

Terms of Reference

Appointment of a service provider to render

Legal services for

Agrément South Africa

1. EXPRESSION OF INTEREST

The Provision of specified external legal service (as part of an external panel to be identified and appointed following this process) to Agrément South Africa on an *ad hoc* basis

2. INTRODUCTION

Agrément South Africa was established by a Ministerial delegation of Authority in 1969. Since its inception it has been administered by and housed at the Council for Scientific and Industrial Research (CSIR). The National Department of Public Works (NDPW) has effectively managed the process of creating Agrément South Africa as a juristic person. The Agrément South Africa Bill was tabled before the National Council of Provinces and the National Assembly in Parliament and passed. The Agrément South Africa Act was accented to by the Honourable President of the Republic of South Africa as Act No 11 of 2015. Agrément South Africa's main site is in Pretoria while it is represented in other provinces of South Africa.

3. BACKGROUND

Agrément South Africa, situated at the Pretoria campus of the CSIR, does not currently have an internal legal advisor.

From time to time, the Entity may require/need to appoint external Attorneys to assist it in the protection of the organisation's interests in one or more of the following specialised areas:

- 3.1 Intellectual Property (IP) and Domain Names and IP Litigation;
- 3.2 Labour Law-related matters;
- 3.3 Commercial work (including litigation; administrative and public law; debt- collection; and advice on specialised areas);
- 3.4 Property Law and Conveyancing work; and/or
- 3.5 Information Communications and Technology (ICT Law)

The Entity is therefore hereby embarking upon a process to identify a limited number of external law firms to form part of its panel and as and when required, provide *ad hoc* specialised legal services to it over a three year period.

This procurement process is aimed at ensuring that the Entity has adopted an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective.

4. INVITATION FOR EXPRESSIONS OF INTEREST (EOIs)

Applicants are hereby invited to submit EOIs for the provision of specified external legal services (as part of an external panel to be identified and appointed following this process) to ASA situated at CSIR Pretoria on an *ad hoc* basis in one or more of the following areas, **clearly indicating, by means of a cover letter or otherwise, the area(s) of specialisation in respect of which its specific EOI applies:**

- 4.1 Intellectual Property laws (IP);
- 4.2 Labour Law matters;
- 4.3 Commercial work (including corporate governance/ Company law, litigation; administrative and public law; debt- collection; and advice on specialised areas or law);
- 4.4 Property Law and Conveyance work; and
- 4.5 Information Communications and Technology (ICT Law)

The Entity envisages the appointment of a limited number of suitable law firms per specialisation area to its panel of external law firms. Appointment in a specific area will not exclude a firm from being appointed in another/other area(s).

EOIs, which should include up to date and detailed Company Profiles.

5. VENUE FOR SUBMISSION OF EOIs

EOIs must be submitted to Ms. Sophy Molete at 1 Meiring Naude Avenue, CSIR, Building 2A, by 16:30 on 31 January 2018.

6. EOI PROGRAMME

EVALUATION PROCESS AND CRITERIA

6.1 Evaluation of EOIs as submitted by applicants

All EOIs will be evaluated by an evaluation team for functionality, price and broad-based black economic empowerment (B-BBEE).

Based on the results of the evaluation process, ASA will appoint the panel of external law firms in each specialisation area as specified above.

A two-phase evaluation will be followed:

- The first phase includes **functionality**.

- The second phase includes the evaluation of **price** and **B-BBEE** status.

A valid B-BBEE Certificate is required for allocation of points for B-BBEE. In its absence (as prescribed in the B-BBEE Act), proof of annual turnover from the company's accountant or auditors will suffice.

In terms of **pricing**, the following is expected of the applicants:

- Provision of hourly rates and/or fixed tariffs, as well as an outline of disbursement items, for the next three financial years of ASA, i.e. as from April 2018 to 31 March 2021.

PREFERENCE WILL BE GIVEN TO APPLICANTS / SERVICE PROVIDERS IN THE PROXIMITY OF THE ASA OFFICES IN PRETORIA.

In each of the identified areas of specialisation, the following general functionality criteria will be considered:

- a) Applicant to provide CVs of members of his/her team per area of specialisation;
- b) Applicant to possess in-depth knowledge of the regulatory framework applicable to organs of state; and
- c) Trade References/ proven track record of applicant per area of specialisation.

6.2 In each of the identified areas of specialisation, the following specific functionality criteria will be considered:

6.2.1 Intellectual Property (IP) and Domain Names and IP litigation

The following are expected of the applicant(s) that will be appointed to the panel:

- 6.2.1.1 The panel provides its clients with a rapid and efficient service with the view to achieving effective solutions to all IP-related aspects, dealing with all aspects of patents, trademarks, copyright (including copyright in engineering drawings and computer software), designs, Plant Breeders' Rights, domain names, and unlawful competition, as well as litigation in regard to these. (The firm is mindful of a solution-driven approach, though, and, when appropriate, will employ alternative dispute resolution mechanisms in which mediation or arbitration may be advised to resolve disputes between parties.)
- 6.2.1.2 It assists its clients in strategically leveraging their IP; defending it against the claims of others; establishing a competitive position and providing value to investors and shareholders.
- 6.2.1.3 It employs professionals with the appropriate scientific and engineering qualifications, together with legal qualifications and experience in the fields of chemistry, chemical processing and chemical engineering, biotechnology and life sciences; physics; electrical, electronics and software engineering; materials science; clean technology and nanotechnology.

- 6.2.1.4 It has proven experience in the provision of advice on appropriate confidentiality agreements and regimes; investment structuring; corporate structuring, and of negotiating successful technology and strategic collaborations and exits, such as licensing; franchises, assignments, co-development/collaboration arrangements and research agreements; supply and distribution agreements; joint ventures and strategic alliances, portfolio management, and due diligence investigations and audits, as well as in the valuation of IP.
- 6.2.1.5 It offers exchange control advice.
- 6.2.1.6 It provides specific advice in relation to the specific legislation which impacts on the ownership and transfer of IP derived from publicly-funded research.
- 6.2.1.7 It offers advice on regulatory issues concerning the applicable regulatory framework.

6.2.2 Labour Law-related matters

The following is expected of the applicant(s) that will be appointed to the panel:

- 6.2.2.1 Expertise in all aspects of Employment/Labour Law, which includes the drafting of employment contracts;
- 6.2.2.2 Chairing of, or participation as committee member in, Disciplinary Enquiries;
- 6.2.2.3 Labour Litigation (CCMA and Labour Court);
- 6.2.2.4 provision of advice on labour implications of mergers and acquisitions;
- 6.2.2.5 provision of advice on the restructuring of businesses and transfers or sale of businesses as a going concern; and
- 6.2.2.6 provision of advice on retrenchments and rationalisations; as well as a sound knowledge of and the provision of advice in respect of all employment-related legislation.

6.2.3 Commercial work (including litigation, administrative law, debt-collection and advice on specialised areas)

The following are expected of the applicant(s) that will be appointed to the panel:

- 6.2.3.1 It has a commercial law team who provides assistance with the drafting of a range of commercial contracts; advises on implementation and termination of contracts, and offers general legal advice and services in regard to specific facts and issues involving commercial law, insolvency law, banking law, constitutional law, administrative and public law, environmental law and construction law.
- 6.2.3.2 It registers companies and trusts; conducts company and close corporation searches, and offers a full spectrum of Corporate and Commercial Law services, which include transactional and regulatory services in the following areas of law/legislation:

- Black Economic Empowerment;
- Construction;
- Environmental legislation;
- Insurance Law;
- Mergers and Acquisitions;
- Advice and structuring of transactions such as share sales, sale of businesses and assets sales;
- Advice on appropriate forms of business enterprises for transactions;
- Advice on appropriate corporate structures;
- Advice on tax implications in relation to various forms of commercial transactions;
- Due diligence investigations and reports thereof;
- Drafting of all related contracts and other documentation;
- Compliance and Corporate Governance, including the King III Code;
- *Public Finance Management Act* as well as the National Treasury Regulations and Treasury Guidelines and directives, and public-private partnerships;
- Professional liability claims; and
- The Preferential Procurement Policy Framework Act and its regulations.

6.2.3.3 It also deals with specialised litigation relating to Commercial disputes, Building and Construction Law disputes, Professional Negligence claims, and alternative dispute resolution, such as mediation and arbitration, as well as litigation relating to the interpretation of legislation.

6.2.4 Property law and Conveyance work

The following is expected of the applicant(s) that will be appointed to the panel:

6.2.4.1 Its property lawyers, notaries and conveyancers have a wealth of knowledge and experience in all aspects of Property Law, providing advice on all aspects of property developments, mining and mineral rights including mineral leases; acquisition and development of property; transfer of immovable property (conveyancing); registration of mortgage and notarial bonds; rezoning of properties; registration of servitudes; and the provision of advice on property-related matters including expropriation matters.

6.2.5 Information Communications and Technology (ICT Law)

The following is expected of the applicant(s) that will be appointed to the panel:

6.2.5.1 The panel has extensive expertise in information communications and technology law and, as such, it is experienced to deal with legal issues arising from the use of IP on the Internet, such as advising on Information Technology (IT)

- contracts; issues impacting upon online transactions and copyright; and draft website usage and privacy agreements.
- 6.2.5.2 It has proven expertise in the interpretation and application of the *Electronic Communications and Transactions Act (No. 25 of 2002)* as well as *Regulation of Interception of Communications and Communication-related Information Act (No. 70 of 2002)*, as well as the [Electronic Communications Act \(No. 36 of 2005\)](#), and Telecommunications Law.

The following will apply to the evaluation of each specified area above:

EOIs with functionality points of less than the **pre-determined** minimum of 70% – as determined by the Supplier Selection Committee in such area – shall be eliminated and will not be evaluated for price and B-BBEE. An applicant may therefore qualify to be evaluated for price and B-BBEE in one area, but not necessarily in another area(s) in terms of which it submitted an EOI.

6.3 General terms and conditions of the EOIs

6.3.1 All EOIs are to be submitted sealed. No open documents will be accepted.

6.3.2 All EOIs are to be clearly marked with the EOI number and the name of the applicant on the outside of the main package. EOIs must consist of two parts, each of which is placed in a separate sealed package clearly marked:

- PART 1: Technical – EOI Number: PQ2/ASA/2018
- PART 2: Pricing, B-BBEE and Mandatory Documentation - Q2/ASA/2018

6.3.3 The Entity will appoint to its panel of external lawyers the applicants those who's EOIs are determined to be the most advantageous to ASA, taking into consideration the technical (functionality) solution, price and B-BBEE.

6.3.4 The Entity envisages the appointment of a limited number of law firms per specialisation area to its panel of external law firms. Appointment in a specific area will not exclude a firm from being appointed in another area.

APPOINTMENT TO THE PANEL IN ANY SPECIFIC AREA/S OF SPECIALISATION DOES NOT IMPLY THAT ANY LEGAL SERVICES WILL NECESSARILY BE PROCURED FROM ANY OR ALL OF THE PANEL MEMBERS DURING THE THREE-YEAR PERIOD REFERRED TO ABOVE.

6.4 Elimination criteria

- 6.4.1 Submission after the deadline of 16:30 on Wednesday 31 January 2018.
 - 6.4.2 No valid Tax Clearance Certificate or Letter of Good Standing with the South African Revenue Service (SARS).
 - 6.4.3 Any conflict of interest.
 - 6.4.4 Applicants who are not practising attorneys.
 - 6.4.5 Failure to provide proof of current Fidelity Fund Certificate.
- The following additional documentation will be required should the EOI be successful:
- 6.4.6 Completed Central Supplier Database with National Treasury Registration Forms.

7. GENERAL TERMS

The Provision of external legal services as part of an external panel to the ASA in the following specialised area(s): (Applicants to choose and/or eliminate an area/s):

- 7.1 IP and Domain Names and IP Litigation;
- 7.2 Labour Law-related matters;
- 7.3 Commercial work (including litigation; administrative and public law; debt-collection and advice on specialised areas);
- 7.4 Property Law and Conveyance work; and/or
- 7.5 Information Communications and Technology (ICT Law).

8. PROCEDURE FOR QUERIES AND CONTACT WITH ASA

There is only one person authorised to respond to queries and questions. The person may subsequently appoint another person as the authorised contact.

All queries pertaining to the EXPRESSION OF INTEREST (EOI) must be forwarded for attention: Financial Accountant at e-mail address; kmadzivha@csir.co.za with 'EXPRESSION OF INTEREST (EOI) No. PQ2/ASA/2018 Appointment of a service provider to render Legal services for Agrément South Africa as the subject.

THE CUT-OFF DATE FOR QUERIES IS FRIDAY, 31 January 2018 AT 16:30.

Contact by any means whatsoever with ASA personnel is not permitted during the EOI process other than as required through existing service arrangements and/or as requested by ASA as part of the EOI process. Any form of canvassing by an applicant to any member of staff or supplier, for the purposes of influencing the process, will automatically disqualify the applicant from the evaluation process. Applicants shall not offer or give any consideration of any kind to any employee or representative of ASA as an inducement or reward for doing or refraining from doing, any act in relation to the obtaining or execution of this or any other contract with ASA.

9. MEDIUM OF COMMUNICATION

All documentation submitted in response to this EOI must be in English.

10. COST OF EOI

Applicants are expected to fully acquaint themselves with the conditions, requirements and specifications of this EOI before submitting their EOIs. Each applicant assumes all risks for resource commitment and expenses – direct or indirect – of proposal preparation and participation throughout the EOI process. ASA is not responsible – directly or indirectly – for any costs incurred by applicants in the preparation and submission of the EOI.

11. VALIDITY AND CORRECTNESS OF RESPONSES

The applicant furthermore confirms satisfaction regarding the correctness and validity of its proposal and that all prices and rates quoted cover all the work/items specified in the EOI, and that prices and rates quoted cover all obligations under any resulting contract.

The applicant accepts that any mistakes regarding prices and calculations will be at their own risk.

12. VERIFICATION OF DOCUMENTS

Applicants should check the numbers of the pages to satisfy themselves that none are missing or duplicated. No liability will be accepted by ASA in regard to anything arising from the fact that pages are missing or duplicated.

Three (3) copies of each EOI plus an electronic version must be submitted, including the original. In the event of a contradiction between the submitted copies, the original shall take precedence. Telegraphic, telefax and e-mail EOIs will not be accepted.

Pricing schedule, B-BBEE credentials should be submitted with the EOI, but as a separate document and no such information should be available in the main EOI.

If a courier service company is being used for delivery of the proposal document, the EOI description must be endorsed on the delivery note/courier packaging to ensure that documents are delivered to the tender box, by the date and time as mentioned above.

13. EOI TERMS AND CONDITIONS

Where an EOI is not received by ASA by the due date, it will be regarded as a late EOI. Late EOIs will not be considered.

An applicant shall not assume that information and/or documents supplied to ASA, at any time prior to this request, are still available to ASA, and shall consequently not make any reference to such information document in its response to this request.

A copy/s of any affiliations, memberships and/or accreditations that support your submission must be included with your EOI submission.

Kindly note that ASA is entitled to:

- Amend any EOI conditions, validity period, specifications, or extend the closing date and/or time of EOIs before the closing date. All applicants, to whom the EOI documents have been issued, will be advised in writing of such amendments on time;
- Verify any information contained in an EOI;
- Request documentary proof regarding any EOI issue;
- Not appoint any applicant;
- Vary, alter, and/or amend the terms of this EOI, at any time prior to the finalisation of its adjudication hereof.

ASA also reserves the right to:

- Award this EOI to an organisation that has strong B-BBEE credentials in terms of current B-BBEE legislation;
- Cancel or withdraw this EOI at any time, without attracting any liability;
- Cancel or withdraw from this EOI as a whole or in part without furnishing reasons and without attracting any liability.

Additional conditions to the EOI:

- The applicant hereby offers to render all of the services described in the attached document (if any) to ASA on the terms and conditions and in accordance with the specifications stipulated in these EOI documents (and which shall be taken as part of, and incorporated into, this EOI at the prices inserted therein).
- The applicant may be required to prepare a possible presentation should ASA require such, and the Applicant shall be timeously notified thereof.
- An omission to disclose material information, a factual inaccuracy, and/or a misrepresentation of fact may result in the disqualification of an EOI, or cancellation of any subsequent contract; and
- ASA's decision on EOIs received shall be final and binding.

14. Disclaimers

- 14.1 ASA has produced this EOI in good faith. However, ASA, its agents and its servants do not warrant its accuracy or completeness. To the extent that ASA is permitted by law, ASA will not be liable for any claim whatsoever and howsoever arising (including, without limitation, any claim in contract, negligence or otherwise) for any incorrect or misleading information contained in this EOI due to any misinterpretation of this EOI.
- 14.2 This EOI is a request for EOIs only and not an offer document; answers to it must not be construed as acceptance of an offer or an implication of the existence of a contract between the parties.
- 14.3 ASA makes no representation, warranty, assurance, guarantee or endorsements to any applicant concerning the EOI, whether with regard to its accuracy, completeness

or otherwise and ASA shall have no liability towards the Respondent or any other party in connection therewith.

15. EOI COMPLIANCE CHECK LIST

To be completed by the applicant

I/We/ hereby undertake to render services described in the attached EOI documents as and when requested by ASA in accordance with the requirements stipulated in EOI Number: PQ2/ASA/2018 at the price/s quoted.

The following documents shall be deemed to form and be read and construed as part of this EOI:

1. EOI documents, namely:
2. Invitation to submit an EOI;
3. The response to the EOI, including the Tax Clearance Certificate; Fidelity Fund Certificate; Pricing schedule(s); B-BBEE Status Level of Contribution in terms of the Preferential Procurement Regulations 2017 as per Gazette 10684; and
4. Declaration of interest.

I/We confirm that I/we have satisfied myself/ourselves as to the correctness and validity of my/our EOI and that the price(s) and rate(s) quoted cover all the services specified in the documents.

I/We declare that I/we have not participated in any collusive practices with any other applicant or third party regarding this or any other EOI.

I/we confirm that I/we am duly authorised to sign this document.

NAME (PRINT)

CAPACITY

SIGNATURE

NAME OF FIRM

DATE

| | |
|------------------|-------|
| WITNESSES | |
| 1 | |
| 2 | |
| DATE: | |

DECLARATION OF CONFLICT OF INTEREST FORM (supplier)

This declaration of interest must be completed and submitted with the EOI. Failure to do so may result in the elimination of the Applicant's EOI.

Declaration of Interest – ASA EOI Number: PQ2/ASA/2018

Are staff members from your company involved in this EOI process, connected or have any relationship with anyone employed by ASA?

| | | | |
|-----|--|----|--|
| Yes | | No | |
|-----|--|----|--|

If Yes, please state particulars:

DECLARATION

I, _____ (THE UNDERSIGNED), DULY AUTHORISED, CERTIFY THAT THE INFORMATION FURNISHED ABOVE IS CORRECT. I ACCEPT THAT ASA MAY TAKE APPROPRIATE ACTIONS, DEEMED NECESSARY, SHOULD THIS DECLARATION PROVE TO BE FALSE.

Signature

Date

Position
END OF EOI

Name of applicant