



Independent Communications Authority of South Africa

350 Witch-Hazel Avenue, Eco Point Office Park

Eco Park, Centurion.

Private Bag X10, Highveld Park 0169

Telephone number: (012) 568 3000/1

APPOINTMENT OF A SERVICE PROVIDER TO ASSIST ICASA IN CONDUCTING AN INQUIRY INTO TELEVISION SUBSCRIPTION BROADCASTING SERVICES FOR A PERIOD OF TWELVE (12) MONTHS.

1. Purpose

- 1.1. The purpose of this (TOR) terms of reference is for the procurement of the services of an external service provider to assist the Authority with conducting an inquiry into television subscription broadcasting services for a period of twelve (12) months.
- 1.2. The bid is to be advertised for 30 calendar days and advertised on additional platforms available to SCM within the permissible legal instruments.

2. Background and Scope

- 2.1. On 11 July 2016, the Authority published a notice of its intention to inquire into the state of competition in subscription television broadcasting services in section 4B of the ICASA Act¹.
- 2.2. In the Notice, the Authority noted that despite having issued five subscription broadcasting service licences in 2007 and a further two subscription broadcasting service licences in 2015, only three licensees² are operational.
- 2.3. One of the licensees³ faced sustainability challenges and underwent a business rescue process. The remaining subscription broadcasting service

¹ The Initial Notice was corrected by an erratum published under GN 552 in *Government Gazette* 40256 of 7 September 2016.

² Multichoice, StarSat and Deukom

³ StarSat

licensees issued with licences in 2015 and 2007, respectively, have not yet started operations.

- 2.4. As such, the Authority noted in the Notice that, due to its commitment and mandate to ensure that markets are effectively competitive, it was commencing an inquiry into subscription television broadcasting services.
- 2.5. The Inquiry sought to establish factors that contributed to new subscription broadcasting licensees' inability to successfully launch their services and attract a fair number of new subscribers. A notice of an inquiry is attached herewith and marked **Annexure A**.
- 2.6. On 25 August 2017, the Authority published a Discussion Document to solicit input from interested stakeholders on the Authority's preliminary views and analysis in relation to Subscription Television Broadcasting Services. A copy of the Discussion Document is attached herewith and marked **Annexure B**.
- 2.7. On 12 April 2019, the Authority published the Draft Findings Document for consultations for forty-five (45) days. A copy of the Draft Findings Document is attached and marked **Annexure C**. In addition, the Authority held public hearings on 12-15 January 2021.
- 2.8. Following the public hearings, the Authority noted that there rapidly changing market development will have an impact on the final Findings, and therefore, the Authority decided that the consultation process in respect of the Inquiry into the Subscription Broadcasting Services Market must be extended. This extension builds upon and will update and refine the work undertaken in the consultation process by the Authority during the 2021-22 financial year.
- 2.9. The purpose of the extended Inquiry is to assess the state of competition and determine whether or not there are markets or market segments within the subscription broadcasting services value chain that may warrant

regulation in the context of a market review in terms of section 67(4) of the ECA.

2.10. To achieve this, the Authority seeks to appoint a service provider to conduct an inquiry into the television subscription broadcasting market, as required in terms of Chapter 10 of the ECA.

3. Specifications

3.1. The service provider will build on the existing work done and assist the Authority in conducting an inquiry, as envisaged in terms of section 67 of the ECA.

3.2. In undertaking this work, the service provider will be expected, among other things, to attend to the following activities:

3.2.1. Defining the relevant wholesale and retail markets or market segments in television subscription broadcasting, taking into account the relationship, if any and the impact from adjacent markets (e.g. Free-to air broadcasters, new technologies);

3.2.2. Determining whether there is effective competition in those relevant markets and market segments;

3.2.3. Determining which, if any, licensees have significant market power (SMP) in those markets and market segments where there is ineffective competition; and

3.2.4. Developing and recommending proposals on appropriate pro-competitive license conditions (not limited to conditions set out in section 67(7) of the ECA) to be applied to licensees with significant market power to remedy the market failure if there is evidence of such market failure.

3.3. In conducting the activities covered under paragraph 2.2 above, the service provider will work with the project team at ICASA.

3.4. The milestones for this project will include the following:

- 3.4.1. Relevant information gathering tools: This may take the form of questionnaires setting out the critical information and evidence needed to conclude the project. The gathering of information must be done through a consumer survey and/or one-on-one meetings with stakeholders to verify submissions received.
- 3.4.2. A report analysing and summarising the findings of the information gathering exercise.
- 3.4.3. A report to be used for publication as a Discussion Document which includes the international benchmarking report and the findings of the information gathering exercise, including the consumer survey.
- 3.4.4. A report to be used as a Findings Document based on the final analysis of the Inquiry process, including updating the Findings Document based on market developments which occurs before the finalisation of the Inquiry.
- 3.4.5. A recommendation report and presentation on the market definition, SMP, the effectiveness of competition, and possible pro-competitive remedies to remedy the market failure if there is evidence of such market failure.
- 3.4.6. A report to be used as a Draft Regulations, if any, based on the findings document and pro-competitive remedies.
- 3.4.7. Participation at all hearings to be conducted by ICASA on this project and analysis of the hearing's transcripts and post-hearing information.

4. Period of assignment

- 4.1. All work is to be carried out in accordance with the time schedule as agreed with the Authority for a period of no more than twelve (12) months from the date of finalisation of the contract with service provider.

5. Briefing Session

5.1. A non-compulsory briefing session will be held.

6. Evaluation of the Bids

6.1. 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.

6.2. 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. Proposed methodology to be used to define or assess competition in the relevant markets. Evaluation criteria: - Listed less than two (2) methodologies to be used = 1 - Listed two (2) methodologies=2 - Listed two methodologies discussed how these will be used=3 - Listed two (2) or more methodologies, discussed how these will be used and provided recommendations for a methodology to be used based on international benchmarks = 5	25
	2. Previous organisational experience in conducting market reviews in the ICT sector (including broadcasting and Over-the-Top (OTT) services/ Internet distribution platform), with	30

No	Category (Cut-off 70)	Points
A.	Functionality: Pre-qualification criteria (cut-off 70%)	
	Functional Proposal	
	<p>at least three contactable references on a company letterhead.</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> - No experience in conducting market reviews in the ICT sector (including broadcasting and OTT services/ Internet distribution platform) = 1 - Less than or one years' experience in conducting market reviews in the ICT sector (including broadcasting and OTT services/ Internet distribution platform) = 2 - Two to three years' experience in conducting market reviews in the ICT sector (including broadcasting and OTT services/ Internet distribution platform) = 3 - Four to five years' experience in conducting market reviews in the ICT sector (including broadcasting and OTT services/ Internet distribution platform) = 4 - Greater than five years' experience in conducting market reviews in the ICT sector (including broadcasting and OTT services/ Internet distribution platform) = 5 	
	<p>3. Previous organisational experience in competition assessment studies in the ICT sector (including broadcasting and OTT services/ Internet distribution platform), with at least three contactable references on the company letterhead.</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> - No experience in competition assessment studies = 1 - Less than one years' experience in competition assessment studies = 2 - Two to three years' experience in competition assessment studies = 3 - Four to five years' experience in competition assessment studies = 4 - Greater than five years' experience in competition assessment studies = 5 	30
	<p>4. Provide proof of at least two team members with postgraduate qualifications in Economics and Competition law together with proof of having practiced for a number of years.</p>	15

No	Category (Cut-off 70)	Points
A.	Functionality: Pre-qualification criteria (cut-off 70%)	
	Functional Proposal	
	Evaluation Criteria: <ul style="list-style-type: none"> - No confirmation of knowledge and proof of practical experience provided=1 - Proof of qualifications and combined professional experience of 2-3 years. (written confirmation in CVs) = 2 - Proof of qualifications and combined professional experience of 4-7 years. (written confirmation in CVs) =3 - Proof of qualifications and combined professional experience of 8-14 years. (written confirmation in CVs) =4 - Proof of qualifications and combined professional experience of at least 15 years or more. (written confirmation in CVs) = 5 	
TOTAL FOR FUNCTIONALITY PRE-QUALIFICATION CRITERIA		100