

ANNEXURE A

FUNCTIONAL REQUIREMENTS

1. Introduction

1.1 Purpose of the Bid

The Independent Communications Authority of South Africa (hereinafter referred to as "the Authority") seeks to appoint a panel of legal practitioners to provide legal assistance/services to the Independent Communication Authority of South Africa (ICASA) Head Office for a period of three (3) years on 80/20 PPPFA. ICASA reserves the right to appoint a limited number of law firms to this panel.

1.2 Background

As part of its mandate, ICASA is responsible for regulating the electronic communications, broadcasting and postal services sectors in the public interest and to ensure affordable services of a high quality for all South Africans. The Authority also, amongst others, issues licences to electronic communications network and service providers and broadcasting service providers, registers equipment and postal service providers, enforces compliance with rules and regulations, protects consumers from unfair business practices and poor quality services, hears and decides on disputes and complaints brought against licensees and controls and manages the effective use of radio frequency spectrum.

As a regulator and an employer, ICASA is constantly involved in litigation either instituted by itself, the licensees or its employees. It is thus necessary to have a panel of service providers to provide legal assistance/services to the Authority with various degrees of speciality and experience in the legal field.

1.3 Scope of work

The successful bidders will be required to assist with handling litigation matters on behalf of the Independent Communications Authority of South Africa, and may be required to provide general legal support for a period of thirty-six months in, amongst others the following areas (categories):

- (a) ICT Law (broadcasting, electronic communications and postal services);
- (b) Labour Law;
- (c) Commercial law;
- (d) Legislative Drafting;
- (e) Administrative law;
- (f) Competition Law;
- (g) Environmental Law;
- (h) Corporate Governance;
- (i) Constitutional Law; and
- (j) Complaint and non-compliance investigations.

The successful service provider(s) will be expected to provide services regarding the above criteria of law and submit the following to the Authority:

1.3.1 Litigation strategy or methodology:

The prospective bidder must provide and demonstrate how it prepares a litigation strategy or what methodology it may use in order to assist the Authority in dealing with or handling its court cases in a cost-effective, pragmatic and efficient manner. The Authority must ensure compliance with legislation when executing its functions and act in the best interest of the public. Above all, the Authority should act without fear, favour or prejudice. As an example, a plethora of review proceedings are instituted by disgruntled applicants who are unsuccessful in the competitive licensing processes that are undertaken by the Authority. The Authority has an obligation to oppose such review proceedings and stand its ground particularly in instances where the Authority followed the appropriate licensing processes, and acted in the public interest.

1.3.2. Pro-active Measures / Analysis of short-comings and inadequacies:

The potential bidders are expected to provide a detailed analysis of the Authority's short-comings and inadequacies in dealing with and handling litigation. The Authority would like to see a profound improvement in terms of success rate in its litigation matters and other matters related thereto. The bidders should not only identify the problem areas but also make propositions as to how the Authority may improve from now onwards in dealing with litigation.

Significantly, potential bidders must indicate what pro-active measures the bidder has or will have in place to assist the Authority in achieving its mandate as a regulator.

1.3.3 Communication plan and reporting strategy:

Potential bidders must provide a communication plan and reporting strategy that clearly spells-out how often and how the successful bidders will communicate and report on the progress made on matters handled on behalf of the Authority. Additionally, how pro-active measures will be communicated and implemented, to assist the Authority in achieving its objectives.

Bidders must indicate how new developments in law that may have an impact on the mandate of the Authority will be communicated to the Authority.

Lastly, please indicate (provide at a minimum a sample contract clause and Chinese wall policy) how the bidder will handle any potential conflict of interest, when assisting the Authority.

1.4 Key Criteria

1.4.1 Personnel profiles of members of staff that will execute the project:

In order to have a sense of the calibre and areas of expertise of the individual members of staff that will be deployed to advise the Authority and/or handle litigation matters, the bidders are expected to provide the Authority with a detailed personnel profile for each and every member of staff that will be handling its matters. Emphasis must be placed on the experience, skills-base, prominent matters handled by the member of staff as well as the academic qualifications. Bidders are allowed to subcontract certain expert skills, however, a detailed profile, academic qualifications and experience must be provided for each expert. A subcontractor's agreement, that illustrates the immediate availability of such experts, when required, must be submitted with this bid.

1.4.2. Categories (Focus areas):

Potential bidders must provide a clear indication of the bidder's preferred categories (focus area(s)) from the following list, which should align with the personnel profiles provided:

- (a) ICT Law (broadcasting, electronic communications and postal services);
- (b) Labour Law;
- (c) Commercial law;
- (d) Legislative Drafting;
- (e) Administrative law;

- (f) Competition Law;
- (g) Environmental Law;
- (h) Corporate Governance;
- (i) Constitutional Law; and
- (j) Complaint and non-compliance investigations.

It should be noted that successful bidders may be required to provide support in areas beyond those listed above, where appropriate.

1.4.3 Ten (10) years' experience:

Potential bidders must indicate that the lead legal personnel to provide the services to the Authority have been admitted as legal practitioners for at least ten (10) years and have been specialising in any of the above categories (focus areas) for at least ten (10) years.

1.4.4 Administrative and ICT law experience:

Potential bidders must indicate that the entity has participated/advised on Administrative law, ICT law related matters, and provide details regarding the legal issues dealt with (no confidential information is required).

1.5 Hourly Rate

Potential bidders must indicate fees charged per hour by each legal practitioner to provide the services to the Authority.

Position	Rate per hour
Partner	
Director	
Senior Associate	
Associate	
Candidate Attorney	