

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

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### **1. Background and Scope**

- 1.1. On 11 July 2016, the Independent Communications Authority of South Africa ("the Authority") published a notice of its intention to inquire into the state of competition in subscription television broadcasting services according to section 4B of the ICASA Act<sup>1</sup> ("the Notice").
- 1.2. 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 licensees<sup>2</sup> are operational.
- 1.3. One of the licensees<sup>3</sup> faced sustainability challenges and underwent a business rescue process. The remaining subscription broadcasting service licensees issued with licences in 2015 and 2007, respectively, have not yet started operations.
- 1.4. 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 ("the Inquiry")
- 1.5. 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.

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

<sup>2</sup> Multichoice, StarSat and Deukom

<sup>3</sup> StarSat

- 1.6. 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.
- 1.7. On 12 April 2019, the Authority published the Draft Findings Document for consultations for forty-five (45) days. In addition, the Authority held public hearings on 12-15 January 2021 inviting stakeholders to make oral representations on the draft Findings Document.
- 1.8. Following the public hearings, the Authority noted that there are rapidly changing market developments that will have an impact on the Final Findings, and therefore, the Authority resolved that the consultation process in respect of the Inquiry into the Subscription Broadcasting Services must continue. This continuation builds upon and will update and refine the work undertaken in the consultation process by the Authority during the 2021-22 financial year. The Authority has since published a supplementary discussion document on 6 January 2025 in the government gazette No. 51848.
- 1.9. The continuation 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.
- 1.10. 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.

## **2. Specifications**

2.1.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.

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

2.2.1.Consider the evidence collected by the Authority and review the conclusions drawn from such evidence on the following elements:

2.2.1.1. Market definition;

2.2.1.2. Assessment of competition in the defined markets; and

2.2.1.3. Proposed remedies on the identified market failures, as contained in the Draft Findings document, if any.

2.3.In conducting the activities covered under paragraph 3.2 above, the service provider will work with the project team at ICASA.

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

3.4.1.Develop the Final Findings Document;

3.4.2.A report to be used as draft Regulations and explanatory memorandum, based on the proposed pro-competitive remedies, if any;

3.4.3.Participation at all hearings to be conducted by ICASA on this project and analysis of the hearing's transcripts and post-hearing information; and

3.4.4.A report to be used as the Final Regulations and Reasons Document, if any.

### **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 of no more than Twelve (12) months from the date of finalisation of the contract with service provider.

### **4. Briefing Session**

- 4.1. A non-compulsory 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 and specific goals. 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

No	Category (Cut-off 70)	Points
<b>A.</b>	<b>Functionality: Pre-qualification criteria (cut-off 70%)</b>	
	<b>Functional Proposal</b>	
	<p>1. Provide the proposed methodology to be used to define markets and assess competition in the relevant markets. The proposed methodology should include the following:</p> <p>A) The approach which will be used to define the relevant market or market segments.</p> <p>B) How to determine effective competition in the market.</p> <p>C) How significant market power will be tested.</p> <p>D) How the methodology can be applied to the South African subscription broadcasting market.</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> <li>- Methodology does not include all the items on (A -C) listed above or no submission = 1</li> <li>- Methodology includes information on the items (A-C) listed above = 3</li> <li>- Methodology includes information on all the items listed above (A-D) = 5</li> </ul>	<b>25</b>
	<p>2. Previous organisational experience in conducting market reviews or competition assessments in (1) broadcasting market or (2) Over-the-Top (OTT) for audio visual content services (The bidder must provide business profile)</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> <li>- Less than one years' experience in conducting market reviews or competition assessments in (1) broadcasting market or (2) Over-the-Top (OTT) for audio visual content services = 1</li> </ul>	<b>30</b>

No	Category (Cut-off 70)	Points
A.	<b>Functionality: Pre-qualification criteria (cut-off 70%)</b>	
	<b>Functional Proposal</b>	
	<ul style="list-style-type: none"> <li>- At least one year but less than two years' experience in conducting market reviews or competition assessments in (1) broadcasting market or (2) Over-the-Top (OTT) for audio visual content services = 2</li> <li>- At least two years' but less than four years' experience in conducting market reviews or competition assessments in (1) broadcasting market or (2) Over-the-Top (OTT) for audio visual content services = 3</li> <li>- Four to five years' experience in conducting market reviews or competition assessments in (1) broadcasting market or (2) Over-the-Top (OTT) for audio visual content services = 4</li> <li>- Greater than five years' experience in conducting market reviews or competition assessments in (1) broadcasting market or (2) Over-the-Top (OTT) for audio visual content services = 5</li> </ul>	
	<p>3. Provide proof of at least two team members with postgraduate qualifications in Economics (Competition Economics) together with proof of having practiced for a number of years</p> <p>Evaluation Criteria:</p> <ul style="list-style-type: none"> <li>- No Proof of postgraduate qualifications in Economics and team members having professional experience in Competition Economics of less than 2 years. (written confirmation in CVs) =1</li> <li>- Two members with Proof of postgraduate qualifications in Economics and at least one member with professional experience in Competition Economics of at least 2 years but less than 4 years. (written confirmation in CVs) = 2</li> </ul>	<b>25</b>

No	Category (Cut-off 70)	Points
<b>A.</b>	<b>Functionality: Pre-qualification criteria (cut-off 70%)</b>	
	<b>Functional Proposal</b>	
	<ul style="list-style-type: none"> <li>- Two members with Proof of postgraduate qualifications in Economics and at least one member with professional experience in Competition Economics of at least 4 years but less than 8 years. (written confirmation in CVs) =3</li> <li>- Two members with Proof of postgraduate qualifications in Economics and least one member with professional experience in Competition Economics of at least 8 years but less than 14 years. (written confirmation in CVs) =4</li> <li>- Two members with Proof of postgraduate qualifications in Economics and least one member with professional experience in Competition Economics of more than 14 years. (written confirmation in CVs) = 5</li> </ul>	
	<p>4. Provide proof of practical experience through verifiable reference letters with company letterheads from companies/regulatory authorities/organisations where market reviews or competition assessments undertaken in the (1) broadcasting market or (2) Over-the-Top (OTT) for audio visual content services / Internet distribution platforms for audio visual content services was provided.</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> <li>- No submission of reference letters = 1</li> <li>- Provide one (1) reference letter = 2</li> <li>- Provide two (2) reference letters = 3</li> <li>- Provide three (3) reference letters = 4</li> <li>- Provide more than three (&gt;3) reference letters = 5</li> </ul>	<b>20</b>
<b>TOTAL FOR FUNCTIONALITY PRE-QUALIFICATION CRITERIA</b>		<b>100</b>

Bidders who score **70 and** more out **of 100** will qualify for further evaluation in terms of Price and Specific Goals.

## **6. Price and Specific Goals Evaluation**

Bidders who comply with the requirements of this bid will be evaluated according to the preference point scoring system as determined in the Preferential Procurement Regulations, 2022 pertaining to the Preferential Procurement Policy Framework Act, Act No 5 of 2000.

The maximum points for this bid are allocated as follows:

<b>No</b>	<b>Category</b>	<b>Weight</b>
<b>A.</b>	<b>Price</b>	<b>80</b>
<b>B.</b>	<b>Specific goals</b>	<b>20</b>
	<b>TOTAL</b>	<b>100</b>