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## GENERAL NOTICE

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**NOTICE 155 OF 2002**



**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA  
(ICASA)**

### **PUBLIC TENDER**

**CONSULTANCY TO PROVIDE FINANCIAL, ECONOMIC, TECHNICAL AND LEGAL ADVICE  
RELATING TO THE LICENSING PROCESS THAT WILL CULMINATE TO THE AWARD OF A  
PUBLIC SWITCHED TELECOMMUNICATIONS SERVICE (PSTS) LICENCE TO THE SECOND  
NETWORK OPERATOR (SNO)**

**TENDER CLOSING DATE: 8 March 2002**

**MANDLA LANGA  
CHAIRPERSON  
ICASA**

## **SOUTH AFRICA'S SNO LICENSING PROJECT**

### **REQUEST FOR PROPOSALS AND TERMS OF REFERENCE**

#### **1. PROLOGUE**

The Independent Communications Authority of South Africa (ICASA), the regulator of the communications industry in South Africa, is initiating a competitive and comparative bidding process to engage the services of one or more Consulting Organization(s) or Service Provider(s) for financial, economic, technical and legal advice relating to the tender process that will culminate in the award of a Public Switched Telecommunications Service (PSTS) license to the Second Network Operator (SNO).

ICASA is inviting all consulting companies or individuals, meeting the qualifications and requirements set out below, to submit binding written tenders in response to this Request for Proposals (RFP) and Terms of Reference (TOR).

#### **2. BACKGROUND**

**2.1** ICASA, following the anticipated expiry on May 7, 2002 of Telkom SA Limited's (Telkom) exclusivity period, is expected to license the SNO. In licensing the SNO, Government aims is to create true facilities and service based competition that will provide the people of South Africa with a variety of product choices, excellent service, competitive prices and job creation. The South African Government recently enacted legislation to facilitate the liberalisation of the telecommunications market. As part of the liberalisation process, legal authority was provided for the licensing of the SNO.

**2.2** ICASA has started with the preparations for the SNO licensing process and has identified the need for engaging the services of Consulting Organization(s) or Service Provider(s) to assist and advise it in a number of areas including:

- (a) creating and enhancing the value of the SNO and attracting qualified and financially sound bidders with a real and long term interest in investing in South Africa;
- (b) defining the SNO licence tender rules to ensure a fair, efficient and transparent process and preparation of all necessary documentation, including bidder packages;



- (c) strengthening media campaigns and awareness initiatives relating to the SNO process;
- (d) liaison with Government Ministries - such as Communications; National Treasury; Trade and Industry; and Public Enterprises - having a material interest and whose input will benefit and enrich the SNO licensing process;
- (e) facilitating rapid responses to bidder inquiries on the SNO licensing process;
- (f) evaluating bidders' propositions for the network roll out and concomitant implementation plan;
- (g) evaluating bidders business plans and projected investment over the long term;
- (h) verification of the credentials of potential investors and their experience in other countries;
- (i) proposed service offerings and attendant implementation plan;
- (j) the development of weighting factors to be used in determining the successful bid; and
- (k) negotiating, as appropriate, with qualified bidders to ensure that ICASA receives the best possible bids to advance the objectives of the South African Government and the public interest.

2.3 From the needs set out in paragraph 2.2 above, it should be clear that the expert assistance required by ICASA would be in Finance, Economics, Law and Network Engineering (both for fixed line and wireless technology given the legislative prescription entitling the SNO licensee to, in addition to the PSTS license, 1800 MHz as well as 3G spectrum licenses). For all service providers keen on submitting proposals as requested in this document, we have decided to set out the context, historical and otherwise, within which ICASA will have to manage the SNO licensing process.

### **3. TELKOM'S SA LIMITED'S EXCLUSIVITY PERIOD.**

3.1 As far back as 1996, South Africa took a decision to liberalize the various segments of its telecommunications market in a phased manner. The liberalization of the PSTS market, as envisioned by the 1996 White Paper on Telecommunications, was to be overseen by ICASA. Through a policy decision Telkom, the incumbent operator, was granted a five-year exclusivity period to be the sole provider of PSTS telecommunications services. This exclusivity period started on May 7, 1997 and will end on May 7, 2002. The exclusivity period was intended to give Telkom a limited period of time to be the sole provider of public switched telecommunications and related services to "best promote the goals" of the telecommunications sector. These goals include, among others:



- (a) the expansion of the telecommunication infrastructure to support growth in other sectors of the economy;
- (b) build out of a telecommunications network as expeditiously and as extensively as possible;
- (c) attainment of universal service;
- (d) enhancement of South Africa's telecommunications capacity internationally; and
- (e) adoption of a strong customer focus.

**3.2** The South African Government, anticipating the termination of Telkom's exclusivity period and contemplating the initial public offering (IPO) of Telkom, initiated and managed the process of defining the structure of the post-exclusivity telecommunications market.

#### **4. MARKET STRUCTURE FOR TELECOMMUNICATIONS COMPETITION**

**4.1** The debate on market structure occurred in a colloquium, representative of all key stakeholders in the Telecommunications Sector, organised by the Ministry of Communications in February 2001. Following the colloquium, the Ministry of Communications published policy directives on March 23, 2001 creating an authorizing environment for the SNO to be licensed to compete with the incumbent operator in a "managed liberalization" process. These directives were revisited and on July 26, 2001, the Ministry of Communications published another set of policy directives in which it declared its commitment to have licensed an SNO and a Third Network Operator (TNO) in the PSTS market.

**4.2** The provision for licensing a TNO was, however, dropped when amendments to the Telecommunications Act (Act 103 of 1996) to facilitate the liberalization process were tabled in Parliament in October 2001. The Telecommunications Act of 1996 ("the Act"), as amended, now makes provision solely for the licensing of the SNO on or after May 7, 2002. However, it appears from the Invitation to Apply (ITA) for the Black Economic Empowerment (BEE) set aside or equity interest (discussed in Section 4.4 below) that the Ministry of Communications, empowered by section 34(2) of the Act to issue ITA's for certain categories of licenses including PSTS', plans to have the SNO licensing process finalized in the fourth quarter of 2002.

**4.3** As the objective of licensing the SNO is to create true facilities based competition, the SNO will be permitted for a limited period (two years) to use Telkom's telecommunications facilities and infrastructure. And



from about May 2004, the SNO will be expected to develop and roll out its own facilities and infrastructure.

- 4.4** An outline of the market structure without mention of the Eskom-Transnet and BEE stakes in the SNO would not reflect the complexity of the task lying ahead of ICASA as the world looks upon it to manage the licensing process for the competitor to Telkom.

**4.4.1** Section 32(B) of the Act provides that Eskom and Transnet will have a percentage of the equity interest in the SNO, which will be determined by the Minister of Communications with the concurrence of the Minister of Public Enterprises. Eskom and Transnet are State Owned Enterprises (SOE's). The Eskom-Transnet equity interest has been determined as 30% according to the BEE ITA which was published in Government Gazette No.: 22971 on December 20, 2001. According to the Act, the value of the Eskom-Transnet contribution to the SNO, in exchange for the 30% stake, could include: cash, rights of way, immovable property, personal rights and other assets such as existing infrastructure; facilities and equipment. One of the purposes behind involving Eskom-Transnet in the SNO licence is to allow the SNO to piggyback on, among others, existing rights of way and infrastructure of Eskom-Transnet to facilitate rapid deployment of an SNO network in competition with Telkom. If there is single serious challenge facing ICASA and the South African Government - it is the endeavour to attract serious investment on an SNO business model in an environment where:

- (a) the value of the assets of the Eskom-Transnet partnership, from the perspective of institutional investors – both domestic and international – vying for the 51% stake in the SNO, have not been assessed by an independent evaluator; and
- (b) ICASA has no role in the decision-making process relating to the evaluation of Eskom-Transnet contribution other than point out the risks to the relevant ministries in Government, i.e., Communications, Public Enterprises, Trade and Industry and National Treasury.

**4.4.2** A set aside of 19% of the equity interest in the SNO is for empowering the historically disadvantaged groups. The Ministry of Communications has as of December 20, 2001 issued an ITA for this purpose. According to this ITA, the deadline for the submission of applications for the 19% BEE stake is March 14,



2002 and the date set for the Minister to make a decision on the successful bid is May 31, 2002. The award of the 19% BEE equity interest is seen as phase one of a three phased SNO licensing process. The second phase would be the award of the 51% stake to international and domestic investors. The third phase involves the management of the 30% stake allocated to the Eskom-Transnet partnership.

## **5. SNO LICENSING PROJECT**

**5.1** ICASA wants to put together a multi-disciplinary project team that will add significant value in the management of the SNO licensing project. The team will comprise 4 councillors assigned to the Project by the ICASA Council, ICASA staff and a team of consultants with a background in Economics, Finance, Law and Network Engineering to be drawn from the organization(s) who will be awarded the contract to provide professional services and advice to ICASA. The ICASA Council, represented in the Project Team by four of its councillors, will take the overall strategic and political responsibility for the leadership of the SNO Licensing Project. A staff member has been appointed Project Leader and will be responsible for the day-to-day management of the project. The Project Leader will be assisted and mentored by a Project Advisor with international experience in licensing processes of fixed line operators. The World Bank will assign, in a capacity building initiative, the Project Advisor to the project for six months.

**5.2** The organization(s) whose professional services and advice would be procured through this RFP and TOR will be expected to have:

### **5.2.1 Finance and Economics**

- Expertise in international marketing of large government sponsored telecommunications projects.
- Expertise in advising governments during all facets of a bidding and license application process, including co-ordination with appropriate media organizations to generate maximum interest in the project.
- Expertise in preparing the necessary documentation required for the successful completion of the license application process, including defining appropriate criteria for evaluating bidder's financial qualifications and associated weighting factors.
- Ability to review business plans and underlying assumptions to determine the soundness and viability of such plans.



- Ability to identify and secure additional financial information required for evaluating proposals and making recommendations.
- Experience in executing and evaluating bank guarantees or other security interests that may be required or contained in various proposals.

#### **5.2.2 Network Engineering**

- Knowledge of design and evolution of networks, including: network architecture and topology, regional build-outs and nationwide development, reliability, security and safety of the network, network management systems, life cycles and broadband communications.
- Expertise in year by year evolution of the functionality of the network, including: customer services and number of lines having access to such services, functionality of the billing system, quality of network services including reliability, availability, interconnectivity and interoperability; and network operations and maintenance.
- Skills in negotiating the optimal expansion of the size of the network over an agreed period of time including: network capacity and roll out, digitalization of the network, technology deployment plans, provision and coverage of leased line services, provision and coverage of pay phones.
- Maintenance and migration of any existing networks.

#### **5.2.3 Law**

- Experience in developing legal and regulatory structures for competitive markets and representing government agencies in determining and setting out license conditions.
- Worldwide legal, regulatory, financial and technical expertise in managing telecommunications assignments and deep understanding of the issues and options facing the telecommunications industry.
- Ability to advise ICASA during all stages of the license application process up to and including the award of license.
- Sufficient experience and knowledge in other countries to be able to provide ICASA with advice on

international "best practices" as issues arise in the license application and evaluation process.

- Experience in negotiating complex global and trans-border transactions in the telecommunications sector to assist ICASA in negotiations with bidders to secure the best possible bids for meeting the government's objectives.
- Experience in South African Administrative and Constitutional Law, Company Law, Competition Law, Telecommunications Law and Litigation.

## 6. CONDITIONS

6.1 Service Provider(s) to the project, whose work will be co-ordinated by the Project Leader with assistance from the Project Advisor, will commence work on or about **April 1, 2002**. Their first assignment will be to assist ICASA evaluate the BEE portion of the SNO license. Service Provider(s) will be retained in the project until **November 30, 2002** by which time all three phases of the licensing project would have been completed.

6.2 The Service Provider(s) will operate from the ICASA head office located in Sandton, Johannesburg, South Africa. When required to provide services away from Sandton, the Service Provider(s) will be paid a travelling allowance on the following terms and conditions:

6.2.1 The Service Provider(s) must provide own transport. ICASA will reimburse the Service Provider(s) per kilometre travelled according to government rates applicable to his/her vehicle up to a maximum for a vehicle with an engine capacity of 2000cc.

6.2.2 If a car hire service is used, the Service Provider(s) must use a C category car with an engine capacity of 1300cc.

6.2.3 In cases where the Service Provider(s) has to make use of air travel, such travel will be limited to economy class. It is the responsibility of the Service Provider(s) to make his/her own bookings. Air travel will be paid as supported by certified accounts.

6.2.4 Accommodation will be paid to a maximum of R600 per night as supported by certified accounts and Service Provider(s) must use three star hotels. ICASA will not be responsible for any expenses incurred by Service Provider(s) for alcoholic beverages and private telephone calls while staying in a hotel.



**6.2.5** Professional fees will be paid once key milestones, as agreed between ICASA and the Service Provider(s), are achieved to the satisfaction of the Project Leader. Regular reports on the work done and specified deliverables should be furnished timeously.

**6.2.6** Payments shall only be made against measurable deliverables and against the payment schedule as approved by ICASA.

## **7. TENDER DETAILS**

The following details must be submitted with the tender documents:

- 7.1** The Service Provider's CV and/or Company Profile;
- 7.2** A detailed breakdown of the budget;
- 7.3** Contactable Referees;
- 7.4** A list of persons to be used on the project together with their qualifications, related work experience and hourly or daily charge rate;
- 7.5** The Service Provider's empowerment and affirmative action position;
- 7.6** A short (2 pages) description of the methodology envisaged to undertake the project;
- 7.7** Details of two most recent projects of a similar nature undertaken by the Service Provider in the past two years;
- 7.8** The estimated costs of the project within the prescribed timeframe; and
- 7.9** Details of any conflicting assignments undertaken by the Service Provider(s) in the past two years.

## **8. EVALUATION CRITERIA**

The following criteria will be used to shortlist a maximum of three Service Provider(s) for the project or per project discipline with a view to concluding a contract with Service Provider(s) against a detailed set of terms of reference:

#	Evaluation Criteria	Score
1.	Budget	40
2.	Technical Expertise and Experience	30
3.	Methodology	10
4.	Skills and Knowledge Transfer	10
5.	Empowerment of Historical Disadvantaged Individuals	5
6.	Service Provider's Profile	5
Total Score		100

## 8. EPILOGUE

- 8.1** Service Provider(s) may tender for as many disciplines of this project as they wish. More than one-project disciplines, e.g., finance and law, may be awarded to one service provider or one-project discipline, e.g., network engineering can be awarded to a number of Service Providers. The assignment, which makes up any particular project discipline, will be awarded, as deemed appropriate by ICASA, to successful Service Provider(s).
- 8.2** All tenders must be submitted by no later than **14h00 on Friday, March 8, 2002** and marked for the attention of the Chairperson of the Tender Committee, Mr. Haroun Moolla. The tender documents must be posted in the tender box on the entry hall of Block C, Pinmill Farm, 164 Katherine Street, Sandton, Johannesburg. Alternatively, especially for overseas-based tenderers, tender documents must be couriered for the attention of Mr. Haroun Moolla, Chairperson of the Tender Committee, ICASA, Block B, Pinmill Farm, 164 Katherine Street, Sandton 2146, Johannesburg, SOUTH AFRICA.
- 8.3** Tender documentation must be presented and written in the English language and submitted as follows:
- (a) 10 paper copies and, if necessary, in colour; and
  - (b) an electronic version on disk.
- 8.4** Tender documents must:
- (a) clearly identify the legal name of contracting organisation(s); legal status; contact person with a single point of contact; relevant telephone numbers, both voice and fax; and internet address; and



- (b) contain a certification that respondent's tender shall remain valid and legally binding up to and including June 8, 2002.
- 8.5 All tenders shall be binding and remain open for 90 days (up to and including June 8, 2002). Further, if selected, the successful Service Provider(s) must be prepared to enter immediately into a binding memorandum of understanding with ICASA committing the Service Provider(s) to the project on the terms outlined in its proposal. The agreement(s) entered into pursuant to this invitation to tender shall comply in all respects with, and be governed by, applicable South African laws.
- 8.6 ICASA expressly reserves the right at any time to amend or terminate any procedures, requirements, terms or discussions without further notice and without liability or obligation to ICASA or its representatives.
- 8.7 Consultants responding to these RFP and TOR should note that ICASA might request further presentations, interviews and information at short notice in order to select the successful candidate.
- 8.8 A confidentiality and non-disclosure agreement will be signed with the Service Provider(s) who will be awarded the tender.
- 8.9 Respondents to this RFP and TOR will carry all expenses and obligations incurred as a result of their response to this RFP and TOR and the tendering process.
- 8.10 Any queries in relation to this RFP and TOR must be submitted in writing to:
- |                         |   |  |
|-------------------------|---|--|
| <b>Name</b>             | : | Siyabonga Madyibi  |
| <b>Title</b>            | : | <b>SNO Project Leader</b>  |
| <b>Physical Address</b> | : | Block C, Pinmill Farm<br>164 Katherine Street<br>Sandton, JOHANNESBURG<br>South Africa |
| <b>Postal Address</b>   | : | Private Bag X10002<br>2146 SANDTON<br>South Africa                                     |
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