



TERMS OF REFERENCE FOR A PANEL OF LAW FIRMS TO PROVIDE LEGAL ASSISTANCE/SERVICES TO THE AUTHORITY FOR A PERIOD OF THREE (3) YEARS

1. Background

- 1.1 As part of its mandate, the Authority 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, adjudicates on disputes and complaints brought against licensees and controls and manages the effective use of radio frequency spectrum.

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

2. Scope of work

2.1 The successful bidders will be required to provide legal services to the Authority, which will include, representing the Authority in litigation matters, advising the Authority on regulatory matters (incl. the applicable regulatory instruments), representing the Authority in public hearings or inquiries and providing general legal support for a period of three (3) years in any of the following legal categories ("Focus Areas"):

- (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) Data Privacy Law;
- (j) Constitutional Law; and
- (k) any other matter having an impact on the Authority's ability to execute its mandate in terms of the Independent Communications Authority of South Africa Act, 2000 (Act 13 of 2000) ("ICASA Act"), Electronic Communications Act, 2005 (Act 36 of 2005) ("EC Act") and other related legislations.

2.2 The bidder(s) will be expected to provide services relating to the above Focus Areas and submit the following to the Authority:

2.2.1 Litigation strategy or methodology

2.2.1.1 The bidder(s) 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 litigation matters 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.

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

- 2.2.2.1 The bidder(s) are expected to provide proactive measures and detailed analysis of the Authority's short-comings and inadequacies in:
- (a) dealing with and handling litigation;
 - (b) developing regulations; and
 - (c) conducting inquiries in terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 36 of 2000).
- 2.2.2.2 The Authority would like to see a profound improvement in terms of success rate in its litigation matters and implementation of its legislated mandate. The bidders should not only identify the problem areas but also make propositions as to how the Authority may improve from now onwards in minimising litigation against it and dealing with litigation proceedings once instituted.
- 2.2.2.3 Significantly, bidder(s) must indicate what pro-active measures the bidder will put in place to assist the Authority in achieving its mandate as a regulator and identify and litigation and or regulatory risks and mitigation controls.

2.3.2 Communication plan and reporting strategy:

- 2.2.3.1 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 and/or mandate.
- 2.2.3.2 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.
- 2.2.3.3 Lastly, bidders must 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.

3. Briefing Session

3.1. There will be no briefing session conducted.

4. Pre-qualification criteria

4.1 The following evaluation approach will be applied

- **Phase 1** will be the evaluation of mandatory requirements.
- **Phase 2** will be evaluation on functionality wherein the top ten (10) law firms which meet the cut off mark of 70 points for functionality will be shortlisted to qualify for the third phase
- **Phase 3** will be evaluation on Price and BBEE.

4.2 Mandatory Requirements

- Bidders must be law firms registered with the Legal Practice Council ("LPC"). Bidders must attach the Fidelity Fund Certificate.
- The lead legal practitioner must be admitted to practice as a legal practitioner by the LPC for a period of ten (10) years or more. Bidders must provide the certificate of admission to practice as a legal practitioner and a certificate in good standing for the lead legal practitioner.

4.3 Functionality Criteria

Bidders will be evaluated in terms of the following Focus Areas, (ICT Law, Competition Law, Administrative Law, Labour Law, Commercial Law, Constitutional Law, Corporate Governance, Legislative Drafting and Litigation, in accordance with the following functional criteria:

| No | Category | Maximum Points |
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| A. | Functionality | |

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| 1. | <p>How does the bidder prepare a litigation strategy and how will such approach assist ICASA in achieving its mandate and ensure cost efficiency?</p> <ul style="list-style-type: none"> • No litigation strategy = 1 • Litigation strategy without analysis for prospect of success = 2 • Litigation strategy with analysis for prospect of success but without evaluation for possibility of settlement = 3 • Litigation strategy with analysis for prospect of success and evaluation for the possibility of settlement but without cost savings plan = 4 • Litigation strategy with analysis for prospect of success, evaluation for possibility of settlement and cost savings plan= 5 | 20 |
| 2. | <p>Provide pro-active measures that the bidder will put in place to assist the Authority in achieving its mandate as a regulator for electronic communications, postal and broadcasting services and provide a risk analysis on litigation, regulation drafting process and ICASA Act section 4B inquiry with mitigation controls.</p> <ul style="list-style-type: none"> • No pro-active measures provided= 1 • Pro-active measures provided without a detailed plan = 2 • Pro-active measures provided with a detailed plan but without identifying the potential risks = 3 • Pro-active measures provided with a detailed plan and identified potential risks (litigation, development of regulations or section 4B inquiries) but without an analysis to mitigate the risks = 4 • Pro-active measures provided with a detailed plan and provided a thorough analysis of potential risks (litigation, development of regulations and section 4B inquiries) with mitigation controls = 5 | 30 |

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| <p>3.</p> | <p>Provide legal practitioners' profiles (Curriculum Vitae) with experience in at least three of the Focus areas and include other pertinent credentials that will be deployed to execute the services. Indicate if external services or sub-contractors will be utilised as experts in certain instances and add the credentials and profiles of such experts. Please include examples of any matter(s) involving ICT law that the bidder participated in or advised on and provide reference letters prepared on a client's letterhead for such matter(s).</p> <ul style="list-style-type: none"> • CV provided with relevant Focus areas, no example of ICT law matter and no reference letter= 1 • CV provided with relevant Focus areas and example(s) of ICT law matter(s) but no reference letter(s) = 2 • CV provided with relevant Focus areas and reference letter(s) but no example(s) of ICT law matter(s) = 3 • CV provided with relevant Focus areas, example(s) of ICT law matter(s) and reference letter(s) = 4 • CV provided with relevant Focus areas, example(s) of ICT law matter and public interest matter and reference letter(s) = 5 | <p style="text-align: center;">30</p> |
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| <p>4.</p> | <p>Provide a communication plan or reporting strategy.</p> <ul style="list-style-type: none"> • No communication Plan or Reporting Strategy provided = 1 • Communication Plan or Reporting Strategy is provided but without indication of how new developments impacting ICASA will be communicated and how to handle potential conflict of interest = 2 • Communication Plan or Reporting Strategy is provided with indication of either how new developments impacting ICASA will be communicated or how to handle potential conflict of interest = 3 • Communication Plan or Reporting Strategy is provided with indication of how new developments impacting ICASA will be communicated and how potential conflict of interest will be handled= 4 • Comprehensive Communication Plan or Reporting Strategy with reporting timeframes and indication of how new developments impacting ICASA will be communicated and how to handle potential conflict of interest, sample contract clause and Chinese wall policy provided = 5 | <p style="text-align: center;">20</p> |
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| | TOTAL | 100 |
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Note: Only bidders who obtain a cut-off score of 70 points out of 100 for functionality will be considered for Price and BBBEE (Phase three (3)).

8.4 Price and BBBEE

All bids that will achieve the minimum qualifying score on functionality will be evaluated further in terms of the preference point system as follows:

| No | Category | Maximum points |
|-----------|---------------------------------|-----------------------|
| A | Price | 80 |
| B | BBBEE Status Level Contribution | 20 |