

Request for Quotation – Regulatory Advisory Support for Market and Sectoral Review: Electronic Communications Sector

This Request for Quotation (**RFQ**) for the supply of Services is issued by the Regulatory Authority of Bermuda (the “Authority”).

This document comprises the following parts:

- Part A: RFQ Overview
- Part B: RFQ Information
- Part C: Contract Information
- Part D: Conditions of Quotation
- Part E: Quotation Form

Part A: RFQ Overview

The nature of the services to be provided (the “Services”) is set out in Section 1 and 2 of Part C.

Details about how to submit an offer to supply the Services set forth in this RFQ (“Quotation”) are set out in Section 2 of Part B.

Conditions of Quotation: Please read the Conditions of Quotation in Part D before submitting a Quotation. The RFQ Information in Part B also forms part of the Conditions of Quotation. The Conditions of Quotation are the conditions upon which the Authority is prepared to receive and evaluate Quotations. Failure to strictly observe these conditions may result in a Quotation being rejected without evaluation.

Quotation Form: The Quotation Form in Part D is a required form that must be completed. Do not separate the Quotation Form from this RFQ

document. A Quotation is likely to be rejected if the Quotation Form is not used. A Quotation must contain (or be accompanied by) all the information and details required by this RFQ.

Terms and Condition of Contract: Please provide your standard terms and conditions that apply to contracts for the supply of the Services as an attachment to the Quotation Form. Please note that the Authority reserves the right to negotiate such terms and conditions to meet the Authority’s specific needs.

Enquires and requests for further information about this RFQ should be directed to the following:

Contact: Jozelle Escolastica
Telephone: 1 441 405 6000
Email: rfq@rab.bm

Part B: RFQ Information

1. Closing date and time for submitting a Quotation: The closing date and time for submitting a Quotation is Wednesday, 21st June 2017 by 4pm AST.
 2. Method of submitting a Quotation: A Quotation must be submitted via email to rfq@rab.bm with the subject “**Regulatory Advisory Support for Market and Sectoral Review: Electronic Communications Sector**”.
 3. Status of Quotation: A Quotation submitted by a prospective supplier in response to this RFQ constitutes an offer by the prospective supplier to supply the Services. The Authority may then proceed to negotiate an agreement for the provision of the Services.
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| 4. | Information to be provided by suppliers as part of Quotation: | <p>All relevant information to support the supplier establishing its skills and credentials, as per the defined Services.</p> <p>Prospective suppliers should also include an attachment to the Quotation Form (Appendix 1) setting forth the prospective supplier’s applicable terms and conditions of contract, including warranty terms.</p> |
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| 5. | Evaluation criteria: | <p>The Authority in its evaluation of Quotations will take all relevant factors into consideration, including value for money and ongoing costs, to achieve the best outcome for the Authority. In evaluating Quotations, the Authority may take into consideration factors including, but not limited to: price; experience; previous performance; capability; safety performance; and conformity with the requirements of this RFQ and relevant Authority policies.</p> |
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| 6. | Notification of outcome: | <p>It is anticipated that a successful supplier will be notified in writing of the outcome of the RFQ process in due course.</p> <p>Unsuccessful suppliers will be notified at the conclusion of the procurement process in due course as well.</p> |
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Part C: Contract Information

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| 1. | Services to be supplied: | <p>The Authority, pursuant to section 23 of the Electronic Communications Act 2011 (“ECA”) and section 17 of the Regulatory Authority Act 2011 (“RAA”), is responsible for conducting sectoral and market reviews (the “Reviews”).</p> <p>Duly, this would require consultants to assist with the development of the Reviews. Please see further background on the Reviews in Appendix A.</p> <p>The deliverables would include:</p> <ol style="list-style-type: none"> 1. Review and assessment of the Electronic Communications market sector of Bermuda in accordance with Section 23 of the ECA, culminating in a report of initial findings. This shall include static and dynamic analysis of the market sector. 2. Assessment of implications of (1), in the context of the licenses that apply to sector entities and definition of relevant turnover pursuant to section 11 of ECA. 3. In the context of (1) and (2), provide recommendations in the area of existing remedies (as per Section 24 of the ECA), including potential revisions and additions to the same. 4. Assistance with public consultation based on findings of (1), (2) and (3) above and section 17 of the RAA, including drafting the consultation document. 5. A draft report and a final report with recommendations and/or decisions as appropriate, based on the consultation process in (4) above. |
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| 2. | Basis of Quotation: | <p>Please provide quotation for:</p> <ol style="list-style-type: none"> (i) an agreed retainer type basis with ‘on call’ accessibility by the Authority to the supplier for support for the services to be supplied as per Section (1) above with a maximum of 50 call down hours per week. |
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(ii)		With regard to the deliverables specified in Section (1) above, support and advice will also be required by the Authority on a project basis, with the scope and cost of each project being specified and agreed by the Authority and the supplier on a project-by-project basis. The Authority anticipates that the details of these projects will be specified via call down time procured under the retainer detailed in (i) above.
		Any subsequent increase in call down time will be negotiated with the supplier. Please provide individual charge out rates for staff allocated to this project.
		The Authority is able to clarify any aspects of this RFQ via email or telephone.

3.	Delivery date for the Services:	Provision of the Services will commence on a date to be determined by the Authority with the successful supplier.
4.	Location for delivery of the Services:	The Services are to be provided to: The Regulatory Authority of Bermuda 1 st Floor, Craig Appin House 8 Wesley Street Hamilton, HM 11 Bermuda
5.	The Authority's address details:	Same as section 4 above.

Part D: Conditions of Quotation

1 Conditions of Quotation

The conditions of quotation (**Conditions of Quotation**) comprise Part B and Part D of this RFQ.

2 Communications

A prospective supplier must direct all communications and enquiries concerning this RFQ to the Contact named in Part A.

Unauthorised communication by a prospective supplier with any other employee or agent of the Authority may lead to a Quotation being rejected.

3 Agreement to be bound

By lodging a Quotation, a prospective supplier agrees to be bound by the Conditions of Quotation.

4 Use of RFQ and information restricted

This RFQ, and any information provided by the Authority to a prospective supplier as part of the RFQ process, remain the property of the Authority, and may only be used by a prospective supplier to prepare a Quotation in response to this RFQ.

5 Status of RFQ representation

No representation made by or on behalf of the Authority during the RFQ process binds the Authority unless the representation is subsequently included as part of a formal contract.

6 Confidentiality

A prospective supplier who submits a Quotation must keep the information in its Quotation confidential. Nothing in this clause prevents a prospective supplier from disclosing information in its Quotation: that is available to the public generally otherwise than as a

result of a breach of this clause 6 by the prospective supplier; if the disclosure of the Quotation is required by law; or if the disclosure is to the prospective supplier's professional advisers or lenders.

Prospective suppliers should be aware that any information that submitted to the Authority, including via the Quotation process, may be subject to public disclosure pursuant to the Public Access to Information Act 2010.

7 Quotations become property of the Authority

All Quotations become the property of the Authority on submission.

8 Reservations

The Authority reserves the right at its absolute discretion to do any of the following things;

- (a) to discontinue or suspend the RFQ process; to extend the closing date and time in Section 1 of Part B; and to amend this RFQ;
- (b) to negotiate with any prospective supplier submitting a Quotation;
- (c) to determine the number of organisations with whom it will contract.

The Authority is not bound to accept the lowest, or any, Quotation submitted.

9 Content and format of Quotations

Quotations must include all the information listed in Section 4 of Part B, including Appendix 1.

A Quotation must be prepared using the Quotation Form in Part E.

10 Joint Quotations

Suppliers may submit a Quotation to jointly provide the Services with one or more other prospective suppliers. Prospective suppliers should include all relevant information of all applicable prospective suppliers in such 'Joint Quotation', with the respective price offer for each supplier, in addition to the information required as detailed in Part E.

11 Alternative offers

Suppliers may submit an alternative proposal if it is clearly identified as an 'Alternative Offer' wherever it fails to comply with this RFQ.

A prospective supplier who submits a Quotation which meets the requirements in this RFQ in an alternative and practical manner, taking into account the totality of those requirements, must include any supplementary material, together with the associated price, which demonstrates, in detail, that the Alternative Offer will fully achieve all the requirements.

The Authority reserves the right either to consider Alternative Offers on their merits or not to consider them further.

12 Monetary amounts

All monetary amounts must be expressed in **US Dollars**.

13 Preparation of Quotation

The Authority will neither be responsible, nor pay, for any cost, expense or loss, which may be incurred by any person in connection with the preparation or presentation of a Quotation.

14 Exclusion of liability

The Authority is not liable for any error or omission in this RFQ.

15 Validity

A Quotation constitutes an unalterable offer by the prospective supplier to the Authority. A Quotation must remain valid and open to be accepted for at least 60 business days from the later of the date of submission and date specified in Section 1 of Part B, or as extended under clause 8.

16 Submission of Quotations

A Quotation must be submitted by the closing time and date specified in Section 1 (Part B) of the RFQ Information Table, or as extended under clause 8, and in the manner specified in Section 2 (Part B) of the RFQ Information Table.

Submission by email will be at the sole risk of the prospective supplier. A Quotation may be rejected if it contains a virus, worm or other defect, or if the Quotation does not comply with any format, size or other requirements stated in Section 2 of the RFQ Information Table.

Part E: Quotation Form

To: The Regulatory Authority of Bermuda

I/We:

	(the Supplier)
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(insert name)

hereby offer to supply to the Authority the Services (specified in this RFQ) in accordance with the terms and conditions set forth in this RFQ.

Price:

The price offered (the "Price") is:

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(insert offered price)

The Supplier's details for the service of Notices will be as follows:

Address:	
Email:	
Contact person or position:	

(insert details, use BLOCK LETTERS)

I/We confirm the following supplementary documentation has been submitted with this offer:

Information / Document Description	No. of pages

I/We declare that:

- (a) the Conditions of Quotation are agreed; and
- (c) the information and particulars provided as part of this offer are accurate and correct.

Dated:

(insert date)

Supplier Signature

Signed by the Supplier:

Signature: →

*Print name and office held:

Signature: →

*Print name and office held:

Appendix A

Background

The Electronic Communications Act 2011 (“**ECA**”) and the Regulatory Authority Act 2011 (“**RAA**”) established a new framework for regulation of electronic communications services in Bermuda. This new framework requires the Regulatory Authority (“**Authority**”), among other things, to define relevant product and geographic markets appropriate to national circumstances according to the principles and procedures outlined in Sections 21 through 23 of the ECA. Conjointly with the exercise, the Regulatory Authority is to conduct an analysis of the relevant markets to determine if they are effectively competitive, identify any competition problems, recommend the addition of new markets (if relevant), and to propose appropriate regulatory measures that will address this, following the procedures generally outlined in Section 24 of the ECA.

Section 75 of the ECA placed a moratorium on further licenses being awarded in Bermuda to allow grandfathered licence holders an opportunity to operate within a liberalized market.

On 29 April 2013, the Authority issued a General Determination (GD) on market definition, defining 23 distinct markets within the Bermuda electronic communications sector. This market review led to the creation of remedies for sectoral participants with Significant Market Power (SMP).

On 7 August 2013, the Authority adopted a GD called *Obligations for Operators with Significant Market Power* which imposed a set of ex-ante obligations on Integrated Communications Operating Licence (ICOL) holders in several markets found to be susceptible to ex-ante regulation. One of the major features of the ex-ante regulation was a wholesale obligation on operators with significant market power. This required SMP operators to grant wholesale access to their networks to any other ICOL holder at a rate of retail minus 15%.

Subsequently, there has been a market trend in Bermuda’s electronic communications sector towards consolidation with an emphasis on multiple market players and bundled services.

These recent changes in the competitive market in Bermuda requires the Authority to revisit the market review factors set out in the legislative background below to determine whether they are still relevant.

Duly, the market review will require the supplier to conduct surveys of the ICOL holders to gather relevant information, in line with the requirements of the market review.

The resulting report which will be produced through the market review will provide significant informational input into the sectoral review, as discussed below.

Section 17 of the RAA requires the Authority to conduct a comprehensive review of the regulated industry sector (in this case the electronic communications sector), including all policies, legislation, regulations and administrative determinations applicable to the sector.

The legislative requirements of the market and sectoral reviews can be found in sections 23 of the ECA and Section 17 of the RAA, as set out below.

Legislative Background of the market review and sectoral review

ELECTRONIC COMMUNICATIONS ACT 2011

Market review procedures

- 23 (1)** The Authority may publish advisory guidelines that identify or clarify the criteria for—
- (a) defining relevant product markets based upon demand and supply-side characteristics;
 - (b) defining relevant geographic markets;
 - (c) assessing market power in such markets based on a forward-looking assessment;
 - (d) establishing effective ex ante remedies and obligations; and
 - (e) any other aspect of the market review process.
- (1)** The Authority shall, in conducting a market assessment pursuant to subsections (1)(a), (b) or (c), consider all of the factors that it deems relevant under the circumstances, which may include the following—
- (a) the overall size of the communications provider and its share of the relevant market;
 - (b) the volatility of shares in the relevant market;
 - (c) the communications provider's control over infrastructure not easily duplicated;
 - (d) the communications provider's technological advantages or superiority;
 - (e) the degree of countervailing buyer power;
 - (f) the communications provider's ability to access capital and financial markets relative to that of its competitors;
 - (g) the existence of economies of scale or scope;
 - (h) the diversification of products or services (including bundles);
 - (i) the relative advantages of vertical integration enjoyed by the sectoral provider;
 - (j) the presence of de jure or de facto barriers to market entry or expansion;
 - and
 - (k) evidence of previous anti-competitive behaviour.

- (3)** In assessing whether two or more communications providers operating in the same relevant market jointly have significant market power, the Authority shall consider, among other relevant factors, whether—

 - (a) the relevant market is concentrated;
 - (b) each provider has a relatively high and stable share of the relevant market;
 - (c) significant and enduring barriers to entry exist; and
 - (d) there are reasonable grounds for concluding that these factors, in combination with any relevant factors set out in subsection (2), are evidence of a market structure that is likely to give rise to tacit coordination and thereby prevent, restrict or distort competition in the provision of products or services in the relevant market.
- (4)** The Authority shall conduct a public consultation to review those markets identified in accordance with Section 22 that in its view are susceptible to ex ante regulation, if any, or pursuant to subsection (6), for the purposes of—

 - (a) evaluating whether these relevant markets are, or continue to be, correctly defined based on an economic assessment of supply and demand;
 - (b) analysing whether a communications provider, individually or with others, in fact possesses, or continues to hold, significant market power in one or more of these relevant markets based on the applicable facts and circumstances; and
 - (c) deciding which obligations, if any, should be imposed in respect of each relevant market characterised by significant market power in order to promote or preserve effective competition, in accordance with section 24.
- (5)** The Authority shall issue one or more general determinations designating the communications provider, if any, which, individually or with others, has significant market power in each relevant market reviewed pursuant to subsection (4) and specifying any ex ante obligations that shall apply in accordance with section 24.
- (6)** A further review of any relevant product or geographic market identified as requiring ex ante regulation pursuant to subsection (5) may be carried out by the Authority on its own initiative or, at its discretion, upon the request of an interested party, provided that—

 - (a) the Authority shall conclude a further review of each relevant market within a period of not more than four years from the date of its completion of the previous review of the same relevant market in any case in which it has made a finding of significant market power; and
 - (b) in determining when to initiate an initial or further review of a relevant product or geographic market, the Authority shall consider requests from sectoral participants, the views of consumers and relevant market developments.
- (7)** A general determination made by the Authority finding that a communications provider possesses significant market power in a relevant market shall be considered interim, and shall not constitute final Authority action for purposes of the Regulatory Authority

Act 2011, until the Authority makes a determination specifying the ex ante obligations, if any, that shall apply in respect of such relevant market in accordance with section 24.

Regulatory Authority Act 2011

Sectoral review

- 17 (1) The Authority shall periodically conduct a comprehensive review of each regulated industry sector, including all policies, legislation, regulations and administrative determinations applicable to the sector.
- (2) The Authority shall initiate the review process by publishing a consultation document, pursuant to section 70, inviting comment regarding—
- (a) market conditions in the sector;
 - (b) regulations and administrative determinations applicable to the sector that should be made, modified or revoked; and
 - (c) any other issues found to be relevant by the Authority.
- (3) Not later than six months after the date on which the Authority issues the initial consultation document, the Authority shall issue a preliminary report and, if appropriate, a preliminary recommendation or decision and order, in accordance with section 72(2).
- (4) Not later than nine months after the date on which the Authority issues the initial consultation document, the Authority shall issue a final report and, if appropriate, a final recommendation or decision, in accordance with section 72(4).
- (5) Unless sectoral legislation provides otherwise, for each regulated industry sector, the Authority shall initiate the first sectoral review no later than three years after the date of the coming into operation of the applicable sectoral legislation.
- (6) The Authority shall initiate each subsequent sectoral regulatory review no later than three years after the date on which the Authority issues the final report specified in subsection (4).