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TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO DEVELOP PROCESSES AND PROCEDURES FOR INVESTIGATING NON COMPLIANCE, COMPLAINTS AND PRESENTATION OF ENFORCEMENT MATTERS BEFORE THE ENFORCEMENT COMMITTEE

1. INTRODUCTION AND BACKGROUND

The Film and Publication Board (FPB) is a state-owned media content regulatory authority under the Department of Communications and Digital Technologies (DCDT) established in terms of section 3 of the Film and Publication Act, 1996 (Act No. 65 of 1996), amended (FP Act). Its mandate is to regulate the creation, production, possession and distribution of films, games and certain publications. The mandate of the FPB among other things is to protect children from premature exposure to consumption of disturbing and harmful materials and members of the public from harmful and prohibited content.

For the past 25 years content has been distributed in a manner that was easily identifiable. Films were either distributed via VHS, disc (DVD and Blu ray) and in cinema format, and games were likewise distributed in disc format whereas publications were in pre-packaged magazines and books. With developments in technology, content has moved to online streaming or digital platforms. Consumers, and particularly children, now can access content which may not have been appropriately classified and labelled through such online streaming and digital platforms. Since its inception approximately 25 years ago, the FPB has had the responsibility of classifying films, games and certain publications in line with South African values and norms under the overarching application of the Bill of Rights. This approach has a distinct difference from the censorship regime used by the Apartheid government to advance the then state's discriminatory and dehumanising political agenda. The role of the FPB has previously been to regulate the distribution of content, which was easily identifiable. Films were either distributed via VHS, disc (DVD and Blu ray) and in cinema format, and games were likewise distributed in disc format whereas publications were in pre-packaged magazines and books. With developments in technology, content has moved to online streaming or digital

platforms. Consumers, and particularly children, now can access content which may not have been appropriately classified and labelled through such online streaming and digital platforms. Such progress has necessitated the 2019 amendments to the FP Act. The FP Act was operationalized by Presidential Proclamation on 1 March 2022 to close the regulatory gap that existed due to technological development and the convergence of technology in the distribution of content on streaming and digital platforms.

In terms of the Amendment, the FPB now has legitimate powers to issue and grant licenses to commercial distributors of online content, and with the power to enforce such regulation by imposing penalties for non-compliance with the FP Act and the related regulations through the enforcement committee. The FPB therefore, has the regulatory power to register distributors, monitor compliance, investigate non-compliance and where appropriate refer matters of non-compliance to the enforcement committee to impose penalties where deemed appropriate. Furthermore the FPB has a mandate to deal with complaints against harmful and prohibited contents lodged by the members of the public. It is therefore critical that internal processes and procedures are outlined to ensure proper investigation of non-compliance and presentation of matters before the enforcement committee.

2. SCOPE OF THE PROJECT

The scope of the project is to conduct the following:

- 2.1 Analyse and define matters to be taken before the enforcement committee as provided for in the FP Act;
- 2.2 Analyse the current processes at the FPB which deals with non-compliance and complaints handling;
- 2.3 Develop the processes and procedures for how investigations relating to non-compliance with the provisions of the FP Act and how to present those matters before the Enforcement Committee which is a quasi-judicial body chaired by a retired judge

3. EXPECTED STRATEGIC DELIVERABLES

The successful service provider is expected to produce a clear compendium of matters to be taken to the Enforcement Committee, an Investigation Policy, Process and Procedures and Complaints Handling Processes and Procedures taking into consideration the scope outlined in paragraph 2 above.

4. DURATION OF THE PROJECT

The duration of this project is three weeks after date of signing of a contract by the successful service provider, subject to general conditions of the project, as spelled out in the Service Level Agreement.

5. EVALUATION CRITERIA

Bidders will be evaluated as follows:

- Gate 1 – Assessment of the technical experience
- Gate 2 – Functionality
- Gate 3 – Price and Preference Points

5.1. GATE 1- ASSESSMENT OF THE TECHNICAL EXPERIENCE

5.1.1. Bidders must submit a list of previous relevant work done in the prescribed template, attached to the terms of reference as Annexure A. Bidders will be disqualified from further evaluation if:

- The list is not submitted using the prescribed template, and
- Previous work done is not relevant to the scope of project detailed in paragraph 2.

5.2. GATE 2 – FUNCTIONALITY

Functional criteria	Weight	Applicable scores				
		1	2	3	4	5
		Poor	Fair	Average	Good	Excellent

<p>Experience in developing procedures/or providing advisory services in investigations of non-compliance to be presented before a quasi-judicial or judicial body.</p> <p>Company Experience (to be determined by inspection of reference letters) and/ or Project Leader experience (to be determined through the inspection of CVs) (whichever is longest)</p>	40	1 – 2 years	More than 2 – 4 years	More than 4-5 years	More than 5 -8 years	More than 8 years
<p>Reference Letters: Provide written reference letters of similar work previously done not older than 10 years. Letters must be on the letterhead of the client, signed and briefly describe the services which were rendered and relevant years of same service.</p>	40	N/A	1 letter	2 letters	3 – 4 letters	5 or more letters
<p>Project plan and methodology Clear plan on how the project scope will be delivered.</p>	20	N/A.	N/A.	Project plan and methodology – no timelines	Project plan and methodology – with timelines	4 referral letters submitted.

Minimum qualifying score = 70%. Bidders who meet the minimum score of 70% will be further evaluated in gate 3.

5.3. GATE: PRICE AND PREFERENTIAL POINTS

Price = 80

Specific goals (Refer to SBD 6.1) = 20