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## **TERMS OF REFERENCE – REGULATOR OF THE FUTURE**

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### **1. BACKGROUND**

The National Integrated ICT White Paper (2016), together with the draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision For South Africa (2020), recognizes that content, especially broadcasting content, has to have a separate regulatory institution. The National Integrated ICT White Paper (2016) specifically provided that broadcasting content regulation (such as licensing and regulation of broadcasting service license) will not fall under such a separate regulatory institution (economic regulator) pending the finalisation of the review of all broadcasting related policies which will consider the framework for policy and regulation of the audio and audio-visual content sector holistically, taking into account the constitutional objectives of freedom of expression including cultural expression.

The Draft White Paper on Audio and Audiovisual Content Services Policy Framework: A New Vision For South Africa (2020), in particular, defines Audio and Audio-visual Content Services (AAVCS) as, “a service where the principal purpose of the service or dissociable section thereof is devoted to provide audio and/or audiovisual programming to inform, entertain and educate the public and is distributed over electronic communications networks under the editorial responsibility of a recognised or juristic person” and proposes that same replaces the reference to “broadcasting” in section 192 of the Constitution of the Republic of South Africa, 1996 (Constitution).

Acknowledging that the definition of AAVCS does not provide clarity regarding the fundamental differences between linear and non-linear services, the Independent Communications Authority of South Africa (ICASA) is identified as the all-encompassing content regulator for AAVCS but simultaneously indicates that the Film and Publication Board (FPB) should still be responsible for the regulation of the classification of content.



The digital space within which the FPB operates is a rapidly changing technological space characterised by the need to create agile and responsive policies which shall enable the institution to respond rapidly. Previous challenges within the then Department of Communications were, amongst others, policies that were largely inward looking, as opposed to policies that would position South Africa as a global technological player and what is required by our country.

It was posited by the Presidential Commission on the Fourth Industrial Revolution (PC4IR) that a complete overhaul of current legislation in South Africa, as well as its regulation, is required. The PC4IR Report sets out a framework for government to rationalise as well as take to scale the digital technological era that the FPB find itself in. Concomitantly, there is the need to overhaul the institutions in this space and ensure that staff are upskilled and/or correctly placed (the need for fit-for-purpose skills that are aligned to the new vision of government). Additionally, the regulators required to operate in this rapidly changing space are ones who must appreciate the environment that they are operating in. What is required is a regulator/s who understand the “world of one”, the Internet as a key driver (enabler) of all things and everything that takes place on a day-to-day basis, the socio-economic impact of the internet, social media platforms and big tech organisations and their changing patterns in distribution and consumption of content.

## **2. PURPOSE**

The FPB is seeking a service provider to produce a business case report that provides a justification for the creation of a future content regulator in the sector, which shall be responsible for regulation of:

- a) content, such as films, games and certain publications both online and physical.
- b) the ICT sector.
- c) broadcasting of content.
- d) video-on-demand (VOD) platforms.
- e) over-the-top (OTT); and

- f) audio- and audio-visual services.

### **3. PROJECT AIM(S)**

The aim of the project is to develop an overall business case that sets out amongst others, an institutional framework or model for the future regulator and incidental appeal bodies thereof. Upon completion of the institutional framework and model for a future content regulator, such business case will be presented to the Minister of Communications and Digital Technologies for her consideration.

### **4. PROJECT SCOPE**

#### **4.1. The Appointed Service Provider Is Expected to Carry Out the Following:**

- a) Develop a Business Case for the future regulator which should include the following key elements:

##### **4.1.1. Strategic or tactical business opportunity**

- a) Conduct an assessment of the market (market analysis).
- b) Needs analysis and a resultant gap analysis.
- c) Complete a competitive analysis of current regulators in the space as well as prospective ones, self-regulatory bodies.
- d) Resultant business benefits; and
- e) An options analysis – to be considered (include reasons for rejecting or taking forward each option).

##### **4.1.2. Institutional arrangements**

- a) Corporate form and legislative regime/s.
- b) Organisational structure, human resourcing for the future.
- c) Operational and service delivery indicators.
- d) Information and Communication Technologies (ICT) Need analysis – capabilities, infrastructure, capacity, etc. ;
- e) Corporate governance principles.
- f) Implementation plan and interim arrangements (transitional arrangements); and

- g) Financial modelling demonstrating the financial requirements and viability for the regulator of the future and incidental Appeal bodies.

#### **4.1.3. Return on investment**

- a) Financial plan.
- b) Forecast expected costs of the “future content regulator” project.
- c) Estimated financial needs/resources; and
- d) An evaluation of the costs and benefits.

#### **4.1.4. Alternatives to this opportunity**

- a) Comparative analysis of ICASA and FPB (merger of the existing regulators) – on the development of the “future regulator”.
- b) Assess whether such an alternative exists as a model elsewhere (benchmark studies)).
- c) Will we be able to solve new problems in new ways applying this model? and
- d) Provides a rationale for the preferred solution. Options analysis.

#### **4.1.5. Risks**

- a) Risk analysis and mitigation.
- b) Assess the risk Universe.
- c) Strategic risks both short and long term.
- d) Operational risks – short term; and
- e) Consider contingencies and mitigations.

#### **4.1.6. Project Approval**

- a) Develop a fully costed proof of concept; and
- b) Support the FPB Executive in completing a submission and PowerPoint, presentation to Council and Minister of Communications and Digital Technologies.

### **4.2. Expected outputs**

It is expected that the service provider will at the end of the project submit a complete and well-developed document containing the following elements:

- a) Needs analysis
- b) Corporate form and Legislative regime
- c) Organisational structure, human resources

- d) Risk analysis and mitigation
- e) Operational and service delivery indicators
- f) ICT capabilities and needs analysis
- g) Financial plan
- h) Corporate governance principles
- i) Implementation plan and interim arrangements
- j) Financial modelling demonstrating the financial requirements and viability for the regulator of the future and incidental Appeal bodies.

The service provider must provide the following:

- a) Monthly progress reports and debriefing sessions with the delegated working group and EXCO by the Council of the FPB; and
- b) Produce a comprehensive report with recommendations and conduct a presentation include presentation slides.

## 5. EVALUATION CRITERIA

Bids will be evaluated using 3 gates as follows:

- Gate 1 – Mandatory requirements
- Gate 2 – Functionality
- Gate 3 – Preferential points scoring

### 5.1. Gate 1 – Mandatory requirements

- 5.1.1. The bidder must have at least 8 years' experience in developing business cases within the Content Communications Regulatory sector
- 5.1.2. The bidder must have at least 5 years' experience in financial modelling for organisation
- 5.1.3. A dedicated Project Manager with at least 5 years of project management experience
- 5.1.4. Project team members with at least 5 years of project experience
- 5.1.5. Documents listed in Table 1 as follows:

## 5.2. Gate 2 Technical Evaluation Criteria = 100 points

5.2.1. All bidders who have met the pre-qualification criteria in (Gate 1) will be evaluated in Gate 2 for functionality based on the criteria in table 2.

Table 1: Document that must be submitted	Non-submission will result in disqualification	
Invitation to Bid – SBD 1	Yes	Complete and sign the supplied document
Tax Status	Yes	Tax Compliance Pin must be submitted with the bid. The validity of the Tax Clearance Certificate/Tax Compliance Pin issued by the South African Revenue Services certifying that the tax status of the Bidder is in order will be verified against the information recorded in the Central Supplier Database (CSD) In the event where the Bidder submits a hard copy of the Tax Clearance Certificate, the CSD verification outcome will take precedence
Declaration of interest – SBD 4	Yes	Complete and sign the supplied document
Preference Point Claim Form – SBD 6.1	Yes	Non-submission will lead to a zero (0) score on BBBEE
Declaration of Bidder's Past Supply Chain Management Practices – SBD 8	Yes	Complete and sign the supplied document
Certificate of Independent Bid Determination – SBD 9	Yes	Complete and sign the supplied document
Registration on Central Supplier Database (CSD)	Yes	All bidders must be registered as a service provider on the Central Supplier Database (CSD). If you are not registered proceed to complete the registration of your company prior to submitting your proposal. Visit <a href="https://secure.csd.gov.za">https://secure.csd.gov.za</a> to obtain your vendor number.

5.2.2. Bidders will be evaluated out of 100 points; and are required to achieve a minimum of 80 out of 100 points to be evaluated in Gate 3.

Table 2:

Functionality	Weight	1	2	3	4	5	Total Score
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Film and Publication Board™

		(Very Poor)	(Poor)	(Good)	(Very Good)	(Excellent)	
Experience in providing solutions to regulation of digital media content (This must be evidenced by reference letters)	20	N/A	N/A	8 years of experience	More than 8 to 9 years of experience	More than 9 years of experience	
Dedicated Project Manager (years of experience – CV must be submitted)	15	N/A	N/A	5 years' experience	More than 5 to 8 years of experience	More than 8 years of experience	
Project team (years of experience based on CV's)	10	N/A	N/A	5 years' experience	More than 5 to 8 years of experience	More than 8 years of experience	
Reference letters of previous similar work done with contact details.	15	N/A	N/A	3 reference letters	4 reference letters	More than 4 reference letters	
Minimum of 3 relevant and recent (last 5 years) references for having	15	N/A	N/A	3 reference letters	4 reference letters	More than 4 reference letters	

successfully developed a business case for a Public Sector entity. The letters must include contact details.							
Sound Financial Position – Financial stability and ability to provide the service required.	10	Audited/Reviewed Financial Statements for 1 year. Positive working capital position	Audited/Reviewed Financial Statements for 2 years. Positive working capital position	Audited/Reviewed Financial Statements for 3 years. Positive working capital position	Audited/Reviewed Financial Statements for 4 years. Sufficient working capital	Audited/Reviewed Financial Statements for more than 4 years. Positive working capital position	
Samples of business cases for similar projects done.	15	2	3	4	5	More than 5	

Minimum score – **75%**

### Gate 3: Price and BBBEE Evaluation 80/20 points

Price = 80 points

BBBEE = 20 points