

## **ANNEXURE A**

### **FUNCTIONAL REQUIREMENTS**

#### **1. Introduction**

##### **1.1 Purpose of the Bid**

The Independent Communications Authority of South Africa (hereinafter referred to as “the Authority”) seeks to appoint a panel of law firms to provide legal assistance/services to the Authority for a period of three (3) years on 80/20 PPPFA. ICASA reserves the right to appoint a limited number of law firms to this panel.

##### **1.2 Background**

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.

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.

##### **1.3 Scope of work**

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, representing the Authority in public hearings or inquiries and providing general legal support for a period of thirty-six months 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) Constitutional Law; and
- (j) 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.

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

#### **1.3.1 Litigation strategy or methodology:**

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.

#### **1.3.2. Analysis of short-comings and inadequacies:**

The bidder(s) are expected to provide a detailed analysis of the Authority's short-comings and inadequacies in:

- 1.3.2.1 dealing with and handling litigation;
- 1.3.2.2 developing regulations; and
- 1.3.2.3 conducting inquiries in terms of section 4B of the Independent Communications Authority of South Africa Act, 2000 (Act No. 36 of 2000).

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.

Significantly, bidder(s) must indicate what pro-active measures the bidder has or will have in place to assist the Authority in achieving its mandate as a regulator.

### **1.3.3 Communication plan and reporting strategy:**

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.

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.

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.

## **1.4 Key Criteria**

### **1.4.1 Personnel profiles of members of staff that will execute the project:**

To have a sense of the calibre and areas of expertise of the individual members of staff that will be deployed to provide legal services to the Authority, the bidders are expected to provide the Authority with a detailed personnel profile for each and every member of staff that will be handling its matters. Emphasis must be placed on the experience, skills-base, prominent matters handled by the member of staff as well as the academic qualifications. Bidders are allowed to subcontract certain expert skills; however, a detailed profile, academic qualifications and experience must be provided for each expert. A subcontractor's agreement, that illustrates the immediate availability of such experts, when required, must be submitted with this bid.

### **1.4.2. Categories (Focus areas):**

Bidder(s) must provide a clear indication of the bidder's preferred categories (Focus area(s)) from the following list, which should align with the personnel profiles provided:

- (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; and
- (i) Constitutional Law.

It should be noted that successful bidders may be required to provide support in areas beyond those listed above, where appropriate.

#### **1.4.3 Ten (10) years' experience:**

Bidder(s) must indicate that the lead legal practitioner to provide the services to the Authority have been admitted to practice as legal practitioners for at least ten (10) years and have been specialising in any of the above categories (Focus areas) for at least ten (10) years.

#### **1.4.4 Administrative and ICT law experience:**

Bidder(s) must indicate whether the law firm has participated/advised on Administrative law and ICT law related matters and provide details regarding the legal issues dealt with (no confidential information is required).

### **1.5 Fee Structure**

#### **1.5.1 Hourly Rates**

<b>Position</b>	<b>Rate per hour</b>
Partner	
Director	
Senior Associate	
Associate	
Candidate Attorney	

The fee structure shall be firm and fixed for the initial 12 (twelve) months and thereafter shall be subject to review on an annual basis and the Consumer Price Index shall be

considered for any fee increases.

### 1.5.2 Disbursements

Advocates fees	As agreed with ICASA
Telephone cost per quarter of an hour or part thereof	As set out in applicable statutory tariffs
Sheriff costs	As per Tax invoice
Flights	As agreed with ICASA
Accommodation	As agreed with ICASA
Photocopying per page	As set out in applicable statutory tariffs
Printing per page	As set out in applicable statutory tariffs
Travelling cost (rands per km)	Applicable AA Rating

## 2. EVALUATION OF THE BID

### 2.1 The following evaluation approach will be applied:

- **Phase 1** will be the screening of mandatory documents, ensuring compliance thereof and evaluation of specific goals.
- **Phase 2** will be evaluation on functionality wherein the bidders that 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 Specific Goals.

### 2.2 Mandatory Requirements

Bidders **must** be law firms registered with the Legal Practice Council. Submit the Fidelity Fund Certificates of all the Directors who will be handling ICASA matters.

### 2.3 Functionality Criteria

Bidders will be evaluated in terms of the following categories, (ICT Law, Competition Law, Administrative Law, Labour Law, Commercial Law, Constitutional Law, Corporate Governance, Legislative Drafting and Litigation) based on the preferred focus areas, in accordance with the following functional criteria:

No	Category	Maximum Points
A.	Functionality	

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"> <li>• No litigation strategy = 1</li> <li>• Litigation strategy without analysis for prospect of success = 2</li> <li>• Litigation strategy with analysis for prospect of success but without evaluation for possibility of settlement = 3</li> <li>• Litigation strategy with analysis for prospect of success and evaluation for the possibility of settlement but without cost savings plan = 4</li> <li>• Litigation strategy with analysis for prospect of success, evaluation for possibility of settlement and cost savings plan = 5</li> </ul>	20
2.	<p>What pro-active measures does/will the bidder have in place to assist the Authority in achieving its mandate as a regulator for electronic communications, postal and broadcasting services?</p> <ul style="list-style-type: none"> <li>• No pro-active measures provided = 1</li> <li>• Pro-active measures provided without a detailed plan = 2</li> <li>• Pro-active measures provided with a detailed plan but without identifying the potential litigation risk = 3</li> <li>• Pro-active measures provided with a detailed plan and identified potential litigation risk but without analysis to mitigate the litigation risk = 4</li> <li>• Pro-active measures provided with a detailed plan and identified potential litigation risk with mitigation controls = 5</li> </ul>	10

3.	<p>Provide personnel profiles (Curriculum Vitae) with experience in at least three of the categories (focus areas) and include other pertinent credentials that will be deployed to execute the services. Please include examples of any ICT law matter(s) that the bidder participated in or advised on and provide reference letter(s) prepared on a client's letterhead for such matter(s).</p> <ul style="list-style-type: none"> <li>• No CV provided or CV provided with irrelevant Focus areas, no example of ICT law matter and no reference letter= 1</li> <li>• CV provided with relevant Focus areas and reference letter(s) but no example of ICT law matter = 2</li> <li>• CV provided with relevant Focus areas and example of ICT law matter but no reference letter = 3</li> <li>• CV provided with relevant Focus areas, 1 example of ICT law matter and reference letter(s) = 4</li> <li>• CV provided with relevant Focus areas, more than 1 example of ICT law matters and reference letter(s) = 5</li> </ul>	<p style="text-align: center;"><b>30</b></p>
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4.	<p>Provide a communication plan or reporting strategy.</p> <ul style="list-style-type: none"> <li>• No communication Plan or Reporting Strategy provided = 1</li> <li>• 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</li> <li>• 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</li> <li>• 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</li> <li>• 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 = 5</li> </ul>	<p><b>20</b></p>
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5.	<p>Has the lead legal practitioner been admitted as an attorney for at least ten (10) years and specialised in any of the Focus areas for at least ten (10) years?</p> <ul style="list-style-type: none"> <li>• Lead legal practitioner has been admitted for less than ten years = 1</li> <li>• Lead legal practitioner has been admitted for ten years but has specialised in any of the Focus areas for a period of at least one (1) to three (3) years = 2</li> <li>• Lead legal practitioner has been admitted for ten (10) years but has specialised in any of the Focus areas for a period between four (4) to six (6) years = 3</li> <li>• Lead legal practitioner has been admitted for ten (10) years but has specialised in any of the Focus areas for a period between seven (7) to nine (9) years = 4</li> <li>• Lead legal practitioner has been admitted for ten (10) years and specialises in any of the Focus areas for at least ten (10) years = 5</li> </ul>	<b>20</b>
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	<b>TOTAL</b>	<b>100</b>
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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 Specific Goals (Phase three (3)).

## 2.4 Price and BBEE

**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	Specific Goals	20