



THE POWER IS IN YOUR HANDS

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Independent Communications Authority of South Africa
Pin Mill Farm Block A
164 Katherine Street
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South Africa

By email: spectrumresources@icasa.org.za

Attention: Spectrum Resources

Dear Sirs

Cell C's Enquiries To The Invitation To Apply For A Radio Frequency Spectrum Licence To Provide Mobile Broadband Wireless Access Services For Urban And Rural Areas Using The Complementary Bands, 700MHz, 800MHz AND 2.6GHz

We refer to the invitation to apply (the "ITA") published by ICASA for high demand spectrum in the 700MHz, 800MHz and 2.6GHz bands, which it proposes to award by means of an Simultaneous Multi-Round Auction (SMRA) auction in early 2017 following a qualification process.

Unless specified otherwise, capitalized terms used but not otherwise defined in the body of this document shall have the meanings set forth in the ITA.

In response to your invitation for interested persons to submit enquiries regarding the ITA, we attach hereto our queries for your attention and response.

Yours sincerely

Graham Mackinnon
Chief Legal Officer

**ICASA INVITATION TO APPLY FOR HIGH DEMAND SPECTRUM IN TERMS OF s 31(3)
OF THE ECA AND REGS 5 AND 6 OF THE RFS REGULATIONS**

CONFIDENTIALITY

1. Will the entire business plan of an Applicant be treated as confidential?

DEFINITIONS

2. As a Bidder can only bid on one Lot during a round, kindly clarify the definition of "Activity"?
3. Does "Auction Fee" include the Reserve Price?
4. The definition of "MVNO" seems to be equivalent to that of "reseller" in the ECA – is this correct?
5. The definition of "Reserve Price" contemplates three stages – Initial Bid, First Round, and Auction Stage. Is this correct?
6. Kindly provide definitions for Initial Bid, First Round, and Auction Stage.
7. Why is the Reserve Price set uniformly for each Lot when the Lots are technically different hence some lots are less valuable than others?
8. Why is the definition of "Rural" used in the defined context in the ITA?

LEGAL FRAMEWORK

9. Was the ITA published in terms of both regulations 6 and 7 of the Radio Frequency Spectrum Regulations, 2015?
10. Why does section 5 entitled "Legal Framework" refer only to regulation 7 and Annexure E of the Regulations is not used as the application form?

11. If the ITA was published only in terms of regulation 7, please advise where the evaluation criteria and selection process referenced in this regulation are to be found in the ITA in relation to the Application?

POLICY FRAMEWORK

12. Has ICASA received a policy direction from the Minister in terms of section 3 of the ECA?
13. If not, has the Minister sanctioned the allocation of high demand spectrum by ICASA in terms of the ITA?

SPECTRUM TO BE AWARDED AND LICENCE CONDITIONS

14. International best practice has moved towards flexible packaging, where the spectrum is offered in small blocks and bidders are allowed to bid for multiple blocks in order to acquire the bandwidth they require (subject to the necessary safeguards – namely spectrum caps – that protect downstream competition and ensure an efficient auction process). Why does ICASA favour the approach followed?
15. We note that the table on page 12 which describes the Lots includes a Lot A which bears the following note, *“To be awarded through a separate process”*. Why has Lot A been excluded from the auction?
16. Why is some spectrum (most notably in the 800MHz band) excluded from the auction and other spectrum held back for an undefined separate future award process?
17. How many Lots can be bid for and what spectrum caps, if any, will apply?
18. Why is only 2×25MHz of spectrum in the 800MHz band now included as part of the proposed award, whereas previously (in the information memorandum dated 11 September 2015) close to 2×30MHz was proposed?
19. Please advise whether spectrum caps are being imposed, particularly as paragraph 150 suggests that one Bidder could win more than one Lot?

20. Paragraph 143.2 when read with these preceding paragraphs suggests that a Bid could be made for less spectrum than is in a particular Lot. Is this correct?
21. How will the spectrum in the 700MHz centre gap (733-758MHz) be used as the ITA is silent thereon?
22. Has any thought been given to using the centre gap of the 700MHz band for SDL by ICASA?
23. Paragraph 29 states that licences are valid for 15 years from date of issue, but ICASA has not stated when the spectrum in each band will actually be available to use (with there being particular uncertainty in the 700MHz band). When will each band be available for use?
24. With reference to paragraphs 35 to 43:
- 24.1 which clauses or paragraphs in the European publications referring to “technical conditions” are relevant?
- 24.2 What does the term “usage conditions” mean in reference to “maximum power limits within and beyond each band”?
- 24.3 Are “beyond in-band power limits” and “out-of-block power masks” required?
25. Why are the pre-defined Lots, as combinations of blocks of spectrum, unequal Lots?

OBLIGATIONS

26. Why do the obligations that apply to the licences exceed even the targets set by the policy that ICASA is relying on? Are the obligations open for reconsideration?
27. Is it correct that paragraph 48 suggests that there are also interim targets that must be met prior to 2020?
28. Further to the above, what are the interim targets that operators have to achieve after 12, 18, 24, 30 and 36 months after the awarding of the new licence?

29. What is meant by “user experience throughput” in paragraph 47?
30. The reference in paragraph 49 to measurements of actual performance suggests that some sort of realistic loading scenario is being assumed. Is this correct?
31. What is the deadline for achieving the obligations set out in paragraph 45 to 49? Is it to be met by the start of 2020 or the end of 2020 or some other point?
32. The term “open access” in paragraph 50 is not defined. What is meant by this?
33. Paragraphs 51 and 67.2 make reference to “Historically Disadvantaged Groups”. Although the phrase is capitalised, it is not defined anywhere in the ITA. What does Historically Disadvantaged Groups mean? Where is it defined?

APPLICATION PROCESS

34. Why are the three stages referred to in paragraph 54 not the same three stages referred to in the definition of Reserve Price?
35. Must the Reserve Price be paid in order to pass through the Qualification stage and participate in the Auction?
36. Paragraph 57 suggests that the Reserve Price can qualify as a Bid on a Lot once the Applicant has determined which Lot to bid for. Is this correct?
37. Does the Reserve Price of R3 billion mean the Reserve Price for each Lot or the total Reserve Price across all Lots?
38. In terms of paragraph 56, Applicants must state on which Lot Categories they may wish to place Bids during the award process. Does this mean that such an Applicant will be precluded from placing a Bid on any of the available Lots as contemplated in paragraph 110.2, even if they did not express such interest as set out in paragraph 56?
39. Why is it necessary to indicate which Lot an Applicant wishes to Bid for during the Application Stage (paragraph 56), particularly as it appears the Authority is going to set prices which may differ from the Reserve Price (paragraph 119)?

40. In paragraph 81.4 ICASA asks for the upfront costs of the spectrum to be taken into account, but the spectrum is to be auctioned. How does ICASA envisage the Applicant knowing the upfront cost in advance?

TIMETABLE FOR THE AWARD PROCESS

41. The timetable indicates that the licences may be issued in or around March 2017. When will the frequency in the 700 and 800 MHz bands be available for use?

GENERAL RULES

42. Paragraph 63 suggests that allowing a financial institution to participate in a consortium is not permitted. Why are those financial institutions, who are not I-ECNS licence holders, not permitted to participate in a consortium when it would be the consortium that is applying for the licence through a licensee with the requisite I-ECNS licence?

QUALIFICATION STAGE

43. Paragraph 67.2, read with paragraph 77.4, seems to suggest that if a consortium wishes to issue shares to an HDG should it be successful in acquiring a licence in circumstances where that HDG is not a licensee, the parties may not be able to form a consortium to bid for a licence where the representative bidder holds an I-ECNS. Is this correct?
44. Paragraph 73 states that a bidder can submit only one Application. May a Bidder indicate interest in more than one Lot in an Application or alternatively indicate which Lot it is not interested in?
45. Paragraph 81 seems to allow significant discretion to the Authority to determine whether or not an Applicant has made a "realistic assessment" of the market. On what basis will the Authority make this determination?
46. In paragraph 77.6 reference is made to business plans for the exploitation of the Lots covering a period of at least 10 years from the award of the Licence. Is it this business plan (of at least 10 years) which must be "fully funded" as envisaged in paragraph 83?

47. What penalties and compensation (paragraph 86) do ICASA envisage may be applicable during the Application Stage?
48. Why does ICASA not make allowance for a period to remedy or appeal any alleged contravention?
49. In light of the penalties and/or compensation which are envisaged above, why is there no dispute resolution process set out?
50. With reference to paragraphs 91 and 92, and paragraphs 102 to 105, does ICASA have the necessary resources to conduct a thorough assessment of the documents to be submitted with the Application and particularly the technical plan and business plan, in the period set out in the timetable?
51. Were the processes set out in paragraphs 92 to 98 taken into account in determining the timetable?

AUCTION STAGE

52. What are the Activity Rules in paragraph 110.2? Please provide a definition and detailed explanation.
53. Please advise if the identity of the Bidders in relation to the Standing High Bidder amount referred to in paragraph 111 will be confidential?
54. Why is there a prohibition on disclosure of information on Applicants in paragraphs 61 and 62 (until after the award of the Licence), where, in conflict therewith, paragraph 146.1 states that the Bidder identity, Standing High Bidder identity and Bid amounts will be disclosed by ICASA?
55. The terms "Waiver", "No Bid" and "Lot Categories" are not defined anywhere although they are used in paragraphs 113 and 114. What are those definitions?
56. What is the tie-break referred to in paragraph 116.1 and how will this work?

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57. Will the tie-breaking rule only apply to bids submitted at the highest bid amount available in that round?
58. With reference to paragraphs 118 and 119 – why does ICASA determine bid amount options, if the spectrum is being auctioned?
59. How does ICASA determine the four bid amounts options referred to in paragraphs 118 and 119?
60. May a Bidder place Bids on more than one Lot in any Round, having regard to paragraphs 123 and 143.8 and 143.11?
61. What is the relationship between the provisions of paragraphs 124 to 131 and the determination of a Standing High Bidder?
62. “Withdrawal” as used in paragraphs 139-142 is not defined. What is the definition?
63. With regards to paragraph 143.13, why would the Bids be deemed invalid?
64. If there are Rounds proceeding simultaneously for different Lots then why should the auction close if no Bid is received in relation to one Lot only? See paragraph 148.
65. What is the meaning of Bid Increments as used in paragraph 164.7?
66. Paragraph 173 suggests prices are already determined by ICASA – is this correct?
67. Further to the above, on what basis would ICASA pre-determine a price in an auction?
68. What does paragraph 175 mean?
69. What does paragraph 176 mean?
70. What precisely is the role of the independent auditor referred to in paragraph 197? Are they only an advisor to ICASA or will they have other powers too?
71. On what basis may an Auction Stage not be required as set out in paragraph 200?

LICENSING & LICENCE DURATION

72. Is the intention of paragraph 202 that Bidders may win more than one Lot?

APPENDIX A

73. What is the relevance of Appendix A?

APPENDIX B

74. Please see questions 9 and 10 above in relation to the Form prescribed. Is regulation 6 still applicable?