



Independent Communications Authority of South Africa

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ANNEXURE A: TERMS OF REFERENCE

APPOINTMENT OF A SERVICE PROVIDER TO ASSIST THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA WITH THE LICENSING PROCESS FOR THE INTERNATIONAL MOBILE TELECOMMUNICATIONS SPECTRUM IN THE RADIO FREQUENCY SPECTRUM BANDS OF THE IMT750, IMT800, IMT1500, IMT2300, IMT3300, AND IMT3500

1. Background

- 1.1. The Independent Communication Authority of South Africa (“the Authority”) is in the process of licensing available International Mobile Telecommunications (IMT) radio frequency spectrum bands through a competitive market-based approach as outlined in regulations 2(1)(c), 2(1)(f), 6, 7 and 8 of the Radio Frequency Spectrum Regulations published in Government Gazette No. 38641 (Notice 279) dated 30 March 2015, as amended, read with section 31(3) of the Electronic Communications Act No 36 of 2005 (ECA).
- 1.2. The IMT radio frequency spectrum bands to be licensed are IMT750, IMT800, IMT1500, IMT2300, IMT3300 and IMT3500 (“the spectrum bands”).
- 1.3. The Radio Frequency Spectrum Regulations published in Government Gazette Number 38641 (Notice 279 of 2015) dated 30 March 2015 (“RFSR 2015”) as amended, prescribe the market-based approach to ensure efficient spectrum management.
- 1.4. The market-based licence approach includes using an auction process, beauty contest, or any other licensing mechanism deemed appropriate by the Authority to license the spectrum in instances where demand exceeds supply

or where an Invitation to Apply (“the ITA”) is to be published to invite applications.

2. Objective

- 2.1. The Authority requires the services of a service provider for the following:
 - 2.1.1. Conduct a competition assessment of direct spectrum holdings and indirect spectrum access;
 - 2.1.2. Development of rules for the market-based assignment approach for the spectrum bands to be licensed;
 - 2.1.3. Implement the market-based assignment approach adopted by the Authority to licence the identified spectrum bands;
 - 2.1.4. Determination of the value of each of the spectrum bands and determined spectrum lots as packaged;
- 2.2. Furthermore, the service provider must transfer knowledge, particularly on spectrum valuation, to at least 16 ICASA employees and the employees should be issued with a completion certificate.

3. Scope of Work and deliverables

- 3.1. The service provider must follow the licensing procedure outlined in regulations 6, 7 and 8 of the RFSR 2015.
- 3.2. The project will be implemented in Five stages as follows:
 - 3.2.1. **Competition Assessment**
 - 3.2.1.1. The Competition assessment entails assessing the effects of current direct spectrum holdings and indirect spectrum access on competition in the mobile markets. The assessment should also include the likely future competition in the mobile markets and measures, if any, that

the Authority should take into consideration during the licensing process of high demand spectrum to promote competition.

3.2.1.2. The Competition assessment should take into account the following:

- 3.2.1.2.1. Radio Frequency Spectrum Regulations;
- 3.2.1.2.2. The current state of the mobile market;
- 3.2.1.2.3. IMT Spectrum Holdings including spectrum sharing/leasing arrangements;
- 3.2.1.2.4. Competition Commission's Data Service Market Inquiry;
- 3.2.1.2.5. Findings of the Mobile Broadband Service Inquiry;
- 3.2.1.2.6. SA Connect Policy Targets;
- 3.2.1.2.7. Next Generation Radio Frequency Spectrum Policy; and
- 3.2.1.2.8. Any related Policies and Regulations.

3.2.1.3. The Competition Assessment will be subjected to the public consultation process and must include the following

- 3.2.1.3.1. Commencement of the competition assessment: Develop a questionnaire or request for information.
- 3.2.1.3.2. Draft Competition Assessment Report: Develop a draft Competition Assessment Report to be published for public comments.
- 3.2.1.3.3. Public Consultation: Analyse the public comments and participate in one-on-one meetings and public hearings, if necessary, on the draft Competition Assessment Report; and
- 3.2.1.3.4. The Final Competition Assessment Report should take into account the inputs from the public consultation process. The Final Competition report must be submitted together with the following:
 - 3.2.1.3.4.1. The Explanatory Note outlining how written representations were considered in the final competition report, and

3.2.1.3.4.2. Guideline for assessing applications (received post this licensing process) for spectrum sharing/leasing arrangements between licensees.

3.2.2. **Formulation of the ITA**

- 3.2.2.1. Review of the previous licensing process of an auction of the IMT Spectrum and draw some learnings for purposes of the current process, taking into consideration the published ITA of 2021, its reasons and the analysis document to be shared against the information memorandum published in 2022 (Notice 1225 of 2022 as published in Government Gazette No. 46738);
- 3.2.2.2. Determine the value of each of the spectrum bands and produce a spectrum valuation report, which includes suggesting appropriate radio frequency spectrum packages.
- 3.2.2.3. Development of rules for the market-based assignment approaches for the spectrum bands to be licensed and recommend the appropriate approach. This will incorporate all associated components of the market-based assignment approach and award, including but not limited to - licence obligations and packaging of the radio frequency spectrum and radio frequency spectrum caps.
- 3.2.2.4. Formulate the Radio Frequency Spectrum Assignment Phase rules to ensure that all the prospective licensees are assigned contiguous radio frequency spectrum from the licensing approach; and
- 3.2.2.5. Draft Information Memorandums (IM) to consult the stakeholders on the licensing process and rules for inviting applications.
- 3.2.2.6. Analyse the written public representations received against the published (IM) and formulate the ITA. Moreover, formulate the reasons document explaining how the decisions in the ITA were taken after considering the public representations.

3.2.3. **Qualification Stage**

- 3.2.3.1. To assist the Authority in Administering and managing the Qualification Stage as per the ITA; and
- 3.2.3.2. To assist the Authority in evaluating and analysing the applications and responses to the ITA in accordance with the evaluation criteria outlined therein.
- 3.2.4. **Auction/Beauty Contest Stage**
 - 3.2.4.1. To the extent that the Competition Assessment is to recommend the appropriate market-based assignment approach for this licensing, the appointed service provider is expected to administer the beauty contest rules or the auction rules.
 - 3.2.4.2. If the ITA calls for the auction, the service provider is expected to:
 - 3.2.4.2.1. Determine and identify the prohibited practices as per the ITA and assist the Authority in managing prohibited practices in accordance with the applicable laws and international best practices;
 - 3.2.4.2.2. Provide and run the relevant auction tool necessary for the execution of a successful auction process;
 - 3.2.4.2.3. Provide training to the ICASA team on the auction tool and implementation of the auction rules consistent with the published ITA;
 - 3.2.4.2.4. Provide training to the bidders on the auction tool;
 - 3.2.4.2.5. Perform a mock Auction in preparation for the Auction process; and
 - 3.2.4.2.6. Execute the auction process together with the ICASA team as per the ITA.
 - 3.2.4.3. The service provider is excluded from the following activities:

- 3.2.4.3.1. The auditing of the licensing process since the Authority will appoint independent auditors;
- 3.2.4.3.2. Stakeholder engagements and media coverage. The issuing of media releases and any other relevant stakeholder communications shall be the responsibility of the Authority; and
- 3.2.4.3.3. Announcing the award results. The announcement of award results shall be the responsibility of the Authority.

3.2.5. Licensing stage

- 3.2.5.1. Assist the Authority with assigning contiguous radio frequency spectrum to the prospective licensees, as per the award.
- 3.2.5.2. Assist the Authority with issuing the Radio Frequency Spectrum Licences to the prospective licensees and finalising the terms and conditions.

3.2.6. Training:

- 3.2.6.1. The service provider will be expected to transfer knowledge (skills/knowledge transfer) through formalised training to at least sixteen (16) employees of the Authority.
- 3.2.6.2. The service provider will be expected to provide training and knowledge transfer on spectrum valuation.
- 3.2.6.3. The service provider will be expected to provide training on the Auction tool supplied to the Authority and bidders.

4. Capability and Experience

- 4.1. The proposal shall include, but not be limited to:

- 4.1.1. proof of experience and capabilities in the performance or execution of projects in the fields of radio frequency spectrum licensing processes or similar projects in the last ten years.
- 4.1.2. qualifications and experience of the key personnel.

5. Auction Tool

- 5.1. The proposal shall include, but not be limited to, details and specifications of the Electronic Auction Tool which will be utilised. The tool must be capable of implementing different auction strategies.
- 5.2. The proposed auction tool shall ensure transparent, auditable, tracked authenticity and verification of information throughout the auction process.
- 5.3. The service providers shall provide the platform and all the required licences for the auction tool.
- 5.4. The service provider or its partners must be affiliated with a professional auctioneering organisation.

6. Period of Assignment

- 6.1. The service provider will assist the Authority for a period of 36 months.

7. Briefing Session

- 7.1. Virtual non-compulsory briefing session will be held.

8. Bid Advertisement and Bid Evaluation

- 8.1. The bid will be advertised for 21 calendar days on the e-Tender Portal and ICASA's website. The bid will be evaluated on an 80/20 procurement principle.

8.2. Bidders will be evaluated on:

8.2.1. Receiving of Bids and Compliance Checks;

8.2.2. On two functionality criteria (Functionality A and Functionality B); and

8.2.3. Price and specific goals.

8.3. Only bidders who meet the cut-off score of 70 points out of 100 points for functionality will be considered further for price and specific goals. All bid proposals submitted will be evaluated per the 80/20 procurement principle.

8.4. Bids will be evaluated for functionality in line with 2 functional requirements, as reflected in Table A and Table B below. The requirements of Functionality A (as in Table A) and Functionality B (as in Table B) both have a cut-off score of 70 points respectively. If a bidder scores less than 70 points on either Functionality A or Functionality B, they will be disqualified.

8.4.1. Table A: Competition Assessment Functional Requirements

No	Category (Cut-off 70 points)	Weight
A.	Functionality (cut-off 70 points)	
	Functional Proposal (Competition Assessment)	
	1. Provide the proposed methodology to be used to define or assess competition in the relevant markets. Evaluation criteria: - No methodology listed = 1 - Listed the methodology but did not provide an outline on how it will be implemented = 3 - Listed the methodology and provided an outline on how it will be implemented = 5	35
		35

No	Category (Cut-off 70 points)	Weight
A.	Functionality (cut-off 70 points)	
	Functional Proposal (Competition Assessment)	
	<p>2. Previous organisational experience in conducting market reviews or competition assessments in the telecommunications industry.</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> - No experience in conducting market reviews or competition assessments in the telecommunications industry = 1 - Less than two years' experience in conducting market reviews or competition assessments in the telecommunications industry = 2 - Two to three years' experience in conducting market reviews or competition assessments in the telecommunications industry = 3 - Four to five years' experience in conducting market reviews or competition assessments in the telecommunications industry = 4 - Greater than five years' experience in conducting market reviews or competition assessments in the telecommunications industry = 5 	
	<p>3. Provide proof of at least two team members with postgraduate qualifications in Competition Economics together with proof of having practised for a number of years, supported by curriculum vitae.</p> <p>Evaluation Criteria:</p> <ul style="list-style-type: none"> - Less than two team members with relevant postgraduate qualifications or no confirmation of knowledge and proof of practical experience provided or a combined professional experience of less than 2 years =1 	20

No	Category (Cut-off 70 points)	Weight
A.	Functionality (cut-off 70 points)	
	Functional Proposal (Competition Assessment)	
	<ul style="list-style-type: none"> - Proof of qualifications and combined professional experience of two or more team members of 2-3 years. (written confirmation in CVs) = 2 - Proof of qualifications and combined professional experience of two or more team members of 4-7 years. (written confirmation in CVs) =3 - Proof of qualifications and combined professional experience of two or more team members of 8-14 years. (written confirmation in CVs) =4 - Proof of qualifications and combined professional experience of two or more team members of at least 15 years or more. (written confirmation in CVs) = 5 	
	<p>4. Provide proof of practical experience through contactable reference letters with company letterheads from companies/regulatory authorities/organisations where market reviews or competition assessments in the telecommunications industry were provided.</p> <p>Evaluation criteria:</p> <ul style="list-style-type: none"> - No submission of testimonial contactable reference letters = 1 - Provide one (1) testimonial contactable reference letter = 2 - Provide two (2) testimonial contactable reference letters = 3 - Provide three (3) testimonial contactable reference letters = 4 - Provide more than three (>3) testimonial contactable reference letters = 5 	10
TOTAL FOR FUNCTIONALITY A		100

8.4.2. Table B: Spectrum Licensing Functional Requirements

No	Category (Cut-off 70 points)	Weight
B.	Functionality (cut-off 70 points)	
	Functional Proposal (Spectrum Licensing)	
	<p>1. Bidder’s clear understanding of the project brief (as outlined in paragraphs 2 and 3 above, except the aspects referring to the competition assessment) is demonstrated by the Project approach.</p> <p>Evaluation criteria for 1:</p> <ul style="list-style-type: none"> - Provision of three or fewer of the following requirements: Business Case, Research Methodology, Work Breakdown Structure, and Resource Allocation in undertaking this project = 1 - Provision of all the following requirements: Business Case, Research Methodology, Work Breakdown Structure, and Resource Allocation in undertaking this project = 5 	10
	<p>2. Bidder’s capability in carrying out Spectrum Valuation is to be demonstrated by, among others:</p> <p>a. Years of experience in undertaking projects of a similar scope (attach contactable reference letters and Testimonials on the company’s letterheads).</p> <p>Evaluation criteria for 2(a), with contactable reference letters and Testimonials on the company’s letterheads, attached:</p> <ul style="list-style-type: none"> - Less than seven years of experience in undertaking similar projects = 1 - Seven years of experience in undertaking similar projects = 2 	20

No	Category (Cut-off 70 points)	Weight
B.	Functionality (cut-off 70 points)	
	Functional Proposal (Spectrum Licensing)	
	<ul style="list-style-type: none"> - Eight years of experience in undertaking similar projects = 3 - Nine years of experience in undertaking similar projects = 4 - Ten years or more years of experience in undertaking similar projects = 5 	
	<p>3. Bidder's capability to carry out a Spectrum Auction is to be demonstrated by, among others:</p> <p>a. Years of experience in undertaking projects of a similar scope (attach contactable reference letters and Testimonials on the company's letterheads).</p> <p>Evaluation criteria for 3(a), with contactable reference letters and Testimonials on the company's letterheads attached:</p> <ul style="list-style-type: none"> - Less than seven years of experience in undertaking similar projects = 1 - Seven years of experience in undertaking similar projects = 2 - Eight years of experience in undertaking similar projects = 3 - Nine years of experience in undertaking similar projects = 4 - Ten years or more years of experience in undertaking similar projects = 5 <p>b. Number of international experiences with similar project(s) using an Auction Tool (attach contactable reference letters and Testimonials on the company's letterheads).</p>	<p>30 (15 for a. and 15 for b.)</p>

No	Category (Cut-off 70 points)	Weight
B.	Functionality (cut-off 70 points)	
	Functional Proposal (Spectrum Licensing)	
	<p>Evaluation criteria for 3(b), with contactable reference letters and Testimonials on the company's letterheads attached:</p> <ul style="list-style-type: none"> - One similar international project undertaken = 1 - Two similar international projects undertaken = 2 - Three similar international projects undertaken = 3 - Four similar international projects undertaken = 4 - Five or more similar international projects undertaken = 5 	
4	<p>Bidder's Experience in the fields of licensing spectrum in processes similar to that envisaged in section 31 (3) of the ECA and the procedures as detailed in regulations 6,7 and 8 of the RFSR 2015, which must include amongst others:</p> <p>a. Years of experience in supporting and/or executing a licensing process on behalf of the public sector organisations and/or Regulatory Authorities (Attach contactable reference letters and Testimonials on the company's letterheads); and</p> <p>Evaluation criteria for 4(a), with contactable reference letters and Testimonials on the company's letterheads attached:</p> <ul style="list-style-type: none"> - Less than seven years of experience in supporting and/or executing a licensing process on behalf of the public sector organisations and/or Regulatory Authorities= 1 	<p>30 (15 for a. and 15 for b.)</p>

No	Category (Cut-off 70 points)	Weight
B.	Functionality (cut-off 70 points)	
	Functional Proposal (Spectrum Licensing)	
	<ul style="list-style-type: none"> - Seven years of experience in supporting and/or executing a licensing process on behalf of public sector organisations and/or Regulatory Authorities = 2 - Eight years of experience in supporting and/or executing a licensing process on behalf of the public sector organisations and/or Regulatory Authorities = 3 - Nine years of experience in supporting and/or executing a licensing process on behalf of the public sector organisations and/or Regulatory Authorities = 4 - Ten years or more years of experience in supporting and/or executing a licensing process on behalf of the public sector organisations and/or Regulatory Authorities = 5 <p style="margin-left: 40px;">b. Years of experience in advising entities and potential licensees within the private sector in similar licensing processes (Attach contactable reference letters and Testimonials on the company's letterheads).</p> <p>Evaluation criteria for 4(b), with contactable reference letters and Testimonials on the company's letterheads attached:</p> <ul style="list-style-type: none"> - Less than seven years of experience in advising entities and potential licensees within the private sector in similar licensing processes = 1 - Seven years of experience in advising entities and potential licensees within the private sector in similar licensing processes = 2 	

No	Category (Cut-off 70 points)	Weight
B.	Functionality (cut-off 70 points)	
	Functional Proposal (Spectrum Licensing)	
	<ul style="list-style-type: none"> - Eight years of experience in advising entities and potential licensees within the private sector in similar licensing processes = 3 - Nine years of experience in advising entities and potential licensees within the private sector in similar licensing processes = 4 - Ten years or more years of experience in advising entities, and potential licensees within the private sector in similar licensing processes = 5 	
5	<p>Project Members' Experience in the fields of Electronic Engineering, Economics, and Legal indicated in the Curriculum Vitae (Each field should have at least one expert that is highly experienced).</p> <p>Evaluation criteria for 5, with curriculum vitae attached:</p> <ul style="list-style-type: none"> - Less than seven years of experience of the most experienced expert in each field of Electronic Engineering, Economics, and Legal = 1 - Seven years of experience of the most experienced expert in each field of Electronic Engineering, Economics, and Legal = 2 - Eight years of experience of the most experienced expert in each field of Electronic Engineering, Economics, and Legal = 3 - Nine years of experience of the most experienced expert in each field of Electronic Engineering, Economics, and Legal = 4 - Ten years or more years of experience of the most experienced expert in each field of Electronic Engineering, Economics, and Legal = 5 	10

No	Category (Cut-off 70 points)	Weight
B.	Functionality (cut-off 70 points)	
	Functional Proposal (Spectrum Licensing)	
TOTAL FOR FUNCTIONALITY B		100

9. Price Evaluation

- 9.1. Only bidders that passed the functionality evaluation will be further evaluated for price and specific goals.

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