

REQUEST FOR PROPOSALS

YOU ARE HEREBY INVITED TO SUBMIT A BID TO MEET THE REQUIREMENTS OF THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

BID NUMBER:	RFP300/2022
COMPULSORY BRIEFING SESSION DETAILS:	Tender briefing will be done online via Microsoft teams. Bidders are advised to use the link below to join the briefing session. Link: Click here to join the meeting 11 October 2022 @12H00 (Johannesburg time)
CLOSING DATE:	28 October 2022
CLOSING TIME:	23H55 (Midnight)
PERIOD FOR WHICH BIDS ARE REQUIRED TO REMAIN OPEN FOR ACCEPTANCE:	120 days
DESCRIPTION OF BID:	TRANSACTION ADVISORY SERVICES FOR THE FEASIBILITY STUDY AND PROCUREMENT (IF APPLICABLE) OF THE REHABILITATION AND EXTENSION OF LA NICOLIÈRE WATER TREATMENT PLANT IN ACCORDANCE WITH THE BUILD OPERATE TRANSFER PROJECTS ACT, 2016 AND APPLICABLE LEGISLATION
BID DOCUMENTS DELIVERY ADDRESS:	1. ELECTRONIC SUBMISSIONS <u>INSTRUCTIONS:</u> ➤ Bidders are required to submit written requests for clarification via e-mail to lihleSCM@dbsa.org ONLY, quoting the RFP Number on the subject of the e-mail. ➤ Written requests for clarification will be considered up to and including 19 OCTOBER 2022 17:00 Johannesburg time. Requests received after this date may not be attended to. ➤ Bidders are asked to nominate one dedicated contact person (name, email address and phone number). The nomination shall be sent to the Tender Officer via email lihleSCM@dbsa.org by latest on 21 OCTOBER at 17:00 prior to expiry of the deadline for submission. The data shall be used to set up an e-procurement system for this tender submission. ➤ Timely submission means that the file must be successfully uploaded by the deadline of 28 OCTOBER 2022 before 23:55. ➤ Any requests after the stipulated date and time may be disregarded. NB: Closing date of this RFP300.2022 is 28 OCTOBER 2022 before 23:55.

	No physical bids will be received or accepted at the DBSA offices
NAME OF BIDDER:	
CONTACT PERSON:	
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	
BIDDER'S STAMP OR SIGNATURE	



The Development Bank of Southern Africa has a Zero Tolerance on Fraud and Corruption.
Report any incidents of Fraud and Corruption to Whistle Blowers on any of the following:

TollFree : 0800 20 49 33
Email : dbsa@whistleblowing.co.za
Free Post : Free Post KZN 665 | Musgrave | 4062
SMS : 33490

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**PART A
INVITATION TO BID**

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED (“DBSA”)

BID NUMBER: RFP300/2022

DESCRIPTION: TRANSACTION ADVISORY SERVICES FOR THE FEASIBILITY STUDY AND PROCUREMENT (IF APPLICABLE) OF THE REHABILITATION AND EXTENSION OF LA NICOLIÈRE WATER TREATMENT PLANT IN ACCORDANCE WITH THE BUILD OPERATE TRANSFER PROJECTS ACT, 2016 AND APPLICABLE LEGISLATION

COMPULSORY BRIEFING: 11 OCTOBER 2022 - Tender briefing will be done online via Microsoft teams.

LINK: [Click here to join the meeting](#)

Time: 12H00 AM Johannesburg time (**Microsoft Teams**)

LINK REQUESTS: Bidders are asked to nominate one dedicated contact person (name, email address and phone number). The nomination shall be sent to the Tender Officer via email lihleSCM@dbsa.org by latest on **21 OCTOBER 2022 at 17:00** prior to expiry of the deadline for submission. Any requests after the stipulated date and time may be disregarded.

CLOSING DATE: 28 OCTOBER 2022

CLOSING TIME: 23H55

The Central Water Authority of the Republic of Mauritius has received grant support from KfW Development Bank, through the SADC Secretariat's Project Preparation and Development Facility (PPDF), a project preparation fund managed by the DBSA. The PPDF requires that procurement of service providers for grant beneficiaries should be undertaken in accordance with the DBSA Procurement Guidelines. Therefore, the DBSA hereby procures transaction advisory services and procurement (if applicable) of the rehabilitation and extension of the La Nicoliere Water Treatment Plant in accordance with the Build Operate Transfer Act, 2016 and applicable legislation. The successful bidder will conclude a Professional Services Contract with the Central Water Authority, in United States Dollars, for a fixed period of 36 months.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT, WHICH ARE SET OUT IN PART C OF THIS DOCUMENT.

THE FOLLOWING PARTICULARS MUST BE FURNISHED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED).
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BIDDERS THAT ARE UNINCORPORATED CONSORTIA CONSISTING OF MORE THAN ONE LEGAL ENTITY MUST SELECT A LEAD ENTITY AND FURNISH THE DETAILS OF THE LEAD ENTITY, UNLESS OTHERWISE SPECIFIED.

NAME OF BIDDER AND EACH ENTITY IN CONSORTIUM:				
POSTAL ADDRESS:				
STREET ADDRESS:				
CONTACT PERSON (FULL NAME):				
EMAIL ADDRESS:				
TELEPHONE NUMBER:				
FAX NUMBER:				
BIDDER REGISTRATION NUMBER OR REGISTRATION NUMBER OF EACH ENTITY IN CONSORTIUM				
BIDDER VAT REGISTRATION NUMBER OR VAT REGISTRATION NUMBER OF EACH ENTITY IN CONSORTIUM				
BBBEE STATUS LEVEL VERIFICATION CERTIFICATE /BBBEE STATUS LEVEL SWORN AFFIDAVIT SUBMITTED? [TICK APPLICABLE BOX]	YES		NO	
IF YES, WHO ISSUED THE CERTIFICATE?				
REGISTERED WITH THE NATIONAL TREASURY CSD [TICK APPLICABLE BOX]	YES		NO	
CSD REGISTRATION NUMBER				
TAX COMPLIANCE STATUS PIN (TCS) NUMBER ISSUED BY SARS				

1..1.1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ENCLOSE PROOF]
1..1.2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?	☐ Yes ☐ No [IF YES ANSWER PART B:3 BELOW]
1..1.3 SIGNATURE OF BIDDER	
1..1.4 DATE	
1..1.5 FULL NAME OF AUTHORISED REPRESENTATIVE	
1..1.6 CAPACITY UNDER WHICH THIS BID IS SIGNED (Attach proof of authority to sign this bid e.g. resolution of directors, etc.)	

PART B
TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:

- 1.1. BIDS MUST BE SUBMITTED ELECTRONICALLY BY THE STIPULATED TIME TO THE LINK PROVIDED. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION.
- 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED – (NOT TO BE RE-TYPED)
- 1.3. SOUTH AFRICAN BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED BY BIDDING INSTITUTION.
- 1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, SUCH AS BIDDERS DOMICILED OUTSIDE OF SOUTH AFRICA, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MUST BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION.

2. TAX COMPLIANCE REQUIREMENTS

- 2.1 ALL BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS IN THEIR COUNTRY OF RESIDENCE.
- 2.2 SOUTH AFRICAN BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS.
- 2.3 SOUTH AFRICAN BIDDERS CAN APPLY FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA.
- 2.4 SA BIDDERS' MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID.
- 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED; EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER (TAX COMPLIANCE) IN ACCORDANCE WITH APPLICABLE LEGISLATION IN THEIR COUNTRY OF RESIDENCE.
- 2.6 WHERE SA BIDDERS HAVE NO TCS AVAILABLE BUT ARE REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS

- 3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?
☐ YES ☐ NO
- 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA?
☐ YES ☐ NO
- 3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA?
☐ YES ☐ NO
- 3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA?
☐ YES ☐ NO

IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

NB: FAILURE TO PROVIDE ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.

PART C

CHECKLIST OF COMPULSORY RETURNABLE SCHEDULES AND DOCUMENTS

Please adhere to the following instructions

- Tick in the relevant block below
- Ensure that the following documents are completed and signed where applicable:
- Use the prescribed sequence in attaching the annexes that complete the Bid Document

NB: Should all these documents not be included, the Bidder may be disqualified based on non-compliance

YES NO

☐	☐	One original Bid document in separate folders; Folder 1 - for Pre-Qualifying Criteria and Functional Evaluation and Folder 2 - Price / Financial Proposal – Electronic submission
☐	☐	Part A: Invitation to Bid
☐	☐	Part B: Terms and Conditions of Bidding
☐	☐	Part C: Checklist of Compulsory Returnable Schedules and Documents
☐	☐	Part D: Conditions of Tendering and Undertakings by Bidders
☐	☐	Part E: Specifications/Terms of Reference and Project Brief
☐	☐	Annexure A: Price Proposal Requirement (Submitted in folder 2)
☐	☐	Annexure B: SBD4 Declaration of Interest
☐	☐	Annexure C: SBD6.1 and B-BBEE status level certificate
☐	☐	Annexure D: SBD8: Declaration of Bidder's Past Supply Chain Practices
☐	☐	Annexure E: SBD9: Certificate of Independent Bid Determination
☐	☐	Annexure F: Certified copies of your CIPC company registration documents listing all members with percentages, in case of a lose corporation
☐	☐	Annexure G: Certified copies of latest share certificates, in case of a company.
☐	☐	Annexure H: (if applicable): A breakdown of how fees and work will be spread between members of the bidding consortium.
☐	☐	Annexure I: Supporting documents to responses to Pre-Qualifying Criteria and Functional Evaluation Criteria.

☐☐

Annexure J: General Condition of Contract

☐☐

Annexure K: CSD Tax Compliance Status and Registration Requirements Report

☐☐

Annexure J: KfW Declaration of Undertaking

PART D

CONDITIONS OF TENDERING AND UNDERTAKINGS BY BIDDER

1. DEFINITIONS

In this Request for Proposals, unless a contrary intention is apparent:

- 1.1 **B-BBEE** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act, 2003;
- 1.2 **B-BBEE Act** means the Broad-Based Black Economic Empowerment Act, 2003;
- 1.3 **B-BBEE status level of contributor** means the B-BBEE status received by a measured entity based on its overall performance used to claim points in terms of regulation 6 and 7 of the Preferential Procurement Regulations, 2017.
- 1.4 **Business Day** means a day which is not a Saturday, Sunday or public holiday in South Africa.
- 1.5 **Bid** means a written offer in the prescribed or stipulated form lodged by a Bidder in response to an invitation in this Request for Proposal, containing an offer to provide goods, works or services in accordance with the Specification as provided in this RFP.
- 1.6 **Bidder** means a person or legal entity, or an unincorporated group of persons or legal entities that submit a Bid.
- 1.7 **Companies Act** means the Companies Act, 2008.
- 1.8 **Compulsory Documents** means the list of compulsory schedules and documents set out in Part B.
- 1.9 **Closing Time** means the time, specified as such under the clause 4 (Bid Timetable) in Part C, by which Tenders must be received.
- 1.10 **DBSA** means the Development Bank of Southern Africa Limited.
- 1.11 **DFI** means Development Finance Institution.
- 1.12 **Evaluation Criteria** means the criteria set out under the clause 27 (Evaluation Process) of this Part C, which includes the Qualifying Criteria, Functional Criteria and Price and Preferential Points Assessment (where applicable).
- 1.13 **Functional Criteria** means the criteria set out in clause 27 of this Part C.
- 1.14 **Intellectual Property Rights** includes copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- 1.15 **PFMA** means the Public Finance Management Act, 1999.
- 1.16 **PPPFA** means the Preferential Procurement Policy Framework Act, 2000.
- 1.17 **PPPFA Regulations** means the Preferential Procurement Regulations, 2017 published in terms of the PPPFA.
- 1.18 **Pre-Qualifying Criteria** means the criteria set out in clause 27.3 of this Part C.
- 1.19 **Price and Preferential Points Assessment** means the process described in clause 27.6 of this Part C, as prescribed by the PPPFA.

- 1.20 **Proposed Contract** means the agreement including any other terms and conditions contained in or referred to in this RFP that may be executed between the DBSA and the successful Bidder.
- 1.21 **Request for Proposal** or **RFP** means this document (comprising each of the parts identified under Part A, Part B, Part C and Part D) including all annexures and any other documents so designated by the DBSA.
- 1.22 **SARS** means the South African Revenue Services.
- 1.23 **Services** means the services required by the DBSA, as specified in this RFP Part D.
- 1.24 **SLA** means Service Level Agreement i.e., a professional services contract.
- 1.25 **SOE** means State Owned Enterprise, as defined by the Companies' Act.
- 1.26 **Specification** means the conditions of tender set and any specification or description of the DBSA's requirements contained in this RFP.
- 1.27 **State** means the Republic of South Africa.
- 1.28 **Statement of Compliance** means the statement forming part of a Tender indicating the Bidders compliance with the Specification.
- 1.29 **Tendering Process** means the process commenced by the issuing of this Request for Proposals and concluding upon formal announcement by the DBSA of the selection of a successful Bidder(s) or upon the earlier termination of the process.
- 1.30 **Website** means a website administered by DBSA under its name with web address www.dbsa.org

2. INTERPRETATIONS

In this RFP, unless expressly provided otherwise a reference to:

- 2.1 "includes" or "including" means includes or including without limitation; and
- 2.2 "USD" or "United States Dollar" is a reference to the lawful currency of the United States of America.

3. TENDER TECHNICAL AND GENERAL QUERIES

Queries pertaining to this tender must be directed to:-

DBSA Supply Chain Management Unit

Email: lihleSCM@dbsa.org

No questions will be answered telephonically.

4. BID TIMETABLE

This timetable is provided as an indication of the timing of the tender process. It is indicative only and subject to change by the DBSA. Bidders are to provide proposals that will allow achievement of the intended commencement date.

Activity	Date
Advertisement of tender	04 /10 / 2022
RFP document available	04 /10 / 2022
Closing date for tender enquiries	19 / 10 / 2022 by 17:00 (SA Time)
Link requests	21/ 10 / 2022 by 17:00 (SA time)
Closing date and time	28 / 10 / 2022 at 23h55 (SA Time)
Intended completion of evaluation of tenders	04/ 11 / 2022
Intended formal notification of successful Bidder(s)	02/ 12 /2022
Signing of Service Level Agreement	15/ 12/ 2022
Effective date	03/ 01/ 2023

5. SUBMISSION OF TENDERS

COMPULSORY BRIEFING: **11 October 2022** - Tender briefing will be done online via Microsoft teams.

LINK: [Click here to join the meeting](#)

Time: 12H00 Johannesburg time (**Microsoft Teams**)

LINK REQUESTS: Bidders are asked to nominate one dedicated contact person (name, email address and phone number). The nomination shall be sent to the Tender Officer via email lihleSCM@dbsa.org by latest on **21 October 2022 at 17:00** prior to expiry of the deadline for submission.

CLOSING DATE: **28 October 2022**

CLOSING TIME: 23H55

6. RULES GOVERNING THIS RFP AND THE TENDERING PROCESS

- 6.1 Participation in the tender process is subject to compliance with the rules contained in this RFP Part C.
- 6.2 All persons (whether a participant in this tender process or not) having obtained or received this RFP may only use it, and the information contained herein, in compliance with the rules contained in this RFP.
- 6.3 All Bidders are deemed to accept the rules contained in this RFP Part C.
- 6.4 The rules contained in this RFP Part C apply to:
 - 6.4.1 The RFP and any other information given, received or made available in connection with this RFP, and any revisions or annexure;
 - 6.4.2 the Tendering Process; and
 - 6.4.3 any communications (including any briefings, presentations, meetings and negotiations) relating to the RFP or the Tendering Process.

7. STATUS OF REQUEST FOR PROPOSAL

- 7.1 This RFP is an invitation for person(s) to submit a proposal(s) for the provision of the services as set out in the Specification contained in this RFP. Accordingly, this RFP must not be construed, interpreted, or relied upon, whether expressly or implicitly, as an offer capable of acceptance by any person(s), or as creating any form of contractual, promissory or other rights. No binding contract or other understanding for the supply of services will exist between the DBSA and any Bidder unless and until the DBSA has executed a formal written contract with the successful Bidder.

8. ACCURACY OF REQUEST FOR PROPOSAL

- 8.1 Whilst all due care has been taken in connection with the preparation of this RFP, the DBSA makes no representations or warranties that the content in this RFP or any information communicated to or provided to Bidders during the Tendering Process is, or will be, accurate, current, or complete. The DBSA, and its officers, employees and advisors will not be liable with respect to any information communicated which is not accurate, current, or complete.
- 8.2 If a Bidder finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this RFP or any other information provided by the DBSA (other than minor clerical matters), the Bidder must promptly notify the DBSA in writing of such discrepancy, ambiguity, error, or inconsistency in order to afford the DBSA an opportunity to consider what corrective action is necessary (if any).
- 8.3 Any actual discrepancy, ambiguity, error or inconsistency in this RFP or any other information provided by the DBSA will, if possible, be corrected and provided to all Bidders without attribution to the Bidder who provided the written notice.

9. ADDITIONS AND AMENDMENTS TO THE RFP

- 9.1 The DBSA reserves the right to change any information in, or to issue any addendum to this RFP before the Closing Time. The DBSA and its officers, employees and advisors will not be liable in connection with either the exercise of, or failure to exercise this right.
- 9.2 If the DBSA exercises its right to change information in terms of clause 9.1, it may seek amended Tenders from all Bidders.

10. REPRESENTATIONS

No representations made by or on behalf of the DBSA in relation to this RFP will be binding on the DBSA unless that representation is expressly incorporated into the contract ultimately entered between the DBSA and the successful Bidder.

11. CONFIDENTIALITY

- 11.1 All persons (including all Bidders) obtaining or receiving this RFP and any other information in connection with this RFP or the Tendering Process must keep the contents of the RFP and other such information confidential, and not disclose or use the information except as required for the purpose of developing a proposal in response to this RFP.

12. REQUESTS FOR CLARIFICATION OR FURTHER INFORMATION

- 12.1 All communications relating to this RFP and the Tendering Process must be directed to the Tender Officer.
- 12.2 All questions or requests for further information or clarification of this RFP or any other document issued in connection with the Tendering Process must be submitted to the Tender Officer in writing, and most preferably by e-mail to lihleSCM@dbsa.org
- 12.3 Any communication by a Bidder to the DBSA will be effective upon receipt by the Tender Officer (provided such communication is in the required format).
- 12.4 The DBSA has restricted the period during which it will accept questions or requests for further information or clarification and reserves the right not to respond to any enquiry or request, irrespective of when such enquiry or request is received.
- 12.5 Except where the DBSA is of the opinion that issues raised apply only to an individual Bidder, questions submitted and answers provided will be made available to all Bidders by e-mail, or on the DBSA's website without identifying the person or organisation which submitted the question.
- 12.6 In all other instances, the DBSA may directly provide any written notification or response to a Bidder by email to the address of the Bidder (as notified by the Bidder to the Tender Manager).
- 12.7 A Bidder may, by notifying the Tender Officer in writing, withdraw a question submitted in accordance with clause 12, in circumstances where the Bidder does not wish the DBSA to publish its response to the question to all Bidders.

13. UNAUTHORISED COMMUNICATIONS

- 13.1 Communications (including promotional or advertising activities) with staff of the DBSA or their advisors assisting with the Tendering Process are not permitted during the Tendering Process, or otherwise with the prior consent of the Tender Officer. Nothing in this clause 13 is intended to prevent communications with staff of, or advisors to, the DBSA to the extent that such communications do not relate to this RFP or the Tendering Process.
- 13.2 Bidders must not otherwise engage in any activities that may be perceived as, or that may have the effect of, influencing the outcomes of the Tendering Process in any way.

14. IMPROPER ASSISTANCE, FRAUD AND CORRUPTION

- 14.1 Bidders may not seek or obtain the assistance of employees of the DBSA in the preparation of their tender responses.
- 14.2 The DBSA may in its absolute discretion, immediately disqualify a Bidder that it believes has sought or obtained such improper assistance.
- 14.3 Bidders are to be familiar with the implications of contravening the Prevention and Combating of Corrupt Activities Act, 2004 and any other relevant legislation.

15. ANTI-COMPETITIVE CONDUCT

- 15.1 Bidders and their respective officers, employees, agents, and advisors must not engage in any collusion, anti-competitive conduct, or any other similar conduct in respect of this Tendering Process with any other Bidder or any other person(s) in relation to:
- 15.1.1 the preparation or lodgement of their Bid
 - 15.1.2 the evaluation and clarification of their Bid; and
 - 15.1.3 the conduct of negotiations with the DBSA.
- 15.2 For the purposes of this clause 15, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange, and clarification of information whether or not such information is confidential to the DBSA or any other Bidder or any other person or organisation.
- 15.3 In addition to any other remedies available to it under law or contract, the DBSA may, in its absolute discretion, immediately disqualify a Bidder that it believes has engaged in any collusive, anti-competitive conduct or any other similar conduct during or before the Tendering Process.

16. COMPLAINTS ABOUT THE TENDERING PROCESS

- 16.1 Any complaint about the RFP or the Tendering Process must be submitted to the Supply Chain Management Unit in writing, by email, immediately upon the cause of the complaint arising or becoming known to the Bidder, (tenders@dbsa.org)
- 16.2 The written complaint must set out:
- 16.2.1 the basis for the complaint, specifying the issues involved;
 - 16.2.2 how the subject of the complaint affects the organisation or person making the complaint;
 - 16.2.3 any relevant background information; and
 - 16.2.4 the outcome desired by the person or organisation making the complaint.
- 16.3 If the matter relates to the conduct of an employee of the DBSA, the complaint should be addressed in writing marked for the attention of the Chief Executive Officer of the DBSA, and delivered to the physical address of the DBSA, as notified.

17. CONFLICT OF INTEREST

- 17.1 A Bidder must not, and must ensure that its officers, employees, agents, and advisors do not place themselves in a position that may give rise to actual, potential, or perceived conflict of interest between the interests of the DBSA and the Bidder's interests during the Tender Process.
- 17.2 The Bidder is required to provide details of any interests, relationships or clients which may or do give rise to a conflict of interest in relation to the supply of the services under any contract that may result from this RFP. If the Bidder submits its Bid and a subsequent conflict of interest arises, or is likely to arise, which was not disclosed in the Bid, the Bidder must notify the DBSA immediately in writing of that conflict.
- 17.3 The DBSA may immediately disqualify a Bidder from the Tendering Process if the Bidder fails to notify the DBSA of the conflict as required.

18. LATE BIDS

- 18.1 Bids must be delivered by the Closing Time. The Closing Time may be extended by the DBSA in its absolute discretion by providing written notice to Bidders.
- 18.2 Bids delivered after the Closing Time or lodged at a location or in a manner that is contrary to that specified in this RFP will be disqualified from the Tendering Process and will be ineligible for consideration. However, a late Bid may be accepted where the Bidder can clearly demonstrate (to the satisfaction of the DBSA, in its sole discretion) that late lodgement of the Bid was caused by the DBSA; that access was denied or hindered in relation to the physical tender box or online; or that a major/critical incident hindered the delivery of the Bid and, in all cases, that the integrity of the Tendering Process will not be compromised by accepting a Bid after the Closing Time.
- 18.3 The determination of the DBSA as to the actual time that a Bid is lodged is final. Subject to clause 18.2, all Bids lodged after the Closing Time will be recorded by the DBSA and will only be opened for the purposes of identifying a business name and address of the Bidder. The DBSA will inform a Bidder whose Bid was lodged after the Closing Time of its ineligibility for consideration. The general operating practice is for the late Bid to be returned within 5 (five) working days of receipt or within 5 (five) working days after determination not to accept a late Bid.

19. BIDDER'S RESPONSIBILITIES

- 19.1 Bidders are responsible for:
- 19.1.1 examining this RFP and any documents referenced or attached to this RFP and any other information made or to be made available by the DBSA to Bidders in connection with this RFP;
 - 19.1.2 fully informing themselves in relation to all matters arising from this RFP, including all matters regarding the DBSA's requirements for the provision of the Services;
 - 19.1.3 ensuring that their Bids are accurate and complete;
 - 19.1.4 making their own enquiries and assessing all risks regarding this RFP, and fully considering and incorporating the impact of any known and unknown risks into their Bid;
 - 19.1.5 ensuring that they comply with all applicable laws in regard to the Tendering Process particularly as specified by National Treasury Regulations, Guidelines, Instruction Notes and Practice Notes and other relevant legislation as published from time to time in the Government Gazette; and
 - 19.1.6 submitting all Compulsory Documents.
- 19.2 South African bidders with annual total revenue of ZAR10 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the B-BBEE Act must submit a certificate issued by a registered, independent auditor (who or which is not the Bidder or a part of the Bidder) or an accredited verification agency.
- 19.3 South African bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy, or a sworn affidavit thereof, substantiating their B-BBEE status. The submission of such certificates must comply with the requirements

of instructions and guidelines issued by National Treasury and be in accordance with the applicable notices published by the Department of Trade and Industry in the Government Gazette.

- 19.4 The DBSA reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the DBSA.
- 19.5 Failure to provide the required information may result in disqualification of the Bidder.

20. PREPARATION OF BIDS

20.1 Bidders must ensure that:

- 20.1.1 their Bid is submitted in the required format as stipulated in this RFP; and
- 20.1.2 all the required information fields in the Bid are completed in full and contain the information requested by the DBSA.

20.2 The DBSA may in its absolute discretion reject a Bid that does not include the information requested or is not in the format required.

20.3 Unnecessarily elaborate responses or other representations beyond that which is sufficient to present a complete and effective tender proposal are not desired or required. Elaborate and expensive visual and other presentation aids are not necessary.

20.4 Where the Bidder is unwilling to accept a specified condition, the non-acceptance must be clearly and expressly stated. Prominence must be given to the statement detailing the non-acceptance. It is not sufficient that the statement appears only as part of an attachment to the Bid or be included in a general statement of the Bidders usual operating conditions.

20.5 An incomplete Bid may be disqualified or assessed solely on the information completed or received with the Bid.

21. ILLEGIBLE CONTENT, ALTERATION AND ERASURES

21.1 Incomplete Bids may be disqualified or evaluated solely on information contained in the Bid.

21.2 The DBSA may disregard any content in a Tender that is illegible and will be under no obligation whatsoever to seek clarification from the Bidder.

21.3 The DBSA may permit a Bidder to correct an unintentional error in its Bid where that error becomes known or apparent after the Closing Time, but in no event will any correction be permitted if the DBSA reasonably considers that the correction would materially alter the substance of the Bid or effect the fairness of the Tendering Process.

22. OBLIGATION TO NOTIFY ERRORS

If, after a Bidder's Response has been submitted, the Bidder becomes aware of an error in the Bidders Response (including an error in pricing but excluding clerical errors which would have no bearing on the evaluation of the Bid), the Bidder must promptly notify the DBSA of such error.

23. RESPONSIBILITY FOR BIDDING COSTS

- 23.1 The Bidders participation or involvement in any stage of the Tendering Process is at the Bidders sole risk, cost and expense. The DBSA will not be held responsible for, or pay for, any expense or loss that may be incurred by Bidders in relation to the preparation or lodgement of their Bid.
- 23.2 The DBSA is not liable to the Bidder for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Bidders participation in the Tendering Process, including without limitation, instances where:
- 23.2.1 the Bidder is not engaged to perform under any contract; or
 - 23.2.2 the DBSA exercises any right under this RFP or at law.

24. DISCLOSURE OF BID CONTENTS AND BID INFORMATION

- 24.1 All Bids received by the DBSA will be treated as confidential. The DBSA will not disclose contents of any Bid and Bid information, except:
- 24.1.1 as required by law;
 - 24.1.2 for the purpose of investigations by other government authorities having relevant jurisdiction;
 - 24.1.3 to external consultants and advisors of the DBSA engaged to assist with the Tendering Process; or for the general information of Bidders required to be disclosed as per National Treasury Regulations, Guidelines, Instruction Notes or Practice Notes.

25. USE OF BIDS

- 25.1 Upon submission in accordance with the requirements relating to the submission of Bids, all Bids submitted become the property of the DBSA. Bidders will retain all ownership rights in any intellectual property contained in the Bids.
- 25.2 Each Bidder, by submission of their Bid, is deemed to have licensed the DBSA to reproduce the whole, or any portion, of their Bid for the sole purposes of enabling the DBSA to evaluate the Bid.

26. BID ACCEPTANCE

All Bids received must remain open for acceptance for a minimum period of 120 (One Hundred and Twenty) days from the Closing Time. This period may be extended by written mutual agreement between the DBSA and the Bidder.

27. EVALUATION PROCESS

- 27.1 The Bids will be evaluated and adjudicated as follows:

27.1.1 First Stage – Test for administrative Responsiveness

The test for administrative responsiveness will include the following:

Stage 1: Responsiveness

The Tenderer should be able to provide all the relevant information required in the Supplier Information Form (SIF) which will include but not limited to;

A. Tenderers who do not adhere to those criteria listed a PRE-QUALIFIER, will be disqualified immediately.

Responsiveness Criteria		Prequalifying Criteria	Applicable to this Tender (Y/N)
1	Adherence to submitting Tender as a two-folder tender. Folder 1: Functionality and returnable submission separate from Folder 2: Pricing proposal submission	Pre-Qualifier	Y
2	Attendance Register of the Compulsory Briefing Session attended by the Tenderer.	Pre-Qualifier	Y
3	In terms of the DBSA Transformation Imperative Targets, the DBSA will consider companies that are EME's and QSE's with a minimum B-BBEE status of Level 2 who will contribute to meaningful B-BBEE initiatives as part of the tender process	Pre-Qualifier	N
4	The successful Tenderer, if not itself an EME or QSE with a minimum B-BBEE status level 2, as per Section 4(1)(a) and (b) of the PPR 2017, must subcontract a minimum of 30% of the value of the contract to the following category referred to in Section 4(1)(c) of the PPR 2017: (i). an EME or QSE which is at least 51% owned by black people.	Pre-Qualifier	N

B. Tenderers who do not adhere to the indicated response time for clarifications requested by the Employer will be deemed to be non-responsive and their submissions will not be evaluated further.

Responsiveness Criteria		Clarification Time	Applicable to this Tender (Y/N)
1	Standard conditions of tender as required.	48 hours	Y
2	Returnable documents completed and signed.	48 hours	Y
3	Submission of Proof of Registration with National Treasury Central Supplier Database (CSD) Summary Report or A Valid and Active Tax Compliance Status Pin issued by SARS for Tax Compliance Status Verification: N.B - Bidder must be fully registered & tax compliant to do business with the DBSA.	7 Working days	N

Only those Bidders which satisfy all the Pre-Qualifying Criteria of the First Stage will be eligible to participate in the Tendering Process further. Bids which do not satisfy all the Pre-Qualifying Criteria of the First Stage will not be evaluated further.

27.1.2 Second Stage – Functional criteria

27.1.1 Only those Bidders which score **[70]** points or higher (out of a possible 100) during the functional evaluation of the Second Stage will be evaluated further. Bidders are required to submit supporting documentation evidencing their compliance with each requirement, where applicable.

Bidders will be assessed on the functional criteria (Second Stage) as set out in this RFP. Only those Bidders which comply with the eligibility criteria will proceed to the Third Stage.

27.1.2 Third Stage – price

27.1.2.1 Those Bidders which have passed the First Stage (Responsiveness Test) and Second Stage (Functional Evaluation) of the tender process will be eligible to be evaluated on the Third Stage, based on price.

27.1.2.2 The recommended preferred Bidder may be the Bidder with the lowest overall price in the Third Stage of the Bid evaluation, unless the DBSA exercises its right to cancel the RFP, in line with the PPPFA Regulations.

27.2 NB: Bidders are required to submit, as Annexure J to their Bids, any documentation which supports the responses provided in respect of the Eligibility Criteria below.

27.3 **First Stage: Pre-Qualifying Criteria**

Only those Bidders which satisfy all the Pre-Qualifying Criteria will be eligible to participate in the Tendering Process further. Bids which do not satisfy all the Pre-Qualifying Criteria will not be evaluated further. Please refer to the table above

Note: A tender that fails to meet any Pre-Qualifying Criteria stipulated herein in the tender documents is an unacceptable tender. Please refer to the table above

27.4 **Second Stage: Functional Criteria**

The technical proposal will be evaluated according to the following criteria and scoring system. The technical score will be calculated out of 100 points, and only those bids that achieve a threshold of **70** points for the technical proposal will move to the next level of evaluation where a score for price and BBEE.

27.5 A minimum of **70 points out of a 100** for the functional evaluation will qualify the Bid to move on to the Third Stage of evaluation, which is price and preferential point's evaluation. Bidders that do not score **70** points or higher at this stage of the evaluation will not be evaluated during the Third Stage of the evaluation.

27.6 **Third Stage: Price**

27.6.1 the Third Stage of evaluation of the Bids will be in respect of price only.

28. **STATUS OF BID**

28.1 Each Bid constitutes an irrevocable offer by the Bidder to the DBSA to provide the Services required and otherwise to satisfy the requirements of the Specification as set out in this RFP.

28.2 A Bid must not be conditional on:

- 28.2.1 the Board approval of the Bidder or any related governing body of the Bidder being obtained;
- 28.2.2 the Bidder conducting due diligence or any other form of enquiry or investigation;
- 28.2.3 the Bidder (or any other party) obtaining any regulatory approval or consent;
- 28.2.4 the Bidder obtaining the consent or approval of any third party; or
- 28.2.5 the Bidder stating that it wishes to discuss or negotiate any commercial terms of the contract.

28.3 The DBSA may, in its absolute discretion, disregard any Bid that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other relevant conditions).

28.4 The DBSA reserves the right to accept a Bid in part or in whole or to negotiate with a Bidder in accordance with the provisions of this RFP and the applicable laws and regulations.

29. **CLARIFICATION OF BIDS**

29.1 The DBSA may seek clarification from and enter into discussions with any or all of the Bidders in relation to their Bid. The DBSA may use the information obtained when

clarification is sought or discussions are had in interpreting the Bid and evaluating the cost and risk of accepting the Bid. Failure to supply clarification to the satisfaction of the DBSA may render the Bid liable to disqualification.

- 29.2 The DBSA is under no obligation to seek clarification of anything in a Bid and reserves the right to disregard any clarification that the DBSA considers to be unsolicited or otherwise impermissible or irrelevant in accordance with the rules set out in this RFP.

30. DISCUSSION WITH BIDDERS

- 30.1 The DBSA may elect to engage in detailed discussions with any one or more Bidder(s), with a view to maximising the benefits of this RFP as measured against the evaluation criteria and in fully understanding a Bidder's offer.
- 30.2 As part of the evaluation of this Bid, DBSA will invite Bidders to give a presentation to the DBSA in relation to their submissions.
- 30.3 The DBSA is under no obligation to undertake discussions with any Bidders.
- 30.4 In addition to presentations and discussions, the DBSA may request some or all Bidders to:
- 30.4.1 conduct a site visit, if applicable;
 - 30.4.2 provide references or additional information; and/or
 - 30.4.3 make themselves available for panel interviews.

31. SUCCESSFUL BIDS

- 31.1 Selection as a successful Bidder does not give rise to a contract (express or implied) between the successful Bidder and the DBSA for the supply of the Services. No legal relationship will exist between the DBSA and a successful Bidder for the supply of the Services until such time as a binding contract is executed by them.
- 31.2 The DBSA may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Bidder.
- 31.3 A Bidder is bound by its Bid and all other documents forming part of the Bidder's Response and, if selected as a successful Bidder, must enter into a contract on the basis of the Bid with or without further negotiation.

32. NO OBLIGATION TO ENTER INTO CONTRACT

- 32.1 The DBSA is under no obligation to appoint a successful Bidder or Bidders (as the case may be), or to enter into a contract with a successful Bidder or any other person, if it is unable to identify a Bid that complies in all relevant respects with the requirements of the DBSA, or if due to changed circumstances, there is no longer a need for the Services requested, or if funds are no longer available to cover the total envisaged expenditure. For the avoidance of any doubt, in these circumstances the DBSA will be free to proceed via any alternative process.
- 32.2 The DBSA may conduct a debriefing session for all Bidders (successful and unsuccessful). Attendance at such debriefing session is optional.

33. BIDDER WARRANTIES

33.1 By submitting a Bid, a Bidder warrants that:

- 33.1.1 it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of the DBSA, its officers, employees, or advisers other than any statement, warranty or representation expressly contained in the RFP;
- 33.1.2 it did not use the improper assistance of DBSA's employees or information unlawfully obtained from them in compiling its Bid;
- 33.1.3 it is responsible for all costs and expenses related to the preparation and lodgement of its Bid, any subsequent negotiation, and any future process connected with or relating to the Tendering Process;
- 33.1.4 it accepts and will comply with the terms set out in this RFP; and
- 33.1.5 it will provide additional information in a timely manner as requested by the DBSA to clarify any matters contained in the Bid.

34. DBSA'S RIGHTS

34.1 Notwithstanding anything else in this RFP, and without limiting its rights at law or otherwise, the DBSA reserves the right, in its absolute discretion at any time, to:

- 34.1.1 cease to proceed with, or suspend the Tendering Process prior to the execution of a formal written contract;
- 34.1.2 alter the structure and/or the timing of this RFP or the Tendering Process;
- 34.1.3 vary or extend any time or date specified in this RFP
- 34.1.4 terminate the participation of any Bidder or any other person in the Tendering Process;
- 34.1.5 require additional information or clarification from any Bidder or any other person;
- 34.1.6 provide additional information or clarification;
- 34.1.7 negotiate with any one or more Bidder;
- 34.1.8 call for new Bid;
- 34.1.9 reject any Bid received after the Closing Time; or
- 34.1.10 reject any Bid that does not comply with the requirements of this RFP.

35. GOVERNING LAWS

35.1 This RFP and the Tendering Process are governed by the laws of the Republic of South Africa.

35.2 Each Bidder must comply with all relevant laws in preparing and lodging its Bid and in taking part in the Tendering Process.

35.3 All Bids must be completed using the English language and all costing must be in United States Dollar (USD).

36. MANDATORY QUESTIONS

36.1 Bidders shall provide full and accurate answers to all (including mandatory) questions posed in this document and are required to explicitly state "Comply/Accept" or "Do not comply/Do not accept" (with a √ or an X) regarding compliance with the requirements. Where necessary, the Bidders shall substantiate their response to a specific question.

NOTE: It is mandatory for Bidders to complete or answer this part fully; failure to do so result the Bid being treated as incomplete and the Bid may be disqualified.

36.1.1

This Bid is subject to the General Conditions of Contract stipulated in this RFP document.	Comply/Accept	Do not comply/Do not accept

36.1.2

The laws of the Republic of South Africa shall govern this RFP and the Bidders hereby accept that the courts of the Republic of South Africa shall have the jurisdiction.	Comply/Accept	Do not comply/Do not accept

36.1.3

The DBSA shall not be liable for any costs incurred by the Bidder in the preparation of response to this RFP. The preparation of response shall be made without obligation to acquire any of the items included in any Bidder's proposal or to select any proposal, or to discuss the reasons why such vendor's or any other proposal was accepted or rejected.	Comply/Accept	Do not comply/Do not accept

36.1.4

The DBSA may request written clarification or further information regarding any aspect of this proposal. The Bidders must supply the requested information in writing within two working days after the request has been made, otherwise the proposal may be disqualified.	Comply/Accept	Do not comply/Do not accept

36.1.5

In the case of Consortium, Joint Venture or subcontractors, Bidders are required to provide copies	Comply/Accept	Do not comply/Do not accept

of signed agreements stipulating the work split and USD value.		
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36.1.6

In the case of Consortium, Joint Venture or subcontractors, all Bidders are required to provide mandatory documents as stipulated in Part C: Checklist of Compulsory Returnable Schedules and Documents of the Tender Document.	Comply/Accept	Do not comply/Do not accept

36.1.7

The DBSA reserves the right to; cancel or reject any proposal and not to award the proposal to the lowest Bidder or award parts of the proposal to different Bidders, or not to award the proposal at all.	Comply/Accept	Do not comply/Do not accept

36.1.8

By submitting a proposal in response to this RFP, the Bidders accept the evaluation criteria as it stands.	Comply/Accept	Do not comply/Do not accept

36.1.9

Where applicable, the DBSA reserves the right to run benchmarks on the requirements equipment during the evaluation and after the evaluation.	Comply/Accept	Do not comply/Do not accept

36.1.10

The DBSA reserves the right to conduct a pre-award survey during the source selection process to evaluate contractors' capabilities to meet the requirements specified in the RFP and supporting documents.	Comply/Accept	Do not comply/Do not accept

36.1.11

Only the proposal as submitted on the closing date shall be considered. No Bids for future bids shall be accepted.	Comply/Accept	Do not comply/Do not accept
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36.1.12

The Bidder should not qualify the proposal with own conditions. Caution: If the Bidder does not specifically withdraw its own conditions of proposal when called upon to do so, the proposal response shall be declared invalid.	Comply/Accept	Do not comply/Do not accept

36.1.13

Delivery of and acceptance of correspondence between the DBSA and the Bidder sent by prepaid registered post (by air mail if appropriate) in a correctly addressed envelope to either party's postal address or address for service of legal documents shall be deemed to have been received and accepted after (2) two days from the date of postage to the South African Post Office Ltd.	Comply/Accept	Do not comply/Do not accept

36.1.14

Should the parties at any time before and/or after the award of the proposal and prior to, and-or after conclusion of the contract fail to agree on any significant product price or service price adjustments, change in technical specification, change in services, etc. The DBSA shall be entitled within 14 (fourteen) days of such failure to agree, to recall the letter of award and cancel the proposal by giving the Bidder not less than 90 (ninety) days written notice of such cancellation, in which event all fees on which the parties failed to agree increases or decreases shall, for the duration of such notice period, remain fixed on those fee/price applicable prior to the negotiations. Such cancellation shall mean that the DBSA reserves the right to award the same proposal to next best Bidders as it deems fit.	Comply/Accept	Do not comply/Do not accept

36.1.15

In the case of a consortium or JV, each of the authorised enterprise's members and/or partners of the different enterprises must co-sign this document.	Comply/Accept	Do not comply/Do not accept
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36.1.16

Any amendment or change of any nature made to this RFP shall only be of force and effect if it is in writing, signed by the DBSA signatory and added to this RFP as an addendum.	Comply/Accept	Do not comply/Do not accept

36.1.17

Failure or neglect by either party to (at any time) enforce any of the provisions of this proposal shall not, in any manner, be construed to be a waiver of any of that party's right in that regard and in terms of this proposal. Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this proposal, or prejudice the right of that party to institute subsequent action.	Comply/Accept	Do not comply/Do not accept

36.1.18

Bidders who make use of subcontractors:	Comply/Accept	Do not comply/Do not accept
1. It is the responsibility of the Bidder to select competent subcontractors that meet all the tender requirements stipulated in this tender document.		
2. The Bidder shall be responsible for all due diligence of the selected subcontractors and will be held liable for any non-performance of the subcontractor.		
3. Bidders are required to provide documentation (such as BBBEE Certificate/Sworn Affidavit, Valid or Active Tax Compliance Status Pin Issued by SARS, CSD Summary Report, Valid or Active CIDB Certificate etc.) for the relevant subcontractor as a minimum in support of the subcontracting arrangement.		
4. Subcontracting must not contradict any Regulation or Legislation		
5. No separate contract shall be entered into between the DBSA and any such subcontractors. Copies of the signed agreements between the relevant parties must be attached to the proposal responses.		

36.1.19

All services supplied in accordance with this proposal must be certified to all legal requirements as per the South African law.	Comply/Accept	Do not comply/Do not accept

36.1.20

No interest shall be payable on accounts due to the successful Bidder in an event of a dispute arising on any stipulation in the contract.	Comply/Accept	Do not comply/Do not accept

36.1.21

Evaluation of Bids shall be performed by an evaluation panel established by the DBSA. Bids shall be evaluated on the basis of conformance to the required specifications (functionality) as outlined in the RFP.	Comply/Accept	Do not comply/Do not accept

36.1.22

If the successful Bidder disregards contractual specifications, this action may result in the termination of the contract.	Comply/Accept	Do not comply/Do not accept

36.1.23

The Bidders' response to this Bid, or parts of the response, shall be included as a whole or by reference in the final contract.	Comply/Accept	Do not comply/Do not accept

36.1.24

Should the evaluation of this Bid not be completed within the validity period of the Bid, the DBSA has discretion to extend the validity period.	Comply/Accept	Do not comply/Do not accept

36.1.25

Upon receipt of the request to extend the validity period of the Bid, the Bidder must respond within the required time frames and in writing on whether or not he agrees to hold his original Bid response valid under the same terms and conditions for a further period.	Comply/Accept	Do not comply/Do not accept

36.1.26

Should the Bidder change any wording or phrase in this document, the Bid shall be evaluated as though no change has been effected and the original wording or phrasing shall be used.	Comply/Accept	Do not comply/Do not accept

36.1.27

Tax Compliance Status either on CSD National Treasury Database or SARS eFiling System as a Condition for Appointment/Award of the Bid. This requirement is mandatory and has to be satisfied by the successful bidder. The successful bidder must be tax compliant prior to appointment/award of the bid as no bid will be awarded to persons who are not tax compliant.	Comply/Accept	Do not comply/Do not accept

36.1.28

The following will be grounds for disqualification: Unsatisfactory performance under a previous public contract in the past 5 years, provided that	Comply/Accept	Do not comply/Do not accept

notice of such unsatisfactory performance has been given to the bidder; and/or • The bidder or any of its directors have committed a corrupt or fraudulent act in competing for the appointment; and/or • The bidder or any of its directors have been convicted of fraud or corruption in the last 5 years; and/or • The bidder or any of its directors have been listed in the Register for Tender Defaulters under section 9 of the Prevention and Combating of Corrupt Activities Act; and/or • Bids received after the stipulated closure time will be immediately disqualified; and/or • Bidders whom have recently completed or currently performing, or to commence work on specific categories of services may be excluded to enable the Bank manage its concentration risk. This threshold is currently set at R10 million for consultancy services.		
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Signature(s) of Bidder or assignee(s)

Date

Name of signing person (in block letters)

Capacity

Are you duly authorized to sign this Bid?

Name of Bidder (in block letters)

Postal address (in block letters)

Domicilium citandi et executandi in the RSA (full street address of this place) (in block letters)

.....

.....

.....

Telephone Number:.....FAX number.....

Mobile Number:

Email Address.....

PART E

TERMS OF REFERENCE & PROJECT BRIEF

1. TRANSACTION ADVISORY SERVICES FOR THE FEASIBILITY STUDY AND PROCUREMENT (IF APPLICABLE) OF THE REHABILITATION AND EXTENSION OF LA NICOLIÈRE WATER TREATMENT PLANT IN ACCORDANCE WITH THE BUILD OPERATE TRANSFER PROJECTS ACT, 2016 AND APPLICABLE LEGISLATION

Introduction

The Government of Mauritius (GOM) has identified the need to rehabilitate and extend La Nicolière Water Treatment Plant (hereinafter referred to as the “Project”). GOM through the Central Water Authority (CWA) wishes to test the feasibility of implementing this Project as a Build, Operate and Transfer (BOT) in accordance with the *Build Operate Transfer Projects Act 2016*. The BOT Projects Unit will be responsible for assessing the Project. The BOT Projects Unit registered the above Project as a BOT project bearing reference number BOT/2019/1006.

A “BOT Project” means a project based on the granting of rights, under a BOT Agreement, to a Private Party, to build, set up, own, operate, rent, lease, finance, modernise, manage, maintain or develop, and to transfer the undertaking in accordance with the BOT Agreement and includes any agreement which may provide for a project based on BOO (Build, Own and Operate), BOOT (Build, Own, Operate and Transfer), DBFOT (Design, Build, Finance, Operate and Transfer) or MOT (Modernise, Own/Operate and Transfer) models.

All information with respect to the *BOT Projects Act 2016*, and Circulars related thereto, are all available on the BOT Projects Unit website: <http://bot.govmu.org> or from the BOT Projects Unit.

The CWA thus intends to procure the services of a Transaction Advisor with proven experience to assist it through the regulated phases of the BOT project cycle for the above Project. Potential Transaction Advisors are required to be familiar with the *Build Operate Transfer Projects Act 2016*, the subsequent amendments thereto.

These Terms of Reference invite proposals from a Transaction Advisor representing a team of suitably qualified and experienced financial, technical, and legal advisors to assist the CWA with the following scope of work:

Stage 1: Undertake a comprehensive Feasibility Study to establish and quantify the feasibility of the Project; and

Stage 2: Subject to Government decision to proceed, provide advisory services in the procurement of an appropriate bidder to deliver the Project, including its marketing.

To undertake the above scope of work, the Transaction Advisor is required to submit a single bid, in the format prescribed in these Terms of Reference.

NB: ‘Transaction Advisor’ refers to the entire advisory team, or relevant members (including but not limited to financial, legal, technical, project management and environmental advisors), under the management of a single lead advisor who shall contract with the CWA.

Background

The Central Water Authority (CWA) was established under the provisions of the Central Water Authority Act No. 20 of 1971, which came into effect in July 1971 by Proclamation No. 9 of 1971. The Principal Act has subsequently been amended by Act No. 26 of 1975, Act No. 39 of 1982, Act No.4 of 1985, Act No.31 of 1989 and Act No. 27 of 2000.

The CWA operates under the aegis of the Ministry of Energy and Public Utilities.

The CWA is responsible for the control, development and conservation of Water Resources and the Treatment and Distribution of water to domestic, industrial, and commercial purposes throughout Mauritius. Since the Water Resources Unit took over the responsibility of water resources administration, the CWA is now mainly responsible for the treatment and distribution of potable water for domestic, commercial, and industrial usage.

Needs

The existing Water Treatment Plant of La Nicolière has a nominal design capacity of 66,000 m³/day. However, due to the actual water demand of the consumers, the production capacity tends to be higher but with a poor treatment quality. The average normal daily production is about 75,000 m³/day on a 24-hour basis.

The existing Water Treatment Plant was commissioned in August 2002. Allowance was made for the possibility of extending the capacity of the Plant to 100,000 m³/day at a later stage, as recommended in the CWA Master Plan of January 2007. According to the actual production, the extension is now required.

The CWA appointed a consultant in the year 2016, to prepare the Feasibility Study (FS) and the Detailed Design (DD) for the Rehabilitation and Extension of la Nicoliere Treatment Plant and Associated Works and Concept Design of Rehabilitation Works. The FS and DD prepared by this Consultant are available for consultation at the CWA and will be granted to the preferred bidder upon appointment.

Objectives

Since several years ago, the treatment plant faces different kinds of difficulties, namely:

- Eutrophication of the dam reservoir in Summer: The algae are not treated and are found in the filtration tanks.
- No more chemicals are added to water except chlorine at the end of the treatment, in absence of a sedimentation stage.
- The sludge treatment was not in operation for a long time. In addition, the sludge treatment has a capacity deficiency to accept the total volume in the inlet buffer tank which tends to overflow quite often to the river.
- Gate valves on backwash lines are leaking heavily.
- The neutralisation tower experiences leaks and is therefore out of order.
- The chlorine injection is not regulated automatically.
- The SCADA is no longer operational on the existing equipment.
- The capacity of the clean water tank has been proven to be insufficient in relation with the downstream works.

Consequently, the Central Water Authority (CWA) decided to refurbish and upgrade the Project to solve the problems faced with the water quality and to be able to distribute drinking water of good quality at any period of the year.

The CWA expects to meet, among others, the following objectives by implementation of this Project:

- Extension of production capacity to 100,000 m³/day of treated water.
- Addressing and fixing the problems of algae and the associated potential toxins.
- Rehabilitation of the existing treatment facilities, including a proper disinfection of water using Sodium Hypochlorite which shall be generated on site instead of the current method of using Liquid Chlorine, if same is found to be feasible.

In addition, an extension/refurbishment of the sludge treatment is expected, including the dosing chemicals and drying beds.

Background Documentation and Preparatory Work

The Transaction Advisor will have to become familiar with all background documentation and preparatory work conducted to date by GOM and other Agencies in connection with or relating to this Project. GOM, through its implementation agency, the CWA, has identified the following challenges that it faces in pursuing the Project:

- This is the first potable water treatment project which is proposed to be implemented on a BOT roadmap.
- The issue of Toxic algae is to be addressed in this project.
- Clear procedures and methods will have to be adopted to comply with the environmental and social impacts requirements of this Sub-Clause and the Environment Protection Act 2002 as amended in 2008.

- The Works are to be built whilst maintaining the full operation of the existing works and treatment is to be transferred over to the new works in a controlled manner. The uninterrupted continuous water supply of the present average flow rate of 75,000 m³/day is to be ensured for the consumers during the refurbishment / extension works. A meticulous phasing task is therefore compulsory to comply with this obligation.
- During the works implementation, provision for the continuous access to the existing Water Treatment Works by the CWA O&M staff for the operation of the existing facilities is to be catered for.
- The equipment offered meets all relevant local and statutory requirements and where these are not sufficient, WHO and British or International Organization for Standardization (ISO).
- Attention is drawn to the requirements under this Contract for one discrete operation and maintenance period as from the end of Commissioning for the whole completed works (Taking Over) but also including operation and maintenance of part of the completed works required by the phasing, as from the end of the Commissioning and during the rest of the construction works.
- Geotechnical investigations to ascertain that all test parameters prior to start of design of foundations for the new works.

The TA should therefore clearly demonstrate in their proposal how they intend to address these challenges and how they intend to program the various interfaces for the timely delivery of the project outputs.

NOTE: 'The Feasibility Study (Stage 1) and, if applicable, the BOT Procurement (Stage 2) shall be carried out pursuant to the BOT legal and policy framework. The scope of work hereinafter shall not be construed to overrule, in any way whatsoever, the requirements of the BOT policy and legal framework. However, any task included in the following scope of work, but not included in the legal and policy framework, shall also be carried out as part of the assignment.'

SCOPE OF WORK

STAGE 1: FEASIBILITY STUDY

STAGE 1A – PROJECT INCEPTION REPORT

The Transaction Advisor will be required to undertake a comprehensive Feasibility Study for the Project as prescribed under Section 8 of the *BOT Projects Act 2016*. The Feasibility Study is to be conducted in compliance with the prevailing provisions under the BOT legislation. Prior to the commencement of the Feasibility Study, the TA will be required to deliver a Project Inception Report which shall include but is not limited to the following;

- Team site visits of La Nicoliere Water Treatment Plant and establishment of a monitoring programme on site for the analysis of raw and treated water qualities, to prepare the information for the Technical Options Analysis Report;
- Assessment of the existing Water Treatment Plant based on:
 - Site investigations: inspection of all electro-mechanical equipment and accessories to assess the suitability of the equipment for rehabilitation or replacement.
 - Making proposals for remedial actions for each weakness identified in the existing works.
 - Determine the Operation Modalities for the intake structure and all associated water treatment units or processes.
 - Analysis of the current raw water and treated water quality with respect to the initial design through existing monitoring data.
 - Study of all available records and reports in relation with the upgrading of the intake structure and review of treatment process.
 - Disinfection of water using Sodium Hypochlorite which shall be generated on site instead of the current method of using Liquid Chlorine, if same is found to be feasible.
- Updated Programme Management schedule depicting a robust strategy to implement the Project, timelines, contingencies and scheduling of staff;
- Plan for the development of the Asset Register for the Project, to be used during the Technical Options Analysis and Value Assessment stages.

- **DELIVERABLE:** PROJECT INCEPTION REPORT
- **FORMAT:** MS Word and MS Powerpoint Presentation.

STAGE 1B – SECTOR NEEDS ASSESSMENT REPORT AND OUTPUT SPECIFICATIONS

The Sector Needs Assessment Report should include but is not limited to the following;

- The Contracting Authority's vision, mission and strategic objectives;
- Description of the functions the Contracting Authority performs in the public interest or on behalf of public service;
- Provide details on the following aspects of the BOT project;
 - contribution of the Project to the implementation of government and institutional policies;
 - capability of the contracting authority to provide the overall services;
 - the size of the project, in terms of its anticipated budget or capital expenditure;
 - description of the potential cost savings for the Contracting Authority;
 - the potential for the private sector to provide the services;
 - expectations in relation to the performance level of the services, and
 - given the proposed duration of the Project, whether the project will continue to address the broad needs of the contracting authority over the BOT Project timeframe
- The Output Specifications are the services that the Contracting Authority requires over the BOT project period. The outputs should be specific, measurable, achievable, realistic, and time-bounded for them to be adequately communicated to BOT project promoters. They should be defined in ways that allow their subsequent achievement to be evaluated. For example, if a public body procures a water treatment plant on a BOT basis, it no longer simply procures an asset or water treatment plant, but it procures on-going operation and maintenance facility from the private promoter for the duration of the BOT contract.

DELIVERABLE: SECTOR NEEDS ASSESSMENT REPORT AND OUTPUT SPECIFICATIONS

STAGE 1C – TECHNICAL SOLUTIONS OPTIONS ANALYSIS

The option analysis section of the Feasibility Report examines the feasibility of the different options to satisfy the identified need. The Report will have to appraise the BOT options' comparative strategic advantage and operational benefits for each technical option.

For guidance, the scope of the options analysis must include (but not limited to) the following:

- A list and/or matrix of all the options being considered as a proposed solution;
- Evaluation of each option to cover the following components:
 - Brief description of the option, outlining its alignment to the institution's strategic plan, the service it needs to deliver, and the service level output specifications;
 - Preliminary analysis on its financial impacts;
 - How the option can be funded and its affordability;
 - Description of major risks under each option;
 - Socio-economic aspects of each option;
 - Service delivery arrangements;
 - Transitional management issues, for example, on retention, redeployment and/or redundancy of existing staff in the new working environment;
 - Comprehensive technical analysis and physical site conditions analysis, if required;
 - Any major legal issues such as site, human resources, etc.
 - Applicable environmental assessment of the options, including location, infrastructure, possible design, etc.;
 - Market capability to respond to the options, and
 - Qualitative benefits
- Selection of the best option with adequate reasons for the preference.

- Insurance costs – An assessment of the costs of insurance associated with the preferred technical option.
- Development of a Fixed Asset Register or market valuation of the La Nicoliere Water Treatment Plant. This information will be given to the prospective private parties when the RFP for the implementation of the project is issued to market and useful as an input in the Financial Model during the Value Assessment stage.
- The Transaction Advisor should establish a monitoring programme that is designed and implemented fully as part of the feasibility study in order to characterise for the analysis of raw and treated water qualities and incorporate the results in the Option Analysis Report.

DELIVERABLE: TECHNICAL SOLUTION OPTIONS ANALYSIS REPORT

STAGE 1D – SERVICE DELIVERY OPTIONS

Once the preferred technical option has been identified, it is now time to evaluate and recommend the preferred service delivery options. The assessment of service delivery options may include (but not limited to);

- List all service delivery options
 - an internal service delivery options such as;
 - A Department or other administrative unit with the Central Water Authority;
 - Any component within the control of the Central Water Authority;
 - External service delivery options may include (but not limited to);
 - Another organisation of state;
 - Community-based organization;
 - Any other entity or institution competent to conduct a business activity;
 - Obligations and responsibilities of the parties
 - Undertake a risk assessment associated with each option
- Evaluate each option
- Select the preferred option - the choice of treatment technology and design of water treatment should begin with a determination of the required level and type of treatment.

Therefore, the selected approach should achieve the treatment of a nominal flow of 5,500 m³/h that meets all relevant local and statutory requirements and where these are not sufficient, WHO and British or International Organization for Standardization (ISO).

DELIVERABLE: SERVICE DELIVERY OPTIONS ANALYSIS REPORT

STAGE 1E – LEGAL AND INSTITUTIONAL FRAMEWORK

The legal and policy framework for the project includes but not limited to the Central Water Authority Act No.20 of 1971 and its Regulations in respect of the Treatment of water resources for Distribution of water to domestic, industrial, and commercial purposes throughout Mauritius, the Environment Protection Act, the Public Procurement Act, the BOT Projects Act, and all regulations in relation therewith.

- Legal issues
 - Description of the project objectives;
 - Identification of the preferred technical option;
 - Recommended service delivery option;
 - Legal competence of the CWA to undertake the project;
 - Performance of CWA's functions by an external party;
 - Advise on labour matters affecting the CWA employees who may be moved to the Private Party as part of the concession.
- Regulatory matters
 - Sector specific legislation applicable to the project;
 - Economic empowerment, minimum localization or indigenization laws applicable;
 - Contractual matters;
- Site enablement issues

- Conditions of site;
- Applicable local and international environmental law;
- Other matters – the bidder should consider that the legal contracts could include and involve some of the following;
 - Lenders: these may include a combination of private sector commercial lenders together with export credit agencies, bilateral and multilateral finance organisations;
 - Contracting authority, as defined in the Act being “a Ministry, a Government department, a local authority, the Rodrigues Regional Assembly, a statutory body or any other Government-owned entity, or Government-controlled entity, designated by Government”;
 - Multilateral and bilateral agencies: (i) Multilateral agencies (MLAs) represent a grouping of nations and are owned and funded by their members (ii) Bilateral agencies (BLAs) also known as development finance institutions are funded by only one nation. They are generally mandated to provide support to specific developing countries, in the form of loan or equity investment;
 - Project Company: the project company puts together a bid in an effort to be awarded the BOT project contract. Once selected, it may create a special purpose vehicle (SPV) which would enter into a contract with the contracting authority for the implementation of the BOT Project;
 - Construction contractor: The project company (SPV) will enter into a construction contract with the construction contractor in order to divest its obligation to design, build, test and commission the project and still be accountable under the BOT arrangement;
 - Operator: The operator will operate and maintain the project over the BOT contract period, often from completion of construction until the end of the concession period;
 - Offtake purchaser: An agreement may be made with a purchaser for the use of a project or the purchase of an output in order to assign market risk away from the project company, and
 - Input supplier: An input supplier provides an input necessary for operation of the project.

DELIVERABLE: LEGAL AND INSTITUTIONAL FRAMEWORK REPORT

STAGE 1F – ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT (ESIA)

CWA confirms that, in terms of Mauritian Environmental Impact Assessment (EIA) Regulations, the rehabilitation of the Water Treatment Plant is not a listed activity, and the submission to Environment Impact Assessment Report is not a requirement. However, in terms of the DBSA’s ESSS requirements, any project considered for funding must identify and mitigate potential environmental and social risks and impacts.

These Terms of Reference shall cover the preparation of a project-specific Environmental Management System for the rehabilitation and extension of the La Nicolière Water Treatment Plant in Mauritius. The Environmental Impact Assessment shall be prepared in a manner consistent with the DBSA Environmental Social Safeguards Standards (ESSS) and/or include the International Finance Corporation (IFC) Environmental and Social Performance Standards (ESPS) or a project and with the laws and regulations of the Government of Mauritius, to the extent appropriate.

Task 1: Environmental Screening/Scoping and Engineering Interface Role

The Transaction Advisor is to conduct an Environmental and Social Screening in line with the Mauritius Environmental Legal Framework and DBSA’s ESS and compile an Environmental and Social Screening/Scoping Report.

Task 2: Environmental and Social Impact Assessment (ESIA)

Following the Environmental and Social Screening/Scoping Report, an Environmental and Social Impact Report will be prepared, in line with DBSA’s ESSS, dated March 2020, and available on

<https://www.dbsa.org/sites/default/files/media/documents/202103/DBSA%20Environmental%20and%20Social%20Safeguard%20Standards%202020.pdf>) and IFC ESPS.

The purpose of the ESIA Report will be to document the identified potential environmental and social impacts and risk, and the proposed mitigation measures thereto.

STAGE 1G – VALUE ASSESSMENT

A Value Assessment Report assists the CWA to determine the following;

- Can the risk associated with the Project be sufficiently transferred to Private Sector who is better positioned to manage it?
- Does the project provide Value For Money?
- Is the project affordable?

Appropriate risk transfer

The Transaction Advisor will be required to undertake a Risk Workshop with all relevant stakeholders to propose and determine appropriate allocation of risk between the private and public sector, taking into consideration the party that is best positioned to manage such a risk provided they are appropriately remunerated to do so.

Value For Money Analysis

The Value For Money (VFM) in BOT Projects is gained through the trading in of private sector efficiency, effectiveness, and economy along with a fair allocation of risks amongst parties in the project. This assessment is key in informing the CWA whether to continue with the BOT procurement and the most appropriate form of the BOT arrangement.

The final VFM assessment can only be made at the conclusion of the competitive bidding process. The factors that determine whether a project would deliver VFM will vary depending on project type, scope and sector. Some factors like economy, efficiency, effectiveness, and ethics (the 4Es) and the strategic objectives of Government will be common to all projects. Generally, a BOT arrangement can generate improved VFM through several ways including, inter alia:

- *Reduced whole life cycle costs* - This can be achieved through the integration of infrastructure design, construction and operation; private sector bringing innovation in design through the avoidance of over-specification and improved maintenance scheduling;
- *Better allocation of risks* - Cost effective and fair allocation of risk amongst parties enables efficiency benefits to be generated throughout the term of the contract; sometimes, certain risks cannot be totally transferred to one party and have to be shared;
- *Faster project implementation* - The transfer of design and construction risks, together with the principle of no payment until the commencement of service delivery, provides significant incentives for the private sector to deliver infrastructure projects within shorter construction timeframes;
- *Improved quality of service* – These results from better integration of services with supporting assets, improved economies of scale, introduction of new technology, innovation in design, and the performance incentives and penalties included in a BOT contract, and
- *Generation of additional revenue from project externalities* - more intensive exploitation of assets to generate additional revenues, for example from shared use of facilities or the sale of surplus assets.

Therefore, a VFM should include (but not be limited to) an assessment of the following;

- Part 1: Determine the type of value-for-money assessment;

- Part 2: Construct the Base PSC Model;
- Part 3: Construct the risk-adjusted PSC Model;
- Part 4: Construct the external reference model;
- Part 5: Qualitative considerations;
- Part 6: Sensitivity analysis;

Affordability Analysis

The affordability analysis is a major component of the BOT Feasibility Study. Affordability relates to whether the cost of the project over the whole project life can be accommodated in the government's budget, given its existing commitments.

'Affordable' in relations to the BOT Agreement, refers to the ability of the public body to meet any financial commitment incurred in relation to the BOT Agreement from its existing or future budgetary funds. It is possible that a BOT Project may not be affordable, although it illustrates VFM. Therefore, the affordability test may involve (but not limited to the following);

- Determine the budget available for the Project;
- Compare the risk-adjusted external reference model with the available budget;
- Advise on alternative revenue sources that can be explored by the CWA;
- The Financial Model must consider the potential revenue that can be generated from the sale of by-products or alternative revenue sources in assessing the Project's affordability.

All financial models must be presented and explained in a format that is usable by Government with all assumptions and scenario testing. All financial models must be in Excel format, and clearly set out all assumptions made; sensitivity analyses carried out and model outputs. The financial models must be sufficiently adaptable for use by others at later stages.

The first step for carrying out the affordability test would be based on several assumptions to estimate the BOT cost of the project by using the output specifications for the selected option. All direct and indirect costs as well as third party revenues should be included in the estimate.

The affordability test would require assessing the financial implication of the BOT project cost to the contracting authority. If affordability cannot be demonstrated, the project would either need to be shelved or the output specifications be modified to meet the affordability test.

DELIVERABLE: VALUE ASSESSMENT REPORT and EXCEL-BASED FINANCIAL MODEL

STAGE 1H – PROCUREMENT PLAN

The Procurement Plan demonstrates the necessary capacity and capability within the CWA to undertake the procurement of the private entity to undertake the project. This includes;

- Project timetable, key decisions and approvals required prior to commencement of the procurement process;
- Potential challenges identified and mitigation measures;
- Best procurement practices associated with the nature of the project;
- Affected stakeholders and necessary consultations;
- The Project team necessary to undertake the procurement of the project, including the participation of the Central Procurement Boards, etc.;
- Bidding process, security and confidential systems to be in place, data and information flow management solutions, etc.
- Management of local content requirements, local procurement guidelines, etc.

DELIVERABLE: PROCUREMENT PLAN

STAGE 1I – MARKET SOUNDING AND EXPRESSION OF INTEREST

A BOT project can only be implemented where there are private promoters who are not only able to deliver the required service but also willing to accept sufficient risk transfer. Therefore, once the essential characteristics of the infrastructure project have been defined and an initial output specification produced, the nature and extent of market appetite in a BOT solution can be tested by means of a market sounding exercise.

The use of Project Prospectus disseminating the likely scope of the project, its service content, its anticipated key contractual terms and preliminary risk allocation attracts the potential private promoters to engage more effectively in the market sounding process. This engagement can be supplemented with a Project Questionnaire in order to provide a formal record of responses to key questions.

To ensure the widest possible participation in the market sounding exercise, a Prior Information Notice can be released in the press and other information media inviting potential private sector suppliers to participate in the market sounding exercise. The bidder must conduct a marketing exercise to ensure sufficient interest of high calibre private partners in bidding for the Project.

DELIVERABLE: MARKET SOUNDING REPORT (This report shall be an Annexure to the Feasibility Study Report).

FINAL DELIVERABLE: FEASIBILITY STUDY REPORT AND MS POWERPOINT PRESENTATION (including an Executive Summary that can be used by the CWA and BOT Unit for decision-making) – the Transaction Advisor is expected to remain available to address the comments, concerns and points that may require clarification from the BOT Unit until a final determination is made on whether the Feasibility Study report is approved, declined and on what conditions.

The Feasibility Study Report consisting of the above deliverables must be compiled as a single report, in MS Word format (with relevant annexures) and delivered in both hard copy and electronic format.

STAGE 2: BOT PROCUREMENT

If, based on the available Feasibility Study, a BOT solution is decided on, and subject to the approval of the BOT Projects Unit/ the CWA/GOM, the Transaction Advisor will be required to provide the necessary technical, legal and financial advisory support for the procurement of a private partner. The procurement rule shall be as prescribed in the BOT Projects Act 2016.

The Transaction Advisor must prepare a complete set of procurement documents, complying with public sector procurement law, policies and guidelines, the Environment Protection Act, the CWA Act and in accordance with the format approved by the CWA. The documentation must be consistent with the results of the Feasibility Study and enable the CWA to obtain MOFEPD's approval in terms of BOT Projects Act 2016.

STAGE 2A: REQUEST FOR QUALIFICATION

The Transaction Advisor is to provide all necessary administrative support to the CWA for the efficient and professional management of the bidding process. This includes the setting up and management of a data room, facilitating structured engagement between the CWA and bidders, helping the CWA to communicate and negotiate effectively with bidders, and complying with any other requirements of the Central Procurement Board in receiving bids.

The Transaction Advisor must set up a bid evaluation system and criteria, design a suitable bid process that will ensure comparable bids, devise effective systems for communicating with bidders and inspire market confidence. If appropriate, a system that allows for variant bids may be designed. The system must take into consideration the prevailing legal framework. A

Transaction Advisor must design and administer the pre-qualification process and the Request for Qualification (RFQ) documents to be issued to prospective bidders with the intention of;

- Ensuring that the interests of the CWA are clearly communicated to the market;
- Determining the nature and extent of private sector interest in the project;
- Pre-qualifying a competent number of bidding consortia in an efficient and transparent manner;
- Using the outputs of the Market Sounding Report and the Expression of Interest (EOI) to design an RFQ that would attract reasonable interest from the market;
- Consult and liaise with the Central Procurement Board, where applicable, to understand their requirements and expectations of the content of the RFQ;
- Design an RFQ that meets the expectations of the CPB/contracting authority, where applicable, including addressing the comments of the CPB during the RFQ design phase;
- Issue the RFQ to market in accordance with the BOT Projects Act 2016 and approval of the CPB/contracting authority, where applicable;
- Arrange a pre-bid visit of the Project to inform better decision-making and scope of the Project;
- Undertake a 'Bidder's Meeting' where bidders will be granted the opportunity to seek clarification on the content of the RFQ;
- Administer written responses to bidders on clarification matters relating to the Bidder's Meeting;
- Receive bids on closing date and complete the relevant procurement documents and forms to record the bidders who responded to the bid;
- Submit the RFQ bids to the CPB/contracting authority for evaluation, where applicable;
- Remain available to the CPB/contracting authority, where applicable, to address areas of clarification during the bid evaluation process.

DELIVERABLES.

- RFQ document approved by CPB/contracting authority, where applicable;
- Bidders Meeting and address clarification questions;
- Receive bids and submit same to CPB/contracting authority, where applicable;
- Attend to clarification questions from CPB/contracting authority, where applicable, during the evaluation process

The transaction advisor must compile all the documentation necessary for the CWA to obtain MOFEPD's approval as per provisions of *BOT Projects Act 2016* and Central Procurement Board/contracting authority approval, where applicable.

STAGE 2B: RFQ BID EVALUATION

Section 10 (1)(b) of the BOT Act states that the CPB shall, in respect of a BOT project above the prescribed threshold, evaluate bids in accordance with the rules and procedures as designed in the bidding documents. An evaluation team with the necessary expertise must be set up by the CPB/contracting authority, where applicable.

As it is unknown at this stage, what the value of the project to procured may be and consequently unclear whether the evaluation of the RFQ will be led by the CPB or the Contracting Authority, bidders are required price for the scenario where it is assumed that the full evaluation of the bids is the responsibility of the Contracting Authority and all evaluation of the submitted bids is undertaken by the Transaction Advisor to inform decision-making by the CPB/Contracting Authority, where applicable. The final decision on the outcomes of the bids remains that of the CPB, where applicable in consultation with the CWA.

DELIVERABLE: RFQ BID EVALUATION REPORT

STAGE 2C: REQUEST FOR PROPOSAL

The Transaction Advisor must set up a bid evaluation system and criteria, design a suitable bid process that will ensure comparable bids, devise effective systems for communicating with bidders and inspire market confidence. If appropriate, a system that allows for variant bids may be designed. The system must take into consideration the prevailing legal framework. The Transaction Advisor must prepare an RFP document in accordance with best international practice, consistent with the results of the available feasibility study. The RFP package must contain but not limited to the following sections:

- introduction and project background: the project description including the proposed project structure.
- the output specifications of the Project
- project milestones
- instruction to bidders
- form of contracts
- bid forms
- a risk profile as established in the feasibility study
- the payment mechanism
- local counterpart requirements
- the bid process;
- evaluation criteria
- bidder communication systems.

The following should be considered in developing an appropriate RFP for the Project;

- Ensuring that the interests of the CWA are clearly communicated to the market;
- Pre-qualifying the preferred and reserve bidder in an efficient and transparent manner;
- Using the outputs of the Market Sounding Report, the Expression of Interest (EOI) and the RFQ to design an RFP that would attract reasonable interest from the market;
- Consult and liaise with the Central Procurement Board/contracting authority, where applicable, to understand their requirements and expectations of the content of the RFP;
- Design an RFP that meets the expectations of the CPB/contracting authority, where applicable, including addressing the comments of the CPB/contracting authority, where applicable, during the RFP design phase;
- Issue the RFP to market in accordance with the procurement guidelines of the CWA and approval of the CPB, where applicable;
- Arrange a bidder site visit of the Project to inform better decision-making and scope of the Project;
- Undertake a 'Bidder's Conference' where bidders will be granted the opportunity to seek clarification on the content of the RFP;
- Administer written responses to bidders on clarification matters relating to the Bidder's Conference;
- Receive bids on closing date and complete the relevant procurement documents and forms to record the bidders who responded to the bid;
- Submit the RFP bids to the CPB/contracting authority, where applicable, for evaluation;
- Remain available to the CPB/contracting authority, where applicable, to address areas of clarification during the bid evaluation process.

The Transaction Advisor must compile all the documentation necessary for the CWA to obtain MOFEPD's approval as per provisions of *BOT Projects Act 2016* and Central Procurement Board approval, where applicable, to enable the procurement process to begin.

Draft BOT Agreement

The Transaction Advisor must prepare a draft BOT Agreement reflecting the risk profile as established in the Feasibility Study Report to be included as an attachment to the RFP. Close liaison with the CWA Management and the BOT Project Unit is required during drafting. The Transaction Advisor's team shall have the necessary legal expertise to make legal

recommendations on the best international practice of the drafting to be contained in this draft BOT Agreement.

DELIVERABLES.

- RFP document and Draft BOT Agreement approved by CPB;
- Bidders Conference and address clarification questions.
- Receive bids and submit same to CPB;
- Attend to clarification questions from CPB during the evaluation process;
- The Transaction Advisor is expected to undertake the bid evaluation process with the CPB;

STAGE 2D: RFP BID EVALUATION

Section 10 (1)(b) of the BOT Act states that the CPB shall, in respect of a BOT project above the prescribed threshold, evaluate bids in accordance with the rules and procedures as designed in the bidding documents. An evaluation team with the necessary expertise has to be set up by the CPB/contracting authority, where applicable.

As it is unknown at this stage, what the value of the project to procured may be and consequently unclear whether the evaluation of the RFQ will be led by the CPB or the Contracting Authority, bidders are required price for the scenario where it is assumed that the full evaluation of the bids is the responsibility of the Contracting Authority and all evaluation of the submitted bids is undertaken by the Transaction Advisor to inform decision-making by the CPB/Contracting Authority, where applicable. The final decision on the outcomes of the bids remains that of the CPB, where applicable in consultation with the CWA.

DELIVERABLE: RFP BID EVALUATION REPORT

STAGE 2E: VALUE FOR MONEY REPORT

Value for money must be demonstrated by comparing the net present value (NPV) of the bids received with the NPV under the Feasibility Study.

The results of the bidding and evaluation of bids must be presented in a single value-for-money report (with relevant annexures) that demonstrates clearly how Value For Money will be achieved with the preferred bidder. The report must clearly indicate the preferred and second-ranked bidders and provide motivations. The Value-For-Money report must be in a suitable format and of a suitable standard for the approval of the CWA.

DELIVERABLE: VALUE FOR MONEY REPORT

STAGE 2F: BOT AGREEMENT NEGOTIATIONS AND MANAGEMENT PLAN

After acceptance of the Value For Money Report by the CWA and CPB, where applicable, subsection 10(1) (c) of the BOT Act stipulates that the CPB shall make recommendations to the Contracting Authority for entering into negotiations with the preferred bidder.

The Transaction Advisor must assist the CWA in final negotiations with the preferred bidder. This will involve preparing suitable negotiations teams, categorising issues appropriately, developing timelines for completion, and planning negotiation tactics and processes for reaching agreement. The Transaction Advisor must ensure that all agreements reached are incorporated into all the financial, commercial, and legal documentation, and must assist with drafting the necessary and related correspondence. The Transaction Advisor must have the comprehensive legal and technical expertise to assist the CWA in negotiating the BOT agreement.

The pre-final terms of the agreements, each as negotiated with the preferred bidder, must be submitted to the CWA for approval. The Transaction Advisor is responsible for compiling the necessary submissions for obtaining the approval of the CWA.

The Transaction Advisor must, in close liaison with the CWA, draft a comprehensive BOT Agreement Management Plan for the CWA.

The Transaction Advisor must ensure that a comprehensive legal due diligence of the accounting officer/authority has been completed. This will relate to legal compliance, competence, and capacity to enter into the BOT agreement.

DELIVERABLE: BOT NEGOTIATIONS REPORT AND BOT AGREEMENT

STAGE 2G: BOT AGREEMENT SIGNATURE, CLOSE-OUT REPORT, CASE STUDY AND FINANCIAL CLOSURE

The Transaction Advisor must help the CWA with all functions related to signing the final BOT Agreement. The Transaction Advisor must also compile a comprehensive close-out report and Case Study.

The Close-Out Report will be a confidential document of the CWA and will also be lodged with the BOT Projects Unit. The Case Study will become a public document, made available on various government websites. Financial closure signifies that all the procurement deliverables have been successfully completed, and that the Transaction Advisor's work is finished, if applicable.

The Transaction Advisor must also give the CWA all the necessary drafting, bidder communication and administrative support necessary for the entire procurement process to be conducted in accordance with law and policy, and to the highest standards of efficiency, quality, and integrity.

After the evaluation and negotiation has been completed, the CPB, where applicable, may recommend that the Contracting Authority may enter into an Agreement with the private party in terms of Section 10(1)(d) of the BOT Act. After the recommendations of the CPB, where applicable, the contracting authority may enter into an Agreement with the preferred Private Party after informing Cabinet, as per section 11 (1) of the BOT Project Act. Once signed, and as soon as practicable, the BOT Agreement must be laid before the National Assembly by the Contracting Authority. See Section 11(3) (c)

DELIVERABLE: FINANCIAL CLOSURE

Annexure A

This Annexure must be in folder 2 of your submission.

Please see **Annexure A** on the separate attachment titled

“RFP300/2022: Annexure A: Fees and Assumptions”

1. Any legal person, including persons employed by the state¹, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes a price quotation, advertised competitive bid, limited bid or proposal). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or
- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

- 2.1 Full Name of bidder or his or her representative:

.....

- 2.2 Identity Number:

.....

- 2.3 Position occupied in the Company (director, trustee, shareholder²):

.....

- 2.4 Company Registration Number:

.....

- 2.5 Tax Reference Number:

.....

- 2.6 VAT Registration Number:

.....

- 2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / persal numbers must be indicated in paragraph 3 below.

¹“State” means –

- (a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- (b) any municipality or municipal entity;
- (c) provincial legislature;
- (d) national Assembly or the national Council of provinces; or
- (e) Parliament.

²"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.

2.7 Are you or any person connected with the bidder **YES / NO**
presently employed by the state?

2.7.1 If so, furnish the following particulars:

Name of person / director / trustee / shareholder/ member:

.....

Name of state institution at which you or the person connected to the bidder is employed:

.....

Position occupied in the state institution:

Any other particulars:

.....

.....

.....

2.7.2 If you are presently employed by the state, did you obtain **YES / NO**
the appropriate authority to undertake remunerative
work outside employment in the public sector?

2.7.2.1 If yes, did you attached proof of such authority to the bid **YES / NO**
document?

(Note: Failure to submit proof of such authority, where
applicable, may result in the disqualification of the bid.

2.7.2.2 If no, furnish reasons for non-submission of such proof:

.....

.....

.....

2.8 Did you or your spouse, or any of the company's directors / **YES / NO**
trustees / shareholders / members or their spouses conduct
business with the state in the previous twelve months?

2.8.1 If so, furnish particulars:

.....

.....

.....

2.9 Do you, or any person connected with the bidder, have **YES / NO**
any relationship (family, friend, other) with a person
employed by the state and who may be involved with
the evaluation and or adjudication of this bid?

2.9.1 If so, furnish particulars.

.....

.....

.....

2.10 Are you, or any person connected with the bidder, **YES/NO**

aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid?

2.10.1 If so, furnish particulars.

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

2.11 Do you or any of the directors / trustees / shareholders / members **YES/NO** of the company have any interest in any other related companies whether or not they are bidding for this contract?

2.11.1If so, furnish particulars:

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

3. Full details of directors / trustees / members / shareholders.

Full Name	Identity Number	Personal Reference Number	Tax Number	State Number	Employee / Persal Number

4. DECLARATION

I, _____ THE _____ UNDERSIGNED
(NAME).....

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....
Signature Date

.....
Position Name of bidder

- 1 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		

I, THE UNDERSIGNED (FULL NAME).....

CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS
TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE
TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

.....

Signature

.....

Date

.....

Position

.....

Name of Bidder

.....

Position

.....

Name of Bidder

- 1 This Standard Bidding Document (SBD) must form part of all bids¹ invited.
- 2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).² Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.
- 3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:
 - a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.
 - b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.
- 4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
- 5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

¹ Includes price quotations, advertised competitive bids, limited bids and proposals.

² Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf

of: _____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - (a) has been requested to submit a bid in response to this bid invitation;
 - (b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
 - (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium³ will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - (a) prices;
 - (b) geographical area where product or service will be rendered (market allocation)
 - (c) methods, factors or formulas used to calculate prices;
 - (d) the intention or decision to submit or not to submit, a bid;
 - (e) the submission of a bid which does not meet the specifications and conditions of the bid; or
 - (f) bidding with the intention not to win the bid.
8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.

³ **Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.**

10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

.....
Signature Date

.....
Position Name of Bidder

Annexure F

Bidders are required to include, as Annexure F to their Bids, certified copies of all relevant CIPC registration documents listing all members with percentages, in the case of a close corporation

Annexure G

Bidders are required, as Annexure G to their Bids, to submit certified copies of the latest share certificates of all relevant companies

Annexure H

Bidders which submit Bids as an unincorporated joint venture, consortium or other association of persons are required to submit, as Annexure H, a breakdown of how the percentage (%) fees and work will be split between the various people or entities which constitute the Bidder.

Annexure I

Bidders are required to include, as Annexure I to their Bids, supporting documents to their responses to the Pre- Qualifying Criteria and Evaluation Criteria.

Where the supporting document is the profile of a member of the Bidder's proposed team, this should be indicated.

Annexure J: General Conditions of Contract

PLEASE NOTE THAT ALL BIDDERS ARE REQUIRED TO READ THROUGH THE GENERAL CONDITIONS OF CONTRACT PRESCRIBED BY THE NATIONAL TREASURY. SUCH GENERAL CONDITIONS OF CONTRACT CAN BE ACCESSED ON THE NATIONAL TREASURY WEBSITE.

PLEASE NOTE FURTHER THAT ALL BIDDERS MUST ENSURE THAT THEY ARE WELL ACQUINTED WITH THE RIGHTS AND OBLIGATIONS OF ALL PARTIES INVOLVED IN DOING BUSINESS WITH GOVERNMENT.

NOTE: All Bidders are required to confirm *(Tick applicable box)* below:

Item	YES	NO
Is the Bidder familiar with the General Conditions of Contract prescribed by the National Treasury?		

Annexure K: Tax Compliant Status and CSD Registration Requirements

ALL PROSPECTIVE BIDDERS MUST HAVE A TAX COMPLIANT STATUS EITHER ON THE CENTRAL SUPPLIER DATABASE (CSD) OF THE NATIONAL TREASURY OR SARS E FILING PRIOR TO APPOINTMENT/AWARD OF THE BID.

REGISTRATION ON THE CSD SITE OF THE NATIONAL TREASURY IS A COMPULSORY REQUIREMENT FOR A BIDDER TO BE APPOINTED, TO CONDUCT BUSINESS WITH THE DBSA. THE ONUS IS ON THE SUCCESSFUL BIDDER TO REGISTER ON THE CSD SITE AND PROVIDE PROOF OF SUCH REGISTRATION PRIOR TO APPOINTMENT/AWARD OF THE BID.

CSD Registration Number:



The Development Bank of Southern Africa has a Zero Tolerance on Fraud and Corruption. Report any incidents of Fraud and Corruption to Whistle Blowers on any of the following:

TollFree : 0800 20 49 33
Email : dbsa@whistleblowing.co.za
Free Post : Free Post KZN 665 | Musgrave | 4062
SMS : 33490

ANNEXURE L: KfW Declaration of Undertaking

Reference name of the Application/Offer/Contract:

("Contract")¹

To:

("Project Executing Agency")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA")² subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
 - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganization or being in any analogous situation;
 - 2.2) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union or Germany for involvement in a criminal organization, money laundering, terrorist-related offences, child labor or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
 - 2.4) having been subject within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
 - 2.5) not having fulfilled applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the PEA's country;
 - 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of*

1 Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries".

2 The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in
Financial Cooperation with Partner Countries

Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction); or

- 2.7) being guilty of misrepresentation in supplying the information required as a condition of participation in the Tender.
3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:
 - 3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
 - 3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
 - 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;
 - 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;
 - 3.5) in the case of procurement of Works, Plant or Goods:
 - i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
 - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;
4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
6. In the context of the Tender Process and performance of the corresponding Contract:
 - 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;
 - 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
 - 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labor standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International

Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting
Services in
Financial Cooperation with Partner Countries

Labor Organisation³ (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.

7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an agent appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on-the-spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case for at least six years from the date of fulfillment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

Name: _____ in the capacity of:

Duly empowered to sign in the name and on behalf of: _____

Signature: _____ Dated: _____