



Independent Communications Authority of South Africa

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TERMS OF REFERENCE FOR THE PROCUREMENT OF THE SERVICES OF AN EXTERNAL SERVICE PROVIDER TO ASSIST THE AUTHORITY WITH THE MARKET REVIEW INTO SIGNAL DISTRIBUTION SERVICES FOR A PERIOD OF TWENTY-FOUR (24) MONTHS

1. Background and Scope

- 1.1. The primary object of the Electronic Communications Act, 2005 (“ECA”) is to provide for the regulation of electronic communications in the public interest and for that purpose to, *inter alia*, (1) promote competition within the ICT sector, and (2) promote an environment of open, fair and non-discriminatory access to broadcasting services, electronic communication networks and to electronic communications services.
- 1.2. Competition matters are regulated under section 67 of the ECA.
- 1.3. In terms of section 67(4) of the ECA, the Authority must, following an inquiry, prescribe regulations defining the relevant markets and market segments and impose appropriate and sufficient pro-competitive licence conditions on licensees where there is ineffective competition, and if any licensee has significant market power in such markets or market segments.
- 1.4. The regulations must, *inter alia*: (1) define relevant wholesale and retail markets or market segments, (2) determine whether there is effective competition in those relevant markets and market segments, (3) determine which, if any, licensees have significant market power in those markets and market segments where there is ineffective competition, (4) impose appropriate pro-competitive licence conditions on those licensees having significant market power to remedy

the market failure, (5) set out a schedule in terms of which the Authority will undertake periodic review of the markets and market segments; and (6) provide for monitoring and investigation of anti-competitive behavior in the relevant market and market segments.

- 1.5. Sections 4B and 4C of the Independent Communications Authority of South Africa Act, 2000 (“ICASA Act”), give the Authority specific authority to conduct an inquiry into any matter with regard to, *inter alia*, the achievement of the objects of the ICASA Act or the underlying statutes.¹
- 1.6. On 17 September 2021, the Authority published a notice in the gazette² indicating its intention to conduct an inquiry into signal distribution services in terms of section 4B(1)(a) of the ICASA Act. The Authority also published a questionnaire on its website requesting information and opinions from interested parties to inform its market study. The Authority subsequently received three (3) responses from interested stakeholders.
- 1.7. On 22 April 2022, the Authority published the Discussion Document³ on the inquiry into signal distribution services for comments and subsequently received six written representations from interested parties.
- 1.8. The Authority, therefore, seeks to appoint a service provider to assist the Authority with the market review into signal distribution services.
- 1.9. The service provider will be required to assist the special council committee on signal distribution services with, *inter alia*, the following:
 - 1.9.1. Assessment of the state of competition in the signal distribution services markets;
 - 1.9.2. Define the relevant markets in the signal distribution services markets;
 - 1.9.3. Determine whether there is effective competition in the defined markets;
 - 1.9.4. Identify, if any, licensees that have Significant Market Power (“SMP”) in the relevant markets where there is ineffective competition; and
 - 1.9.5. Recommend the appropriate pro-competitive licence conditions to be imposed on licensees with SMP in order to address the identified market failure.

¹ See section 4B(1) of the ICASA Act.

² Government Gazette No 45172 in Notice No 873.

³ Government Gazette No. 46255 in Notice 986.

2. Specifications

- 2.1. The service provider will assist the Authority with the market review into signal distribution services in line with Section 4B of the ICASA Act read with section 67(4) of the Electronic Communications Act.
- 2.2. In undertaking this work, the service provider will be expected to, *inter alia*, carry out the following activities and provide the following documents:
 - 2.2.1. Participate in all public hearings and one-on-one meetings with stakeholders.
 - 2.2.2. Produce a draft findings document, which will be published in the government *gazette* for public comments.
 - 2.2.3. Produce findings document, which will be published in the government *gazette*.
 - 2.2.4. Produce draft regulations (if necessary).
 - 2.2.5. Participate in oral public hearings for draft Regulations (if necessary).
 - 2.2.6. Produce final Regulations (if necessary)
- 2.3. The service provider is expected to work closely with the special council committee on signal distribution services at the Authority and provide training to the committee in order to transfer knowledge to the committee.
- 2.4. The project leader at the Authority will liaise with the project leader of the service provider to arrange a work programme and to schedule meetings with stakeholders (including licensees).
- 2.5. The milestones for this project will include:
 - 2.5.1. Analysis report on public hearings and one-on-one meetings.
 - 2.5.2. Draft Findings document.
 - 2.5.3. Findings Document.
 - 2.5.4. Draft Regulations (if necessary*)
 - 2.5.5. Analysis report on written and oral submissions on draft Regulations (if necessary*)
 - 2.5.6. Final Regulations (if necessary*)

**depends on the Authority's findings.*

3. Period of assignment

3.1. All work is to be carried out in accordance with the time schedule as agreed with the Authority for a period twenty-four (24) months from the date of finalisation of the contract with service provider.

4. Briefing Session

4.1. No briefing session will be held.

5. Evaluation of the Bids

5.1. The received bids will be evaluated on the 80/20 procurement principle as per the Supply Chain Management Policy and the relevant Treasury Regulations. The bid will also be evaluated for functionality as per the functionality table below.

5.2. The bidder will be evaluated on (a) submission of the required documents; (b) functionality and (c) price/BB-BEE. Only bidders who meet the cut-off score of 70 out of 100 points for functionality will be considered further for price evaluation. Please see table 1 overleaf:

Content Bid Functionality: Table 1

No	Category (Cut-off 70)	Points
A.	Functionality: Pre-qualification criteria (cut-off 70%)	
	Functional Proposal	
	1. Provide information on the understanding of the ICASA market review process or competition assessment as it relates to the Authority and the project plan (work breakdown structure, milestones & major deliverables, human resources, budget, project risk identification & management). Evaluation criteria: <ul style="list-style-type: none">• Did not provide information on the market review process or competition assessment and project plan = 1• Provide information on the understanding of the market review process (or competition assessment) or project plan (any two of the above requirements) = 2	30

	<ul style="list-style-type: none"> • Provide information on the understanding of the market review process and project plan (any three of the above requirements) = 3 • Provide information on understanding of the market review process or competition assessment, project plan (any four of the above requirements) and understanding of the relevant section(s) of the South African competition law = 4 • Provide information on understanding of the market review process, project plan (all the above requirements and more) and understanding of the relevant section(s) of the South African competition law. Also, provide a summary of the analysis of market review(s) in the signal distribution market or similar market with possible lessons for the Authority = 5 	
	<p>2. Previous company experience in conducting market reviews or competition assessment in the ICT sector (including broadcasting and/or Over-the-Top (OTT) services/ Internet distribution platform)</p> <p>.</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> • No experience in conducting market reviews or competition assessment in the ICT sector (including broadcasting and/or OTT services/ Internet distribution platform) = 1 	30

No	Category (Cut-off 70)	Points
A.	Functionality: Pre-qualification criteria (cut-off 70%)	
	Functional Proposal	
	<ul style="list-style-type: none"> • Less than two (<2) years' company experience in conducting market reviews or competition assessment in the ICT sector (including broadcasting and/or OTT services/ Internet distribution platform) = 2 • Two (2) to three (3) years' company experience in conducting market reviews or competition assessment in the ICT sector (including broadcasting and/or OTT services/ Internet distribution platform) = 3 • Four (4) to five (5) years' company experience in conducting market reviews or competition assessment in the ICT sector (including broadcasting and/or OTT services/ Internet distribution platform) = 4 • More than five (>5) years' company experience in conducting market reviews or competition assessment in the ICT sector (including broadcasting and OTT services/ Internet distribution platform) = 5 	
	<p>3. Provide proof of at least one team member with at least masters in social sciences (preferably in economics or econometrics) and experience in economic research.</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> • No qualification and research experience in economic research = 1 • Proof of qualification and less than two (<2) years' experience in economic research = 2 • Proof of qualification and two (2) to three (3) years' experience in economic research = 3 • Proof of qualification and four (4) to five (5) years' experience in economics research = 4 • Proof of qualification and more than five (>5) years' experience in economic research = 5 	20
	<p>4. Provide proof of practical experience through verifiable reference letters with company letterheads from companies/regulatory authorities where market reviews or competition assessment in the ICT sector (including broadcasting and/or Over-the-Top (OTT) services/ Internet distribution platform) was provided.</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> • No submission of testimonial reference letters = 1 • Provide one (1) testimonial reference letter = 2 • Provide two (2) testimonial reference letters = 3 • Provide three (3) testimonial reference letters = 4 • Provide more than three (>3) testimonial reference letters = 5 	20
TOTAL FOR FUNCTIONALITY PRE-QUALIFICATION CRITERIA		100

6. Bid Adjudication Committee (BAC) Approval

6.1. The Bid Adjudication Committee (BAC) of the Independent Communication Authority of South Africa (ICASA) approves the recommendation by the Bid Specification Committee (BSC) at a Bid Adjudication Committee meeting held at ICASA on:.....

Additional Conditions if applicable:

Chairperson: BAC

Date: