

## GENERAL CONDITIONS OF CONTRACT

Any award made to a bidder(s) under this bid/quotation 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 (ASA) 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.

### 1. SERVICE LEVEL AGREEMENT

- 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.
- 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.

### 2. SPECIAL CONDITIONS OF THE Bid/Quotation

Agrément South Africa reserves the right:

- 2.1 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).
- 2.2 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).
- 2.3 To accept part of a tender rather than the whole tender.
- 2.4 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.
- 2.5 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.
- 2.6 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.
- 2.7 Award to multiple bidders based either on size or geographic considerations.

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

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

3.1. Confirm that the bidder(s) is to:

3.1.1. Act honestly, fairly, and with due skill, care and diligence, in the interests of Agrément South Africa.

3.1.2. Have and effectively employ the resources, procedures and appropriate technological systems for the proper performance of the services.

3.1.3. Act with circumspection and treat Agrément South Africa fairly in a situation of conflicting interests.

3.1.4. Comply with all applicable statutory or common law requirements applicable to the conduct of business.

3.1.5. Make adequate disclosures of relevant material information including disclosures of actual or potential own interests, in relation to dealings with Agrément South Africa.

3.1.6. Avoidance of fraudulent and misleading advertising, canvassing and marketing.

3.1.7. 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

3.1.8. 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.

#### **4. CONFLICT OF INTEREST, CORRUPTION AND FRAUD**

4.1. 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:

4.1.1. 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.

4.1.2. 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.

4.1.3. 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.

4.1.4. 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.

4.1.5. 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.

4.1.6. 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.

4.1.7. has in the past engaged in any matter referred to above; or

4.1.8. 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.

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

5.1. 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.

5.2. 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.

## **6. 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.

## **7. 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.

## **8. 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/quotation 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.

## **9. TAX COMPLIANCE**

No tender/quotation 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.

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

No tender/quotation 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.

## **11. GOVERNING LAW**

South African law governs this bid/quotation and the bid/quotation 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.

## **12. 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.

## **13. 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.

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

Bidder will on their bid/quotation 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).

## **15. 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.

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

Should funds no longer be available to pay for the execution of the responsibilities of this tender/quotation (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.

**17. 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)

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Signature

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Position

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Name of Bidder (Service Provider)

Date.....