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GENERAL NOTICE

NOTICE 2917 OF 1998

SOUTH AFRICAN TELECOMMUNICATIONS REGULATORY AUTHORITY



**INVITATION FOR TENDERS: PROVISION OF REGULATORY TECHNICAL
AND RELATED ASSISTANCE IN THE PROCESS LEADING TO AND
INCLUDING ISSUANCE OF TWO MOBILE CELLULAR
TELECOMMUNICATIONS LICENCES: SATRA TENDER -ST 0017**

Mr. HNL MAEPA, PrEng. PE
SATRA - CHAIRPERSON

The
South African Telecommunications Regulatory Authority

SATRA

Request for Proposal

ST – 0017

**REGULATORY TECHNICAL AND RELATED
ASSISTANCE IN THE PROCESS LEADING TO
AND INCLUDING ISSUANCE OF TWO MOBILE
CELLULAR TELECOMMUNICATIONS
LICENSES.**

TENDER CLOSING DATE: 21 DECEMBER 1998 AT 12:00

TENDER SPECIFICATION FOR A CONSULTANT TO PROVIDE REGULATORY TECHNICAL AND RELATED ASSISTANCE IN THE PROCESS LEADING TO ISSUANCE OF TWO MOBILE CELLULAR TELECOMMUNICATIONS LICENSES.

1. SCOPE

a) Background

In August 1992, the study by Coopers & Lybrand (C&L) of the South African telecommunications sector was released. Amongst other things, it recommended the licensing of two digital cellular operators as the best way to maximise the efficiency gains while at the same time conserving, scarce frequency resources. Following consideration of the C&L report and industry consultation, the Minister of Transport and of Posts and Telecommunications announced on 14 February 1993, that two national public land mobile network (PLMN) licences would be awarded in the 900 MHz band. A share of up to 50% in one licence (the C2 licence) would be reserved for Telkom SA Limited, the incumbent fixed line operator.

On 5 April 1993 an "Invitation to Apply" was issued. The Invitation to Apply sought detailed information from applicants and set out the criteria on which a decision would be made. In August 1993 the Advisory Panel, following the report to it by the Departmental Evaluation Team recommended that Vodacom should be granted the C2 licence and MTN should be granted the C3 licence based on the ranking of applicants against consolidated selection criteria. The granting of these PLMN licences was subject to both companies committing themselves contractually to the licence and other related licence conditions. Negotiations on the form of the licence and other contractual obligations resulted in the licensing of Vodacom and MTN on 30 September 1993 under the *Post Office Act 1958* and the start of commercial service on 1 June 1994.

The National Cellular Telecommunications Licences granted to Vodacom and MTN and the Multiparty Implementation Agreement between the Government of the Republic of South Africa as represented by the then Minister of Transport and of Posts and Telecommunications, the Postmaster-General, Telkom, Vodacom and MTN was published in *Government Gazette No. 15232 of 29 October 1993*. The issue of additional national cellular telecommunications licences using digital or analogue cellular radio technology is addressed in the National Cellular Telecommunications Licences.

In July 1995 the then Minister for Posts, Telecommunications and Broadcasting published a Green Paper on Telecommunications Policy for public discussion. This initiated a broad consultative process to reform the telecommunications sector of South Africa. This process came to fruition when the Telecommunications Act was passed by Parliament and certain sections were enacted on 15 November 1996. Any future licences will be issued by SATRA in terms of the *Telecommunications Act 1996*.

The South African Band Re-planning Exercise (SABRE) commenced in January 1996 and has as its primary objectives to review the use of radio frequency spectrum between 20 MHz and 3 GHz, produce a band plan for the future and aid social and economical development in South Africa. A draft band plan was released on 12 June 1996 and after extensive consultation the final band plan was approved by Government on 12 November 1996. A migration strategy to implement the band plan was gazetted on 27 December 1996. The revised band plan and migration strategy were gazetted on 6 May 1997.

On 30 May 1997 SATRA issued a tender for a consultancy to do a study on the feasibility to issue additional mobile cellular telecommunications licences. The tender was subsequently awarded to International Technology Consultants, Inc (ITC) and the study was finalised during February 1998. In terms of sections 27 and 37(2)(b) of the Telecommunications Act 1996 SATRA, on 30 March 1998, published a discussion paper announcing a public enquiry and inviting representations on the economic feasibility of the provision of more than two mobile cellular telecommunication services. Copies of the full ITC report were made publicly available so as to provide a wider basis for representations. Thirty written submissions were received from members of the public and the telecommunications sector by 8 May 1998 and twelve oral presentations were heard on 29 and 30 June 1998. After careful deliberation, considering all written and oral representation as well as the ITC report, the SATRA Council concluded that the provision of additional mobile cellular services is feasible and recommended to the Minister for Posts, Telecommunications and Broadcasting to call for applications for two additional mobile cellular licences. The conclusions were published in the Government Gazette on 31 July 1998.

Section 37(2)(c) of the Telecommunications Act 1996 provides that in issuing additional mobile cellular telecommunication service licences SATRA and the Minister must follow the provisions of sections 34 and 35 of the Telecommunications Act 1996. In terms of section 34(1) licence applications must be made in the prescribed manner.

Subsequent to receipt of applications SATRA is obliged to proceed as stipulated in section 34(3) of the Telecommunications Act 1996, namely:

- Consider requests for the confidentiality of specific information provided in applications as per section 34(4).
- Give notice of all applications in the Government Gazette, invite interested persons to lodge representations in relation to the applications and make publicly available all non-confidential sections of the applications.
- Make known the conditions on which the proposed licences will be granted.
- Hold public hearings in respect of the applications as well as licence terms and conditions.

After consideration of the licence applications and representations thereon SATRA must follow the process prescribed in section 35 of the Telecommunications Act 1996, namely:

- Notify each applicant of its intended decision or recommendation.
- On request of applicants, within the prescribed period, furnish reasons for the decision or recommendation.
- Consider representations on the decision or recommendation and adjust if necessary.
- Give due regard to the applications of persons from historically disadvantaged groups.
- Refuse the application or recommend to the Minister to grant the licence and suggest terms and conditions for the licence.
- Should the Minister grant the licence, issue the licence to the successful applicant.
- Furnish written reasons for the decision if requested to by the applicant or any member of the public.

b) Objectives of the Consultancy

The objectives of the Consultancy is to assist SATRA with the development of the regulatory items required in an Invitation to Apply, and the evaluation of the applications for the licensing of two additional mobile cellular telecommunication services. To this end the following is required:

- (i) The Consultant shall be knowledgeable on the requirements of the Telecommunications Act 1996 pertaining to the licensing of telecommunication services, terms and conditions of existing mobile cellular licences, the applicable Multiparty Implementation Agreement published in the Government Gazette no. 15232 of 29 October 1993, Telkom SA licence, the Discussion Document prepared by SATRA and published in Government Gazette number 18799 published under Notice No. 563 dated 30 March 1998, the ITC report and representations made thereon as well as any other relevant material.
- (ii) The Consultant will assist in drafting terms and conditions for the two additional mobile cellular services licences. In preparing such draft terms and conditions the Consultant must keep in mind international trends in licensing as well as the following specific national requirements:
 - The national objective of universal access/service.
 - Due regard must be given to applications of persons from historically disadvantaged groups.
- (iii) The Consultant will advise SATRA on the confidentiality of the applications received for additional mobile cellular telecommunication services licences in compliance to section 34(4) of the Telecommunications Act, 1996.

- (iv) The Consultant must analyse all representations made on the applications as well as the draft terms and conditions and thereafter prepare comments thereon especially with regard to the manner and extent in which the objectives of the Act will, or will not, be met for Council consideration. Consequent to Council consideration, the Consultant will refine and redraft the terms and condition.
- (v) The Consultant must in each analysis provide the technical, business, regulatory and legal expertise necessary to evaluate the applications as well as representations made thereon. In evaluating the technology choice of applications the Consultant must keep in mind the SABRE band plan, migration strategy and costs attended thereon as well as the current status of migration in the relevant portions of the band.
- (vi) The Consultant must advise SATRA on the negotiation process to be followed with the successful applicants so as to agree the final terms and conditions of the licences.

This tender represents the requirements of SATRA for a Consultant for the following reasons:

- It is not appropriate to hire staff for this short term specialist task;
- International expertise and access to international information is required; and
- It is appropriate that a professional Consultancy firm assists SATRA in licensing the additional mobile cellular networks since these licences and consequent services will have a major impact on the South African telecommunications sector and the economy.

2. SPECIFICATIONS

a) Scope of work

The Consultant shall be knowledgeable on the requirements of the Telecommunications Act 1996 pertaining to the licensing of telecommunication services, terms and conditions of existing mobile cellular licences, the applicable Multiparty Implementation Agreement published in the Government Gazette no. 15232 of 29 October 1993, Telkom SA licence, the Discussion Document prepared by SATRA and published in Government Gazette number 18799 published under Notice No. 563 dated 30 March 1998, the ITC report and representations made thereon as well as any other relevant regulatory frameworks, guidelines, and best international practice material, all inside and outside of SATRA.

This information together with Consultant's international technical, business, regulatory and legal expertise will form the basis from which to assist and advise SATRA in contributing to the Invitation to Apply, and in the licensing of two additional mobile cellular telecommunication services.

In executing the Consultancy the Consultant shall at all times keep in mind and work towards the objects of the Telecommunications Act of 1996 as set out in Section 2 thereof.

The Consultant shall produce the following deliverables:

- (i) Advise SATRA on best approaches to creating an attractive environment for success in securing high quality applications in response to the Invitation to Apply.
- (ii) Draft the terms and conditions for an additional mobile cellular telecommunication service licence.
- (iii) Draw and submit a report on the confidentiality requests of applicants, giving guidance on whether to uphold or reject the confidentiality requests of applicants.
- (iv) Draw and submit an evaluation report on the licence applications. This report shall advise SATRA on the technical and economic feasibility of applications and prioritise applications in terms of the evaluation criteria.
- (v) Draw and submit a report on all written representations received on the applications and terms and conditions.
- (vi) Subsequent to the public hearings and where necessary, the Consultant shall redraft the terms and conditions of the contemplated licenses.
- (vii) Consultant shall assist SATRA staff in the evaluation process for submittal to Council for consideration, and shall advise and assist as required for the successful completion of the licensing process. It is contemplated that award will occur on or before 31 July 1999.
- (viii) Prior to notifying applicants of the decisions and recommendations on applications and the final terms and conditions the Consultant shall draw and submit a final evaluation. This report shall prioritise applications, taking into considerations applications as well as written and oral representations thereon.

b) Control of the Study

SATRA Council will appoint the Consultant and assume general control over the Consultancy. SATRA Council will appoint a Project Manager to liaise with the Consultant.

During the course of the Consultancy, the Consultant shall report directly to SATRA's Project Manager and take instructions from him/her on matters appropriate to fulfil the requirements of the Consultancy.

c) Duration of Consultancy

The Consultancy must be co-ordinated with the project plan provided by SATRA. Anticipated duration of the project is seven (7) months.

d) Methodologies and Resources

The Consultant in its offer shall provide a detailed description of the methodologies and resources that it will draw on to conduct the Consultancy and meet the objectives.

e) Commitment of Staff Resources

Key personnel of the Consultant are to be designated by agreement between the Consultant and SATRA and they shall be fully committed to the Consultancy. No key personnel changes will be permitted during the course of the Consultancy unless under exceptional circumstances and only when agreed to in writing by the Chairperson of SATRA.

The Consultant shall provide the following details concerning the personnel that will be dedicated to the Consultancy:

- Name of the relevant person
- CV of the relevant person indicating the relative experience of the person
- Exact function to be performed by the relevant person
- Estimated time allocated to this function
- Hourly tariff for the relevant person

In line with Section 2 of the Telecommunications Act, Objects of the Act, and for the purpose of development of capacity in telecommunications among members of the historically disadvantaged community of South Africa, the Consultant shall consider and include on his team a company, or companies, or individuals in their private consulting capacities, from the historically disadvantaged community.

f) Fees

The fees quoted by the Consultant shall be all-inclusive and shall include travelling and subsistence expenses to be incurred by the Consultant in respect of the Consultancy. The estimate of fees must separately indicate each kind of expense or fee for each of the deliverables in paragraph a).

4. TENDER EVALUATION CRITERIA

- a) International experience in cellular service market studies, especially in developing countries with economic empowerment requirements such as those required under the South African Telecommunications Act – Section 2. Demonstrated experience in this regard with evidence of unique solutions previously applied an important consideration.
(30%)
- b) International experience in local capacity building in telecommunications studies and the extent to which such capacity will be built.
(20%)
- c) Use of local consultant(s) from the historically disadvantaged community.
(20%)
- d) International experience in drafting cellular operator licensing requirements.
(30%)

ANNEXURES

South African Telecommunications Regulatory Authority

SATRA

CONSULTANT CONFIDENTIALITY AGREEMENT

Between:

**THE SOUTH AFRICAN TELECOMMUNICATIONS
REGULATORY AUTHORITY**

(hereinafter referred to as SATRA)

represented by _____ who warrants
that he/she is duly authorised to conclude this agreement.

And

(hereinafter referred to as "The Consultant")

WHEREAS SATRA may from time to time conduct enquiries in terms
of the Telecommunications Act, 1996 into matters relating to
telecommunications ; and

WHEREAS SATRA has appointed
_____ as a Consultant to conduct the

aforesaid inquiry on SATRA's behalf, as contemplated in the Telecommunications Act; and

WHEREAS both SATRA and the Consultant agree that all information obtained by the Consultant in the course of the said inquiry remains confidential.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1.

(a) The Consultant shall take all reasonable steps to minimize the risk of disclosure of confidential information, by ensuring that only its directors, delegates or employees whose duties will require them to possess any of such information shall have access thereto and that they shall be instructed to treat the same as confidential.

(b) The foregoing shall not be applicable to the Consultant with respect to disclosures made as required by law or enforceable legal process or by the rules of any regulatory authority having jurisdiction.

2. Unless otherwise agreed to in writing by SATRA, the Consultant shall not issue or make any public announcement or statement, whether written or oral, under circumstances where it could reasonably be expected that such statement would be published in any media, or any other disclosure to any third party regarding the inquiry, including, without limitation, any reference to its terms and conditions, unless required by law or enforceable legal process or any regulatory authority having jurisdiction over the Consultant.

3. The Consultant shall not at anytime be relieved of its obligation to maintain confidentiality of information unless and until it is so relieved by SATRA in writing.

SIGNED AT _____ ON THIS _____
DAY OF _____

_____ 199

AS WITNESSES:

1.

ON BEHALF OF SATRA

2.

SIGNED AT _____ ON THIS _____
DAY OF _____

_____ **199**

AS WITNESSES:

1.

**ON BEHALF OF THE
CONSULTANT**

2.

TENDER FORM

1. I/We hereby tender to supply all or any of the supplies and/or to render all or any of the services described in the attached documents to the South African Telecommunications Regulatory Authority (SATRA) on the terms and conditions and in accordance with the specifications stipulated in the tender documents (and which shall be taken as part of, and incorporated into, this tender) at the prices and on the terms regarding time for delivery and/or execution inserted therein.
2. I/We agree that:-
 - (a) the offer herein shall remain binding upon me/us and open for acceptance by SATRA during the validity period indicated and calculated from the closing time of the tender;
 - (b) if I/we withdraw my/our tender within the period for which I/we have agreed that the tender shall remain open for acceptance, or fail to fulfill the contract when called upon to do so, SATRA may, without prejudice to its other rights, agree to the withdrawal of my/our tender or cancel the contract that may have been entered into between me/us and SATRA and I/we will then pay SATRA any additional expense incurred by SATRA having either to accept any less favourable tender, if fresh tenders have to be invited, the additional expenditure incurred by the invitation of fresh tenders and by the subsequent acceptance of any less favourable tender, SATRA shall also have the right to recover such additional expenditure by set-off against moneys which may be due or become due to me/us under this or any other tender or contract or against any guarantee or deposit that may have been furnished by me/us or on my/our behalf for the due fulfilment of this or any other tender or contract and pending the ascertainment of the amount of such additional expenditure to retain such moneys, guarantee or deposit as security for any loss SATRA may sustain by reason of my/our default;
 - (c) if my/our tender is accepted the acceptance may be communicated to me/us by letter or order by ordinary post or registered post and that SA Post Office LTD shall be regarded as my/our agent, and delivery of such acceptance to SA Post LTD shall be treated as delivery to me/us;

- (d) the law of the Republic of South Africa shall govern the contract created by the acceptance of my/our tender and that I/we choose domicilium citandi et executandi in the Republic at (full address of this place):
- _____
- _____
- _____

3. I/We furthermore confirm that I/we have satisfied myself/ourselves as to the correctness and validity of my/our tender, that the price(s) and rate(s) quoted cover all the work/item(s) specified in the tender documents and that the price(s) and rate(s) cover all my/our obligations under a resulting contract and that I/we accept that any mistakes regarding price(s) and calculations will be at my/our risk.
4. I/We hereby accept full responsibility for the proper execution and fulfillment of all obligations and conditions devolving on me/us under this agreement as the Principal(s) liable for the due fulfillment of this contract.
5. I/We agree that any action arising from this contract may in all respects be instituted against me/us and I/we hereby undertake to satisfy fully any sentence or judgement which may be pronounced against me/us as a result of such action.
6. I/We declare that I/we have participation*/no participation* in the submission of any other offer for the supplies/services described in the attached documents. If in the affirmative, state name(s) of tender(s) involved.
-
-

* Delete whichever is not applicable

7. Are you duly authorised to sign the tender?

*YES/NO

8. Has the Declaration of Interest (S 12) been duly completed and included with the other tender forms?

*YES/NO

SIGNATURE(s) OF TENDERER OR ASSIGNEE

DATE:

Capacity and particulars of the authority under which this tender is signed

Name of tenderer

Postal address (In block letters)

Telephone No. (s) (Toll free if applicable):

Facsimile No.:

Tender No.:

Name of contact person (in block letters):

SEE NEXT PAGE FOR IMPORTANT CONDITIONS

NB: Each tender must be submitted in a separate, sealed envelope on which the NAME AND ADDRESS OF THE TENDERER, THE TENDER NUMBER, THE TENDER TITLE AND THE CLOSING DATE must be clearly endorsed. The tender must be addressed and posted to the CHAIRMAN: SATRA, PRIVATE BAG X1, MARLBORO, 2063, so as to reach the destination not later than the closing time or deposited in the tender box Building B, PIN MILL FARM, 164 KATHERINE STREET, SANDTON, 2196 South Africa.

IMPORTANT CONDITIONS

1. Failure on the part of the tenderer to sign this tender form (S 8) and thus to acknowledge and accept the conditions in writing or to complete the attached forms, questionnaires and specifications in all respects, may invalidate the tender.
2. Tenders should be submitted on the official forms and should not be qualified by the tenderer's own conditions of tender. Failure to comply with these requirements or to renounce specifically the tenderer's own conditions of tender, when called upon to do so, may invalidate the tender.
3. If any of the conditions on this tender form (S 8) are in conflict with any special conditions, stipulations or provisions incorporated in the tender, such special conditions, stipulations or provisions shall apply.
4. Not used
5. Firm tender prices and delivery periods are preferred. Consequently tenderer shall clearly state whether prices delivery periods will remain firm for the duration of the contract or not.
6. Definitions
 - 6.1 **Equity Ownership:** The percentage beneficial ownership and/or control, exercised by individuals within an enterprise.
 - 6.2 **Historically Disadvantaged Individuals (HDI):** Individuals who, being South African citizens, are socially and economically disadvantaged by the legacy of the South African political dispensation prior to 28 April 1994. For the purpose of the contract, the presumption shall be made that individuals who fall into population groups that had no franchise in national elections prior to the introduction of the 1993 constitution and the tricameral parliamentary system, are Historically Disadvantaged Individuals. Incumbent individuals must demonstrate their claims to fall into such population group on the basis of identification and association with and recognition by the members of such group.

7. **Feasibility Study Consultants or members thereof:** where the study objective may result in a business opportunity, I/We will not be permitted to take part in the follow-on tender, or application, for the resulting business opportunity.

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the State or SATRA, or persons who act on behalf of the State or SATRA or persons having a kinship with persons employed by the State or SATRA, including a blood relationship, may make an offer or offers in terms of this tender invitation. In view of possible allegations of favouritism, should the resulting tender, or part thereof, be awarded to persons employed by the State or SATRA, or to persons who act on behalf of the State or SATRA, or to persons connected with or related to them, it is required that the tenderer or his authorized representative shall declare his position *vis-à-vis* the evaluating authority and/or take an oath declaring his interest, where:-

- ☐ the tenderer is employed by the State or SATRA or acts on behalf of the State or SATRA; and/or
- ☐ the legal person on who's behalf the tender document is signed, has a relationship with persons/a person who are/is involved with the evaluation of the tender(S), or where it is known that such a relationship exists between the person or persons for or on who's behalf the declarant acts and persons who are involved with the evaluation of the tender.

In order to give effect to the above, the following questionnaire shall be completed and submitted with the tender.

2. Are you or any person connected with the tenderer, employed by the State or SATRA?

*YES/NO

2.1 If so, state particulars

.....

.....

.....

.....

3. Do you, or any person connected with the tenderer, have any relationship (family, friend, other) with a person employed in the department concerned or with the State Tender Board or SATRA or their Administrations and who may be involved with the evaluation or adjudication of this tender?

*YES/NO

3.1 If so, state particulars

.....

.....

.....

.....

4. Are you, or any person connected with the tenderer, aware of any relationship (family, friend, other) between the tenderer and any person employed by the department Concerned, State Tender Board or SATRA, or their administrations, who may be involved with the evaluation or adjudication of this tender?

*YES/NO

4.1 If so, state particulars

.....
.....
.....
.....

.....
.....
SIGNATURE OF DECLARANT

TENDER NUMBER

.....
DATE

.....
.....
POSITION OF DECLARANT
TENDERER

NAME OF COMPANY OR

- Delete whichever is not applicable

Keep South Africa Clean



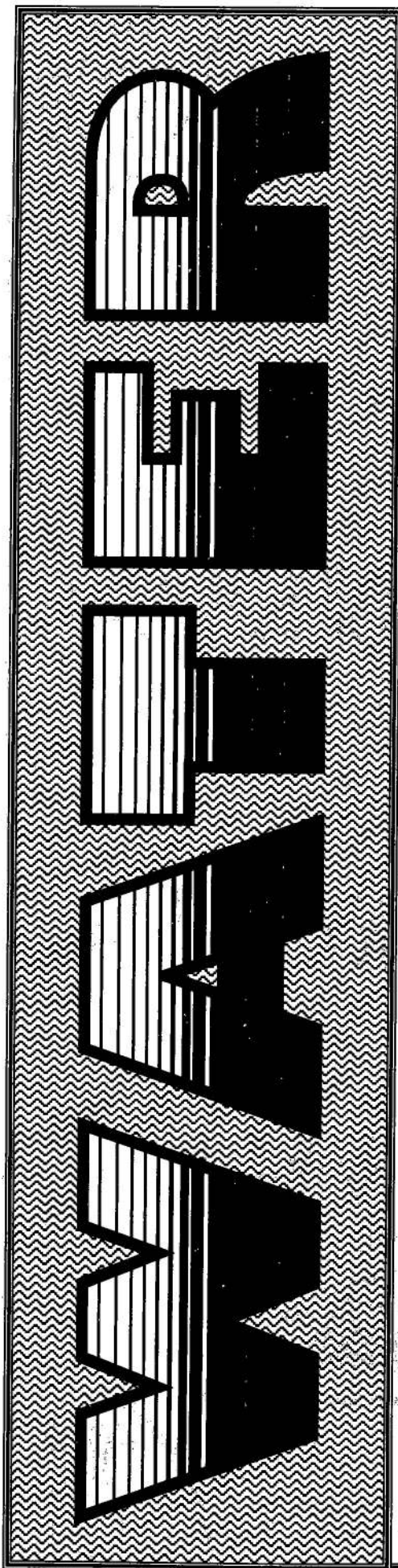
Throw trash where it belongs



DON'T

WASTE

It!

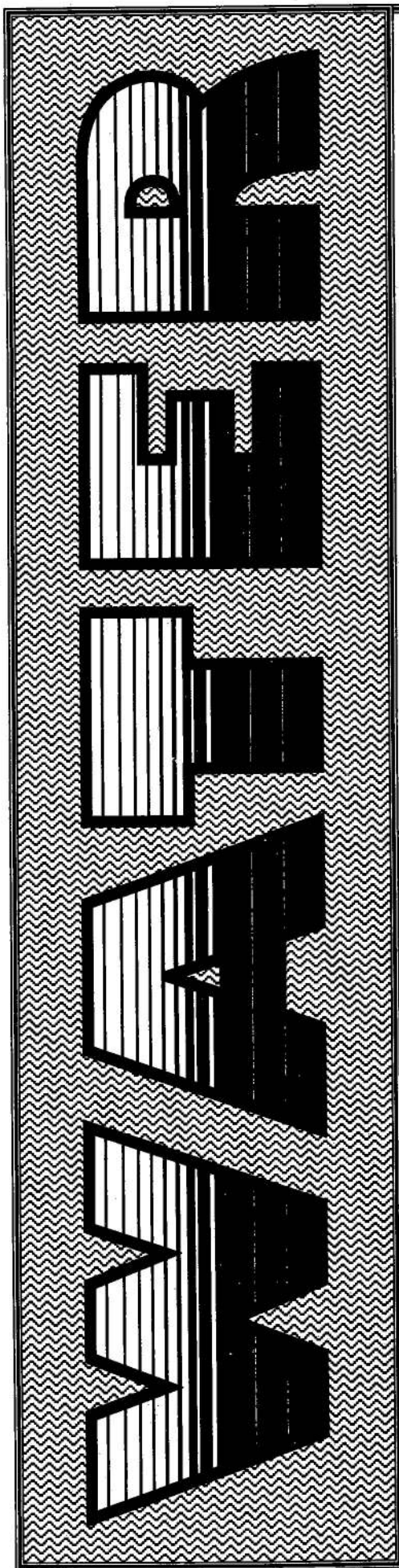




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SPAARSAAM

DAARMEE !



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