submit a project plan detailing activities to be</li> </ul>	30%

	demonstrate understanding of the scope of work by submitting a proposal on how the work will be approached and carried out	<p>conducted, how and within which timeframes</p> <p><u>Rating Scales</u></p> <p>No proposal = 0 points          Poor proposal = 1 point          Average proposal = 2 points          Good proposal = 3 points          Very good proposal = 4 points          Excellent proposal = 5 Points</p>	
<b>3</b>	<b>Understanding of ecoASA's (ASA's Eco-Labeling Scheme) link to the proposed tool</b>	<p>➤ The service provider must demonstrate understanding of ecoASA and its link to green building rating. This must be demonstrated by explaining the link, in the proposal</p> <p><u>Rating Scales</u></p> <p>No understanding of link = 0 points          Poor understanding of link = 1 point          Average understanding of link = 2 points          Good understanding of link = 3 points          Very good understanding of link = 4 points          Excellent understanding of link = 5 Points</p>	<b>10%</b>
<b>4</b>	<b>Contactable References</b> For the requirements, the bidder must provide contactable references to clients they have managed certification projects for	<p>➤ The service provider must provide contactable reference, with letters of recommendation</p> <p><u>Rating Scales</u></p> <p>No References Provided = 0 Points          1 – 2 References Provided = 1 Point          3 – 4 References Provided = 2 Points          5 – 6 References Provided = 3 Points          7 – 8 References Provided = 4 Points          More than 8 References Provided = 5 Points</p>	<b>10%</b>
			<b>100%</b>

Technical (Functional) Assessments' minimal acceptable requirements: 60 Points

**TOTAL SCORE = 100**

**After considering the functional criteria, a bidder is considered to have passed Stage 2 (Functional Requirements) if the TOTAL score is equal to, or greater than 60 points.**

Bidders who obtain 60%, under Functionality Evaluation will be evaluated in terms of the **80/20** preference point system, where a maximum of **80** points are allocated for price and a maximum of **20** points are allocated in the respect of the level of B-BBEE Contribution of the bidder.



### Stage 3: BBBEE and Cost calculation

Bidders that achieved a minimum score of 60% in Stage 2 (Presentations from the Technical criteria) will progress to this level (Stage 3) and will be evaluated in accordance with the Preferential Procurement Policy Framework method as per SBD 6.1. Based on B-BBEE contributor level score. Points will be calculated on an 80/20 method as stipulated below:

- a) The following preference point systems is applicable to all bids:
  - The 80/20 system for requirements with a Rand value of up to R50,000,000 (all applicable taxes included); and
  - The 90/10 system for requirements with a Rand value above R50,000,000 (all applicable taxes included).
- b) The value of this tender is estimated to not exceed R50,000,000 (all applicable taxes included) and therefore the 80/20 scoring system shall be applicable.
- c) If it is unclear which preference point system will be applicable, then either the 80/20 or the 90/10 preference point system will apply, and the lowest acceptable tender will be used to determine the applicable preference point system.
- d) Preference points for this bid shall be awarded for:
  - Price (80 or 90 as applicable); and
  - B-BBEE Status Level of Contribution (20 or 10 as applicable).
- e) A maximum of 80 or 90 points is allocated for price on the following basis:

80/20 or 90/10

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where:

- $P_s$  = Points scored for price of bid under consideration  
 $P_t$  = Rand value of bid under consideration  
 $P_{\min}$  = Rand value of lowest acceptable bid

In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<b>B-BBEE Status Level of Contributor</b>	<b>Number of points (90/10)</b>	<b>Number of points (80/20)</b>
1	10	20
2	9	18
3	6	14
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

- f) Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a sworn affidavit (with the exception of sector codes).
- g) For sectors not repealed nor amended, a B-BBEE status level certificate issued by an Accounting Officer as contemplated in the Close Corporation Act (CCA), or a Verification Agency accredited by South African Accreditation System (SANAS) or a Registered Auditor. Registered auditors do not need to meet the prerequisite for Independent Regulatory Board of Auditors (IRBA) approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.
- h) Bidders who qualify as qualifying small enterprises (QSEs) in terms of the B-BBEE Act must submit a sworn affidavit or B-BBEE status level certificate as applicable.
- QSEs with at least 51% black ownership must submit a B-BBEE QSE sworn affidavit.
  - QSEs with 50% or less black ownership must submit their original and valid B-BBEE status level certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a SANAS.
- i) Bidders other than EMEs or QSEs with at least 50% black ownership must submit their original and valid B-BBEE status level certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a SANAS.
- j) Failure on the part of a bidder to complete and/or to sign this form and submit a sworn affidavit, or an original or a certified copy of a B-BBEE Verification Certificate from a SANAS together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.



- k) A trust, consortium or joint venture, will qualify for points for its B-BBEE status level as a legal entity, provided that the entity submits its B-BBEE status level certificate.
- l) A trust, consortium or joint venture will qualify for points for its B-BBEE status level as an unincorporated entity, provided that the entity submits its consolidated B-BBEE status level certificate as if it were a group structure and that such a consolidated B-BBEE status level certificate is prepared for every separate bid.
- m) Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.
- n) A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder 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 bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- o) A person 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 EME that has the capability and ability to execute the sub-contract.
- p) Agrément South Africa reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preference points, in any manner required by Agrément South Africa. In the event that no response is received from the issuer of the certificate after 48 hours no B-BBEE points will be allocated in the final scoring.
- q) The bidder obtaining the highest number of total points will be awarded the contract subject to complying with all the other requirements, such as, meeting the technical specifications and satisfying the due diligence audit.
- r) Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.
- s) Points scored will be rounded off to the nearest 2 decimal places.
- t) In the event that two or more bids have scored equal total points, the successful bid will be the one scoring the highest number of preference points for B-BBEE.
- u) However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid will be the one scoring the highest score for functionality.

- v) Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.
- w) Any legal person, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal).
- x) In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority, where:
- the bidder is employed by the state; and/or
  - the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and/or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and/or adjudication of the bid.
- y) The Public Administration Management Act 11 of 2014 prohibits public servants from conducting business with the state or being a director of a public or private company that conducts business with the state. This Act will take effect on a date still to be determined by the President. Should your bid be submitted on a date after such determination by the President, you may be disqualified in terms of this Act.

### **3.5. Selection Process**

The selection process shall take the following steps:

- A. Quotations/Proposals will be reviewed to determine compliance with minimum requirements.
- B. Quotations/Proposals will be evaluated on the technical criteria by the Bid Evaluation Committee.
- C. Bidders will also be evaluated on Price and BBBEE (refer to document SBD6.1); and
- D. A reference check may be performed by the management of ASA on bidders.

## **PART 4 GENERAL CONDITIONS OF CONTRACT**

Any award made to a bidder(s) under this bid is conditional, amongst others, upon:

- The bidder(s) accepting the terms and conditions contained in the general conditions of contract as the minimum terms and conditions upon which Agrément South Africa is prepared to enter into a contract with the successful bidder(s).
- The bidder submitting the general conditions of contract to Agrément South Africa together with its bid, duly signed by an authorised representative of the bidder.

#### **4.1. Service Level Agreement**

- 4.1.1 Upon award, Agrément South Africa and the successful bidder will negotiate and conclude a service level agreement regulating the specific terms and conditions applicable to the services being procured by Agrément South Africa more or less in the format of the draft service level indicators included in this tender pack.
- 4.1.2 Agrément South Africa reserves the right to accept or reject any or all amendments or additions proposed by a bidder if such amendments or additions are unacceptable to Agrément South Africa or pose a risk to the organisation.

The bidder's SLA must also include the following:

- Resources that will be allocated to ASA;
- Details of inclusions and exclusions; and
- Standard turnaround times.

#### **4.2. Special Conditions of the Bid**

Agrément South Africa reserves the right:

- 4.1.3 To award this tender to a bidder that did not score the highest total number of points, only in accordance with section 2(1)(f) of the PPPFA (Act 5 of 2000).
- 4.1.4 To negotiate with one or more preferred bidder(s) identified in the evaluation process, regarding any terms and conditions, including price without offering the same opportunity to any other bidder(s) who have not been awarded the status of the preferred bidder(s).
- 4.1.5 To accept part of a tender rather than the whole tender.
- 4.1.6 To carry out site inspections, product evaluations or explanatory meetings in order to verify the nature and quality of the services offered by the bidder(s), whether before or after adjudication of the bid.

- 4.1.7 To correct any mistakes at any stage of the tender that may have been in the bid documents or occurred at any stage of the tender process.
- 4.1.8 To cancel and/or terminate the tender process at any stage, including after the closing date and/or after presentations have been made, and/or after tenders have been evaluated and/or after the preferred bidder(s) have been notified of their status as such.
- 4.1.9 Award to multiple bidders based either on size or geographic considerations.

## **5. AGRÉMENT SOUTH AFRICA REQUIRES BIDDER(S) TO DECLARE**

In the bidder's technical response, bidder(s) are required to declare the following:

- 5.1. Confirm that the bidder(s) is to:
  - 5.1.1. Act honestly, fairly, and with due skill, care and diligence, in the interests of Agrément South Africa.
  - 5.1.2. Have and effectively employ the resources, procedures and appropriate technological systems for the proper performance of the services.
  - 5.1.3. Act with circumspection and treat Agrément South Africa fairly in a situation of conflicting interests.
  - 5.1.4. Comply with all applicable statutory or common law requirements applicable to the conduct of business.
  - 5.1.5. Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with Agrément South Africa.
  - 5.1.6. Avoidance of fraudulent and misleading advertising, canvassing and marketing.
  - 5.1.7. To conduct their business activities with transparency and consistently uphold the interests and needs of Agrément South Africa as a client before any other consideration; and
  - 5.1.8. To ensure that any information acquired by the bidder(s) from Agrément South Africa will not be used or disclosed unless the written consent of the client has been obtained to do so.

## 6. CONFLICT OF INTEREST, CORRUPTION AND FRAUD

- 6.1. Agrément South Africa reserves its right to disqualify any bidder who either itself or any of whose members (save for such members who hold a minority interest in the bidder through shares listed on any recognised stock exchange), indirect members (being any person or entity who indirectly holds at least a 15% interest in the bidder other than in the context of shares listed on a recognised stock exchange), directors or members of senior management, whether in respect of the bidder or any other government organ or entity and whether from the Republic of South Africa or otherwise:
- 6.1.1. engages in any collusive tendering, anti-competitive conduct, or any other similar conduct, including but not limited to any collusion with any other bidder in respect of the subject matter of this bid.
  - 6.1.2. seeks any assistance, other than assistance officially provided by Agrément South Africa, from any employee, advisor or other representative of Agrément South Africa in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to Agrément South Africa.
  - 6.1.3. makes or offers any gift, gratuity, anything of value or other inducement, whether lawful or unlawful, to any of Agrément South Africa's officers, directors, employees, advisors or other representatives.
  - 6.1.4. makes or offers any gift, gratuity, anything of any value or other inducement, to any Agrément South Africa officials, employees, advisors or other representatives in order to obtain any unlawful advantage in relation to procurement or services provided or to be provided to Agrément South Africa.
  - 6.1.5. accepts anything of value or an inducement that would or may provide financial gain, advantage or benefit in relation to procurement or services provided or to be provided to Agrément South Africa.
  - 6.1.6. pays or agrees to pay to any person any fee, commission, percentage, brokerage fee, gift or any other consideration, that is contingent upon or results from, the award of any tender, contract, right or entitlement which is in any way related to procurement or the rendering of any services to Agrément South Africa.
  - 6.1.7. has in the past engaged in any matter referred to above; or
  - 6.1.8. has been found guilty in a court of law on charges of fraud and/or forgery, regardless of whether or not a prison term was imposed and despite such bidder, member or director's name not specifically appearing on the List of Tender Defaulters kept at National Treasury.

## **7. MISREPRESENTATION DURING THE LIFECYCLE OF THE CONTRACT**

- 7.1. The bidder should note that the terms of this tender will be incorporated in the proposed contract by reference and that Agrément South Africa relies upon the bidder's tender as a material representation in making an award to a successful bidder and in concluding an agreement with the bidder.
- 7.2. It follows, therefore, that misrepresentations in a tender may give rise to service termination and a claim by Agrément South Africa against the bidder notwithstanding the conclusion of the service level agreement between Agrément South Africa and the bidder for the provision of the services in question. In the event of a conflict between the bidder's proposal and the service level agreement concluded between the parties, the service level agreement will prevail.

## **8. PREPARATION COSTS**

The bidder will bear all its costs in preparing, submitting and presenting any response or Tender to this bid and all other costs incurred by it throughout the bid process. Furthermore, no statement in this bid will be construed as placing Agrément South Africa, its employees or agents under any obligation whatsoever, including in respect of costs, expenses or losses incurred by the bidder(s) in the preparation of their response to this bid.

## **9. INDEMNITY**

If a bidder breaches the conditions of this bid and, as a result of that breach, Agrément South Africa incurs costs or damages (including, without limitation, the cost of any investigations, procedural impairment, repetition of all or part of the bid process and/or enforcement of intellectual property rights or confidentiality obligations), then the bidder indemnifies and holds Agrément South Africa harmless from any and all such costs which Agrément South Africa may incur and for any damages or losses Agrément South Africa may suffer.

## **10. PRECEDENCE**

This document will prevail over any information provided during any briefing session whether oral or written, unless such written information provided, expressly amends this document by reference.

#### **a) Limitation of Liability**

A bidder participates in this bid process entirely at its own risk and cost. Agrément South Africa shall not be liable to compensate a bidder on any grounds whatsoever for any costs incurred or any damages suffered as a result of the bidder's participation in this bid process.

### **11. TAX COMPLIANCE**

No tender shall be awarded to a bidder who is not tax compliant. Agrément South Africa reserves the right to withdraw an award made, or cancel a contract concluded with a successful bidder in the event that it is established that such bidder was in fact not tax compliant at the time of the award or has submitted a fraudulent tax clearance certificate to Agrément South Africa or whose verification against the Central Supplier Database (CSD) proves non-compliant. Agrément South Africa further reserves the right to cancel a contract with a successful bidder in the event that such bidder does not remain tax compliant for the full term of the contract.

### **12. TENDER DEFAULTERS AND RESTRICTED SUPPLIERS**

No tender shall be awarded to a bidder whose name (or any of its members, directors, partners or trustees) appears on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Agrément South Africa reserves the right to withdraw an award, or cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been blacklisted with National Treasury by another government institution.

### **13. GOVERNING LAW**

South African law governs this bid and the bid response process. The bidder agrees to submit to the exclusive jurisdiction of the South African courts in any dispute of any kind that may arise out of or in connection with the subject matter of this bid, the bid itself and all processes associated with the bid.

### **14. RESPONSIBILITY FOR SUB-CONTRACTORS AND BIDDER'S PERSONNEL**

A bidder is responsible for ensuring that its personnel (including agents, officers, directors, employees, advisors and other representatives), its sub-contractors (if any) and personnel of its sub-contractors comply with all terms and conditions of this bid. In the event that Agrément South Africa allows a bidder to make use of sub-contractors, such sub-contractors will at all times remain the responsibility of the bidder and Agrément South Africa will not under any circumstances be liable for any losses or damages incurred by or caused by such sub-contractors.

## **15. CONFIDENTIALITY**

Except as may be required by operation of law, by a court or by a regulatory authority having appropriate jurisdiction, no information contained in or relating to this bid or a bidder's tender(s) will be disclosed by any bidder or other person not officially involved with Agrément South Africa's examination and evaluation of a tender.

No part of the bid may be distributed, reproduced, stored or transmitted, in any form or by any means, electronic, photocopying, recording or otherwise, in whole or in part except for the purpose of preparing a tender. This bid and any other documents supplied by Agrément South Africa remain proprietary to Agrément South Africa and must be promptly returned to Agrément South Africa upon request together with all copies, electronic versions, excerpts or summaries thereof or work derived there from.

Throughout this bid process and thereafter, bidder(s) must secure Agrément South Africa's written approval prior to the release of any information that pertains to (i) the potential work or activities to which this bid relates; or (ii) the process which follows this bid. Failure to adhere to this requirement may result in disqualification from the bid process and civil action.

## **16. AGRÉMENT SOUTH AFRICA PROPRIETARY INFORMATION**

Bidder will on their bid cover letter make declaration that they did not have access to any Agrément South Africa proprietary information or any other matter that may have unfairly placed that bidder in a preferential position in relation to any of the other bidder(s).

## **17. PENALTY CLAUSE ON COMMISSION EARNED**

If it is found that commissions payable to Agrément South Africa as referred to in this document is not adhered to, penalties will be enforced as stated in the SLA.

## **18. AVAILABILITY OF FUNDS – ESCAPE CLAUSE**

Should funds no longer be available to pay for the execution of the responsibilities of this quotation (ASA 07/01/2021), and/or the service received from the bidder is not according to the specifications, Agrément South Africa may terminate the agreement at its own discretion or temporarily suspend all or part of the services by notice to the successful bidder who shall immediately make arrangements to stop the performance of the services and minimize further expenditure: Provided that the successful bidder shall thereupon be entitled to payment in full for the services delivered, up to the date of cancellation or suspension.



**19. BIDDER DECLARATION**

The bidder hereby declares the following:

We confirm that \_\_\_\_\_ (Bidder’s Name) will:

- a) Act honestly, fairly, and with due skill, care and diligence, in the interests of Agrément South Africa
- b) Employ effectively the resources, procedures and appropriate technological systems for the proper performance of the services.
- c) Act with circumspection and treat the Agrément South Africa fairly in a situation of conflicting interests.
- d) Comply with all applicable statutory or common law requirements applicable to the conduct of business.
- e) Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with Agrément South Africa.
- f) Avoid fraudulent and misleading advertising, canvassing and marketing.
- g) Conduct business activities with transparency and consistently uphold the interests and needs of Agrément South Africa as a client before any other consideration; and
- h) Ensure that any information acquired by the bidder(s) from Agrément South Africa will not be used or disclosed unless the written consent of the client has been obtained to do so.

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Name and Surname (Print)

Signature

.....

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Position

Name of Bidder (Service Provider)

Date.....