

## **FOSKOR MINING**

an Operating Division of FOSKOR (PTY) **LTD**

[hereinafter referred to as **Foskor**]

[Registration No. 1951/002918/07]

### **REQUEST FOR PROPOSAL [RFP] [GOODS]**

#### **REQUEST FOR PROPOSAL FOR THE APPOINTMENT OF A TRANSACTION ADVISOR FOR THE DEVELOPMENT OF A 100MW SOLAR PV PLANT FOR FOSKOR'S PHALABORWA'S MINE.**

**RFP NUMBER** **FOSCO-RFP-44-2024**

**ISSUE DATE:** **27 February 2024**

**CLOSING DATE:** **20 March 2024**

**CLOSING TIME:** **12:00 PM**

**COMPULSARY BRIEFING SESSION: 04 March 2024 at 10:00am IT WILL BE A TEAMS MEETING LINK IS BELOW:**

[https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_OGI5Mjk5ZjUtNWY5NS00YWNjLTq2OTEtMGMyZGJkYTEyOGYw%40thread.v2/0?context=%7b%22Tid%22%3a%22d00d9ede-66f3-4c6d-ac38-376f9f2b10fe%22%2c%22Oid%22%3a%2252196d9a-7f3a-4723-8435-13a9ddd32987%22%7d](https://teams.microsoft.com/l/meetup-join/19%3ameeting_OGI5Mjk5ZjUtNWY5NS00YWNjLTq2OTEtMGMyZGJkYTEyOGYw%40thread.v2/0?context=%7b%22Tid%22%3a%22d00d9ede-66f3-4c6d-ac38-376f9f2b10fe%22%2c%22Oid%22%3a%2252196d9a-7f3a-4723-8435-13a9ddd32987%22%7d)

**ON THE LINK ABOVE PRESS CONTROL AND CLICK ON THE LINK TO JOIN THE TEAMS MEETING.**

**BID VALIDITY PERIOD:** **180 Business Days from Closing Date**

**NOTE TO BIDDERS: ALL SUBMISSIONS MUST INCLUDE A USB FLASH DRIVE/MEMORY STICK THAT CONTAINS YOUR BID SUBMISSION ON THE CLOSING DATE AND TIME AS MANDATORY REQUIREMENT**

## SCHEDULE OF BID DOCUMENTS

Section No	Page
SECTION 1: SBD1 FORM.....	3
PART A .....	3
PART B .....	4
1 INVITATION TO BID.....	5
2 FORMAL BRIEFING .....	5
3 RFP INSTRUCTIONS .....	5
4 JOINT VENTURES OR CONSORTIUMS .....	6
5 COMMUNICATION .....	6
6 CONFIDENTIALITY .....	6
7 COMPLIANCE .....	6
8 EMPLOYMENT EQUITY ACT .....	7
9 DISCLAIMERS .....	7
10 LEGAL REVIEW .....	7
11 SECURITY CLEARANCE .....	8
12 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE.....	8
13 TAX COMPLIANCE .....	8
SECTION 3: BACKGROUND AND SCOPE OF REQUIREMENTS .....	9
1 BACKGROUND.....	9
2 SCOPE OF REQUIREMENTS .....	9
3 GREEN ECONOMY / CARBON FOOTPRINT .....	14
4 GENERAL SUPPLIER OBLIGATIONS.....	14
5 EVALUATION METHODOLOGY .....	15
SECTION 4: PRICING AND DELIVERY SCHEDULE.....	25
1. DISCLOSURE OF CONTRACT INFORMATION.....	26
PRICES TENDERED .....	26
JOHANNESBURG STOCK EXCHANGE DEBT LISTING REQUIREMENTS .....	27
DOMESTIC PROMINENT INFLUENTIAL PERSONS (DPIP) OR FOREIGN PROMINENT PUBLIC OFFICIALS (FPPO) .....	27
2. RISK .....	27
SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS .....	29
SECTION 6: CERTIFICATE OF ACQUAINTANCE WITH RFP, MASTER AGREEMENT & APPLICABLE DOCUMENTS .....	34
SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM.....	35
SECTION 8: RFP CLARIFICATION REQUEST FORM.....	40
SECTION 9: B-BBEE PREFERENCE POINTS CLAIM FORM .....	41
SECTION 10: JOB-CREATION SCHEDULE .....	46
SECTION 11: SBD 5 .....	48
SECTION 12: PROTECTION OF PERSONAL INFORMATION.....	51

**REQUEST FOR PROPOSAL FOR THE APPOINTMENT OF A TRANSACTION ADVISOR FOR THE DEVELOPMENT OF A 100MW SOLAR PV PLANT FOR FOSKOR'S PHALABORWA'S MINE.**

**SECTION 1: SBD1 FORM**

**PART A**

**INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF FOSKOR MINING AND FOSKOR ACID, DIVISIONS FOSKOR (PTY) LTD</b>							
BID NUMBER:	FOSCO-RFP-44-2024	ISSUE DATE:	27 February 2024	CLOSING DATE:	20 March 2024	CLOSING TIME:	12:00pm
DESCRIPTION	For the appointment of a transaction advisor for the development of a 100mw solar plant.						
<b>BID RESPONSE DOCUMENTS SUBMISSION</b>							
<b>RESPONDENTS ARE TO SUBMT THEIR BID RESPONSES AT THE RECEPTION OF THE FOLLOWING ADDRESS</b>							
<p>- Dimension Data</p> <p><b>Building 5</b>  <b>Waterfall Corporate Campus</b>  <b>74 Waterfall Drive</b>  <b>Waterfall City</b>  <b>Please include a USB Flash Drive (soft copy) with your submission</b></p>							
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>			<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>				
CONTACT PERSON	Clayton Losper		CONTACT PERSON	Clayton Losper			
TELEPHONE NUMBER	<b>011 347 0638</b>		TELEPHONE NUMBER	<b>011 347 0638</b>			
E-MAIL ADDRESS	<b>claytonl@foskor.co.za</b>		E-MAIL ADDRESS	<b>claytonl@foskor.co.za</b>			
<b>SUPPLIER INFORMATION</b>							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE			NUMBER			
CELLPHONE NUMBER							
FACSIMILE NUMBER	CODE			NUMBER			
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:		OR	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA		
B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]			B-BBEE STATUS LEVEL SWORN AFFIDAVIT		[TICK APPLICABLE BOX]	
	<input type="checkbox"/> Yes		<input type="checkbox"/> No			<input type="checkbox"/> Yes	

<p><b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED FOR PURPOSES OF COMPLIANCE WITH THE B-BBEE ACT]</b></p>			
<p><b>1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?</b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <small>[IF YES ENCLOSE PROOF]</small>	<p><b>2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES /WORKS OFFERED?</b></p>	<input type="checkbox"/> Yes <input type="checkbox"/> No <small>[IF YES, ANSWER QUESTIONNAIRE BELOW]</small>
<p><b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b></p>			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A BRANCH IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION?		<input type="checkbox"/> YES <input type="checkbox"/> NO	
<p>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 1.3 BELOW.</p>			

## **PART B TERMS AND CONDITIONS FOR BIDDING**

### **I. TAX COMPLIANCE REQUIREMENTS**

- 1.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
- 1.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
- 1.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
- 1.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
- 1.5 IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
- 1.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....

(Proof of authority must be submitted e.g. company resolution)

DATE: \_\_\_\_\_

## SECTION 2: NOTICE TO BIDDERS

### 1 INVITATION TO BID

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent or Bidder**].

<b>DESCRIPTION</b>	For the appointment of a transaction advisor for the development of a 100mw solar plant.
<b>TENDER ADVERT</b>	All Foskor tenders are advertised on the Foskor Website.
<b>COMMUNICATION</b>	<p>Foskor will publish the outcome of this RFP on the National Treasury e-tender portal and Foskor website with 10 days after the award has been finalised. All unsuccessful bidders have a right to request for reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form</p> <p>Any addenda to the RFP or clarifications will be published on the e-tender portal and Foskor website. Bidders are required to check the e-tender portal or Foskor website prior to finalising their bid submissions for any changes or clarifications to the RFP.</p> <p>Foskor will not be held liable if Bidders do not receive the latest information regarding this RFP with the possible consequence of either being disadvantaged or disqualified as a result thereof.</p>
<b>COMPULSARY BRIEFING SESSION</b>	<b>04 March 2024 at 10:00am the link is listed above.</b>
<b>CLOSING DATE</b>	<b>12:00 pm on Wednesday 20 March 2024</b> Bidders must ensure that bids are Generally, if a bid is late, it will not be accepted for consideration.
<b>VALIDITY PERIOD</b>	<b>180 Business Days from Closing Date</b> Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.  Should a bidder fail to respond to a request for extension of the validity period before it expires, that bidder will be excluded from tender process.  With regard to the validity period of next highest ranked bidders, please refer to Section 2, paragraph 10.12

Any additional information or clarification will be published on the e-Tender portal and Foskor website, if necessary.

### 2 FORMAL BRIEFING

A formal briefing session will be held on the **04 March 2024 at 10:00am**. Please note if you don't attend the briefing session your bid will not be accepted for evaluation.

### 3 RFP INSTRUCTIONS

- 3.1 Please sign documents [sign, stamp and date the bottom of each page] before submitting them. The person or persons signing the submission must be legally authorised by the respondent to do so.
- 3.2 **All returnable documents tabled in the Proposal Form [Section 5] must be returned with proposals.**

- 3.3 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.
- 3.4 **Bidder responses must include a soft copy of the submission in the form of a USB Flash Drive (stick).**
- 3.5 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions, paragraph 12 below (Legal Review) and Section 6 of the RFP, alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

#### **4 JOINT VENTURES OR CONSORTIUMS**

Respondents who would wish to respond to this RFP as a Joint Venture [**JV**] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If at the time of the bid submission such a JV or consortium agreement has not been concluded, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Foskor through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Foskor.

- Respondents are to note that for the purpose of Evaluation, a JV will be evaluated based on one consolidated B-BBEE score card (a consolidated B-BBEE Status Level verification certificate) Preference points will be awarded to a bidder for attaining the specific goals requirements in accordance with the table indicated in Table 3.2 of the specific goals Claim Form.

#### **5 COMMUNICATION**

- 5.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted onto the system and to [**Clayton Losper**] before **12:00 pm, 15 March 2024**, substantially in the form set out in Section 8 hereto. In the interest of fairness and transparency, Foskor's response to such a query will be published on the e-tender portal and Foskor website.
- 5.2 After the closing date of the RFP, a Respondent may only communicate with the DBAC Secretariat [**Mpho Thipe**], at telephone number 011 347 0607, email [mphot@foskor.co.za](mailto:mphot@foskor.co.za) on any matter relating to its RFP Proposal.
- 5.3 Respondents are to note that changes to its submission will not be considered after the closing date.
- 5.4 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Foskor in respect of this RFP between the closing date and the date of the award of the business.
- 5.5 Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.
- 5.6 Foskor will publish the outcome of this RFP in the Foskor website with 10 days after the award has been finalised. Respondents are required to check the Foskor website for the results of the tender process. All unsuccessful bidders have a right to request Foskor to furnish individual reasons for their bid not being successful. This requested must be directed to the contact person stated in the SBD 1 form

#### **6 CONFIDENTIALITY**

All information related to this RFP is to be treated with strict confidence. In this regard Respondents are required to certify that they have acquainted themselves with the Non-Disclosure Agreement. All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information related to this RFP or the subsequent contract, written approval must be obtained from Foskor.

#### **7 COMPLIANCE**

The successful Respondent [hereinafter referred to as the **Supplier/Service provider**] shall be in full and complete compliance with any and all applicable laws and regulations.

## **8 EMPLOYMENT EQUITY ACT**

Respondents must comply with the requirements of the Employment Equity Act 55 of 1998 applicable to it including (but not limited to) Section 53 of the Employment Equity Act.

## **9 DISCLAIMERS**

Respondents are hereby advised that Foskor is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Foskor reserves the right to:

- 9.1 modify the RFP's Goods/Services and request Respondents to re-bid on any such changes;
- 9.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 9.3 disqualify Proposals submitted after the stated submission deadline [closing date];
- 9.4 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 9.5 award a contract for only a portion of the proposed Goods/Services which are reflected in the scope of this RFP;
- 9.6 split the award of the contract between more than one Supplier/Service provider, should it at Foskor's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 9.7 cancel the bid process;
- 9.8 validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Foskor to do so;
- 9.9 request audited financial statements or other documentation for the purposes of a due diligence exercise;
- 9.10 not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provided for it;
- 9.11 to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;
- 9.12 to award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods at the quoted price, should the preferred bidder fail to sign or commence with the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the outcome of the tender has been published the outcome of the bid process on the National Treasury e-tender Portal and Foskor website. Bidders may therefore be requested to advise whether they would still be prepared to provide the required Goods at their quoted price.

Note that Foskor will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

## **10 LEGAL REVIEW**

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Foskor's Legal Counsel, prior to consideration for an award of business. A material deviation from the Standard terms or conditions could result in disqualification.

## **11 SECURITY CLEARANCE**

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the Goods/Services and its subcontractor(s) must obtain security clearance from the appropriate authorities to the level of **CONFIDENTIAL/SECRET/TOP SECRET**. Obtaining the required clearance is the responsibility of the Successful Respondent. Acceptance of the bid is also subject to the condition that the Successful Respondent will implement all such security measures as the safe performance of the contract may require.

## **12 NATIONAL TREASURY'S CENTRAL SUPPLIER DATABASE**

Respondents are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. Respondents must register on the CSD prior to submitting their bids. Business may not be awarded to a Respondent who has failed to register on the CSD. Only foreign suppliers with no local registered entity need not register on the CSD.

## **13 TAX COMPLIANCE**

Respondents must be compliant when submitting a proposal to Foskor and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

It is a condition of this bid that the tax matters of the successful Respondents be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the Respondents tax obligations.

The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

## **SECTION 3: BACKGROUND AND SCOPE OF REQUIREMENTS**

### **1 BACKGROUND**

Foskor (Pty) Limited is seeking the services of a Transaction Advisor for the development of a captive 100MW solar PV Plant with a suitable Battery Energy Storage System (BESS) for its Phalaborwa mine. This solar PV Plant will reduce CO<sub>2</sub> emissions and bring reliable and affordable green power supply to the mine as well as contribute towards maintaining uninterrupted mine production during instances of load curtailment by Eskom. This will considerably reduce the dependency of the mine on Eskom for power supply.

These Terms of Reference (TOR) seek the services of a Transaction Advisor (legal, financial / commercial, technical, environmental and empowerment specialists) in the renewable energy environment to offer professional advisory services to Foskor to achieve the above. Foskor wants to procure the services of an experienced Transaction Advisor with proven track record in undertaking projects of similar nature in the past.

The Transaction Advisor will provide the necessary advisory services in the preparation and development of the project leading to the appointment of a suitable Independent Power Producer (IPP) to implement the Solar PV Plant.

### **2 SCOPE OF REQUIREMENTS**

#### **IPP Built Solar PV Plant on Foskor's Leased Land:**

The first option is whereby Foskor leases the land to an appointed IPP company and the IPP raises funding, develops, operates and maintains the project to produce Solar power for Foskor. An offtake

agreement in the form of a concession of between 15 and 20 years will be entered between Foskor and the IPP.

The proposed site for this solar farm measures roughly 200 hectares and is located at Foskor's Phalaborwa mine as shown in Figure 1 below:



Figure 1: Site Locality

The Transaction Advisor is at liberty to investigate and come up with an alternative suitable site for this purpose, where necessary.

#### **Foskor Builds its own Solar PV Plant**

The second option can be executed by getting an expert or EPC contractor who will build and transfer the plant to Foskor to produce electricity for its own operations. Foskor may elect to have full ownership or co-ownership of the project with others as project developers. The project developers will then raise funding, develop, own and operate the plant.

#### **Participation in Phalaborwa Mining Company (PMC) Solar PV Project**

The third option provides an opportunity to increase the capacity of the solar power plant being developed for Phalaborwa Mining Company (PMC) by their appointed IPP to cater for an additional load of 100MW to supply power to Foskor independently. The IPP is going to develop a 100 MW captive solar power plant and a 420MWh Battery Energy Storage System for PMC. PMC is located adjacent to the Foskor mine in Phalaborwa.

The IPP has identified 1600 hectares of communal land located approximately 20km from PMC that is available for rental for the power plant. Only 200 hectares of land will be used for PMC's 100MW solar plant at this initial stage and the remainder of the land is earmarked for future expansion of the solar power plant, when the need arises. The developer is considering building a dedicated transmission line from the solar power plant to the PMC mine via the Foskor MTS substation.

It is understood that the IPP has successfully completed the detailed feasibility study for the Solar PV farm and Environmental Authorisation and Eskom's Cost Estimate Letter (CEL) have been granted. The IPP and PMC are presently in Power Purchase Agreement negotiations.

## **Other Viable Option(s)**

The Transaction Advisor is permitted to look into other viable option(s) of providing a solar PV supply and battery storage solution to the mine that are not proposed above.

To this end, there is a possibility that electricity can be bought from traders or any generation IPP. This should be compared as an alternative, both as a short-term and as a long-term alternative or as a complimentary source.

Likewise, the option of selling power, i.e. exporting to the grid to other off-takers, similar to a portfolio offtake model ("POM"), should be an alternative. Grid access should not be a problem and tariff should be competitive.

The Transaction Advisor appointed under this Terms of Reference is required to deliver the expected outcomes within a period of 9 months from the date of receiving an appointment.

The Transaction Advisor must assemble a project team with the appropriate and necessary skills to achieve success in the implementation of this project. Populating the teams is the responsibility of the bidding advisory firms and it is expected from them, in their professional capacity, to propose the right team members and manage them to enable a successful outcome in accordance with the scope outlined in the subsections below.

### **An Optimal Development Model of Implementing the Solar PV Farm**

The Transaction Advisor shall conduct a feasibility study that ultimately serves to investigate, evaluate and advise on the best solution and model of implementing the Solar PV farm given the possible Options highlighted in this document in order to achieve project success. Furthermore, the Transaction Advisor must define milestones / gates and sequencing that allows for termination if certain viability and competitive criteria are not achieved. This shall be applied to the three options, where relevant. Work on options with a fatal flaw or low viability shall be terminated.

This feasibility study shall entail a thorough professional assessment of all relevant technical; legal; financial / commercial and environmental considerations applicable to the development to yield a sustainable and optimal solution that meets the project objectives whilst ensuring a good return on investment.

## **Supporting the IPP Pre-Screening Process**

The Transaction Advisor shall provide Foskor with all administrative support necessary for the efficient and professional management of the IPP pre-screening process. This should include, but not be limited to, the following:

- Organizing the pre-selection of IPPs by the development of pre-selection documentation;
- Facilitate effective engagement between Foskor and selected bidders, including among others, responding to questions raised on pre-qualification;
- Manage with the Client the receipt of prequalification offers;
- Support the Client in the pre-qualification process; and
- Manage communication with non-selected IPPs and pre-qualified IPPs notifying them if they have not or have passed pre-qualification, respectively

## **Supporting the IPP Tendering Process**

The Transaction Advisor shall provide Foskor with all administrative support necessary for the efficient and professional management of the selection process for the preferred IPP in the bidding process. This shall include, but not be limited to, the following:

- Manage communication with the IPP(s) pre-qualified for the bidding and the sending of the bidding documents;
- Sharing of any relevant information about the Project qualifying bidders;

- Facilitate effective engagement between the Client and bidders, including, among others, responding to questions raised on the tender documents;
- Organizing, conducting and documenting (minutes) pre-bid meetings among others; and
- Provide support in the management of complaints.

### **Technical, Environmental, Legal and Commercial Evaluation**

The Transaction Advisor shall:

- Assist and advise Foskor in the evaluation of the technical and commercial offers in relation to the environmental; legal and commercial conditions contained in the procurement document, taking into account any significant deviation from the offer documentation;
- Evaluate the technical configuration and specifications included in the bids (including, but not limited to, availability, major and annual maintenance schedules, etc.);
- Verify and approve the project implementation schedule provided by the bidders;
- Advise Foskor on all other technical, social and environmental issues related to the bids;
- Advise Foskor on the legal and commercial implications of the bids received; and
- Finalize the technical evaluation report and discuss the results with Foskor
- Review the Foskor Riks profile of influence and the impact that this can have on this proposal.

### **Financial Evaluation and Selection of the Preferred IPP Bidder**

The Transaction Advisor shall:

- Advise Foskor in establishing the underlying financial and business assumptions used by the various bidders and compliance with the tender documents;
- Request the IPP(s) to submit a financial bid (R/kWh);
- Finalize the evaluation report of the financial bid based on the tariff; and
- Assist and advise the Client in the final selection of the winning bidder

### **Contract Negotiation Phase and Support to Financial Close**

The Transaction Advisor shall assist Foskor in negotiations with the IPP bidder(s) who submitted the most advantageous offer. This shall include: -

- Advising Foskor in the preparation of the final set of Contracts and making recommendations for its execution;
- Ensure that the Preferred Tenderer meets the preconditions of the Contracts and the financial documents;
- Preparing reports on agreements, negotiations and highlight any risks;
- Provide recommendations and final version of Contracts for execution;
- Review and/or provide legal opinions; and
- Finalize the power purchase agreements (PPAs).

## **SKILLS AND EXPERIENCE REQUIRED**

The Transaction Advisor will comprise of different teams / specialists, managed by a single lead advisor / project manager, the members of which have the skill and experience, commitment, and availability necessary to undertake the range of tasks set out in this Terms of Reference. Each individual on the team must be personally available to do the work as and when required to do so. The lead advisor will be held accountable, in terms of the delivery, i.e. ensuring project deliverables on time and of extremely high quality.

The lead advisor in a proposed team will be responsible for the professional conduct and integrity of the team.

The skills and experience required in the transaction advisory team must be relevant to the project described in this Terms of Reference. Some of the skills required from the transaction advisory team are as follows:

- Financial analysis, project structuring and modelling in context and with relevant IPP in renewable energy;
- Limited recourse project finance and the structuring and modelling of such transactions;
- General IPP procurement and structuring;
- Knowledge of and experience of the South African legislation and enabling environment for IPPs;
- Knowledge and experience in design of a procurement process and preparing procurement documentation;
- Knowledge and experience in solar energy technologies;
- Knowledge, skills and experience in structuring IPP projects;
- Expertise and experience in the environmental requirements for Solar PV Plant transactions;
- Expertise and experience in environmental impact assessments and planning;
- Legal experience and expertise relating to PPAs in Solar PV technologies;
- Expertise and experience in obtaining necessary EIA approvals;
- Expertise and experience in developing transactions that promote black economic empowerment and local economic development;
- Project management experience and expertise;
- Administrative support;
- Review to comply with international best practice and standards and alignment with South African environment; and
- Contract management

### **The minimum experience required for key personnel is, as follows:**

- Project Manager: minimum of fifteen (15) years of experience in the development of bidding for renewable energy projects, and experience in solar projects within the last 5 years;
- Senior Solar Expert: minimum of ten (10) years of experience in the development of solar projects;
- Senior Financial Expert: minimum of fifteen (15) years of experience in financing infrastructure projects with extensive experience in financing solar projects;

- Senior Environmental Expert: minimum of fifteen (15) years of experience in conducting Environmental Impact Assessments (EIAs) on infrastructure projects. EIA experience on solar PV projects will be an added advantage;
- Senior Procurement Expert: minimum of fifteen (15) years of experience in procurement and bidding development for energy projects, particularly solar projects;
- Legal Expert: minimum of fifteen (15) years of experience in infrastructure project finance and / or solar project development;

All members of the Transaction Advisory team must be in good standing in all respects including ethically and professionally and should provide proof of registration in respect of professional registration as well as proof of good standing with such professional bodies.

## **REPORTING AND DELIVERABLES**

The Transaction Advisor will be required, among others, to produce:

- An Inception Report containing, among others, the Consultant's work program with details on the timing and milestones for financial closing, major deliverables, prerequisites for the Consultant's work to be obtained from the Client, and a detailed list of Contracts to be prepared by the consultant, and a communication plan with a strategy for consultations with relevant project stakeholders;
- A Full Due Diligence Report (Technical; Legal; Financial; Social and Environmental);
- A Report identifying risks and mitigation measures;
- A Report on the Contractual Framework for bidding for an IPP;
- A Financial Due Diligence Report with its financial model;
- IPP Bid Evaluation Report (from pre-qualification to selection of the preferred bidder);
- Pre-qualification Documents with selection criteria;
- IPP Bidding Documents with selection criteria; and
- Drafting and executing relevant Contracts / Agreements

## **3 GREEN ECONOMY / CARBON FOOTPRINT**

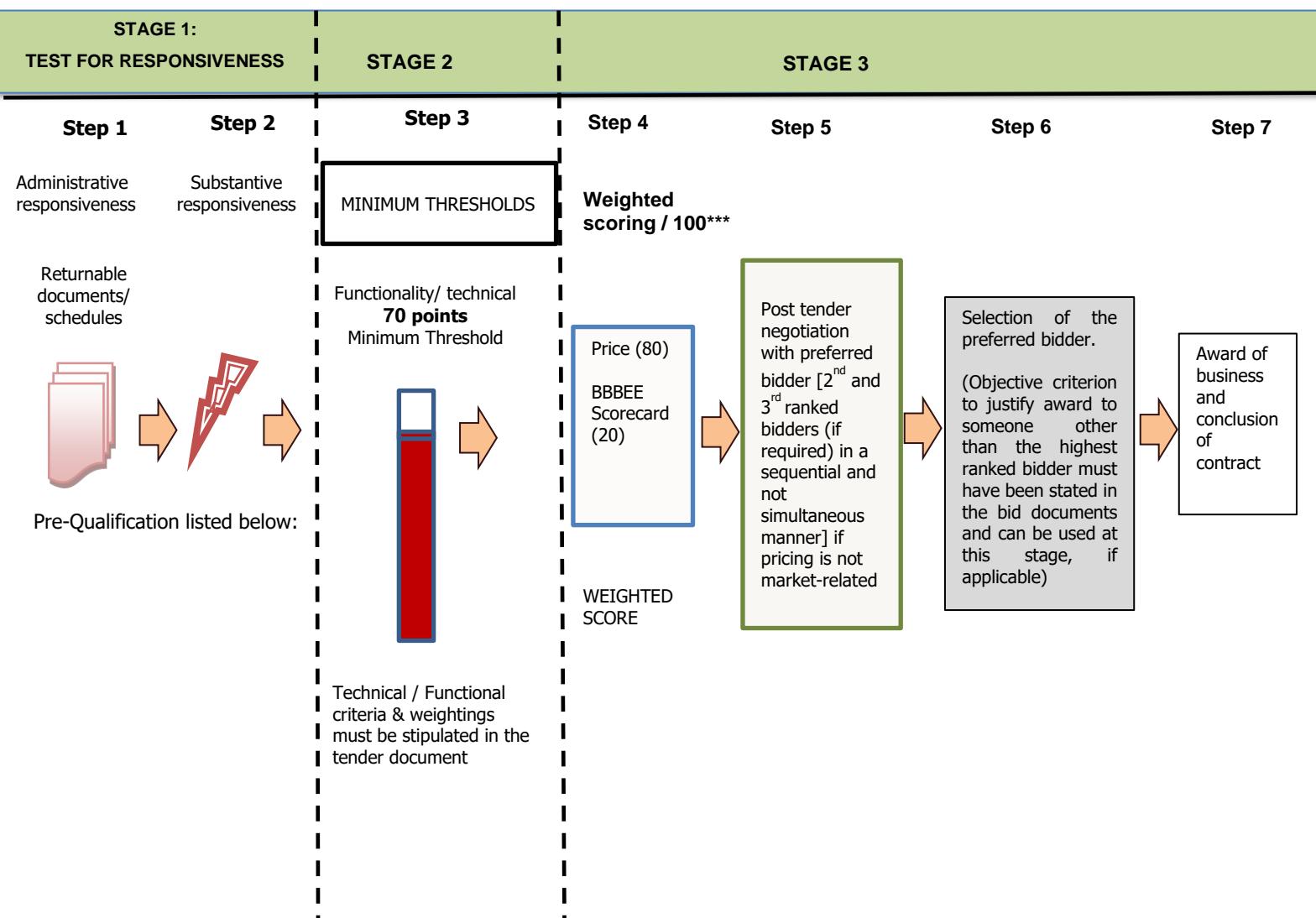
Foskor wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

## **4 GENERAL SUPPLIER OBLIGATIONS**

- 4.1 The Supplier(s) shall be fully responsible to Foskor for the acts and omissions of persons directly or indirectly employed by them.
- 4.2 The Supplier(s) must comply with the requirements stated in this RFP.

## 5 EVALUATION METHODOLOGY

Foskor will utilise the following methodology and criteria in selecting a preferred Supplier:



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Foskor reserves the right to conduct the different steps of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must not be interpreted to mean that bidders have necessarily passed any previous stage(s).

### 5.1 STEP ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative responsiveness check	RFP Reference
• Whether the Bid has been lodged on time	<i>Section 2 paragraph 3</i>
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	<i>Section 5</i>
• Verify the validity of all returnable documents	<i>Section 5</i>
• Verify if the Bid document has been duly signed by the authorised respondent	<i>All sections</i>

***The test for administrative responsiveness [Step One] must be passed for a Respondent's Proposal to progress to Step Two for further pre-qualification***

## 5.2 STEP TWO: Test for Substantive Responsiveness to RFP

The test for substantive responsiveness to this RFP will include the following:

Check for substantive responsiveness	RFP Reference
• Whether any general and legislation qualification criteria set by Foskor, have been met	<i>All sections including: Section 2 paragraphs, 2.2, 6.</i>
• Whether the Bid contains a priced offer as prescribed in the pricing and delivery schedule	<i>Section 4</i>
• Whether the Bid materially complies with the scope and/or specification given	<i>All Sections</i>
• Proof of registration on the National Treasury Central Supplier Database (CSD)	<i>Section 2, paragraph 13</i>

***The test for substantive responsiveness [Step Two] must be passed for a Respondent's proposal to progress to Step Three for further evaluation.***

## (PRE-QUALIFICATION CRITERIA)

- **Senior Project Manager** with minimum of fifteen (15) years of experience in the development of bidding for renewable energy projects, and experience in solar projects within the last 5 years (must be professionally registered with both ECSA and SACPCMP).
- **Senior Solar Expert** minimum of ten (10) years of experience in the development of solar projects (Must have BSc Eng or BEng or B-Tech Eng in Electrical Engineering or Mechanical Engineering or Electro-Mechanical Engineering and must also be registered with ECSA).
- **Senior Financial Expert** minimum of fifteen (15) years of experience in financing infrastructure projects with extensive experience in financing solar projects (Must have a BCom or Business Science degree (Accounting or Actuarial Science or any other Commerce degree) and must also be professionally registered with SAICA or relevant industry body).
- **Senior Environmental Expert** minimum of fifteen (15) years of experience in conducting Environmental Impact Assessments (EIAs) on infrastructure projects. EIA experience on solar PV projects will be an added advantage (Must have an appropriate degree in Environmental Sciences and must be professionally registered as a certified Environmental practitioner within South Africa).
- **Senior Procurement Expert** minimum of fifteen (15) years of experience in procurement and bidding development for energy projects, particularly solar projects; (must hold an appropriate graduate degree).
- **Legal Expert** minimum of fifteen (15) years of experience in infrastructure project finance and solar project development (must have B-com Law degree and be registered as a practicing Lawyer or Attorney with the Legal Practice Council of South Africa. Possession of a Fidelity Fund Certificate or being under the employment of an entity that holds such will be an added advantage).

**Note: A bidder that does not meet all the required pre-qualification criteria as stated above will be disqualified and won't be assessed for next stage of evaluation.**

### 5.3 STEP THREE: Minimum Threshold 70 points for Technical Criteria

The test for the Technical and Functional threshold will include the following:

FUNCTIONALITY	EVIDENCE / SUPPORTING INFORMATION REQUIRED	MAXIMUM POINTS	POINTS SCORED
<b>1. METHODOLOGY &amp; PROPOSAL</b> <ul style="list-style-type: none"> <li>➤ Bidders must clearly demonstrate methodology of project implementation proposal submitted. This must cover : <ul style="list-style-type: none"> <li>• Project development and management (0-3)</li> <li>• Technical / engineering transaction advisory &amp; roll out (0-3)</li> <li>• Financial transaction advisory &amp; roll out. (0-3)</li> <li>• Legal and regulatory transaction advisory &amp; roll out (0-3)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>➤ Comprehensive proposals must be submitted addressing all the requirements as per bid scope.</li> <li>➤ Detailed Methodology with full demonstration of technical capacity to strictly deliver the project within the timeframe (9 months).</li> </ul> <p><b><i>NB: If all the Evaluation Criteria Tasks and Milestones (steps) are not included in the Methodology and Proposal, the Bidder will be</i></b></p>	30	

FUNCTIONALITY	EVIDENCE / SUPPORTING INFORMATION REQUIRED	MAXIMUM POINTS	POINTS SCORED
<ul style="list-style-type: none"> <li>Environmental transaction advisory &amp; roll out (0-3)</li> <li>Economic Development transaction advisory &amp; roll out (0-3)</li> </ul> <p>➤ The bidder must further demonstrate how these processes shall be managed in term of:</p> <ul style="list-style-type: none"> <li>Cost management and reporting (0-2)</li> <li>Program schedule management (0-2)</li> <li>Quality management (0-2)</li> <li>Resource management (0-2)</li> <li>Risk management (0-2)</li> <li>Close out and Reporting (0-2)</li> </ul>	<p><i>scored zero on each of the submitted specific tasks or milestones in line with the scores as indicated in the functionality scoring allocation points.</i></p> <p><i>The Bid Evaluation committee will consider the content of the Methodology and Proposal submission and will allocate points as shown in the range shown in brackets against each bullet point item listed. Quality of the written submission will be a key factor to the scoring.</i></p>		
<p><b>2. EXPERIENCE OF THE BIDDING ENTITY</b></p> <p><u>Each</u> Letter of Appointment OR a Purchase Order (PO) <u>for similar Solar project 30MW or above</u> and each must be accompanied by a Completion Certificate based on the Engineering contract that was used for that project (attachment required will be an appointment letter or PO with a completion certificate)</p> <ul style="list-style-type: none"> <li>1 appointment letter or PO with completion certificate submitted = <b>7 points</b></li> <li>2 appointment letters or POs with 2 completion certificates submitted = <b>14 points</b></li> <li>3 appointment letters or POs with 3 completion certificates submitted = <b>21 points</b></li> </ul>	<p>Appointment Letters <u>OR</u> Purchase Order (P.O.'s) each indicating the professional appointment for similar Solar projects 30MW or above, each accompanied by a completion Certificate for the Main Contract.</p> <p><u>(Completion Certificate can either be a Practical or Final Completion certificate)</u></p> <p><b>NB:</b> An appointment letter or P.O. without main contract completion certificate shall not be considered.</p>	35	

FUNCTIONALITY	EVIDENCE / SUPPORTING INFORMATION REQUIRED	MAXIMUM POINTS	POINTS SCORED
<ul style="list-style-type: none"> <li>4 appointment letters or POs with 4 completion certificates submitted = <b>28 points</b></li> <li>5 appointment letters or POs with 5 completion certificates submitted = <b>35 points</b></li> </ul>			
<p><b>3. EXPERIENCE OF KEY PERSONNEL &amp; QUALIFICATIONS FOR RESOURCES ASSIGNED TO UNDERTAKE THE WORKS</b></p> <p>Please provide detailed CVs (with contactable references details) of proposed team, certified copies of qualifications; ID and affiliations with relevant professional bodies for the following: -</p> <ol style="list-style-type: none"> <li>1) Senior Project Manager</li> <li>2) Senior Solar Expert</li> <li>3) Senior Financial Expert</li> <li>4) Senior Environmental Expert</li> <li>5) Senior Procurement Expert</li> <li>6) Legal Expert</li> </ol> <p><b>(NB: maximum 6 points to be allocated per resource person)</b></p> <p><b>Senior Project Manager</b></p>	<p>Bidders to please Attach detailed CVs, Certified Copies of Qualifications including respective Professional Registrations, Certified Copies of Identity Documents, and the Organogram of the Technical Team.</p> <p><b>NB:</b> The organogram must clearly indicate the role of each professional team member.</p> <p><b>Senior Project Manager</b></p>	<b>35</b>	

FUNCTIONALITY	EVIDENCE / SUPPORTING INFORMATION REQUIRED	MAXIMUM POINTS	POINTS SCORED
<ul style="list-style-type: none"> <li>○ 15 years' experience &amp; above post SACPCMP professional registration = <b>(6 points)</b></li> <li>○ More than 10 years to below 15 years' experience post SACPCMP professional registration = <b>(4 points)</b></li> <li>○ 5-10 years' experience post SACPCMP professional registration = <b>(3 points)</b></li> <li>○ Less than 5 years' experience post SACPCMP professional registration = <b>(1 point)</b></li> </ul> <p><b>Senior Solar Expert</b></p> <ul style="list-style-type: none"> <li>○ 10 years' experience &amp; above post ECSA professional registration = <b>(6 points)</b></li> <li>○ More than 5 years to below 10 years' experience post ECSA professional registration = <b>(4 points)</b></li> <li>○ More than 2 years to below 5 years' experience post ECSA professional registration = <b>(2 points)</b></li> <li>○ Less than 2 years' experience post ECSA professional registration = <b>(1 point)</b></li> </ul> <p><b>Senior Financial Expert</b></p> <ul style="list-style-type: none"> <li>○ 15 years' experience &amp; above post SAICA or other relevant industry body professional registration = <b>(6 points)</b></li> </ul>	<p>Must have an appropriate built environment degree and be registered as a professional with The South African Council for the Project and Construction Management Professions (SACPCMP).</p> <p><b>Senior Solar Expert</b></p> <p><i>Must have BScEng, B.Eng or B.Tech Eng in Electrical Engineering or Electro-Mechanical Engineering and must be professionally registered with The Engineering Council of South Africa (ECSA).</i></p> <p><b>Senior Financial Expert</b></p>		

FUNCTIONALITY	EVIDENCE / SUPPORTING INFORMATION REQUIRED	MAXIMUM POINTS	POINTS SCORED
<ul style="list-style-type: none"> <li>○ More than 10 years to below 15 years' experience post SAICA or other relevant industry body professional registration = <b>(4 points)</b></li> <li>○ 5-10 years' experience post SAICA or other relevant industry body professional registration = <b>(3 points)</b></li> <li>○ Less than 5 years' experience post SAICA or other relevant industry body professional registration = <b>(1 point)</b></li> </ul> <p><b>Senior Environmental Expert</b></p> <ul style="list-style-type: none"> <li>○ 15 years' experience &amp; above post EAPASA or SACNASP professional registration = <b>(6 points)</b></li> <li>○ More than 10 years to below 15 years' experience post EAPASA or SACNASP professional registration = <b>(4 points)</b></li> <li>○ 5-10 years' experience post EAPASA or SACNASP professional registration = <b>(3 points)</b></li> <li>○ Less than 5 years' experience post EAPASA or SACNASP professional registration = <b>(1 point)</b></li> </ul> <p><b>Senior Procurement Expert</b></p> <ul style="list-style-type: none"> <li>○ 15 years' experience &amp; above post-graduation = <b>(5 points)</b></li> <li>○ More than 10 years to below 15 years' experience post-graduation = <b>(3 points)</b></li> </ul>	<p>Must have BComm or Business Science degree and must also be a registered professional with South African Institute of Chartered Accountants (SAICA) or other relevant industry body.</p> <p><b>Senior Environmental Expert</b></p> <p>Must have an appropriate degree in Environmental Sciences and must be registered as a Certified Environmental Practitioner with Environmental Assessment Practitioners Association of South Africa (EAPASA) or South African Council for Natural Scientific Professions (SACNASP)</p> <p><b>Senior Procurement Expert</b></p>		

FUNCTIONALITY	EVIDENCE / SUPPORTING INFORMATION REQUIRED	MAXIMUM POINTS	POINTS SCORED
<ul style="list-style-type: none"> <li>○ 5-10 years' experience post-graduation = <b>(2 points)</b></li> <li>○ Less than 5 years' experience post-graduation = <b>(1 point)</b></li> </ul> <p><b>Senior Legal Expert</b></p> <ul style="list-style-type: none"> <li>○ 15 years' experience &amp; above post LPCSA professional registration = <b>(6 points)</b></li> <li>○ More than 10 years to below 15 years' experience post LPCSA professional registration = <b>(4 points)</b></li> <li>○ 5-10 years' experience post LPCSA professional registration = <b>(3 points)</b></li> <li>○ Less than 5 years' experience post LPCSA professional registration = <b>(1 point)</b></li> </ul>	<p>Must hold an appropriate graduate degree.</p> <p><b>Senior Legal Expert</b></p> <p>Must have Bachelor of Laws or BComm Law degree and be registered as a practicing Lawyer or Attorney with the Legal Practice Council of South Africa (LPCSA)</p>		
<b>TOTAL POINTS</b>		<b>100</b>	
<b>MINIMUM THRESHOLD</b>		<b>70</b>	

***The minimum threshold for technical/functionality [Step Three] must be met or exceeded for a Respondent's Proposal to progress to Step Four for final evaluation***

#### 5.4 STEP FOUR: Evaluation and Final Weighted Scoring

##### a) Price and TCO Criteria [Weighted score 80/90 points]:

Evaluation Criteria	RFP Reference
• Commercial offer	Section 4

Foskor will utilise the following formula in its evaluation of Price:

$$PS = 80 \left( 1 - \frac{Pt - Pmin}{Pmin} \right) \text{ OR } PS = 90 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where:

$Ps$  = Score for the Bid under consideration  
 $Pt$  = Price of Bid under consideration  
 $Pmin$  = Price of lowest acceptable Bid

##### b) Broad-Based Black Economic Empowerment criteria [Weighted score 20 points]

- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form
- Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Section 4.1 of the B-BBEE Preference Points Claim Form.

#### 5.5 SUMMARY: Applicable Thresholds and Final Evaluated Weightings

Thresholds	Minimum Threshold
Technical / functionality	70

Evaluation Criteria	Final Weighted Scores
Price and Total Cost of Ownership	80
BBBE-E Scorecard	20
<b>TOTAL SCORE:</b>	<b>100</b>

#### 5.6 STEP FIVE: Post Tender Negotiations (if applicable)

- Respondents are to note that Foskor may not award a contract if the price offered is not market-related. In this regard, Foskor reserves the right to engage in PTN with the view to achieving a market-related price or to cancel the tender. Negotiations will be done in a sequential manner i.e.:
  - first negotiate with the highest ranked bidder or cancel the bid, should such negotiations fail,
  - negotiate with the 2nd and 3rd ranked bidders (if required) in a sequential manner.
- In the event of any Respondent being notified of such short-listed/preferred bidder status, his/her bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.

- Should Foskor conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Foskor based on such negotiations. Where a market related price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).

#### 5.7 **STEP SIX: Objective Criteria (if applicable)**

Foskor reserves the right to award the business to the highest scoring bidder/s unless objective criteria justify the award to another bidder. The objective criteria Foskor may apply in this bid process include:

- Skills Transfer and Capacity Building for Foskor;
- Impact on Foskor's Return On Investment;
- Rotation of Suppliers to promote opportunities for other suppliers, by overlooking a supplier that has been awarded business repeatedly overtime in order to benefit other suppliers in the market;
- the tenderer:
- is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement,
- is not undergoing a process of being restricted by Foskor or other state institution that Foskor may be aware of,
- can, as necessary and in relation to the proposed contract, demonstrate that he or she possesses the professional and technical qualifications, professional and technical competence, financial resources, equipment and other physical facilities, managerial capability, reliability, experience and reputation, expertise and the personnel, to perform the contract,
- has the legal capacity to enter into the contract
- is not insolvent, in receivership, under Business Rescue as provided for in chapter 6 of the Companies Act, 2008, bankrupt or being wound up, has his affairs administered by a court or a judicial officer, has suspended his business activities, or is subject to legal proceedings in respect of any of the foregoing,
- complies with the legal requirements, if any, stated in the tender data and
- is able, in the option of the employer to perform the contract free of conflicts of interest.

#### 5.8 **STEP SEVEN: Award of business and conclusion of contract**

- Immediately after approval to award the contract has been received, the successful bidder(s) will be informed of the acceptance of his/their Bid by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s).
- A final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.

**SECTION 4: PRICING AND DELIVERY SCHEDULE**

Item No	Milestone Description	Unit	Quantity	Rate	Amount
1	<b>Produce a comprehensive Feasibility Study</b> <b>Report with an assessment of viable options</b> <b>and recommendations for a preferred Solar PV</b> <b>and BESS solution: -</b>				
1.1	Inception Report	Sum	1		
1.2	Draft Feasibility Study Report and Powerpoint Presentation	Sum	1		
1.3	Final Feasibility Study Report and Powerpoint Presentation	Sum	1		
1.4	Disbursements (Travel; accommodation etc)	Sum	1		
1.5	<b>Sub-Total (A)</b>				
2	<b>Develop and Manage the IPP Procurement</b> <b>Process: -</b>				
2.1	Produce Terms of Reference; conduct Procurement and produce a Bid Evaluation Report with recommendations for the appointment of an Independent Power Producer (IPP) for the approved Solar PV and BESS solution	Sum	1		
2.2	Disbursements for IPP Bid Process (Travel; accommodation etc)	Sum	1		
2.3	<b>Sub-Total (B)</b>				
3	<b>Total (A + B)</b>				
4	Add: 5% Contingencies	%		5	
5	<b>Sub-Total</b>				
6	Add: 15% VAT	%		15	
7	<b>TOTAL (Bid Offer Amount)</b>				

**Notes to Pricing:**

- a) Respondents are to note that if the price offered by the highest scoring bidder is not market-related, Foskor may not award the contract to that Respondent. Foskor may-
  - (i) negotiate a market-related price with the Respondent scoring the highest points or cancel the RFP;
  - (ii) if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFP;
  - (iii) if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFP.

If a market-related price is not agreed with the Respondent scoring the third highest points, Foskor must cancel the RFP.

- b) Prices must be quoted in South African Rand inclusive of VAT.
- c) Any disbursement not specifically priced for will not be considered/accepted by Foskor.
- d) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this pricing schedule and not utilise a different format. Deviation from this pricing schedule could result in a bid being declared non-responsive.
- e) Rates proposed must be aligned with the "Guide on Hourly Fee Rates for Consultants" by the Department of Public Service and Administration (DPSA);
- f) Quantities given are estimates only. Any orders resulting from this RFP will be on an "as and when required" basis.
- g) Please note that should you have offered a discounted price(s), Foskor will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.
- h) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed for the contract duration. [Not to be confused with bid validity period Section 2, clause 1]

YES	
-----	--

- i) Respondents, if awarded the contract, are required to indicate that their prices quoted would be kept firm and fixed a period of 12 months, subject thereafter to adjustment (i.e. after the initial period of 12 months), utilizing the following price index/indices/adjustment formula. [Not to be confused with bid validity period Section 2, clause 1]

**1. DISCLOSURE OF CONTRACT INFORMATION****PRICES TENDERED**

Respondents are to note that, on award of business, Foskor may be required to publish the tendered prices of the successful and unsuccessful Respondents *inter alia* on the National Treasury e-Tender Publication Portal, ([www.etenders.gov.za](http://www.etenders.gov.za)), as required per National Treasury Instruction Note 01 of 2015/2016.

**JOHANNESBURG STOCK EXCHANGE DEBT LISTING REQUIREMENTS**

Foskor may also be required to disclose information relating to the subsequent contract i.e. the name of the company, goods/services provided by the company, the value and duration of the contract, etc. in compliance with the Johannesburg Stock Exchange (JSE) Debt Listing Requirements.

**DOMESTIC PROMINENT INFLUENTIAL PERSONS (DPIP) OR FOREIGN PROMINENT PUBLIC OFFICIALS (FPPO)**

Foskor is free to procure the services of any person within or outside the Republic of South Africa in accordance with applicable legislation. Foskor shall not conduct or conclude business transactions, with any Respondents without having:

- Considered relevant governance protocols;
- Determined the DPIP or FPPO status of that counterparty; and
- Conducted a risk assessment and due diligence to assess the potential risks that may be posed by the business relationship.

The below form contains personal information as defined in the Protection of Personal Information Act, 2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot reasonably be withheld.

Is the Respondent (Complete with a "Yes" or "No")						
A DPIP/FPPO		Closely Related to a DPIP/FPPO		Closely Associated to a DPIP/FPPO		
<b>List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.</b>						
No	Name of Entity / Business	Role in the Entity / Business (Nature of interest/ Participation)	Shareholding %	Registration Number	Status (Mark the applicable option with an X)	
					Active	Non-Active
1						
2						
3						

Respondents declaring a commercial relationship with a DPIP or FPPO are to note that Foskor is required to annually publish on its website a list of all business contracts entered into with DPIP or FPPO. This list will include successful Respondents, if applicable.

**2. RISK**

Respondents must elaborate on the control measures put in place by their entity, which would mitigate the risk to Foskor pertaining to potential non-performance by the Respondent, in relation to:

**2.1 Quality and specification of Goods/Services delivered:**

---

---

**2.2 Continuity of supply:**

---

---

**2.3 Compliance with the Occupational Health and Safety Act, 85 of 1993:**

---

---

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

**SECTION 5: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS**

I/We \_\_\_\_\_  
 [name of entity, company, close corporation or partnership] of [full address]

carrying on business trading/operating as \_\_\_\_\_

represented by \_\_\_\_\_

in my capacity as \_\_\_\_\_

being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated \_\_\_\_\_ to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Foskor decide to enter into Post Tender Negotiations with highest ranked bidder(s).

FULL NAME(S)

CAPACITY

SIGNATURE

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

I/We hereby offer to supply/provide the abovementioned Goods/Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Foskor's:

- (i) Master Agreement (which may be subject to amendment at Foskor's discretion if applicable);
- (ii) General Bid Conditions; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

I/We accept that unless Foskor should otherwise decide and so inform me/us in the letter of award, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Foskor's acceptance thereof shall constitute a binding contract between Foskor and me/us.

Should Foskor decide that a formal contract should be signed and so inform me/us in a letter of award [the **Letter of Award**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Foskor's Letter of Award, shall constitute a binding contract between Foskor and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply/provision of Goods/Services within 2 [two]

weeks thereafter, Foskor may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

Furthermore, I/we agree to a penalty clause/s which will allow Foskor to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Goods/Services due to non-performance by ourselves, , etc.

I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Foskor with cause for cancellation.

#### **ADDRESS FOR NOTICES**

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Address: \_\_\_\_\_

#### **NOTIFICATION OF AWARD OF RFP**

As soon as possible after approval to award the contract(s), the successful Respondent [**the Supplier/Service provider**] will be informed of the acceptance of its Proposal. Foskor will also publish the outcome of the tender, including successful and unsuccessful bidders, in the National Treasury e-tender portal. Any unsuccessful bidder has a right to request reasons for the bid not to be successful and Foskor has a duty to provide those reasons on receipt of the request from the bidder.

#### **VALIDITY PERIOD**

Foskor requires a validity period of 180 Business Days [09 February 2024] against this RFP, excluding the first day and including the last day.

#### **NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)**

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [**C.C.**] on whose behalf the RFP is submitted.

- (i) Registration number of company / C.C. \_\_\_\_\_
- (ii) Registered name of company / C.C. \_\_\_\_\_

(iii) Full name(s) of director/member(s)      Address/Addresses      ID Number(s)

---



---



---

## RETURNABLE DOCUMENTS

Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below. There are three types of returnable documents as indicated below and Respondents are urged to ensure that these documents are returned with their bids based on the consequences of non-submission as indicated below:

Mandatory Returnable Documents	<b><i>Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFP will result in a Respondent's disqualification.</i></b>
Returnable Documents Used for Scoring	<b><i>Failure to provide all Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion.</i></b>
Essential Returnable Documents	<b><i>Failure to provide essential Returnable Documents will result in Foskor affording Respondents a further opportunity to submit by a set deadline. Should a Respondent thereafter fail to submit the requested documents, this may result in a Respondent's disqualification.</i></b>

**All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.**

### a) Mandatory Returnable Documents

Respondents are required to submit with their bid submissions the following **Mandatory Returnable Documents**, and also to confirm submission of these documents by so indicating [Yes or No] in the tables below:

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 4 : Pricing and Delivery Schedule	
Technical Proposal	

### b) Returnable Documents Used for Scoring

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **Returnable Documents Used for Scoring** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

<b><u>RETURNABLE DOCUMENTS USED FOR SCORING</u></b>	<b>SUBMITTED</b> <b>[Yes or No]</b>
Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 9 of this RFP	

**c) Essential Returnable Documents:**

Over and above the requirements of section (a) and (b) mentioned above, Respondents are further required to submit with their Proposals the following **Essential Returnable Documents** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

<b>ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</b>	<b>SUBMITTED</b> <b>[Yes or No]</b>
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
Latest Financial Statements signed by your Accounting Officer or latest Audited Financial Statements plus 2 previous years	
SECTION 1: SBD1 FORM	
SECTION 5 : Proposal Form and List of Returnable documents	
SECTION 6 : Certificate Of Acquaintance with RFP, Terms & Conditions & Applicable Documents	
SECTION 7 : RFP Declaration and Breach of Law Form	
SECTION 9: Specific goals points claim form	
SECTION 12: Protection of Personal Information	
CSD Registration report	

**CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its valid proof of B-BBEE status, for the duration of any contract emanating from this RFP. Should the Respondent be awarded the contract [**the Agreement**] and fail to present Foskor with such renewals as and when they become due, Foskor shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement immediately without any liability and without prejudice to any claims which Foskor may have for damages against the Respondent.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

## **SECTION 6: CERTIFICATE OF ACQUAINTANCE WITH RFP, MASTER AGREEMENT & APPLICABLE DOCUMENTS**

**By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP. This includes those terms and conditions contained in any printed form stated to form part hereof, including but not limited to the documents stated below. As such, Foskor SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such term or condition or failed properly to take it into account for the purpose of calculating tendered prices or any other purpose:**

1	Foskor's General Bid Conditions
2	Foskor Terms and Conditions
3	Foskor's Supplier Integrity Pact
4	Non-disclosure Agreement

**Note:** Should a Respondent be successful and awarded the bid, they will be required to complete a Supplier Declaration Form for registration as a vendor onto the Foskor vendor master database.

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFP unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Foskor's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from any term or condition may result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond on, before submitting the bid. **The Bidder agrees that he/she will have no claim or cause of action based on an allegation that any aspect of this RFP was unclear but in respect of which he/she failed to obtain clarity.**

The bidder understands that his/her Bid will be disqualified if the Certificate of Acquaintance with RFP documents included in the RFP as a returnable document, is found not to be true and complete in every respect.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

\_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

**SECTION 7: RFP DECLARATION AND BREACH OF LAW FORM**

NAME OF ENTITY: \_\_\_\_\_

We \_\_\_\_\_ do hereby certify that:

1. Foskor has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFP Clarification purposes;
2. We have received all information we deemed necessary for the completion of this Request for Proposal [**RFP**];
3. We have been provided with sufficient access to the existing Foskor facilities/sites and any and all relevant information relevant to the Goods/Services as well as Foskor information and Employees, and have had sufficient time in which to conduct and perform a thorough due diligence of Foskor's operations and business requirements and assets used by Foskor. Foskor will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.
4. At no stage have we received additional information relating to the subject matter of this RFP from Foskor sources, other than information formally received from the designated Foskor contact(s) as nominated in the RFP documents;
5. We are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Foskor in issuing this RFP and the requirements requested from Bidders in responding to this RFP have been conducted in a fair and transparent manner;
6. We have complied with all obligations of the Bidder/Supplier as indicated in the Foskor Supplier Integrity which includes but are not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a contract with Foskor;
7. We declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of the Foskor Group including any person who may be involved in the evaluation and/or adjudication of this Bid;
8. We declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of Foskor;
9. In addition, we declare that an owner / member / director / partner / shareholder/employee of our entity **has / has not been** [delete as applicable] a former employee or board member of Foskor in the past 10 years. I further declare that if they were a former employee or board member of Foskor in the past 10 years that they **were/were not** involved in the bid preparation or had access to the information related to this RFP; and
10. If such a relationship as indicated in paragraph 7, 8 and/or 9 exists, the Respondent is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/  
PARTNER/SHAREHOLDER/EMPLOYEE:

ADDRESS:

---



---

Indicate nature of relationship with Foskor:

---



---

**[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with Foskor. Information provided in the declarations may be used by Foskor and/or its affiliates to verify the correctness of the information provided]**

11. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Foskor [other than any existing and appropriate business relationship with Foskor] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Foskor immediately in writing of such circumstances.

#### **BIDDER'S DISCLOSURE (SBD4)**

##### **12 PURPOSE OF THE FORM**

12.1 Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

12.2 Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

##### **13 Bidder's declaration**

13.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state?

**YES/NO**

13.1.1. If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

<sup>1</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.


13.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution?

**YES/NO**

13.2.1. If so, furnish particulars:

.....  
.....

13.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

**YES/NO**

13.3.1. If so, furnish particulars:

.....  
.....

#### **14 DECLARATION**

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

14.1 I have read and I understand the contents of this disclosure;

14.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

14.3 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 consortium<sup>2</sup> will not be construed as collusive bidding.

14.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid,

<sup>2</sup> 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.

bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

14.5 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.

14.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.

14.7 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.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 12, 13 and 14 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

#### **BREACH OF LAW**

We further hereby certify that *I/we* (the bidding entity and/or any of its directors, members or partners) **have/have not been** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

---

DATE OF BREACH:

---

Furthermore, I/we acknowledge that Foskor SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

For and on behalf of  duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

## **SECTION 8: RFP CLARIFICATION REQUEST FORM**

RFP No: FOSCO-RFP-44-2024

RFP deadline for questions / RFP Clarifications: Before 12:00 pm on **15 March 2024**

TO: Foskor (Pty) Ltd  
ATTENTION: Clayton Losper  
EMAIL [claytonl@foskor.co.za]  
DATE: \_\_\_\_\_  
FROM: \_\_\_\_\_

RFP Clarification No *[to be inserted by Foskor]* .....

## **REQUEST FOR RFP CLARIFICATION**

---

Respondent's Signature

---

Date & Company Stamp

## SECTION 9: B-BBEE PREFERENCE POINTS CLAIM FORM

This preference form must form part of all bids invited. It contains general information and serves as a claim for preference points for Broad-Based Black Economic Empowerment [B-BBEE] Status Level of Contribution.

Foskor will award preference points to companies who provide valid proof of their B-BBEE status using either the latest version of the generic Codes of Good Practice or Sector Specific Codes (if applicable).

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS.**

### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).

1.2 Preference points for this bid shall be awarded for:

- (a) Price; and
- (b) B-BBEE Status Level of Contribution.

1.3 The maximum points for this bid are allocated as follows:

	POINTS
<b>PRICE</b>	<b>80</b>
<b>B-BBEE STATUS LEVEL OF CONTRIBUTION</b>	<b>20</b>
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

1.4 Failure on the part of a bidder to submit proof of B-BBEE status level of contributor together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5 The purchaser 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 purchaser.

### 2. DEFINITIONS

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic

Empowerment Act, 2003 (Act No. 53 of 2003);

(f) “**EME**” means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(g) “**functionality**” means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents

(h) “**Price**” includes all applicable taxes less all unconditional discounts.

(i) “**Proof of B-BBEE Status Level of Contributor**”

- i) the B-BBEE status level certificate issued by an authorised body or person;
- ii) a sworn affidavit as prescribed by the B-BBEE Codes of Good Practice; or
- iii) any other requirement prescribed in terms of the B-BBEE Act.

(j) “**QSE**” means a Qualifying Small Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

(k) “**rand value**” means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

### 3. POINTS AWARDED FOR PRICE

#### 3.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:

80/20

$$Ps = 80 \left( 1 - \frac{Pt - P_{\min}}{P_{\min}} \right)$$

Where

Ps = Points scored for comparative price of bid under consideration

Pt = Comparative price of bid under consideration

Pmin = Comparative price of lowest acceptable bid

### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

4.2 The table below indicates the required proof of B-BBEE status depending on the category of enterprises:

Enterprise	B-BBEE Certificate & Sworn Affidavit
<b>Large</b>	Certificate issued by SANAS accredited verification agency
<b>QSE</b>	Certificate issued by SANAS accredited verification agency Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at <a href="http://www.dti.gov.za/economic_empowerment/bee_codes.jsp">www.dti.gov.za/economic_empowerment/bee_codes.jsp</a> .]
<b>EME<sup>3</sup></b>	Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.

4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

4.6 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

## 5. BID DECLARATION

5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

### B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 6.1

6.1 B-BBEE Status Level of Contribution:      Level 1    =    (maximum of 20 points)

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.)

## 7. SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted?

*(Tick applicable box)*

YES	<input type="checkbox"/>	NO	<input type="checkbox"/>
-----	--------------------------	----	--------------------------

<sup>3</sup> In terms of the Implementation Guide: Preferential Procurement Regulations, 2017, Version 2, paragraph 11.11 provides that in the Transport Sector, EMEs can provide a letter from accounting officer or get verified and be issued with a B-BBEE certificate by SANAS accredited professional or agency as the Transport Sector Code has not been aligned to the generic Codes. EMEs in the Transport Sector are not allowed to provide a sworn affidavit as the generic codes are not applicable to them.

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....% .....
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE.

*(Tick applicable box)*

YES	NO	
-----	----	--

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations,2017:

Designated Group: An EME or QSE which is at last 51% owned by:	EME ✓	QSE ✓
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
OR		
Any EME		
Any QSE		

## 8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

### 8.4 TYPE OF COMPANY/ FIRM

- Partnership/Joint Venture / Consortium
- One person business/sole property
- Close corporation
- Company
- (Pty) Limited

[TICK APPLICABLE BOX]

### 8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
.....

### 8.6 COMPANY CLASSIFICATION

- Manufacturer
- Supplier
- Professional Supplier
- Other Suppliers, e.g. transporter, etc.

[TICK APPLICABLE BOX]

8.7 Total number of years the company/firm has been in business:.....

8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBE status level of contribution indicated in paragraphs 1.4 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:

- i) The information furnished is true and correct;
- ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
- iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 1.4 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
- iv) If a bidder submitted false information regarding its B-BBEE status level of contributor, local production and content, or any other matter required in terms of the Preferential Procurement Regulations, 2017 which will affect or has affected the evaluation of a bid, or where a bidder has failed to declare any subcontracting arrangements or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have
  - (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Foskor reserves the right to penalise the bidder up to 10 percent of the value of the contract;
  - (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
  - (f) forward the matter for criminal prosecution.

<p style="text-align: center;"><b>WITNESSES</b></p> <p>1. ....</p> <p>2. ....</p>	<p style="text-align: center;">.....</p> <p style="text-align: center;"><b>SIGNATURE(S) OF BIDDERS(S)</b></p> <p>DATE: .....</p> <p>ADDRESS.....</p>
---	--

## SECTION 10: JOB-CREATION SCHEDULE

**(Please ensure that you return this schedule with your bid submission)**

The Government has identified State Owned Enterprises sourcing activities as a key enabler to achieve the National Development Plan (NDP) objective of reducing unemployment from the current baseline of 28% to 6%. In order to give effect to these job creation objectives, Respondents are required to provide the following undertaking of new jobs that will be created (either by them or by their subcontractors) should they be awarded this bid.

Note that this undertaking is not required if a NIPP obligation is applicable to a Respondent's bid as indicated in Section 9.

**Respondents are required to indicate below whether the NIPP obligation is applicable to their bid:**

<b>YES</b>		<b>NO</b>	
------------	--	-----------	--

(a) Please indicate total number of new jobs that will be created over the term of the contract:

<b>Total number and value of new jobs created</b>	<b>Total number of new jobs</b>	<b>Total rand value of new jobs created</b>

(b) Of the total number of new jobs created, please indicate the number and value of new jobs to be created for the following designated groups:

	<b>Total number of new jobs</b>	<b>Total rand value of new jobs</b>
Black men		
Black women		
Black Youth		
Black people living in rural or underdeveloped areas or townships		
Black People with Disabilities		

(c) Of the total number of new jobs created, please indicate the number of skilled, semi-skilled and unskilled new jobs that will be created over the term of the contract:

	<b>Total number of Skilled jobs</b>	<b>Total number of Semi-skilled jobs</b>	<b>Total number of Unskilled jobs</b>
Black men			
Black women			
Black Youth			
Black people living in rural or underdeveloped areas or townships			
Black People with Disabilities			
Other			

(d) Please indicate the number of new jobs to be created, broken down per quarter over the term of the contract.

**Insert additional tables for each year of the contract period:**

Year 1	Q1	Q2	Q3	Q4
Total number of new jobs				
Number of new jobs for Black men				
Number of new jobs for black women				
Number of new jobs for black youth				
Number of new jobs for black people living in rural or underdeveloped areas or townships				
Number of new jobs for black People with Disabilities				
Number of new jobs for other categories				
Number of new skilled jobs				
Number of new semi-skilled jobs				
Number of new unskilled jobs				

## SECTION 11: SBD 5

This document must be signed and submitted together with your bid

### THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

#### INTRODUCTION

The National Industrial Participation Programme (NIPP), which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIPP requirements. NIPP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

#### 1. PILLARS OF THE PROGRAMME

- 1.1 The NIPP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US\$5 million or other currency equivalent to US\$5 million will have a NIP obligation. This threshold of US\$5 million can be reached as follows:
  - (a) Any single contract with imported content exceeding US\$5 million.
 

or
  - (b) Multiple contracts for the same goods, works or services each with imported content exceeding US\$3 million awarded to one seller over a 2 year period which in total exceeds US\$5 million.
 

or
  - (c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US\$5 million.
 

or
  - (d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US\$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US\$5 million.
- 1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30% of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIPP obligation on a *pro-rata* basis.
- 1.3 To satisfy the NIPP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.
- 1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

## 2. REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

- 2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.
- 2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

## 3. BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

- 3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with their bid documentation at the closing date and time of the bid.
- 3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIPP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:
  - Bid number;
  - Description of the goods or services;
  - Date on which the contract was awarded;
  - Name, address and contact details of the contractor;
  - Value of the contract; and
  - Imported content of the contract, if possible.
- 3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at [Elias@thedti.gov.za](mailto:Elias@thedti.gov.za) for further details about the programme.

## 4. PROCESS TO SATISFY THE NIPP OBLIGATION

- 4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:
  - a. the contractor and the DTIC will determine the NIPP obligation;
  - b. the contractor and the DTI will sign the NIPP obligation agreement;
  - c. the contractor will submit a performance guarantee to the DTI;
  - d. the contractor will submit a business concept for consideration and approval by the DTI;
  - e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
  - f. the contractor will implement the business plans; and
  - g. the contractor will submit bi-annual progress reports on approved plans to the DTI.

4.2 The NIPP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number .....

Closing date: .....

Name of bidder.....

Postal address .....

.....

Signature.....

Name (in print).....

Date.....

## SECTION 12: PROTECTION OF PERSONAL INFORMATION

1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No.4 of 2013.("POPIA"):  
consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.
2. Foskor will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:  
Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFP, the Responsible party is "Foskor" and the Data subject is the "Respondent". Foskor will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.
4. Foskor reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFP and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Foskor.
5. In responding to this bid, Foskor acknowledges that it will obtain and have access to personal information of the Respondent. Foskor agrees that it shall only process the information disclosed by Respondent in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.
6. Foskor further agrees that in submitting any information or documentation requested in this RFP, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Foskor and/or its authorised appointed third parties.
7. Furthermore, Foskor will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, Foskor requires the Respondent to process any personal information disclosed by Foskor in the bidding process in the same manner.
8. Foskor shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to this RFP (physically, through a computer or any other form of electronic communication).
9. Foskor shall notify the Respondent in writing of any unauthorised access to information, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance

with applicable laws, after becoming aware of such crimes or suspected crime. The Respondent must take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible.

10. The Respondent may, in writing, request Foskor to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Respondent may further request that Foskor correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Respondent in Foskor's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.
11. In submitting any information or documentation requested in this RFP, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFP and further confirming that they are aware of their rights in terms of Section 5 of POPIA

**Respondents are required to provide consent below:**

<b>YES</b>	<input type="checkbox"/>	<b>NO</b>	<input type="checkbox"/>
------------	--------------------------	-----------	--------------------------

12. Further, the Respondent declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying Foskor against any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that the Respondent submitted.
13. The Respondent declares that the personal information submitted for the purpose of this RFP is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent's authorised representative: \_\_\_\_\_

Should a Respondent have any complaints or objections to processing of its personal information, by Foskor, the Respondent can submit a complaint to the Information Regulator on <https://www.justice.gov.za/inforeg/>, click on contact us, click on complaints.IR@justice.gov.za