



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

Vol. 453    Pretoria    31    March    2003    **No. 24682**



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## GENERAL NOTICE

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### NOTICE 965 OF 2003

#### **INVITATION TO EXPRESS INTEREST FOR THE ALLOCATION OF 51% EQUITY IN THE SECOND NATIONAL OPERATOR**

I, Dr. Ivy Matsepe-Casaburri, Minister of Communications, hereby publish the invitation for the expression of interest for the 51% equity interest in the Second National Operator (SNO) in terms section 35A of the Telecommunications Act 1996(Act 103 of 1996), read with notice no 755 of 2002 as set out in the Schedule.

**Dr. IVY MATSEPE-CASABURRI  
MINISTER OF COMMUNICATIONS**

## SCHEDULE

### 1. SUBJECT OF INVITATION

The Minister of Communications (the "Minister") invites expressions of interest to apply for the 51% equity interest in the Second National Operator (SNO) in the Republic of South Africa. The provision of services for the SNO will be in terms of section 36 of the Act.

### 2. PROCESS FOR AWARDING THE 51% EQUITY INTEREST IN THE SNO

The process for the awarding of the 51% equity interest in the SNO shall be conducted in the following four phases:

- Phase 1: Submission of Expression of Interest to Pre-qualify
- Phase 2: One on One Negotiations with SNO Working Committee
- Phase 3: Evaluation of applications and recommendation by ICASA
- Phase 4: Intergration, awarding and issuing of the licence

The submission for the expression of Interest shall be prepared in accordance with the structure and order as set out hereunder.

### 3 MANNER AND FORMAT FOR THE SUBMISSION OF THE EXPRESSION OF INTEREST

#### 3.1 Format, Signing and Packaging of Expressions of Interest

- 3.1.1 All interested parties must submit an original application (marked "Original"), and 20 (twenty) copies (each marked as "copy") of its Expression of Interest. Each copy should be bound, properly numbered and sealed. The applications shall be submitted to the Chairperson of the SNO Working Committee, with an attached letter indicating the name and contact details of the interested parties.
- 3.1.2 The documentation for the expression of interest shall not exceed 200 pages (**Two hundred**) including attachments, and each page shall be signed by a duly authorized representative of the interested party.

#### 3.2 Place and Deadline for Submission of Expressions of Interest

- 3.2.1 The documents shall be submitted to the SNO Working Committee together with non refundable pre-qualification fee of R100 000 (HUNDRED THOUSAND RANDS) in the form of a South African bank

guaranteed cheque, of a duly registered South African Bank, and shall be marked for the attention of:

The Chairperson  
SNO Working Committee  
Department of Communications  
399 Duncan Street  
Iparioli Office Park  
Block D  
Hatfield, Pretoria  
South Africa

3.2.2 The closing date for the submission of the documents shall be **30 April 2003** no later than 15h30.

#### **4. Pre-qualification Requirements**

Pre-qualification will be based on the following:

##### **4.1 Section 1**

- 4.1.1 Ownership structure and a profile of all portfolio investors;
- 4.1.2 Ability to raise funds, debt financing and any other capital related aspects should be presented in detail;
- 4.1.3 Technical capabilities - a detailed overview of the technical plans and capabilities be provided;
- 4.1.4 Human Capital: operational management structure of the entity should be provided;
- 4.1.5 A detailed description of the experience acquired in the Information Communications and Technologies (ICT) environment;
- 4.1.6 Current market positioning;
- 4.1.7 Indicate your important business partners and or business relationships in the sector;
- 4.1.8 Presentation of the balance sheet strengths: Interested parties should provide audited financial statements and the most recent interim financial results;
- 4.1.9 Current social responsibilities: The parties should provide their current commitments on all social **responsibility** activities **(25 points)**

**4.2 Section 2: Critical Elements of SNO**

Provide the following critical elements of the SNO:

Business model  
Financial model  
Technical model

**(35 points)**

**4.3 Section 3: Applicant Volunteered Information**

Provide details of any other matter relating to the interested parties that the party considers to be value add to the SNO.

**(20 points)**

**4.4 Section 4: Social Responsibility**

Social Responsibility Plan – Parties should provide a detailed plan on their proposed social **responsibility** activities.

**(15 points)**

**5. PROCESS**

The process for the awarding of the 51% equity interest and the SNO shall be conducted in the following three stages:

**PHASE 1: THE SUBMISSION OF THE EXPRESSION OF INTEREST**

1. The interested party shall submit the duly executed statements and representations with all accompanying documents. Expressions of Interest without the statements and representations may be disqualified.
2. An Expression of Interest shall be deemed valid and eligible for evaluation only if it fulfils, either originally or as a result of the submission of additional documents at the request of the Chairperson of the SNO Working Committee, all the formal and substantive requirements stipulated by applicable law as well as this Invitation.
3. The SNO Working Committee shall consider all Expressions of Interest and those that are deemed valid and eligible for evaluation,

shall be short-listed and recommended to the Minister for one-on-one negotiations.

## **PHASE 2: ONE-ON-ONE NEGOTIATIONS FOR THE PRESENTATION OF THE FINAL OFFER**

1. Short-listed Interested Parties must on or within 3 working days following the announcement of the shortlist indicate, in writing, if they intend withdrawing from the stage of competitive negotiation for the 51% equity.
2. The Minister may by notice in the Gazette announce the commencement of competitive negotiations and disclose the identity of the bidder/s.

The competitive negotiations will be conducted as follows:

- 2.1 One-on-one negotiations with all negotiating parties to be conducted as required below; and
- 2.2 Submission of best offers by the Interested Parties in respect of all aspects of the proposals;
- 2.3 The SNO Working Committee shall recommend to the Minister the consortium/consortia that should be forwarded to the Authority for consideration and evaluation for the 51% equity stake of the SNO.

## **PHASE 3: EVALUATION OF APPLICATIONS AND RECOMMENDATION BY ICASA**

1. ICASA will, using the process described in section 35A Notice consider, and evaluate the applications taking into account the relevant provisions of the Act, with particular reference to section 2.
2. ICASA shall consider the applications in accordance with the following evaluation criteria:

<b>Criteria</b>	<b>Points</b>
Technical capabilities	25
Financial model	25
Business model	25
Proposed integration & role of Eskom, Transtel and Nexus	25

- a. In the case of only one applicant being forwarded to ICASA, the regulator will consider whether, taking into account the relevant provisions of the Act, with particular reference to section 2, it recommends granting to the sole applicant the 51% stake of the SNO license or not and advise the Minister accordingly stating reasons thereof.
- b. The Minister will consider ICASA's recommendation and decide on the matter, and take such steps as she may deem necessary to facilitate the successful completion of the SNO licensing process.

**PHASE 4: GRANTING BY THE MINISTER AND ISSUING OF THE SNO LICENCE BY ICASA**

1. Once the matter pertaining to the 51% stake of the SNO has been satisfactorily addressed, the Minister shall by notice in the Government Gazette,-
  - (a) publish the names of the equity holders and the stake that each hold in the Second National Operator; and
  - (b) direct the Authority to:
    - (i) facilitate the integration of the equity holders into a juristic entity, incorporated in the accordance with the laws of the Republic of South Africa, as the Second National Operator;
    - (ii) negotiate licence conditions taking into account the commitment/s made by the successful interested party;
2. The successful Interested Party for the 51% equity, together with Nexus, the successful Black Economic Empowerment (BEE) applicant for the 19% equity holder, and ESKOM and TRANSNET 30% equity holders will jointly be issued with a Licence by the Independent Communications Authority of South Africa as set out hereunder.

**6. General Information**

- 6.1 An Interested Party shall be responsible for the review and interpretation of the Invitation, including all the applicable legislations, regulations, draft Licence published and finalised by the Authority. The operational criteria and licence conditions relevant to this licencing process are contained in the draft licence published in Government Gazette 23475.
- 6.2 Regard less of the outcome of this application process, no liability shall accrue to the Minister, the Government of the RSA and the Authority for any damages suffered directly or indirectly as a result of this application process.
- 6.3 The applicants may during the process conduct the due dilligence of the equity holders of the SNO, which are as follows:
  - o Eskom and Transtel 30% equity holders
  - o Nexus Connection 19%

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001  
Publications: Tel: (012) 334-4508, 334-4509, 334-4510  
Advertisements: Tel: (012) 334-4673, 334-4674, 334-4504  
Subscriptions: Tel: (012) 334-4735, 334-4736, 334-4737  
Cape Town Branch: Tel: (021) 465-7531

Gedruk deur en verkrygbaar by die Staatsdrukker, Bosmanstraat, Privaatsak X85, Pretoria, 0001  
Publikasies: Tel: (012) 334-4508, 334-4509, 334-4510  
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