



Independent Communications Authority of South Africa

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ANNEXURE A: TERMS OF REFERENCE

APPOINTMENT OF A CONSULTANT TO ASSIST THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA WITH THE LICENSING PROCESS FOR THE INTERNATIONAL MOBILE TELECOMMUNICATIONS SPECTRUM, INCLUDING CONDUCTING AN AUCTION PROCESS FOR THE LICENSING OF THE IMT750, IMT800, IMT1500, IMT2300, IMT3300, AND IMT3500 RADIO FREQUENCY SPECTRUM BANDS

1. Background

- 1.1. The Independent Communication Authority of South Africa (“the Authority”) is in the process of licensing available International Mobile Telecommunications (IMT) radio frequency spectrum bands through a market-based approach as outlined in regulations 2(1)(c), 2(1)(f), 6, 7 and 8 of the Radio Frequency Spectrum Regulations published in Government Gazette No. 38641 (Notice 279) dated 30 March 2015, as amended, read with section 31(3) of the Electronic Communications Act No 36 of 2005 (ECA).
- 1.2. The IMT radio frequency spectrum bands to be licensed are IMT750, IMT800, IMT1500, IMT2300, IMT3300 and IMT3500 (“the spectrum bands”).
- 1.3. The Radio Frequency Spectrum Regulations published in Government Gazette Number 38641 (Notice 279 of 2015) dated 30 March 2015 (“RFSR 2015”) as amended, prescribe the market-based approach to ensure efficient spectrum management.

- 1.4. The market-based licence approach includes the use of an auction process for the licensing of the spectrum in instances wherein demand exceeds supply or wherein an Invitation to Apply (“the ITA”) is to be published to invite applications.

2. Objective

- 2.1. The Authority requires the services of a consultant for the following:
 - 2.1.1. Review of the previous licensing process of an auction of the IMT Spectrum and draw some learnings for the current process;
 - 2.1.2. Development of rules for the market-based assignment approach for the spectrum bands to be licensed;
 - 2.1.3. Development and design of an auction model detailing the necessary rules and all associated components of the auction process and award, taking into consideration competition aspects. The auction design should include but not be limited to licence obligations, packaging of spectrum and spectrum caps;
 - 2.1.4. Determination of the value of each of the spectrum bands and determined spectrum lots as packaged;
 - 2.1.5. Drafting the information memorandum (IM) for consultation purposes with the public on the actions mentioned above;
 - 2.1.6. Analyse the written public representations received against the published IM and formulate the ITA for the spectrum bands. Moreover, formulate the reasons document as to how the decisions on the ITA were taken having considered the public written representations; and
 - 2.1.7. Execution and implementation of the ITA in accordance with Regulations 6 and 7 of RFSR 2015.

- 2.2. Furthermore, it is mandatory that the consultant transfer knowledge, particularly on spectrum valuation, to at least 12 ICASA employees. The employees should be found competent and issued competency certificates.

3. Scope of Work and deliverables

- 3.1. The consultant must follow the licensing procedure outlined in regulations 6, 7 and 8 of the RFSR 2015.
- 3.2. The project will be implemented in four stages: formulation of the ITA, qualification stage, auction stage and licensing stage.
- 3.3. The auction is aimed to be completed by March 2024. Preceding the Auction, the ITA must be published by September 2023, and the qualification stage be finalised by December 2023.

3.3.1. Formulation of the ITA

- 3.3.1.1. Review of the previous licensing process of an auction of the IMT Spectrum and draw some learnings for purposes of the current process, taking into consideration the published ITA of 2021, its reasons and the analysis document to be shared against the recently published information memorandum;
- 3.3.1.2. Develop rules for market-based assignment and licensing models for the spectrum bands;
- 3.3.1.3. Formulate and propose the competition interventions for this licensing process aligned to the findings of Mobile Broadband Service Inquiry published in the Government Gazette Number 44337 on 26 March 2021, the current state of competition in the market and taking into consideration the Draft Next Generation Radio Frequency Spectrum Policy published on 08 September 2022 in the Government Gazette No. 46873 - submit a competition intervention report;

- 3.3.1.4. Develop and design an auction model detailing the necessary rules and all associated components of the auction process and award, including but not limited to - licence obligations, packaging of the radio frequency spectrum and radio frequency spectrum caps;
- 3.3.1.5. Determine the value of each of the spectrum bands and produce a spectrum valuation report, which includes radio frequency spectrum lots as packaged;
- 3.3.1.6. Formulate the Radio Frequency Spectrum Assignment Phase rules to ensure that all the prospective winning bidders are assigned contiguous radio frequency spectrum from the auction; and
- 3.3.1.7. Draft the Information Memorandum (IM) to consult the stakeholders on the licensing process and rules to be used to invite the applications.
- 3.3.1.8. Analyse the written public representations received against the published (IM) and formulate the ITA for the spectrum bands. Moreover, formulate the reasons document as to how the decisions in the ITA were taken having considered the written public representations.
- 3.3.2. **Qualification Stage**
 - 3.3.2.1. To assist the Authority in Administering and managing the Qualification Stage as per the ITA; and
 - 3.3.2.2. To assist the Authority in evaluating and analysing the applications and responses to the ITA in accordance with the evaluation criteria outlined therein.
- 3.3.3. **Auction stage**
 - 3.3.3.1. Determine and identify the prohibited practices as per the ITA and assist the Authority in managing prohibited practices in accordance with the applicable laws and international best practices;

- 3.3.3.2. Provide and run the relevant auction tool necessary for the execution of a successful auction process;
- 3.3.3.3. Provide training to the ICASA team on the auction tool and implementation of the auction rules consistent with the published ITA;
- 3.3.3.4. Provide training to the bidders on the auction tool;
- 3.3.3.5. Perform a mock Auction in preparation for the Auction process; and
- 3.3.3.6. Execute the auction process together with the ICASA team as per the ITA. However, the consultant is excluded from the following activities:
 - 3.3.3.6.1. The auditing of the auction process since the Authority will appoint independent auditors;
 - 3.3.3.6.2. Stakeholder engagements and media coverage. The issuing of media releases and any other relevant stakeholder communications shall be the responsibility of the Authority; and
 - 3.3.3.6.3. Announcing the award results. The announcement of award results shall be the responsibility of the Authority.

3.3.4. **Licensing stage**

- 3.3.4.1. Assist the Authority with assigning a contiguous radio frequency spectrum to the winning bidders.
- 3.3.4.2. Assist the Authority with issuing the Radio Frequency Spectrum Licences to the winning bidders and finalising the terms and conditions.

3.4. Training:

- 3.4.1. It is mandatory that the consultant transfer knowledge (skills/knowledge transfer) through formalised training to at least twelve (12) employees of the Authority.
- 3.4.2. The consultant will be required to provide training and knowledge transfer on spectrum valuation.
- 3.4.3. The consultant will be required to provide training on the Auction tool supplied to the Authority and bidders.

4. Capability and Experience

- 4.1. The proposal shall include, but not be limited to:
 - 4.1.1. proof of experience and capabilities in the performance or execution of projects in the fields of radio frequency spectrum licensing processes or similar projects in the last ten years.
 - 4.1.2. qualifications and experience of the key personnel.

5. Auction Tool

- 5.1. The proposal shall include, but not be limited to, details and specifications of the Electronic Auction Tool which will be utilised. The tool must be capable of implementing different auction strategies.
- 5.2. The proposed auction tool shall ensure transparent, auditable, tracked authenticity and verification of information throughout the auction process.
- 5.3. The consultants shall provide the platform and all the required licences for the auction tool.
- 5.4. The consultant or its partners must be affiliated with a professional auctioneering organisation.

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