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**TERMS OF REFERENCE FOR THE APPOINTMENT OF A SERVICE PROVIDER TO ASSIST THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA IN DETERMINING REASONABLE COMPENSATION AND FEES IN THE DEPLOYMENT OF ELECTRONIC COMMUNICATION NETWORKS AND FACILITIES**

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**1.Purpose**

- 1.1. The purpose of this bid is to appoint a service provider to assist the Independent Communications Authority of South Africa (ICASA or “the Authority”) in determining reasonable compensation and fees in the deployment of electronic communications networks and infrastructure for a period of eighteen (18) months.

**2.Background**

- 2.1. The primary object of the Electronic Communications Act, 2005 (“ECA”) as amended is to provide for the regulation of electronic communications in the public interest and for that purpose to, *inter alia*,
  - 2.1.1. promote universal provision of electronic communications network and electronic communications services and connectivity for all;
  - 2.1.2. encourage investment, including strategic infrastructure investment, and innovation in the communications sector;
  - 2.1.3. promote an environment of open, fair, and non-discriminatory access to electronic communication networks and to electronic communications services.
- 2.2. In line with Section 21 of the ECA the Minister of Communications and Digital Technologies (“the Minister”) consulted with the ICASA and other relevant institutions in developing the policy and policy directions on the rapid deployment of electronic communications networks and facilities prior to publication of the final national policy and policy direction. In the policy direction the Minister directs the Authority to prescribe regulations on procedures and processes on how reasonable compensation may be determined.
- 2.3. The Minister has since issued a National Policy and Policy Directions on

Rapid Deployment of Electronic Communications Networks and Facilities (“the Policy”) in a Government Gazette No. 48346 dated 31 March 2023<sup>1</sup>.

- 2.4. The ECA provides that the Authority must, after the Minister issued the policy and policy directions prescribe regulations.
- 2.5. Specifically, section 21 (2) of the ECA stipulates that the regulations must provide procedures and processes for-
  - 2.5.1. obtaining any necessary permit, authorisation, approval, or other governmental authority including the criteria necessary to qualify for such permit, authorisation, approval, or other governmental authority; and
  - 2.5.2. resolving disputes that may arise between an electronic communications network service licensee and any landowner, in order to satisfy the public interest in the rapid rollout of electronic communications networks and electronic communications facilities.
- 2.6. Consequently, the Authority intends to develop regulations and thus seeks to engage the services of an experienced and qualified service provider to assist in determining reasonable compensation for access to land/property by licensees when deploying electronic communication networks and facilities in accordance with paragraph 2.2 (c)<sup>2</sup> of the policy direction and section 21 (2) of the ECA.

### **3.Scope**

The service provider shall undertake the following tasks and responsibilities:

- 3.1. Advise the Authority on relevant legal and regulatory frameworks governing property/landowner compensation for access to land/property by licensees with regards to for the deployment of electronic communication networks and facilities related to section 6.5 of the Policy.
- 3.2. Conduct a comprehensive assessment of best practices in determining reasonable compensation procedure for access to land/property.
  - 3.2.1. Provide guidelines on the negotiation process between licensees and property/landowners to gain access.
  - 3.2.2. Develop a framework for the determination of reasonable

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<sup>1</sup> National policy and policy direction on rapid deployment of electronic communications networks and facilities, Government Gazette, No 48346, 31 March 2023

<sup>2</sup> [https://www.gov.za/sites/default/files/gcis\\_document/202304/48346gon3237.pdf](https://www.gov.za/sites/default/files/gcis_document/202304/48346gon3237.pdf)

- compensation procedure for access to land/property for the deployment of electronic communication networks and facilities.
- 3.2.3. Develop a framework for the determination of reasonable compensation procedure for damages caused by licensees during the deployment of electronic communication networks and facilities.
- 3.3. Develop process and procedures for access to government infrastructure, government servitudes, communal land, public and private land/property.
- 3.4. Draft conditions for access to land/property.
- 3.5. Provide recommendations for dispute resolution mechanisms in cases where agreement cannot be reached between landowners and licensees.
- 3.6. In undertaking this work, the service provider will be expected to, among others, take the following into consideration:
- 3.6.1. National Policy and Policy Direction on Rapid Deployment of Electronic Communications Networks and Facilities<sup>3</sup>;
- 3.6.2. Electronic Communications Act of 2005 as amended;
- 3.6.3. Standard draft by-laws for the deployment of electronic communications and facilities<sup>4</sup>;
- 3.6.4. Any relevant policy and or regulation geared towards the achievement of universal service access to broadband services and connecting the unconnected;
- 3.6.5. Any other relevant international technical and regulatory aspects deemed necessary and appropriate;
- 3.6.6. The socio-economic benefits associated with the rapid deployment of broadband infrastructure.
- 3.7. The successful bidder may be invited to give a presentation as and when required.
- 3.8. The successful bidder will be expected to attend in person or virtual meetings and workshops with stakeholders as and when required by the Authority.
- 3.9. The proposal shall include, but not limited to:
- 3.9.1. Project Management approach
- 3.9.2. Methodology to be used in the delivery of the project scope.
- 3.9.3. Data collection methods and analysis.

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<sup>3</sup> [https://www.gov.za/sites/default/files/gcis\\_document/202304/48346gon3236.pdf](https://www.gov.za/sites/default/files/gcis_document/202304/48346gon3236.pdf)

<sup>4</sup> [https://www.gov.za/sites/default/files/gcis\\_document/202209/46920gon2489.pdf](https://www.gov.za/sites/default/files/gcis_document/202209/46920gon2489.pdf)

- 3.9.4. Proven experience in South African property valuation, infrastructure/property leasing, and servitudes.
- 3.9.5. Detailed track record of conducting similar work.
- 3.9.6. proof of practical experience in financial modelling and development of regulations.
- 3.9.7. CVs of Key personnel and experience on similar project(s).
- 3.9.8. Skills transfer plan.

#### **4.Skills Transfer**

- 4.1. In conducting the activities above, the service provider will be required to transfer knowledge and skills through a formalised session/workshop to employees of ICASA.
- 4.2. The service provider will also be expected to work closely with the project team in order to transfer knowledge to the team.
- 4.3. The project manager at the Authority will liaise with the project manager of the service provider to arrange a work programme and to schedule meetings, workshop, and skills transfer to ICASA employees.

#### **5.Period of assignment**

- 5.1. All work is to be carried out in accordance with the time schedule as agreed with the Authority for a period of eighteen (18) months from the date of finalisation of the contract with the service provider.

#### **6.Briefing Session**

- 6.1. Non-compulsory briefing session will be held virtually on Microsoft Teams.

#### **7.Evaluation of the Bids**

- 7.1. 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.
- 7.2. The bidder will be evaluated on:
  - a) submission of the required documents;

- b) functionality and
- c) price/preferential points.
- d) Only bidders who meet the cut-off score of 70 out of 100 points for functionality will be considered further for price evaluation.

<b>A. Functionality: Prequalification criteria</b>	<b>Weight</b>	<b>Grading</b>
<p><b>1. COMPANY EXPERIENCE</b></p> <p>The service provider must demonstrate proven experience in South African property valuation, property leasing, and servitudes. The experience must be related to the deployment of Electronic Communication Networks and Facilities. The experience must be supported by a brief summary of previous work undertaken within the last ten (10) years.</p>	<p><b>10</b></p>	<p>5 = Five (5) projects and more undertaken in the last ten (10) years in South African property valuation, property leasing and servitudes. The experience must be related to the deployment of Electronic Communication Networks and Facilities.</p> <p>4 = Four (4) projects undertaken in the last ten (10) years in South African property valuation, property leasing and servitudes. The experience must be related to the deployment of Electronic Communication Networks and Facilities.</p> <p>3 = Three (3) projects undertaken in the last ten (10) years in South African property valuation, property leasing and servitudes. The experience must be related to the deployment of Electronic Communication Networks and Facilities.</p>

		<p>2 = Two (2) projects undertaken in the last ten (10) years in South African property valuation, property leasing, and servitudes. The experience must be related to the deployment of Electronic Communication Networks and Facilities.</p> <p>1 = No details of previous work undertaken provided or one (1) project provided within the last 10 years, or No experience related to the deployment of Electronic Communication Networks and Facilities.</p>
<p><b>2. CLIENT REFERENCES</b></p> <p>The service provider must submit written reference letters of previous and current projects identified above specific to property valuation, infrastructure/property leasing, and servitudes in the deployment of Electronic Communication Networks and Facilities within the past ten (10) years.</p> <p>The reference letters should entail the following details:</p> <ul style="list-style-type: none"> <li>- Name of department / organization;</li> <li>- Nature of work conducted;</li> <li>- Duration of the contract;</li> <li>- Contact person, contact details and email address; and</li> </ul>	<p><b>10</b></p>	<p>5 = Provide four (4) or more testimonial reference letters.</p> <p>4 = Provide three (3) testimonial reference letters.</p> <p>3 = Provide two (2) testimonial reference letters.</p> <p>2 = Provide one (1) testimonial reference letter.</p> <p>1 = Did not provide testimonial reference letters.</p>

<p>- The letter must be signed by the appropriate client delegated authority. (Reference Letters must be provided on the client's letterhead and must not be older than five (5) years)</p>		
<p><b>3. METHODOLOGY</b></p> <p>The bidder must provide a detailed methodology which covers:</p> <ol style="list-style-type: none"> <li>1. All the project objectives of project with motivation of the chosen methodology.</li> <li>2. Detailed description of data collection techniques and sampling framework.</li> <li>3. Possible limitations to the study and advise how to mitigate potential limitations</li> </ol>	<p><b>30</b></p>	<p>5 = Detailed methodology which covers all the requirements.</p> <p>1 = No methodology or Methodology provided does not meet all the requirements.</p>
<p><b>4. PROJECT MANAGEMENT PLAN</b></p> <p>The service provider must provide a detailed project management approach which include:</p> <ol style="list-style-type: none"> <li>a) Project Timeline</li> <li>b) Roles and Responsibilities</li> <li>c) Communication Plan</li> <li>d) Risk/Issue Management</li> <li>e) Resource Management</li> <li>f) Quality Management</li> </ol>	<p><b>25</b></p>	<p>5 = Project management plan covers all six (6) requirements.</p> <p>1 = No project plan provided, or Project plan does not cover all six requirements.</p>

<p><b>5. LEAD PERSONEL AND TEAM QUALIFICATIONS AND EXPERIENCE</b></p> <p>Lead personnel must have LLB degree or equivalent degree and certificate of good standing from Legal Practice Council (LPC) with experience in property law. The project team must be comprised of the following skills:</p> <ul style="list-style-type: none"> <li>- property valuation and fully registered with the South African Council for the Property Valuers Profession (SACPVP),</li> <li>- property law and certificate Legal Practice Council (LPC),</li> <li>- property leasing, and</li> <li>- cost modelling.</li> </ul> <p><b>The experience must be supported by CVs, proof of qualifications, and proof membership certificates in the area of specialisation.</b></p>	<p>15</p>	<p><b>5</b> = Proof of lead personnel qualifications and professional experience in property law more than 15 years in telecommunications sector. Team members relevant qualifications, membership certificates, and experience in the following areas: cost modelling, property valuation, and property leasing.</p> <p><b>4</b> = Proof of lead personnel qualifications and professional experience in property law from 14 to 15 years in telecommunications sector. Team members relevant qualifications, membership certificates, and experience in the following areas: cost modelling, property valuation, and property leasing.</p> <p><b>3</b> = Proof of lead personnel qualifications and professional experience from 12 to 13 years in telecommunications sector. Team members relevant qualifications, membership certificates, and experience in the following areas: cost modelling, property valuation, property leasing, regulatory drafting.</p> <p><b>2</b> = Proof of qualifications and</p>
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		<p>professional experience from 10 to 11 years in telecommunications sector. Team members relevant qualifications, membership certificates, and experience in the following areas: cost modelling, property valuation, property leasing, regulatory drafting.</p> <p><b>1</b> = No confirmation of knowledge and inadequate proof of practical experience provided or less than 10 years' experience.</p>
<p><b>6. SKILLS TRANSFER</b></p> <p>Provide skills transfer plan detailing how ICASA staff members will be trained which includes:</p> <ul style="list-style-type: none"> <li>a) learning objective,</li> <li>b) learning outcome,</li> <li>c) duration, and</li> <li>d) content aligned with the project scope.</li> </ul>	<p><b>10</b></p>	<p>5 = Provided a detailed skills transfer plan which includes all areas.</p> <p>1 = No skills transfer plan provided or Provided skills transfer plan which lacks one or more area.</p>