



25th
Anniversary

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ANNEXURE A

TERMS OF REFERENCE

APPOINTMENT OF A PANEL OF LAW FIRMS TO PROVIDE LEGAL ASSISTANCE/SERVICES TO INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA (ICASA) FOR A PERIOD OF FIVE (5) YEARS ON AN 90/10 PPPFA 2000, PREFERENTIAL PROCUREMENT REGULATION: 2022

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 ICASA Head Office for a period of five (5) years on 90/10 PPPFA. The maximum of 10 law firms will be appointed on the panel.

1.2 Background

As part of its mandate, ICASA 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, ICASA is constantly involved in litigation either instituted by itself, the licensees or its employees. It is thus necessary to have a panel of law firms to provide legal assistance/services to the Authority with various degrees of speciality and experience in the legal field.

1.3 Scope of work

The successful bidders will be required to assist with handling legal services matters on behalf of the Independent Communications Authority of South Africa, which will include, litigation, and general legal support for a period of five years in any of the following legal categories:

- (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) other matters subject to legislation governing ICASA.

The bidder(s) will be expected to provide services relating to the above criteria 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 court cases 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. Pro-active Measures / 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 dealing with and handling litigation. The Authority would like to see a profound improvement in terms of success rate in its litigation matters and other matters related thereto. The bidders should not only identify the problem areas but also make propositions as to how the Authority may improve from now onwards in dealing with litigation.

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 proactive 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, please 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:

In order to have a sense of the calibre and areas of expertise of the individual members of staff that will be deployed to advise the Authority and/or handle litigation matters, 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 personnel to provide the services to the Authority have been admitted 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 CATEGORY

CATEGORY 1 to 9: Legal Services category and area of expertise

Bidders are required to indicate the specific legal service category or categories for which they wish to be considered. This section enables ICASA to identify the bidder’s areas of expertise.

No	Legal Services Category and Area of Expertise	Bidder’s Service (s) Category for the service, or services the Bidder wish to respond to: (X = Yes)
1	ICT Law (broadcasting, electronic communications and postal services)	
2	Labour Law	
3	Commercial law	
4	Legislative Drafting	
5	Administrative Law	

6	Competition Law	
7	Environmental Law	
8	Corporate Governance	
9	Constitutional Law	

2. EVALUATION OF THE BID

2.1. The following evaluation approach will be applied:

Phase 1: Administrative Compliance.

Phase 2: Mandatory Requirements.

Phase 3: Functional evaluation (Only bidders who meet the cut-off score of 80% out of 100 for functionality will be considered for further evaluation). Only the top ten (10) highest-ranked service providers from Phase 3 will be selected for appointment to the panel.

2.2. Phase 1: Administrative Compliance

Bidders must ensure that they complete and sign documents as indicated below, and the documents must be submitted as part of the bid document.

- SBD 1 – Invitation to Bid
- SBD 2 - Tax Clearance Certificate Requirements
- SBD 4 - Declaration of Interest
- SBD 5- The National Industrial Participation Programme
- SDB 6.1 - Preference Points claim form
- SBD 7.1 – Contract form (rendering of services)
- SBD 8- Declaration of Bidder’s Past Supply Chain Management Practices
- SBD 9- Certificate of Independent Bid Determination
- Declaration in terms of Fronting

2.3. Phase 2: Mandatory Requirements

2.3.1 Bidders must be law firms in good standing at the relevant Legal Practitioners Council. (All legal practitioners must submit their valid letter of Good Standing issued by the South African Legal Practice Council)

2.3.2 All Legal Practitioners are required to be in possession of a valid Fidelity Fund Certificate as provided for in section 84 of the Legal Practice Act. (Bidders must submit the valid Fidelity Fund Certificates of all the Directors who will be handling ICASA matters).

2.4 Phase 3: Functional evaluation

Bidders must be law firms in good standing at the relevant Legal Practitioners Council and 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 area (category), in accordance to 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"> • No litigation strategy = 1 • Litigation strategy without analysis for prospect of success = 2 • Litigation strategy with analysis for prospect of success but without evaluation for possibility of settlement = 3 • Litigation strategy with analysis for prospect of success and evaluation for the possibility of settlement but without cost savings plan = 4 • Litigation strategy with analysis for prospect of success, evaluation for possibility of settlement and cost savings plan= 5 	10
2.	<p>What pro-active measures does/will the bidder have in place to assist ICASA in achieving its mandate as a regulator for electronic communications, postal and broadcasting services?</p> <ul style="list-style-type: none"> • No pro-active measures provided= 1 • Pro-active measures provided without a detailed plan = 2 • Pro-active measures provided with a detailed plan but without identifying the potential litigation risk = 3 • Pro-active measures provided with a detailed plan and identifies potential 	10

	<p>litigation risk but without analysis to mitigate the litigation risk = 4</p> <ul style="list-style-type: none"> • Pro-active measures provided with a detailed plan and identifies potential litigation risk with mitigation controls = 5 	
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. Indicate if external or sub-contractors may be utilised as experts in certain instances and add the credentials and profiles of such experts. Please include examples of any matter(s) protecting public interest that the bidder participated in or advised on and provide a reference for such matter(s).</p> <ul style="list-style-type: none"> • No CV provided = 1 • CV provided with irrelevant categories = 2 • CV provided with relevant categories = 3 • CV provided with relevant categories but with examples for irrelevant matters = 4 • CV with relevant categories and examples of relevant matters = 5 <p>NB: Relevant matters refer to those matters which relate to the relevant categories.</p>	20
4.	<p>Provide an indication of the preferred categories (focus areas) in line with the personnel profile which (personnel profiles) may not be less than three.</p> <ul style="list-style-type: none"> • Preferred categories not provided = 1 • Preferred categories provided not in line with personnel profile(s) = 2 • Preferred categories provided in line with less than three personnel profiles = 3 • Preferred categories provided in line with three personnel profiles = 4 • Preferred categories provided in line with more than three personnel profiles = 5 	10

5.	<p>Provide a communication plan or reporting strategy.</p> <ul style="list-style-type: none"> • No communication Plan or Reporting Strategy provided = 1 • 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 • 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 • 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 • 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 	10
6.	<p>Has the lead personnel been admitted as an attorney (legal practitioner) for at least ten (10) years and specialised in any of the categories (focus areas) for at least ten (10) years?</p> <ul style="list-style-type: none"> • Lead personnel has been admitted for less than ten years = 1 • Lead personnel has been admitted for ten years but has specialised in any of the categories (focus areas) for a period of at least one to three years = 2 • Lead personnel has been admitted for ten but has specialised in any of the categories (focus areas) for a period of at least four to six years = 3 	30

	<ul style="list-style-type: none"> • Lead personnel has been admitted for ten years but has specialised in any of the categories (focus areas) for a period of at least seven to nine years = 4 • Lead personnel has been admitted for ten years and specialises in any of the categories (focus areas) for at least ten years = 5 	
7.	<p>Provide an example of any Administrative law and/or ICT law related matters the bidder has participated in.</p> <ul style="list-style-type: none"> • No matter/ example provided = 1 • Matters /examples provided are based on either Administrative law or ICT law = 2 • Matters /examples provided include both Administrative law and ICT law = 3 • Matters/ examples provided include both Administrative law and ICT law for advisory purposes but without litigation= 4 • Cases provided include both Administrative law and ICT law for advisory and litigation purposes = 5 	10
	TOTAL	100

Note: Functional evaluation (Only bidders who meet the cut-off score of 80% out of 100 for functionality will be considered for further evaluation). Only the top ten (10) highest-ranked service providers from Phase 3 will be selected for appointment to the panel.