



REQUEST FOR PROPOSALS (RFP) RFP/08/2021

**REQUEST FOR PROPOSALS (RFP): APPOINTMENT OF PANEL OF LEGAL SERVICES
FOR A PERIOD OF SIX (6) MONTHS**

CLOSING DATE: 17 MAY 2021

TIME: 16H00

1. INTRODUCTION

Brand South Africa, previously known as the International Marketing Council of South Africa (IMC), was established in 2002 and tasked with leading the global and domestic marketing of our Nation's Brand. The primary object of the Trust is to develop and implement a pro-active and coordinated marketing and communication and reputation management strategies for South Africa.

Brand South Africa's international mandate is to build South Africa's Nation Brand reputation in order to improve the country's global competitiveness, reflecting a great focus on driving international investment and trade.

Domestically, Brand South Africa's mandate is to build pride & patriotism amongst South Africans and contribute to social cohesion and Nation Brand ambassadorship, giving our country a consolidated and clear brand image. This involves the creation of a unified message and promise that becomes identifiable with South Africa, thereby building credibility, conviction and committed patronage.

Brand South Africa is also the central hub of national reputation and competitiveness intelligence. This intelligence is vital for articulating, aligning and mobilising key messages about the nation for the use and benefit of all stakeholders and strategic partners.

2. WHO WE ARE

Brand South Africa is a Schedule 3A Public Entity, which was established in terms of the Brand South Africa Trust Deed, which is governed by the Trust Property Control Act No.57 of 1988 and the Public Finance Management Act, No.1 of 1999. The organisation reports to the Presidency, and GCIS from which it receives its budget.

3. PURPOSE

The purpose of Brand South Africa is to develop and implement pro-active and coordinated marketing, communication and reputation management strategies for the country.

4. MISSION

To achieve our purpose, we will embark on the following execution mission:

- Develop and articulate a South African national brand identity that will advance South Africa's long-term positive reputation and global competitiveness.
- Seek to build individual and institutional alignment to and support for the brand in South Africa and pride and patriotism amongst South African.
- Build awareness and the image of the Nation Brand in other countries.
- Seek the involvement and cooperation of various government departments, civil society, business and the non-government sector.

5. SCOPE OF WORK

5.1 The successful bidder will be required to provide the following Legal services. Deliverables under this section include without limitation, the following:

The scope of work for the Bidder includes the following key activities:

Bidders will be appointed to the Corporate Panel of Legal Services with a maximum of three (3) bidders per category and bidders are required to indicate which category they are bidding for:

CATEGORY	FIELD OF APPOINTMENT	NUMBER TO BE APPOINTED	Indicate which category bidding for (Mark with an X)
Category One	Labour Law	Maximum three (3)	
Category Two	Commercial/Corporate Law	Maximum three (3)	
Category Three	Criminal Law	Maximum three (3)	
Category Four	Intellectual Property Law	Maximum three (3)	
Category Five	Administrative/Public Law	Maximum three (3)	
Category Six	Constitutional Law	Maximum three (3)	

Bids from a single bidder for the provision of services in more than one of the above mentioned areas, will be considered.

5.2 Category One: Labour Law

- Advise on all disputes that arise from the employment relationship.
- Appear on behalf of the Brand South Africa in all employment related forums such as the CCMA; Labour Court etc.
- Provide litigation services in all areas of labour law.

5.3 Category Two: Commercial/Corporate Law

- Contract law.
- Intellectual property law.
- Commercial Law.
- Provide litigation services in all commercial /corporate legal matters.

5.4 Category Three: Criminal Law

- Advise on criminal legal proceedings including the application of the Prevention of Organised Crime Act, Act No. 121 of 1998, and the Prevention and Combating of Corrupt Activities Act, Act No. 12 of 2004.

5.5 Category Four: Property Law

- Provide advice in request of all intellectual property related matters.
- Provide litigation services in all intellectual property related matters.

5.6 Category Five: Administrative/Public Law

- Advice regarding application of the Public Financial Management Act, Act No. 1 of 1999, Promotion of Administrative Justice Act, Act No.3 of 2000; Promotion of Access to Information Act, Act No.2 of 2000; Preferential Procurement Policy Framework Act, Act No. 5 of 2000 and related legislation.
- Provide litigation services in all areas of administrative and public law.

5.7 Category Six: Constitutional Law

- Advice on the constitutionality of legislation, policies etc.
- Provide litigation services in all areas of constitutional law.

6. EVALUATION CRITERIA

a) A minimum of 70 points out of 100 points on technical capability for Table 3; will be the cut off to qualify for further evaluation Those who qualify will be assessed using the 80/20 preference points system for Price and B-BBEE as per the PPPFA 2017.

b) Brand South Africa will analyse and assess technical capability and therefore the bidder should demonstrate the following:

In order to facilitate a transparent selection process that allows equal opportunity to all bidders, Brand South Africa has a Supply Chain Management policy that will be adhered to. Proposals will be evaluated in terms of the prevailing Supply Chain Management policy applicable to Brand South Africa and it should be noted that proposals will be assessed using the 80/20 formula (preference points system) for Price and B-BBEE as per the PPPFA Regulations.

TECHNICAL EVALUATION CRITERIA		
CRITERIA	SUB-CRITERIA	POINTS
Organisational experience and capability	The Bidder must demonstrate relevant experience in practice management. The Bidder must attach certified copies of appointment letters for similar work done in the past five (5) years minimum of 5 years demonstrated experience in executing similar assignments in Public and Private sector. (25) • Minimum of 5 years (5) • Above 5 but less than 10 years (10) • Above 10 but less than 20 years (20) • Above 20 years=25 Points • Minimum of 3 relevant, contactable signed client references or testimonial letters not older than 3 years. (15) • 1 signed reference or testimonial letter (5) • 3 signed reference or testimonial letter (10) • 5 and above reference or testimonial letters (15)	40
Approach, Methodology and Project Plan	Detailed approach, methodology and process to be adopted in the project. (20) Project Plan to be linked to the deliverables and outputs. (10)	30

Key successes in the areas of law	The bidder must provide a summary of successful minimum of 3 matters (10) Less than 3 matters (0) 3 or more matters (5) 5 or more matters (10)	10
Capacity and experience of the Project Lead	The Bidder must demonstrate that the personnel ultimately responsible for the project have relevant experience. Attorneys must be admitted Attorneys. Attach concise CVs/ Biography of key personnel with at least three (3) contactable references. (10) A Post Graduate degree in Law from a reputable institution (10) (attach certified copy not older than three (3) months)	20
TOTAL POINTS		100

Table 2 - Price and B-BBEE

CRITERIA	SUB-CRITERIA	WEIGHTING/ POINTS
Price	Detailed budget breakdown	80
B-BBEE (Status Level Verification Certificate)	B-BBEE Level Contributor	20
TOTAL		100

7. INSTRUCTIONS TO BIDDERS

7.1 Terms and Conditions

Brand South Africa reserves, under exceptional circumstances, the rights to extend the closing date. All proposals and all subsequent information received from bidders will not be returned.

The adjudication process does not represent a commitment on the part of the Brand South Africa to proceed further with that proposal or of any other bidder.

7.2 Changes to this RFP document

Brand South Africa reserves the right to make changes on this RFP Document. All changes will be communicated to those firms that have responded to the RFP. No reliance shall be placed on other information or comment from any other person.

7.3 Confidentiality

Any information relating to the submissions, through the process or otherwise shall be treated in strict confidence.

7.4 Other matters

7.4.1 Brand South Africa reserves the right not to enter into any relationship and no correspondence pertaining to submissions will be entered into.

7.4.2 If Brand South Africa does not accept any proposal, it will declare this RFQ call process closed and may then elect to:

- Proceed on a completely different basis; and
- Not to appoint any respondent in the event it deems proposals not appropriate.

7.4.3 Brand South Africa will not accept any responsibility for costs incurred by bidders in preparing and submitting proposals.

7.4.3 Brand South Africa reserves the right to engage in processes to validate all claims made in the proposal.

7.4.4 Brand South Africa reserves the right to cancel the award if it is determined that the supplier/service provider recommended for award, has engaged in corrupt or fraudulent activities in competing for the contract in question. For the purposes of this RFQ, “fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the accounting officer/authority, and includes collusive practices among bidders/contractors (prior to or after submission of proposals) designed to establish prices at artificial, non-competitive levels and to deprive the accounting officer/authority of the benefits of free and open competition.

8. PAYMENT STRUCTURE

8.1 Brand South Africa undertakes to pay in full within thirty (30) days, all valid claims for work done to its satisfaction upon presentation of a substantiated claim/invoice.

8.2 Payments will only be made on the basis of the work completed (milestones/deliverables) as per the project implementation plan to be agreed at the inception of the project.

9. GENERAL

Below are compulsory requirements for this service:

9.1 It is important to note that the successful bidder will work under the supervision of a Brand SA representative, abide by Brand South Africa's Code of Conduct, and other organizational guidelines.

9.2 Kindly submit the following document:

- **Valid and Original or Certified B-BBEE Status Level Verification Certificates issued by the following agencies SANAS, IRBA or CCA.**
- **Valid Tax Clearance Certificate.**
- **Proposal**
- **Completed SBD 4, 8 and 9**
- **CSD Report**

10. CONTACT DETAILS FOR INFORMATION

10.1 Further information regarding technical and supply chain matters can be sent via email to: ntiyisom@brandsouthafrica.com or tel: 011 483 0122.

11. SUBMISSIONS OF PROPOSALS

11.1 Proposals should be submitted on or before **17 MAY 2021** by no later than 16h00 to the following address: Ntiyisom@brandsouthafrica.com or Quotations@brandsouthafrica.com

11.2 The selection of the qualifying bid/quotations will be at the Brand South Africa's sole discretion. Brand South Africa does not bind itself to accept any particular bid/quotations, and reserves the right not to appoint the bidder.

DECLARATION OF INTEREST

SBD 4

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). 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.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

2.3 Position occupied in the Company (director, trustee, shareholder²):

2.4 Company Registration Number:

2.5 Tax Reference Number:

2.6 VAT Registration Number:

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

¹"State" means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder
presently employed by the state? **YES / NO**

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

Name of state institution at which you or the person
connected to the bidder is employed:

Position occupied in the state institution:

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Any other particulars:

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.....

2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector? **YES / NO**

2.7.2.1 If yes, did you attached proof of such authority to the bid document? **YES / NO**

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

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2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months? **YES / NO**

2.8.1 If so, furnish particulars:

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2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid? **YES / NO**

2.9.1 If so, furnish particulars.

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2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? **YES/NO**

2.10.1 If so, furnish particulars.

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2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract? **YES/NO**

2.11.1 If so, furnish particulars:

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.....

3 Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Tax Reference Number	State Employee Number / Persal Number

4 DECLARATION

I, THE UNDERSIGNED (NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

SBD 8

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐

4.4.1	If so, furnish particulars:
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CERTIFICATION

I, THE UNDERSIGNED (FULL NAME)

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *per se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf

of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:

(a) has been requested to submit a bid in response to this bid invitation;

(b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and

- (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

SBD 9

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ Joint venture or Consortium 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.

SBD 9

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder