

REQUEST FOR PROPOSALS

YOU ARE HEREBY INVITED TO SUBMIT A BID TO MEET THE REQUIREMENTS OF THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED	
BID NUMBER:	RFP288/2021
COMPULSORY BRIEFING SESSION DETAILS:	Tender briefing will be done online via Microsoft teams. Bidders are advised to use the link below to join the briefing session. Link: Click here to join the meeting 17 November 2021 @11H00
CLOSING DATE:	01 December 2021
CLOSING TIME:	23H55 (Midnight)
PERIOD FOR WHICH BIDS ARE REQUIRED TO REMAIN OPEN FOR ACCEPTANCE:	120 days
DESCRIPTION OF BID:	APPOINTMENT OF A CONSULTANCY FIRM AS TRANSACTIONAL ADVISOR FOR THE PROCUREMENT OF A PRIVATE PARTNER AS CONCESSIONAIRE FOR THE FINANCE, DESIGN, MANAGEMENT, OPERATION AND MAINTENANCE OF THE ELECTRICITY DISTRIBUTION SYSTEM IN MIDVAAL LOCAL MUNICIPALITY, GAUTENG, SOUTH AFRICA.
BID DOCUMENTS DELIVERY ADDRESS:	1. ELECTRONIC SUBMISSIONS <u>INSTRUCTIONS:</u> ➤ Bidders are required to issue Tender Submission Link requests and all enquiries to lihleSCM@dbsa.org ONLY; ➤ No – Tender Submission Link requests will be accepted before 16h00 on the 25th of November 2021. Any requests after the stipulated date and time will be disregarded. ➤ Bidders will thereafter receive a OneDrive Link to upload their tender submission documents electronically. NB: Electronic submission is encouraged for all bidders interest in this tender bid Closing date 01 December 2021 before 23:55. All bids must be in on the 1st of December 2021.

NAME OF BIDDER:	
CONTACT PERSON:	
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	
BIDDER'S STAMP OR SIGNATURE	



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

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

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**PART A
INVITATION TO BID**

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

BID NUMBER: RFP288/2021

DESCRIPTION: APPOINTMENT OF A CONSULTANCY FIRM AS TRANSACTIONAL ADVISOR FOR THE PROCUREMENT OF A PRIVATE PARTNER AS CONCESSIONAIRE FOR THE FINANCE, DESIGN, MANAGEMENT, OPERATION AND MAINTENANCE OF THE ELECTRICITY DISTRIBUTION SYSTEM IN MIDVAAL LOCAL MUNICIPALITY, GAUTENG, SOUTH AFRICA.

COMPULSORY BRIEFING: 17 November 2021 - Tender briefing will be done online via Microsoft teams.

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

Time: 11H00 AM (Microsoft Teams)

LINK REQUESTS: No – Tender Submission Link requests will be accepted after **16h00 on the 25th of November 2021**. Any requests after the stipulated date and time will be disregarded.

CLOSING DATE: 01 December 2021

CLOSING TIME: 23H55

The successful Bidder will be required to conclude a service level agreement with the DBSA

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

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

THE FOLLOWING PARTICULARS MUST BE FURNISHED (FAILURE TO DO SO MAY RESULT IN YOUR BID BEING DISQUALIFIED).

BIDDERS THAT ARE UNINCORPORATED CONSORTIA CONSISTING OF MORE THAN ONE LEGAL ENTITY MUST SELECT A LEAD ENTITY AND FURNISH THE DETAILS OF THE LEAD ENTITY, UNLESS OTHERWISE SPECIFIED.

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

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

PART B

TERMS AND CONDITIONS FOR BIDDING

1. BID SUBMISSION:
1.1. BIDS MUST BE SUBMITTED ELECTRONICALLY (ONE DRIVE LINK) BY THE STIPULATED TIME TO THE LINK PROVIDED. LATE BIDS WILL NOT BE ACCEPTED FOR CONSIDERATION. 1.2. ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS PROVIDED-(NOT TO BE RE-TYPED) OR ONLINE 1.3. BIDDERS MUST REGISTER ON THE CENTRAL SUPPLIER DATABASE (CSD) TO UPLOAD MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS; AND BANKING INFORMATION FOR VERIFICATION PURPOSES). B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION. 1.4. WHERE A BIDDER IS NOT REGISTERED ON THE CSD, MANDATORY INFORMATION NAMELY: (BUSINESS REGISTRATION/ DIRECTORSHIP/ MEMBERSHIP/IDENTITY NUMBERS; TAX COMPLIANCE STATUS MAY NOT BE SUBMITTED WITH THE BID DOCUMENTATION. B-BBEE CERTIFICATE OR SWORN AFFIDAVIT FOR B-BBEE MUST BE SUBMITTED TO BIDDING INSTITUTION. 1.5. THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT 2000 AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER LEGISLATION OR SPECIAL CONDITIONS OF CONTRACT.
2. TAX COMPLIANCE REQUIREMENTS
2.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS. 2.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VIEW THE TAXPAYER'S PROFILE AND TAX STATUS. 2.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) OR PIN MAY ALSO BE MADE VIA E-FILING. IN ORDER TO USE THIS PROVISION, TAXPAYERS WILL NEED TO REGISTER WITH SARS AS E-FILERS THROUGH THE WEBSITE WWW.SARS.GOV.ZA. 2.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS TOGETHER WITH THE BID. 2.5 IN BIDS WHERE CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE PROOF OF TCS / PIN / CSD NUMBER. 2.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.
3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS
3.1. IS THE BIDDER A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? ☐ YES ☐ NO 3.2. DOES THE BIDDER HAVE A BRANCH IN THE RSA? ☐ YES ☐ NO 3.3. DOES THE BIDDER HAVE A PERMANENT ESTABLISHMENT IN THE RSA? ☐ YES ☐ NO 3.4. DOES THE BIDDER HAVE ANY SOURCE OF INCOME IN THE RSA? ☐ YES ☐ NO IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN, IT IS NOT A REQUIREMENT TO OBTAIN A TAX COMPLIANCE STATUS / TAX COMPLIANCE SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 2.3 ABOVE.

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

PART C

CHECKLIST OF COMPULSORY RETURNABLE SCHEDULES AND DOCUMENTS

Please adhere to the following instructions

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

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

YES

NO

☐☐

One original Bid document in separate folders; Folder 1 - for Pre-Qualifying Criteria and Functional Evaluation Folder 2 - Price / Financial Proposal –
Electronic submission

☐☐

Part A: Invitation to Bid

☐☐

Part B: Terms and Conditions of Bidding

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Part C: Checklist of Compulsory Returnable Schedules and Documents

☐☐

Part D: Conditions of Tendering and Undertakings by Bidders

☐☐

Part E: Specifications/Terms of Reference and Project Brief

☐☐

Annexure A: Price Proposal Requirement

☐☐

Annexure B: SBD4 Declaration of Interest

☐☐

Annexure C: SBD6.1 and B-BBEE status level certificate

☐☐

Annexure D: SBD8: Declaration of Bidder's Past Supply Chain Practices

☐☐

Annexure E: SBD9: Certificate of Independent Bid Determination

- | | | |
|--------------------------|--------------------------|---|
| ☐ | ☐ | Annexure F: Certified copies of your CIPC company registration documents listing all members with percentages, in case of a lose corporation |
| ☐ | ☐ | Annexure G: Certified copies of latest share certificates, in case of a company. |
| ☐ | ☐ | Annexure H: (if applicable): A breakdown of how fees and work will be spread between members of the bidding consortium. |
| ☐ | ☐ | Annexure I Supporting documents to responses to Pre-Qualifying Criteria and Functional Evaluation Criteria. |
| ☐ | ☐ | Annexure J: General Condition of Contract |
| ☐ | ☐ | Annexure K: CSD Tax Compliance Status and Registration Requirements Report |

PART D

CONDITIONS OF TENDERING AND UNDERTAKINGS BY BIDDER

1. DEFINITIONS

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

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

- 1.17 **PPPFA Regulations** means the Preferential Procurement Regulations, 2017 published in terms of the PPPFA.
- 1.18 **Pre-Qualifying Criteria** means the criteria set out in clause 27.3 of this Part C.
- 1.19 **Price and Preferential Points Assessment** means the process described in clause 27.6 of this Part C, as prescribed by the PPPFA.
- 1.20 **Proposed Contract** means the agreement including any other terms and conditions contained in or referred to in this RFP that may be executed between the DBSA and the successful Bidder.
- 1.21 **Request for Proposal** or **RFP** means this document (comprising each of the parts identified under Part A, Part B, Part C and Part D) including all annexures and any other documents so designated by the DBSA.
- 1.22 **SARS** means the South African Revenue Service.
- 1.23 **Services** means the services required by the DBSA, as specified in this RFP Part D.
- 1.24 **SLA** means service level agreement.
- 1.25 **SOE** means State Owned Enterprise, as defined by the Companies' Act.
- 1.26 **Specification** means the conditions of tender set and any specification or description of the DBSA's requirements contained in this RFP.
- 1.27 **State** means the Republic of South Africa.
- 1.28 **Statement of Compliance** means the statement forming part of a Tender indicating the Bidders compliance with the Specification.
- 1.29 **Tendering Process** means the process commenced by the issuing of this Request for Proposals and concluding upon formal announcement by the DBSA of the selection of a successful Bidder(s) or upon the earlier termination of the process.
- 1.30 **Website** means a website administered by DBSA under its name with web address www.dbsa.org

2. INTERPRETATIONS

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

- 2.1 "includes" or "including" means includes or including without limitation; and
- 2.2 "R" or "Rand" is a reference to the lawful currency of the Republic of South Africa.

3. TENDER TECHNICAL AND GENERAL QUERIES

Queries pertaining to this tender must be directed to:-

DBSA Supply Chain Management Unit

Email: lihleSCM@dbsa.org

No questions will be answered telephonically.

4. BID TIMETABLE

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

Activity	Date
Advertisement of tender	10 / 11 / 2021
RFP document available	10 / 11 / 2021
Closing date for tender enquiries	25 / 11 / 2021
Link requests	25 / 11 / 2021 by 16h00
Closing date and time	01 / 12 / 2021 at 23h55
Intended completion of evaluation of tenders	TBA
Intended formal notification of successful Bidder(s)	TBA
Signing of Service Level Agreement	TBA
Effective date	TBA

5. SUBMISSION OF TENDERS

Instructions:

- Bidders are required to issue Tender Submission Link requests and all other enquiries to lihleSCM@dbsa.org **ONLY**;
- **No** – Tender Submission Link requests will not be accepted after **16h00 on the 25th of November 2021**. Any requests after the stipulated date and time will be disregarded.
- Bidders will thereafter receive a OneDrive Link to upload their tender submission documents electronically.

NB: No Physical submission will be accepted for this bid. Bidders must ensure that they follow the instructions for the electronic submission.

6. RULES GOVERNING THIS RFP AND THE TENDERING PROCESS

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

7. STATUS OF REQUEST FOR PROPOSAL

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

8. ACCURACY OF REQUEST FOR PROPOSAL

- 8.1 Whilst all due care has been taken in connection with the preparation of this RFP, the DBSA makes no representations or warranties that the content in this RFP or any information communicated to or provided to Bidders during the Tendering Process is, or will be, accurate, current or complete. The DBSA, and its officers, employees and advisors will not be liable with respect to any information communicated which is not accurate, current or complete.
- 8.2 If a Bidder finds or reasonably believes it has found any discrepancy, ambiguity, error or inconsistency in this RFP or any other information provided by the DBSA (other than minor clerical matters), the Bidder must promptly notify the DBSA in writing of such discrepancy,

ambiguity, error or inconsistency in order to afford the DBSA an opportunity to consider what corrective action is necessary (if any).

- 8.3 Any actual discrepancy, ambiguity, error or inconsistency in this RFP or any other information provided by the DBSA will, if possible, be corrected and provided to all Bidders without attribution to the Bidder who provided the written notice.

9. ADDITIONS AND AMENDMENTS TO THE RFP

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

10. REPRESENTATIONS

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

11. CONFIDENTIALITY

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

12. REQUESTS FOR CLARIFICATION OR FURTHER INFORMATION

- 12.1 All communications relating to this RFP and the Tendering Process must be directed to the Tender Officer.
- 12.2 All questions or requests for further information or clarification of this RFP or any other document issued in connection with the Tendering Process must be submitted to the Tender Officer in writing, and most preferably by e-mail to lihleSCM@dbsa.org
- 12.3 Any communication by a Bidder to the DBSA will be effective upon receipt by the Tender Officer (provided such communication is in the required format).
- 12.4 The DBSA has restricted the period during which it will accept questions or requests for further information or clarification and reserves the right not to respond to any enquiry or request, irrespective of when such enquiry or request is received.

- 12.5 Except where the DBSA is of the opinion that issues raised apply only to an individual Bidder, questions submitted and answers provided will be made available to all Bidders by e-mail, as well as on the DBSA's website without identifying the person or organisation which submitted the question.
- 12.6 In all other instances, the DBSA may directly provide any written notification or response to a Bidder by email to the address of the Bidder (as notified by the Bidder to the Tender Manager).
- 12.7 A Bidder may, by notifying the Tender Officer in writing, withdraw a question submitted in accordance with clause 12, in circumstances where the Bidder does not wish the DBSA to publish its response to the question to all Bidders.

13. UNAUTHORISED COMMUNICATIONS

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

14. IMPROPER ASSISTANCE, FRAUD AND CORRUPTION

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

15. ANTI-COMPETITIVE CONDUCT

- 15.1 Bidders and their respective officers, employees, agents and advisors must not engage in any collusion, anti-competitive conduct or any other similar conduct in respect of this Tendering Process with any other Bidder or any other person(s) in relation to:
- 15.1.1 the preparation or lodgement of their Bid
 - 15.1.2 the evaluation and clarification of their Bid; and
 - 15.1.3 the conduct of negotiations with the DBSA.

- 15.2 For the purposes of this clause 15, collusion, anti-competitive conduct or any other similar conduct may include disclosure, exchange and clarification of information whether or not such information is confidential to the DBSA or any other Bidder or any other person or organisation.
- 15.3 In addition to any other remedies available to it under law or contract, the DBSA may, in its absolute discretion, immediately disqualify a Bidder that it believes has engaged in any collusive, anti-competitive conduct or any other similar conduct during or before the Tendering Process.

16. COMPLAINTS ABOUT THE TENDERING PROCESS

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

17. CONFLICT OF INTEREST

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

18. LATE BIDS

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

19. BIDDER'S RESPONSIBILITIES

- 19.1 Bidders are responsible for:
- 19.1.1 examining this RFP and any documents referenced or attached to this RFP and any other information made or to be made available by the DBSA to Bidders in connection with this RFP;
 - 19.1.2 fully informing themselves in relation to all matters arising from this RFP, including all matters regarding the DBSA's requirements for the provision of the Services;
 - 19.1.3 ensuring that their Bids are accurate and complete;
 - 19.1.4 making their own enquiries and assessing all risks regarding this RFP, and fully considering and incorporating the impact of any known and unknown risks into their Bid;
 - 19.1.5 ensuring that they comply with all applicable laws in regards to the Tendering Process particularly as specified by National Treasury Regulations, Guidelines, Instruction Notes and Practice Notes and other relevant legislation as published from time to time in the Government Gazette; and
 - 19.1.6 submitting all Compulsory Documents.

- 19.2 Bidders with annual total revenue of R10 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the B-BBEE Act must submit a certificate issued by a registered, independent auditor (who or which is not the Bidder or a part of the Bidder) or an accredited verification agency.
- 19.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy, or a sworn affidavit thereof, substantiating their B-BBEE status. The submission of such certificates must comply with the requirements of instructions and guidelines issued by National Treasury and be in accordance with the applicable notices published by the Department of Trade and Industry in the Government Gazette.
- 19.4 The DBSA reserves the right to require of a Bidder, either before a Bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the DBSA.
- 19.5 Failure to provide the required information may result in disqualification of the Bidder.

20. PREPARATION OF BIDS

- 20.1 Bidders must ensure that:
- 20.1.1 their Bid is submitted in the required format as stipulated in this RFP; and
 - 20.1.2 all the required information fields in the Bid are completed in full and contain the information requested by the DBSA.
- 20.2 The DBSA may in its absolute discretion reject a Bid that does not include the information requested or is not in the format required.
- 20.3 Unnecessarily elaborate responses or other representations beyond that which is sufficient to present a complete and effective tender proposal are not desired or required. Elaborate and expensive visual and other presentation aids are not necessary.
- 20.4 Where the Bidder is unwilling to accept a specified condition, the non-acceptance must be clearly and expressly stated. Prominence must be given to the statement detailing the non-acceptance. It is not sufficient that the statement appears only as part of an attachment to the Bid, or be included in a general statement of the Bidders usual operating conditions.
- 20.5 An incomplete Bid may be disqualified or assessed solely on the information completed or received with the Bid.

21. ILLEGIBLE CONTENT, ALTERATION AND ERASURES

- 21.1 Incomplete Bids may be disqualified or evaluated solely on information contained in the Bid.
- 21.2 The DBSA may disregard any content in a Tender that is illegible and will be under no obligation whatsoever to seek clarification from the Bidder.

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

22. OBLIGATION TO NOTIFY ERRORS

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

23. RESPONSIBILITY FOR BIDDING COSTS

23.1 The Bidders participation or involvement in any stage of the Tendering Process is at the Bidders sole risk, cost and expense. The DBSA will not be held responsible for, or pay for, any expense or loss that may be incurred by Bidders in relation to the preparation or lodgement of their Bid.

23.2 The DBSA is not liable to the Bidder for any costs on the basis of any contractual, promissory or restitutionary grounds whatsoever as a consequence of any matter relating to the Bidders participation in the Tendering Process, including without limitation, instances where:

23.2.1 the Bidder is not engaged to perform under any contract; or

23.2.2 the DBSA exercises any right under this RFP or at law.

24. DISCLOSURE OF BID CONTENTS AND BID INFORMATION

24.1 All Bids received by the DBSA will be treated as confidential. The DBSA will not disclose contents of any Bid and Bid information, except:

24.1.1 as required by law;

24.1.2 for the purpose of investigations by other government authorities having relevant jurisdiction;

24.1.3 to external consultants and advisors of the DBSA engaged to assist with the Tendering Process; or for the general information of Bidders required to be disclosed as per National Treasury Regulations, Guidelines, Instruction Notes or Practice Notes.

25. USE OF BIDS

25.1 Upon submission in accordance with the requirements relating to the submission of Bids, all Bids submitted become the property of the DBSA. Bidders will retain all ownership rights in any intellectual property contained in the Bids.

25.2 Each Bidder, by submission of their Bid, is deemed to have licensed the DBSA to reproduce the whole, or any portion, of their Bid for the sole purposes of enabling the DBSA to evaluate the Bid.

26. BID ACCEPTANCE

All Bids received must remain open for acceptance for a minimum period of 90 (Ninety) days from the Closing Time. This period may be extended by written mutual agreement between the DBSA and the Bidder.

27. EVALUATION PROCESS

27.1 The Bids will be evaluated and adjudicated as follows:

27.1.1 First Stage – Test for administrative Responsiveness

The test for administrative responsiveness will include the following:

Stage 1: Responsiveness

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

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

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

	contract to the following category referred to in Section 4(1)(c) of the PPR 2017: (i). an EME or QSE which is at least 51% owned by black people.		
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B. Tenderers who do not adhere to the indicated response time for clarifications requested by the Employer will be deemed to be non-responsive and their submissions will not be evaluated further.

	Responsiveness Criteria	Clarification Time	Applicable to this Tender (Y/N)
1	Standard conditions of tender as required.	48 hours	Y
2	Returnable documents completed and signed.	48 hours	Y
3	Submission of Proof of Registration with National Treasury Central Supplier Database (CSD) Summary Report or A Valid and Active Tax Compliance Status Pin issued by SARS for Tax Compliance Status Verification: N.B - Bidder must be fully registered & tax compliant in order to do business with the DBSA.	72 hours	Y

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

27.1.2 Second Stage – Functional criteria

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

Bidders will be assessed on the functional criteria set out in this RFP. Only those Bidders which comply with the eligibility criteria will proceed to the next stage.

27.1.2 Third Stage – price and preferential points

27.1.2.1 Those Bidders which have passed the initial and first stages of the tender process will be scored on the basis of price and preference point allocation in accordance with the applicable legislation.

27.1.2.2 The successful Bidder will be the Bidder that scores the highest number of points in the second stage of the Bid evaluation, unless the DBSA exercises its right to cancel the RFP, in line with the PPPFA Regulations.

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

27.3 Qualification: Pre-Qualifying Criteria

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

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

27.4 Second Stage: Functional Criteria

The Functional Criteria that will be used to test the capability of Bidders are as follows: The technical proposal will be evaluated according to the following criteria and scoring system. The technical score will be calculated out of 100 points, and only those bids that achieve a threshold of **70** points for the technical proposal will move to the next level of evaluation where a score for price and BBEE.

Experience of the Transaction Advisor/companies (or members of the TA as a Consortia)

ASSESSMENT CRITERIA	DESCRIPTION	WEIGHTING
Project Finance and Financial Modelling expertise – The financing of PPP, Independent Power Producer (“IPP”) or similar Project Finance structures.	Points 10 – At least three infrastructure projects from the Renewable Energy Independent Power Producer Programme (“REIPPP”) that reached Financial Close. Points 7 – At least two infrastructure projects from the Renewable Energy Independent Power Producer Programme (“REIPPP”) that reached Financial Close. Points 3 – at least one infrastructure project in any sector in the past 15 years where a Feasibility Study Report was	10

ASSESSMENT CRITERIA	DESCRIPTION	WEIGHTING
	completed and received Treasury Approval ¹ (“ TA1 ”) in accordance with the Public Finance Management Act (“ PFMA ”) and PFMA Regulation 16 or Treasury Views and Recommendations 1 (“ TVR1 ”) in accordance with the MFMA, the PPP Regulations and the PPP Guidelines.	
Technical – Experience with the development of public/private electricity distribution and / or IPP projects	Points 10 – At least one Electricity Distribution (wires and retail) public sector infrastructure project in the past 15 years that reached Financial Close (procurement, bid evaluation, negotiations and contracting undertaken by the bidder) and which was done in accordance with legislation similar to the PFMA and PFMA Regulation 16 (South Africa). Points 7 – At least one Electricity Distribution (wires and retail) public or private infrastructure project in the past 15 years where procurement, bid evaluation and negotiations were undertaken by the bidder although the project did not reach Financial Close. Points 5 – At least three infrastructure projects from the REIPPP where the bidder played the role of a Lenders’ technical advisor. Points 3 – Relevant experience with the development of procurement documentation and evaluation of bids submitted at the REIPPP.	10
Legal – PPP Experience in PPP project life cycle and tasks undertaken during the life cycle, intimate knowledge of PPP Agreements and the Standardised PPP Provisions, contracting and	Points 10 – At least one Electricity Distribution (wires and retail) public sector infrastructure project in the past 15 years that reached Financial Close (legal due diligence, procurement, negotiations and contracting undertaken by the bidder) in accordance with relevant PPP/BOT	

ASSESSMENT CRITERIA	DESCRIPTION	WEIGHTING
negotiations of electricity distribution PPP or Build, Own and Transfer (“BOT”) electricity infrastructure projects and/or IPP infrastructure projects.	legislation of that jurisdiction similar to the MFMA (South Africa). Points 7 – At least one Electricity Distribution (wires and retail) public or private sector infrastructure project in the past 15 years where procurement, bid evaluation and negotiations were undertaken by the bidder but did not reach Financial Close (legal due diligence, procurement, negotiations and contracting undertaken by the bidder) in accordance with relevant PPP/BOT legislation of that jurisdiction similar to the PFMA, PFMA Regulation 16, MFMA regulatory framework (South Africa). Points 5 – At least three infrastructure projects from the REIPPP which reached Financial Close and where the bidder advised the private party to conclude the loan agreements with financiers. Points 3 – At least one infrastructure project from the REIPPP which reached Financial Close and where the bidder advised the private party to conclude the loan agreements with financiers.	10

Quality of Project Comprehension and strategy to enable the project to reach Financial Close.	Points 20 - Clear understanding of the project needs, comprehension, and appropriate/robust strategy to reach Financial Close. Points 14 – Reasonable understanding of project comprehension and acceptable strategy to reach Financial Close.	20
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	Points 8 – Average understanding of project comprehension and strategy to reach Financial Close.	
Quality of Project Methodology (the proposed work plan and timetable for the Project).	Points 20 – Robust work plan showing understanding of deliverables and plan to complete the same in parallel, not necessarily in sequence. Points 14 – Reasonable Work Plan and timetable developed in accordance with the PPP Regulations and the PPP Guidelines. Points 8 – Average Work Plan and timetable developed in accordance with the PPP Regulations and the PPP Guidelines.	20

Experience of the Lead Advisor(s) (people) and team

ASSESSMENT CRITERIA	DESCRIPTION	WEIGHTING
Project Finance and Financial Modelling – The financing of PPP or IPP Project Finance structures including innovative structuring of similar transactions with essential income streams.	Points 5 – At least one infrastructure projects from the Renewable Energy Independent Power Producer Programme (“REIPPP”) that reached Financial Close in which the Lead Advisor was the primary financial advisor. Points 4 – At least one Municipal PPP infrastructure project in any municipal service or activity in the past 15 years where Financial Close was not reached but procurement (development of RFQ and/or RFP) and negotiation (of a PPP Agreement) were undertaken in accordance with the MFMA, PPP Regulations and PPP Guidelines and the Lead Advisor was primarily responsible for the financial components of the RFQ and RFP and involved in the financial evaluations and financial negotiations.	5

	Point 1 – at least one infrastructure project in any sector in the past 15 years where a Feasibility Study Report was completed and received TA1 or TVR1 in accordance with the PFMA or MFMA, the PPP Regulations and the PPP Guidelines and the bidder was primarily responsible for the financial analysis i.r.o. the feasibility study, specifically the Financial Model and contributed to the development of a Procurement Plan.	
Technical – Experience with the development of public/private electricity distribution and / or IPP projects	Points 5 – At least one Electricity Distribution (wires and retail) public sector infrastructure project in the past 15 years that reached Financial Close (procurement, bid evaluation, negotiations and contracting) in accordance with legislation of that jurisdiction, such as the MFMA and PFMA (South Africa); and the bidder was primarily responsible for the technical components of the RFQ and RFP and involved in the technical evaluations and negotiations. Points 4 - At least one Electricity Distribution (wires and retail) public or private infrastructure project in the past 15 years where procurement, bid evaluation and negotiations were undertaken by the bidder although the project did not reach Financial Close. Points 1 – At least two infrastructure projects from the REIPPP where the bidder played the role of a Lenders' technical advisor.	5
Legal – Experience in undertaking due diligence, contracting and negotiations of electricity distribution infrastructure PPP/BOT	Points 5 – At least one Electricity Distribution (wires and retail) public sector infrastructure project in the past 15 years that reached Financial Close (legal due diligence, negotiations and contracting	

and/or IPP infrastructure projects.	completed) in accordance with legislation of that jurisdiction, such as the MFMA and PFMA (South Africa) and the bidder was primarily responsible for the legal components of the RFQ and RFP, negotiations and drafting of the contractual documentation. Points 4 - At least one Electricity Distribution (wires and retail) public or private sector infrastructure project in the past 15 years that did not reach Financial Close (legal due diligence, procurement, negotiations and contracting in accordance with relevant PPP/BOT legislation of that jurisdiction similar to the MFMA and PFMA (South Africa) and the bidder was primarily responsible for the legal components of the RFQ and RFP, negotiations and drafting of the contractual documentation. Points 3 – At least two infrastructure projects from the REIPPP which reached Financial Close and where the bidder advised the private party to conclude the loan agreements with financiers.	5
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Qualifications of the Lead Advisor(s)

MINIMUM QUALIFICATION	DETAILS	SCORE
Lead Project Finance Advisor Relevant degree or equivalent in Finance or Accounting or Economics and at least 10 years of post-degree work experience.	Points 5 – Masters' degree or Equivalent professional qualification Points 3 – Honors degree or equivalent. Point 1 – Relevant degree or equivalent	5

Lead Technical Advisor Relevant degree or equivalent in Engineering including 10 years of working experience and a minimum of 5 years as a Lead Technical Advisor;	Points 5 – Certificated Professional Engineer with relevant Council Points 3 – Professional Engineer with relevant Council Point 1 – Relevant degree or equivalent	5
Lead Legal Advisor with 10 years of experience.	Relevant degree or equivalent in law and at least 10 years of relevant experiences in PPP and IPP projects; Points 5 – Admitted attorney Points 3 – LLM degree or equivalent Point 1 – LLB, BA Law, BCom Law, B Proc or relevant degree or equivalent	5
TOTAL		100 Points
MINIMUM THRESHOLD		70 Points

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

27.6 **Third Stage: Price and Preferential Points Assessment**

27.6.1 the second stage of evaluation of the Bids will be in respect of price and preferential procurement only. Points will be allocated to Bidders at this stage of the evaluation in accordance with the PPPFA and the PPPFA Regulations, as follows:

Price points 80

Preferential procurement points 20

27.6.2 **Price points**

The following formula will be used to calculate the points for price:

$$P_s = 80(1 - (P_t - P_{min}) / P_{min})$$

Where:

P_s = Points scored for comparative price of tender or offer under consideration;

Pt = Comparative price of tender or offer under consideration; and
Pmin = Comparative price of lowest acceptable tender or offer.

27.6.3 Preferential procurement points

A maximum of 20 points may be awarded in respect of preferential procurement, which points must be awarded to a tenderer for attaining their B-BBEE Status Level in accordance with the table below:

B-BBEE Status Level	Number of Points
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

An unincorporated trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate Bid.

27.6.4 Total

The total points scored by each Bidder will be calculated by adding the points scored for price (out of 80) to the points scored for preferential procurement (out of 20).

The successful Bidder will be the Bidder which has the highest total points (out of 100) for both price and preferential procurement (unless there is a basis for selecting a different successful Bidder in accordance with section 2(1)(f) of the PPPFA).

28. STATUS OF BID

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

28.2 A Bid must not be conditional on:

- 28.2.1 the Board approval of the Bidder or any related governing body of the Bidder being obtained;
- 28.2.2 the Bidder conducting due diligence or any other form of enquiry or investigation;
- 28.2.3 the Bidder (or any other party) obtaining any regulatory approval or consent;

- 28.2.4 the Bidder obtaining the consent or approval of any third party; or
 - 28.2.5 the Bidder stating that it wishes to discuss or negotiate any commercial terms of the contract.
- 28.3 The DBSA may, in its absolute discretion, disregard any Bid that is, or is stated to be, subject to any one or more of the conditions detailed above (or any other relevant conditions).
- 28.4 The DBSA reserves the right to accept a Bid in part or in whole or to negotiate with a Bidder in accordance with the provisions of this RFP and the applicable laws and regulations.

29. CLARIFICATION OF BIDS

- 29.1 The DBSA may seek clarification from and enter into discussions with any or all of the Bidders in relation to their Bid. The DBSA may use the information obtained when clarification is sought or discussions are had in interpreting the Bid and evaluating the cost and risk of accepting the Bid. Failure to supply clarification to the satisfaction of the DBSA may render the Bid liable to disqualification.
- 29.2 The DBSA is under no obligation to seek clarification of anything in a Bid and reserves the right to disregard any clarification that the DBSA considers to be unsolicited or otherwise impermissible or irrelevant in accordance with the rules set out in this RFP.

30. DISCUSSION WITH BIDDERS

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

31. SUCCESSFUL BIDS

- 31.1 Selection as a successful Bidder does not give rise to a contract (express or implied) between the successful Bidder and the DBSA for the supply of the Services. No legal relationship will exist between the DBSA and a successful Bidder for the supply of the Services until such time as a binding contract is executed by them.

- 31.2 The DBSA may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Bidder.
- 31.3 A Bidder is bound by its Bid and all other documents forming part of the Bidder's Response and, if selected as a successful Bidder, must enter into a contract on the basis of the Bid with or without further negotiation.

32. NO OBLIGATION TO ENTER INTO CONTRACT

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

33. BIDDER WARRANTIES

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

34. DBSA'S RIGHTS

- 34.1 Notwithstanding anything else in this RFP, and without limiting its rights at law or otherwise, the DBSA reserves the right, in its absolute discretion at any time, to:
- 34.1.1 cease to proceed with, or suspend the Tendering Process prior to the execution of a formal written contract;

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

35. GOVERNING LAWS

- 35.1 This RFP and the Tendering Process are governed by the laws of the Republic of South Africa.
- 35.2 Each Bidder must comply with all relevant laws in preparing and lodging its Bid and in taking part in the Tendering Process.
- 35.3 All Bids must be completed using the English language and all costing must be in South African Rand.

36. MANDATORY QUESTIONS

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

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

36.1.1

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

36.1.2

	Comply/Accept	Do not comply/Do not accept
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The laws of the Republic of South Africa shall govern this RFP and the Bidders hereby accept that the courts of the Republic of South Africa shall have the jurisdiction.		
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36.1.3

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

36.1.4

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

36.1.5

In the case of Consortium, Joint Venture or subcontractors, Bidders are required to provide copies of signed agreements stipulating the work split and Rand value.	Comply/Accept	Do not comply/Do not accept

36.1.6

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

36.1.7

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

36.1.8

Where applicable, Bidders who are distributors, resellers and installers of network equipment are required to submit back-to-back agreements and service level agreements with their principals.	Comply/Accept	Do not comply/Do not accept

36.1.9

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

36.1.10

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

36.1.11

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

36.1.12

Only the solution commercially available at the proposal closing date shall be considered. No Bids for future solutions shall be accepted.	Comply/Accept	Do not comply/Do not accept

36.1.13

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

36.1.14

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

36.1.15

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

36.1.16

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

36.1.17

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

36.1.18

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

36.1.19

Bidders who make use of subcontractors:	Comply/Accept	Do not comply/Do not accept
1. It is the responsibility of the Bidder to select competent subcontractors that meet all the tender requirements stipulated in this tender document.		
2. The Bidder shall be responsible for all due diligence of the selected subcontractors and will be held liable for any non-performance of the subcontractor.		
3. Bidders are required to provide documentation (such as BBBEE Certificate/Sworn Affidavit, Valid or Active Tax Compliance Status Pin Issued by SARS, CSD Summary Report, Valid or Active CIDB Certificate etc.) for the		

relevant subcontractor as a minimum in support of the subcontracting arrangement.		
4. Subcontracting must not contradict any Regulation or Legislation.		
5. No separate contract shall be entered into between the DBSA and any such subcontractors. Copies of the signed agreements between the relevant parties must be attached to the proposal responses.		

36.1.20

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

36.1.21

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

36.1.22

Evaluation of Bids shall be performed by an evaluation panel established by the DBSA. Bids shall be evaluated on the basis of conformance to the required specifications (functionality) as outlined in the RFP. For Bids considered for price and preference evaluation, points shall be allocated to each Bidder, on the basis that the maximum number of points that may be scored for price is 80, and the maximum number of preference points that may be claimed for B-BBEE status level of contributor (according to the PPPFA Regulations) is 20.	Comply/Accept	Do not comply/Do not accept

36.1.23

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

36.1.24

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

36.1.25

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

36.1.26

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

36.1.27

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

36.1.28

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

36.1.29

Company registration with CSD National Treasury Database as a Condition for Appointment/Award of the Bid.	Comply/Accept	Do not comply/Do not accept
This requirement is mandatory and has to be satisfied by the successful bidder. The successful bidder must be registered on the CSD National Treasury site prior to appointment/award of the bid.		

36.1.30

The following will be grounds for disqualification:	Comply/Accept	Do not comply/Do not accept
• Unsatisfactory performance under a previous public contract in the past 5 years, provided that notice of such unsatisfactory performance has been given to the bidder; and/or • The bidder or any of its directors have committed a corrupt or fraudulent act in competing for the appointment; and/or • The bidder or any of its directors have been convicted of fraud or corruption in the last 5 years; and/or • The bidder or any of its directors have been listed in the Register for Tender Defaulters under section 9 of the Prevention and Combating of Corrupt Activities Act; and/or • Bids received after the stipulated closure time will be immediately disqualified; and/or • Bidders whom have recently completed or currently performing, or to commence work on specific categories of services may be excluded to enable the Bank manage its concentration risk. This threshold is currently set at R10 million for consultancy services.		

Signature(s) of Bidder or assignee(s)

Date

Name of signing person (in block letters)

Capacity

Are you duly authorized to sign this Bid?

Name of Bidder (in block letters)

Postal address (in block letters)

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

.....

.....

.....

.....

.....

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

Cell Number:

Email Address.....

PART E

TERMS OF REFERENCE & PROJECT BRIEF

TRANSACTION ADVISORY SERVICES FOR THE PROCUREMENT OF A PRIVATE PARTNER AS CONCESSIONAIRE FOR THE FINANCE, DESIGN, MANAGEMENT, OPERATION AND MAINTENANCE OF THE ELECTRICITY DISTRIBUTION SYSTEM IN MIDVAAL LOCAL MUNICIPALITY, GAUTENG, SOUTH AFRICA, IN ACCORDANCE WITH APPLICABLE LEGISLATION.

INTRODUCTION

The Midvaal Local Municipality (“MLM”) is in the process of procuring a Public Private Partnership (“PPP”) in the form of a concession for the finance, design, management, operation and maintenance of an electricity distribution network (incorporating MLM’s existing electricity distribution network) and the associated provision of electricity distribution services currently undertaken by MLM (the “Project”), which Project is registered with National Treasury (“NT”).

MLM has already completed several activities, statutory prescribed and further guided by the PPP Guidelines of NT, towards the procurement of a private party (the “Concessionaire”). These include:

- A needs and preliminary options analysis in terms of section 78(1) of the MSA and a MLM Council decision in terms of section 78(2) of the MSA mandating a feasibility study in respect of external service delivery mechanisms including a PPP for its electricity distribution services;
- A feasibility study in terms of section 78(3) of the MSA, section 120(4) of the MFMA, the PPP Regulations and in accordance with the PPP Guidelines;
- Obtainment of Treasury Views and Recommendations (“TVR”) known as TVR I in respect of the mentioned feasibility study from NT and Gauteng Provincial Treasury (“GPT”) and a subsequent MLM Council decision in terms of section 78(4) of the MSA and section 120(6) of the MFMA to proceed with the procurement of a Concessionaire;
- A Request for Qualification (“RFQ”) process in accordance with the Supply Chain Management (“SCM”) Regulations, the SCM Policy of MLM and as guided by the PPP Guidelines but which process was resolved to be discarded in favour of an open Request for Proposal (“RFP”) to be issued to the market;
- Completion of the RFP documentation and obtaining the TVR IIA in respect of the RFP documentation including a PPP Agreement and a Labour Transfer Agreement;
- In respect of all the steps outlined above, the required public and government consultations have been undertaken.

DBSA, acting on behalf of MLM, intends to procure the services of a Transaction Advisor (“TA”) with proven experience to enter into a Service Delivery Agreement (“SDA”) with MLM focused on completing the remainder of the process to procure a Concessionaire to undertake the finance, design, management, operation and maintenance of MLM’s electricity distribution network for a period of 20 years. The TA’s scope of work will be the following:

Activity 1: Optimisation, issuance, evaluation and the completion of the RFP process with all its associated activities, consultations and approvals inclusive of preparing a TVR IIB submission and receiving a TVR IIB from NT and GPT;

Activity 2: Negotiation and contracting with the preferred bidder with all its associated activities, consultations and approvals inclusive of preparing a TVR III submission and receiving a TVR III from NT and GPT; preparing MFMA section 33 documents and receiving approval thereof from the MLM Council and providing assistance to reach commercial and financial close;

Activity 3: Development of a Close-out Report and a Case Study Report.

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

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

PROJECT SPONSOR

MLM holds an electricity distribution license (NER/D/GT422) in terms of the Electricity Regulation Act, 4 of 2006 (the "ERA") for the distribution and supply of electricity services to the majority of electricity consumers in the MLM geographical area (i.e. its municipal boundaries) which are not supplied by other distributors including ESKOM. The Project relates only to those portions of the municipal area covered by the license (the "Concession Area") issued by the National Energy Regulator of South Africa ("NERSA").

MLM received its seventh consecutive clean audit for the 2019/2020 financial year and is dedicated to reliable, developmental service delivery thus its foresightedness and ability to engage in this Project as the first of its kind in South Africa.

PROJECT RATIONALE AND DEVELOPMENT BACKGROUND

Due to extensive technical, financial and human resources challenges with regards to the electricity services, MLM identified the need in terms of Section 77 of the Local Government: Municipal Systems Act (MSA) to review and decide on the most suitable mechanism to provide electricity services which mechanisms are set out in Section 76 of the MSA.

2016 - 2018:

In May 2016, MLM appointed a Project Officer (the "PO") and a TA and set up a Project Steering Committee (the "PSC") consisting of the municipal management team, the PO and representatives of the TA, NT and GPT. In June 2016 a Section 78(1) needs assessment and preliminary options analysis commenced as first phase of investigating the suitability of alternative service delivery options i.r.o. the management, operation and maintenance of the electricity distribution services.

Based on various criteria including technical, human resources, financial and operational realities as well as affordability, maximisation of benefits to the MLM and the ability to control and manage risk, the various options were evaluated and an external PPP option in terms of which a private party is procured and contracted and becomes responsible for all the components and activities related to electricity service provision through a long-term concession contract was recommended

as the preliminary preferred option to be further evaluated through a feasibility study including a due diligence process and a value for money assessment.

As required by the MSA, labour was consulted about the Project on two occasions and the final S78(1) report was presented to a Special Local Labour Forum (the “LLF”) meeting including all employees of the electricity distribution department.

A Section 78(2) Council decision was taken on 25 May 2017 to proceed with the Section 78(3) feasibility assessment of the preferred option. Due to the preferred option being a PPP, the Feasibility Study also had to comply with Section 120(4) of the MFMA; the PPP Regulations and be undertaken in accordance with the PPP Guidelines of National Treasury. In compliance with the MSA, the community was also notified of the Municipality’s intention to explore the provision of electricity distribution services through an external mechanism.

Subsequently, a comprehensive legal, human resources, technical and BEE due diligence exercise was undertaken in respect of the preferred PPP option and no impediments to the PPP option were found.

The value assessment process included extensive financial modelling of the Public Sector Comparator (PSC) model and an external PPP model including a comprehensive project risk analysis of each model. It was found that the project is affordable; the proposed PPP structure will transfer substantial risk to the private sector party and will provide better value for money than the PSC Model and would therefore, be the better option to procure for the Project.

Prior to finalisation of the draft Feasibility Study, community consultation including businesses and residents took place and organised labour was also again consulted. In the absence of a fully functioning LLF, the meeting was attended by all the employees of the electricity distribution department who actively participated therein.

On 22 March 2018 the Midvaal Municipal Council consented to submission of the Feasibility Study Report (the “FSR”) to NT and GPT for its views and recommendations, i.e. TVR I. Comments were also requested from the Department of Energy (“DOE”), the Department of Cooperative Governance and Traditional Affairs (“CoGTA”), NERSA, the community of Midvaal and organised labour. Only GPT submitted comments (TVR 1) and these were considered. A final Council decision to proceed with the PPP solution as recommended by the Feasibility Study was taken on 31 May 2018.

2018 - 2021:

By the time the FSR was approved both the 24-month PO and TA contracts came to an end. The PO’s contract was extended until December 2019 (and subsequently further extended until July 2021) but the transaction advisor was not available to proceed with the project after May 2018.

The original scope of the project was still the same but the TA’s project brief included a Feasibility Study Report Review (the “FSRR”), i.e. a review of the initial Needs and Options Analysis, a review of the Due Diligence focused on the recommended option and a full value for money (“VfM”) assessment inclusive of public and private sector comparator risk-adjusted financial models. In addition, the TA team embarked on a market engagement exercise to determine the market

appetite for the project and benchmark studies including local and international options took place. Primary criteria concerned the affordability and value for money that an external service delivery mechanism can offer combined with the maximum transfer of risk to such an external party. The objective was to reach a conclusion as to the feasibility of an external PPP option vis-a-vis an internal option. As a requirement of National Treasury, the study also included a Procurement Plan.

In tandem with the initial FSR, the Feasibility Study Report Review (the “FSRR”) identified various financial, technical and human resources challenges faced by the Electricity Distribution Service (the “EDS”) of MLM leading to the need to find a service delivery option that:

- mitigate risk associated with the changing Electricity industry and market
- is receptive and take full advantage of the new opportunities opening up in the Electricity industry and market such as Small-scale Embedded Generation (“SSEG”) and Independent Power Producer (“IPP”) energy supply
- improve resourcing and service quality
- enhance revenue management
- enhance operational efficiencies
- improve compliance and reporting
- improve network investment, maintenance and asset management
- enables a financially sustainable ED service.

The FSRR evaluated the following defined options:

- Option 1: MLM Delivery (Status Quo Option) – MLM develops, finances, operates and manages all network infrastructure existing and new, outsourcing some retail functions (meter management and related collections). MLM is licensed to distribute as a municipality.
- Option 2: Management Contract – MLM procures a Service Provider to manage and oversee operations but retains its license as well as the obligation to invest and finance its electricity undertaking. Option 2 is expected to provide a significant transfer of operational risk to the Private Sector, encouraging private sector efficiencies and service quality.
- Option 3: PPP/Concession – MLM remains the Service Authority but procures an independently incorporated and licensed Concessionaire to manage, operate, invest in and finance the electricity distribution business. Option 3 is a complete transfer of operation and investment risk to the Private Sector, where the Concessionaire takes full responsibility for operation, management, and financing of the distribution business.

These options were compared in pursuit of the following key objectives:

- A financially sustainable electricity distribution service
- Ensuring risk mitigation and risk transfer to the private sector in relation to a quickly changing business environment that is facing significant technology, policy and market disruption
- Enhancing customer satisfaction through improved quality of supply, achieved through increased deployment of specialist resource skills, electricity distribution business management experience, and best practice technologies

- Enhanced delivery of electrification connections, addressing the municipality's social obligations
- Dealing with the current constraint of a scarcity of technical resources
- Opportunity to make efficiency gains through the deployment of best practice technology, with emphasis on the deployment of integrated best practice billing and vending systems, amongst other technology driven solutions
- Flexibility to pursue related business opportunities including purchase of power from alternate suppliers such as IPPs and SSEGs
- Ensuring compliance with all NERSA license requirements and annual submissions, facilitated by the availability of performance data and benchmarks sourced from integrated software platforms
- Consistent returns and budget support for the municipality, paid as a royalty by the private party.

Based on the options analysis it was found that a PPP option through a full concession was the preferred option based on the following reasons:

- Full concession is expected to provide the greatest degree of risk transfer to the private sector, built on the full transfer of operations, management and funding of the network to the Concessionaire;
- It is also expected to have the highest service quality on account of full revenue risk being carried by the Concessionaire;
- Full concession is anticipated to be the most cost-effective due to full operational control being provided to the Concessionaire;
- Consequently, full concession is expected to provide the greatest level of budget support to MLM; and
- A full concession, independently licensed and ring-fenced, was unconditionally preferred by both lenders and operators during the Market Engagement exercise that was conducted.

On this basis the FSRR reached the same option analysis conclusion as did the initial FSR, namely a Full Concession/PPP option was recommended for further development and procurement. The latter led to the development of a Concession Definition specifying and defining this option and transaction structure for the Due Diligence review and Value for Money assessment that followed.

The Due Diligence Review built on the initial FSR's due diligence and specifically looked at technical and regulatory aspects to further built on the Concession Definition. No critical flaws were identified that would prevent the implementation of sustainability of a PPP option. Based thereon the following core elements were identified to be part of a PPP option:

- A 20-year concession for full transfer of core (Wires and Retail) and non-core electricity distribution functions, i.e. services which are not charged to consumers such as street and traffic lights (*subsequently non-core electricity services was excluded from the Concession*)
- A Concessionaire that is required to be a ring fenced, independently licensed, corporate entity for electricity distribution services
- Full responsibility for licensing and tariff applications and obligations transferred to a Concessionaire but taking into account that the approval of tariffs is a Council function and

also subject to NERSA approval with the latter applying a municipal benchmark to determine tariffs

- Full responsibility and risk with respect to revenue, operations, management, investment and funding of electricity distribution function being transferred to a Concessionaire
- Full ownership of all assets (existing, upgraded and new) vesting with MLM
- Transfer of all electricity distribution staff to the Concessionaire – with the Market Engagement exercise indicating the desire of potential bidders to take over staff as a going concern in adherence to section 197 of the Labour Relations Act.

The value assessment of the FSRR was built on updated information and developed a new financial model. In adherence to legal prescriptions the financial model incorporated all the core elements of an envisaged concession and made the required adjustments to accommodate the cost of risk in order to arrive at a comparison between public sector delivery (i.e. where MLM retains and operates the ED function) and the outsourcing thereof to the private sector (i.e. a PPP agreement) with the latter having the same payment mechanism as the MLM, i.e. user pay principle; making provision for the capital investment required to upgrade and expand the infrastructure and including a fixed and variable concession fee to the MLM.

The modelling including the consideration of qualitative factors, arrived at the perspective of a bankable project that passes the test of affordability for the MLM, the transfer of major risk to the private sector and ultimately substantial value for money.

It was concluded that the current trend of an income decline spiral in respect of ED services and a deteriorating financial position of the ED services will continue if the status quo, i.e. MLM retaining the ED services, is maintained vis-a-vis a much better financial outcome under the pre-risk and post-risk results linked to a PPP scenario that has the borrowing capacity to upgrade and expand capital and maintenance investment in infrastructure; broaden the customer base, meet growing demands and enable a mix of customers that feeds into a sustainable service with improved efficiencies and smart technologies to ensure the financial viability, growth and development of the ED services.

Finally, the FSRR concluded that a 20-year PPP option for the ED services vis-a-vis the current status quo holds value for money, can transfer substantial risk to a private party and is an affordable and bankable project. As a firm basis for moving forward, the FSRR provided a thorough concession definition and strong frameworks to support and guide the procurement process taking all MLM requirements into account.

The FSRR was completed in December 2019, it fulfilled all the consultation requirements as stipulated in the MSA and the MFMA and received the compulsory Treasury Views and Recommendations (TVR I) from NT and GPT which supported the FSRR recommendation that MLM proceeded with the procurement of a PPP. At the MLM Council meeting of 29 May 2020 the FSRR was considered and an 'in principle' decision taken in terms of section 78(4) of the MSA and section 120(6)(a) of the MFMA to continue with the procurement of the 20-year PPP concession as recommended by the FSRR.

While the TVR I process was underway, an RFQ aligned to the FSRR was developed in parallel and went through the internal approval processes of MLM. On 14 June 2020 the RFQ was

advertised on the municipal website, local newspapers as well as the e-tender portal. Well over a hundred respondents registered for the RFQ briefing session with seven compliant RFQ responses (submitted in hard copy and electronically) received by the closing date on 24 July 2020. Except one, all the responses were from consortia.

The first leg of the RFQ evaluation process was done by Technical Evaluation Teams (“TET”) (administrative/legal, financial, technical, BB-BEE and socio-economic). The TET members were appointed by the Accounting Officer with a clear scope of work. Each TET consisted of TA team members as well as MLM officials not involved in either the Bid Evaluation Committee (“BEC”) or the Bid Adjudication Committee (“BAC”). These committees remained independent and proceeded with their work once the consolidated TET evaluation report was submitted to the BEC.

Covid related factors impacted on the respondent submissions as well as on the evaluation process which led to a complicated and time-consuming RFQ process including a clarification stage causing a delay in the project timelines. The RFQ process was concluded in December 2020 but subsequently it was resolved that the RFQ process be discarded in favour of an open Request for Proposal (“RFP”) to be issued to the market.

The RFP documentation including the PPP Agreement and the Labour Transfer Agreement were developed through a number of discussions with MLM and the PSC which started in January 2021 and the documents went through various drafts in order to ensure MLM’s objectives are met while keeping in mind that the Project must ultimately be bankable. MLM took responsibility for ongoing labour consultations and communication with the community of MLM. Together the TA and MLM had further discussions with NERSA and ensured that both Emfuleni and Eskom (with whom MLM has electricity supply agreements) were updated on the Project development.

As authorised by the MLM Council, the TA assisted to finalise the RFP documentation and during September 2021 the relevant documents were submitted to NT and GPT for TVR IIA. The latter views and comments and comments received from NERSA based on discussions held with it in May 2021 as well as the TA’s response thereto were recorded in a Comments Report for submission with the RFP documents to the Bid Specification Committee (“BSC”) of MLM for its approval. Following the receipt of TVRIIA, the PO will proceed to seek BSC approval rendering the RFP documentation ready for an optimisation process and thereafter issuance of the RFP publicly. This is the current status quo of the procurement process to be taken further by a TA team appointed as a result of this RFP conducted by DBSA.

Tender Management System:

Prior to the start of the RFQ process, the services of the Ansarada Tender Management System (“TMS”) were procured. The latter was used for the electronic RFQ submissions and all other communications with the respondents to the RFQ. Currently the TMS has been suspended until a new TA is on board and can proceed with the RFP process at which time the MLM-Ansarada SDA and TMS will be re-activated and the RFP Data Room will be re-opened. A full record of the RFP documents as submitted to NT and GPT for TVR IIA has been preserved in the RFP Data Room. During the RFP phase the TMS will be used to host the virtual data room, provide access to RFP documents including related tender content and due diligence documentation; issue Briefing Notes; conduct all communication between Bidders and MLM including Q&A and for the electronic submissions of Bids. The TA will be responsible for management of the TMS.

Project Decision-making and Oversight:

Since 2016 a PSC has been driving the project. The establishment of a PSC is a specific condition to the Project Preparation Facility Agreement between the DBSA and MLM in terms of which the MLM is the recipient of project preparation grant funding and DBSA the grantor of the funding for the Project and it is also required by NT and GPT in fulfilling their advisory and oversight duties. The PSC is the only recommendation -and decision-making body of the Project. The PSC consists of DBSA, MLM, NT, GPT and TA representatives. The PSC meets monthly and a Project Officer appointed or delegated by MLM acts as the chairperson of the PSC.

Electricity Master Plan:

MLM has contracted a service provider to develop an updated and comprehensive asset register as well as an electricity master plan. These documents will be finalised prior to the issuance of the RFP and be provided to bidders at RFP stage.

PROJECT GOING FORWARD - TRANSACTION ADVISOR SCOPE OF WORK

The MLM PPP Itemised Procurement Plan dated April 2021 is the basis for the Scope of Works ("SoW") of the TA. Refer to Annexure D.

Stage 1: Preparing for the RFP Process

The TA will have to become familiar with all background documentation and preparatory work conducted to date by the previous TA in connection with or relating to the Project; which documents have been approved by the PSC and received TVRs as indicated above. Documents to be provided to parties that registered for this RFP and attended the compulsory briefing meeting are the following:

- FSRR and all its related documents as submitted for TVR I
- RFQ and all its related documents as provided to respondents

NOTE: The RFP including the PPP Agreement, the LTA, related and relevant documents will be provided to the preferred bidder once an SDA with MLM has been concluded.

The Transaction Advisor will be required to identify any possible challenges in respect of the RFP phase to be addressed prior to the issuance and optimisation of the RFP and must develop and submit an updated Procurement Plan to the PSC. The current activities and approvals as itemised in the Procurement Plan must be included in an updated Procurement Plan and the Procurement Plan must be in accordance with the PPP Guidelines of NT. The TA will draft and submit an Advance Notification of the RFP for PSC approval to publish such notice three weeks prior to the issuance of the RFP.

DELIVERABLE: INCEPTION REPORT INCLUDING AN UPDATED PROCUREMENT PLAN & RFP ADVANCE NOTICE

- *FORMAT: MS Word, MS PowerPoint Presentation, MS Project Procurement Plan and the latter also as a PDF file.*

Stage 2: Issuance of the RFP (also refer to specific activities in the Procurement Plan)

In co-operation with MLM, the TA will re-activate the TMS; establish procurement protocols for the TMS RFP stage and, if so required, update the RFP documentation in the RFP Data Room. The TA will handle all RFP logistics, where necessary in co-operation with MLM. This will include advertising and issuance of the RFP and registration of bidders on the TMS to provide them access to the TMS RFP Data Room once the sum payable for the RFP documents has been received by MLM. This stage will further require from the TA to organise and facilitate a mandatory bidders' briefing session and site visits, identify the need for and handle all bidder briefing notes and bidder clarifications in accordance with the TMS procurement protocols and MLM SCM processes and obtain the co-operation of MLM in respect of bidder briefing notes and clarification as necessary.

DELIVERABLE: RFP PUBLICATION (electronically, print media or as agreed with MLM).

Stage 3: RFP Optimisation Process (also refer to specific activities in the Procurement Plan)

The TA will execute an RFP optimisation process which will focus on giving Bidders the opportunity to comment on specifically identified clauses in the PPP Agreement; not with the intent to entertain any negotiations in terms of these clauses but in order to allow optimisation of the PPP Agreement as per MLM prerogative before finalisation of the PPP Agreement envisaged to be the final agreement concluded between MLM and a preferred bidder. The incorporation of any comments in respect of the PPP Agreement and the LTA will be workshopped with MLM and the PSC and will need to be approved by the latter.

Similar to stage 2, the TA will continue to identify the need for and handle all bidder briefing notes and bidder clarifications in accordance with the TMS procurement protocols and MLM SCM processes and obtain the co-operation of MLM in respect of bidder briefing notes and clarification as necessary.

DELIVERABLE: OPTIMISATION REPORT INCLUDING FINAL DRAFT PPP AGREEMENT AND LTA

- *FORMAT: MS Word, MS PowerPoint Presentation*

Stage 4: Evaluation of the RFP Bids (also refer to specific activities in the Procurement Plan)

The TA is expected to participate in the bid evaluation process. The TA will nominate representatives on the TETs to be appointed by the Accounting Officer ("AO") of MLM. These will be TETs for administrative/legal compliance; technical, financial and B-BBEE. Furthermore, the TA representatives will lead the respective TETs to perform the preliminary evaluation of the bidders. The TA will collate the TET evaluation scores and prepare a TET Evaluation Report including findings and recommendations for the Bid Evaluation Committee ("BEC") of MLM. The TA leads of the respective TETs will assist the BEC with any additional queries, clarifications or substantiations

emanating from the BEC in finalising its report to the Bid Adjudication Committee (“**BAC**”) including queries emanating from the BAC. Bidders should note that as the RFP is being issued openly, it is unknown what numbers of responses may be received, which all must be evaluated. As a result, the bidder bears the pricing risk related to the work associated with evaluating an unknown number of bid responses.

DELIVERABLE: TET EVALUATION REPORT (including addressing any additional queries by the MLM's BEC thereafter)

- *FORMAT: MS Word*

Stage 5: Value Assessment Report (also refer to specific activities in the Procurement Plan)

Once the BEC and BAC processes have been finalised and a recommendation in respect of a preferred and a reserve bidder has been provided to the AO, the TA must develop a single Value Assessment Report that presents the results of the bidding and evaluation of bids clearly indicating the preferred and reserve bidders, providing motivations for selecting the preferred and reserve bidders and demonstrating how value for money will be achieved with the preferred bidder so as to enable the AO to solicit a TVR IIB from NT and GPT. The content and various annexures of the Value Assessment Report that address inter alia the evaluation criteria, approach and analysis as well as the affordability, risk transfer and value for money assessments, must be in accordance with the PPP Guidelines and incorporate the comments of MLM and the PSC. (Refer to Annexure 4, pages 105 to 108 of Module 5 of the PPP Guidelines).

DELIVERABLE: VALUE ASSESSMENT REPORT

FORMAT: MS Word, MS PowerPoint Presentation

Stage 6: Obtainment of TVR IIB and Finalisation of the RFP process (also refer to specific activities in the Procurement Plan)

Once the TVR IIB is received, the MLM Council must be notified and an appeal period be allowed as per the SCM Regulations. During this stage the TA will do a debriefing of the unsuccessful bidders and be responsible for other related activities to finalise the RFP process.

DELIVERABLE: OBTAINMENT OF TVR IIB

Stage 7: PPP Agreement Negotiations & TVR III Report (also refer to specific activities in the Procurement Plan)

The Transaction Advisor must assist MLM in final negotiations with the preferred bidder. This will involve preparing suitable negotiations teams, categorising issues appropriately, developing timelines for completion, and planning negotiation tactics and processes for reaching agreement. The transaction advisor must ensure that all agreements reached are incorporated into all the financial, commercial and legal documentation and its appropriate schedules. The TA must also do a comprehensive legal due diligence of the compliance, competency and capacity of MLM and the Concessionaire and develop a TVR III Report which must be approved by MLM and the PSC.

DELIVERABLE: PPP AGREEMENT & ITS SCHEDULES AND TVR III REPORT

FORMAT: MS Word, MS PowerPoint Presentation

Stage 8: Contract Management Plan (also refer to specific activities in the Procurement Plan)

The TA must develop a Contract Management Plan (“**CMP**”) in co-operation with the Contract Management Unit (“**CMU**”) of MLM which clearly sets out MLM and the Concessionaire responsibilities and include a Performance Assessment Matrix. The CMP must be workshopped with MLM and the PSC and be approved by MLM and the PSC. The TA must ensure that the CMU of MLM is fully knowledgeable in respect of the CMP and the process of contract management and monitoring.

DELIVERABLE: CONTRACT MANAGEMENT PLAN

FORMAT: MS Word, MS Excel, MS PowerPoint Presentation

Stage 9: Obtainment of TVR III (also refer to specific activities in the Procurement Plan)

The TA must assist MLM to present the TVR III Report to its Mayco for approval and incorporate any comments of the latter therein prior to submission of the TVR III Report (including the PPP Agreement and the CMP) to NT and GPT for a TVR III as well as for the views and comments of other relevant departments / organisations. The TA must also co-operate with MLM in soliciting the comments of the MLM public in respect of the PPP Agreement and taking all these comments into account in a MFMA Section 33 Report. (Refer to pages 74 & 75 of Module 5 of the PPP Guidelines for further guidance).

DELIVERABLE: OBTAINMENT OF TVR III

Stage 10: MFMA Section 33 Report (also refer to specific activities in the Procurement Plan)

The Transaction Advisor must develop a MFMA Section 33 Report including the TVR III, public comments and all other views and comments which may have been received. The Section 33 Report must be a comprehensive document inter alia including the Terms and Conditions of the PPP Agreement, the CMP, financial obligations on MLM throughout the PPP term, the impact of the latter on revenue and tariffs, capital investment, financial and economic benefits of the Project. As annexures the Section 33 Report must include certification of compliance with section 21A of the Systems Act; a register of public comments and representations received and a copy of the TVR III Report submitted for views and recommendations to NT, GPT and any other relevant sectoral department. (Refer to pages 75 and 76 of Module 5 of the PPP Guidelines for further guidance). The Section 33 Report must be approved by MLM and the PSC prior to submission thereof to the MLM Council for its approval.

DELIVERABLE: SECTION 33 REPORT

FORMAT: MS Word, MS PowerPoint Presentation

Stage 11: PPP Agreement Signature and Financial Closure (also refer to specific activities in the Procurement Plan)

The TA will handle all the activities associated with the Project reaching financial closure with the latter signifying that all the procurement deliverables have been successfully completed, and that the transaction advisor's work is finished.

DELIVERABLE: SIGNED PPP AGREEMENT & FINANCIAL CLOSURE

- *FORMAT: MS Word, MS PowerPoint Presentation*

Stage 12: Close-out Report and Case Study (also refer to specific activities in the Procurement Plan)

The Transaction Advisor must develop a comprehensive Close-out Report and a Case Study for MLM for submission to MLM, the PSC, NT and GPT inter alia including key learnings, best practices; value adding innovation, identified deficiencies in legislation. The Close-out Report is for the confidential and complete records of MLM and the Case Study will become available to the public. (Refer to Annexure 5, pages 110 to 116 of Module 5 of the PPP Guidelines for a Template of the PPP Close-out Report and Case Study).

DELIVERABLE: CLOSE-OUT REPORT & CASE STUDY

- *FORMAT: MS Word, MS PowerPoint Presentation*

FINANCIAL PROPOSAL

Remuneration and Disbursement Schedule

Deliverable	Percentage	Amount incl. VAT
Inception Report including updated Procurement Plan and RFP Advance Notice	10%	
RFP Issuance & completion of briefing meeting and site visits	10%	
RFP Optimisation Report including final draft PPP Agreement and Labour Transfer Agreement for issuance	10%	
BEC Report	10%	
Value Assessment Report	10%	
Obtainment of TVR IIB	10%	
Final PPP Agreement & Schedules and TVR III Report	10%	
CMP	5%	
Obtainment of TVR III	5%	
Section 33 Report	5%	
Signed PPP Agreement and Financial Closure	10%	
Close-out Report and Case Study	5%	
Total PPP Procurement Fee	100%	
A Disbursement fee provision equivalent to 2.5% of the Total Procurement Fee must be included	2.5%	
Contingency Fee equivalent to 7.5% of the Total Procurement Fee must be included	7.5%	
TOTAL FEE	110%	
Project Officer Provision	R 313,711.68	R 360,768.43
GRAND TOTAL AMOUNT		

NOTE:

- Prospective TAs are required to proportionally price the total in accordance with the percentages in the table above.
- Terms of payment shall be agreed during the signature of the Service Level Agreement between MLM and the Transaction Advisor. The application for payment shall be made once the Project Steering Committee (PSC) has approved of the respective deliverables.
- Each of the deliverables above will be submitted to the PSC as draft documents for inputs, comments and views by the stakeholders.
- Payment of invoices will be subject to the comments of the stakeholders incorporated into the final deliverable.
- Each draft and final deliverable should be provided in MS Word format and PDF to the relevant stakeholders.

Expenses

Prospective TAs should assume expense provision of a total of 2.5% of the overall bid price. Expenses will be reimbursed (at no margin or management fee) when incurred, subject to prior approval of the Project Officer.

The bidders are advised to consider the following guidelines that govern the DBSA and MLM when incurring expenses:

- All air travel within South Africa is on Economy Class;
- Costs to hire cars are considered on a value for money basis (e.g. larger cars for more people);
- Hotels are limited to a maximum of 4 star and the selection should consider the location of the offices of MLM, convenience and safety;
- The mode and type of travel chosen by the DBSA and MLM teams travelling with the successful TAs can always serve as guidance.

Project Officer provision

The following is applicable:

- Each bidder is required to include a provision of an amount of ZAR 360,768.43 (inclusive of VAT) for the procurement of a Project Officer for the Project;
- The preferred bidder will be required to conclude a sub-contractor Agreement with the identified Project Officer to undertake the relevant tasks as per the PPP Guidelines;
- No margin, management fee, bank charges or similar fees may be charged by the TA on the Project Officer, to facilitate the payment of these fees;
- The Project Officer shall report directly to the Municipal Manager of MLM or his/her designate;
- A Project Officer may be proposed by the TA or MLM and must be accepted/approved by the PSC prior to contracting.

Data Room Management

The TA must include the management of the TMS in its project fees for the various stages of the Project. No additional fees or variation orders related to the TMS will be allowed. The primary function of the TMS is SCM compliant management of the procurement processes and its secondary goal is to provide MLM with a total audit trail of the Project.

BID EVALUATION CRITERIA

Experience of the Transaction Advisor/companies (or members of the TA as a Consortia)

ASSESSMENT CRITERIA	DESCRIPTION	WEIGHTING
Project Finance and Financial Modelling expertise – The financing of PPP, Independent Power Producer	Points 10 – At least three infrastructure projects from the Renewable Energy Independent Power Producer Programme (“REIPPP”) that reached Financial Close.	

ASSESSMENT CRITERIA	DESCRIPTION	WEIGHTING
("IPP") or similar Project Finance structures.	Points 7 – At least two infrastructure projects from the Renewable Energy Independent Power Producer Programme ("REIPPP") that reached Financial Close. Points 3 – at least one infrastructure project in any sector in the past 15 years where a Feasibility Study Report was completed and received Treasury Approval¹ ("TA1") in accordance with the Public Finance Management Act ("PFMA") and PFMA Regulation 16 or Treasury Views and Recommendations 1 ("TVR1") in accordance with the MFMA, the PPP Regulations and the PPP Guidelines.	10
Technical – Experience with the development of public/private electricity distribution and / or IPP projects	Points 10 – At least one Electricity Distribution (wires and retail) public sector infrastructure project in the past 15 years that reached Financial Close (procurement, bid evaluation, negotiations and contracting undertaken by the bidder) and which was done in accordance with legislation similar to the PFMA and PFMA Regulation 16 (South Africa). Points 7 – At least one Electricity Distribution (wires and retail) public or private infrastructure project in the past 15 years where procurement, bid evaluation and negotiations were undertaken by the bidder although the project did not reach Financial Close. Points 5 – At least three infrastructure projects from the REIPPP where the bidder played the role of a Lenders' technical advisor. Points 3 – Relevant experience with the development of procurement	10

ASSESSMENT CRITERIA	DESCRIPTION	WEIGHTING
	documentation and evaluation of bids submitted at the REIPPP.	
Legal – PPP Experience in PPP project life cycle and tasks undertaken during the life cycle, intimate knowledge of PPP Agreements and the Standardised PPP Provisions, contracting and negotiations of electricity distribution PPP or Build, Own and Transfer (“BOT”) electricity infrastructure projects and/or IPP infrastructure projects.	Points 10 – At least one Electricity Distribution (wires and retail) public sector infrastructure project in the past 15 years that reached Financial Close (legal due diligence, procurement, negotiations and contracting undertaken by the bidder) in accordance with relevant PPP/BOT legislation of that jurisdiction similar to the MFMA (South Africa). Points 7 – At least one Electricity Distribution (wires and retail) public or private sector infrastructure project in the past 15 years where procurement, bid evaluation and negotiations were undertaken by the bidder but did not reach Financial Close (legal due diligence, procurement, negotiations and contracting undertaken by the bidder) in accordance with relevant PPP/BOT legislation of that jurisdiction similar to the PFMA, PFMA Regulation 16, MFMA regulatory framework (South Africa). Points 5 – At least three infrastructure projects from the REIPPP which reached Financial Close and where the bidder advised the private party to conclude the loan agreements with financiers. Points 3 – At least one infrastructure project from the REIPPP which reached Financial Close and where the bidder advised the private party to conclude the loan agreements with financiers.	10

Quality of Project Comprehension and strategy to enable the project to reach Financial Close.	Points 20 - Clear understanding of the project needs, comprehension, and	
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	appropriate/robust strategy to reach Financial Close. Points 14 – Reasonable understanding of project comprehension and acceptable strategy to reach Financial Close. Points 8 – Average understanding of project comprehension and strategy to reach Financial Close.	20
Quality of Project Methodology (the proposed work plan and timetable for the Project).	Points 20 – Robust work plan showing understanding of deliverables and plan to complete the same in parallel, not necessarily in sequence. Points 14 – Reasonable Work Plan and timetable developed in accordance with the PPP Regulations and the PPP Guidelines. Points 8 – Average Work Plan and timetable developed in accordance with the PPP Regulations and the PPP Guidelines.	20

Experience of the Lead Advisor(s) (people) and team

ASSESSMENT CRITERIA	DESCRIPTION	WEIGHTING
Project Finance and Financial Modelling – The financing of PPP or IPP Project Finance structures including innovative structuring of similar transactions with essential income streams.	Points 5 – At least one infrastructure projects from the Renewable Energy Independent Power Producer Programme (“REIPPP”) that reached Financial Close in which the Lead Advisor was the primary financial advisor. Points 4 – At least one Municipal PPP infrastructure project in any municipal service or activity in the past 15 years where Financial Close was not reached but	5

	procurement (development of RFQ and/or RFP) and negotiation (of a PPP Agreement) were undertaken in accordance with the MFMA, PPP Regulations and PPP Guidelines and the Lead Advisor was primarily responsible for the financial components of the RFQ and RFP and involved in the financial evaluations and financial negotiations. Point 1 – at least one infrastructure project in any sector in the past 15 years where a Feasibility Study Report was completed and received TA1 or TVR1 in accordance with the PFMA or MFMA, the PPP Regulations and the PPP Guidelines and the bidder was primarily responsible for the financial analysis i.r.o. the feasibility study, specifically the Financial Model and contributed to the development of a Procurement Plan.	
Technical – Experience with the development of public/private electricity distribution and / or IPP projects	Points 5 – At least one Electricity Distribution (wires and retail) public sector infrastructure project in the past 15 years that reached Financial Close (procurement, bid evaluation, negotiations and contracting) in accordance with legislation of that jurisdiction, such as the MFMA and PFMA (South Africa); and the bidder was primarily responsible for the technical components of the RFQ and RFP and involved in the technical evaluations and negotiations. Points 4 - At least one Electricity Distribution (wires and retail) public or private infrastructure project in the past 15 years where procurement, bid evaluation and negotiations were undertaken by the bidder although the project did not reach Financial Close. Points 1 – At least two infrastructure projects from the REIPPP where the bidder	5

	played the role of a Lenders' technical advisor.	
Legal – Experience in undertaking due diligence, contracting and negotiations of electricity distribution infrastructure PPP/BOT and/or IPP infrastructure projects.	Points 5 – At least one Electricity Distribution (wires and retail) public sector infrastructure project in the past 15 years that reached Financial Close (legal due diligence, negotiations and contracting completed) in accordance with legislation of that jurisdiction, such as the MFMA and PFMA (South Africa) and the bidder was primarily responsible for the legal components of the RFQ and RFP, negotiations and drafting of the contractual documentation. Points 4 - At least one Electricity Distribution (wires and retail) public or private sector infrastructure project in the past 15 years that did not reach Financial Close (legal due diligence, procurement, negotiations and contracting in accordance with relevant PPP/BOT legislation of that jurisdiction similar to the MFMA and PFMA (South Africa) and the bidder was primarily responsible for the legal components of the RFQ and RFP, negotiations and drafting of the contractual documentation. Points 3 – At least two infrastructure projects from the REIPPP which reached Financial Close and where the bidder advised the private party to conclude the loan agreements with financiers.	5

Qualifications of the Lead Advisor(s)

MINIMUM QUALIFICATION	DETAILS	SCORE
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Lead Project Finance Advisor Relevant degree or equivalent in Finance or Accounting or Economics and at least 10 years of post-degree work experience.	Points 5 – Masters’ degree or Equivalent professional qualification Points 3 – Honors degree or equivalent. Point 1 – Relevant degree or equivalent	5
Lead Technical Advisor Relevant degree or equivalent in Engineering including 10 years of working experience and a minimum of 5 years as a Lead Technical Advisor;	Points 5 – Certificated Professional Engineer with relevant Council Points 3 – Professional Engineer with relevant Council Point 1 – Relevant degree or equivalent	5
Lead Legal Advisor with 10 years of experience.	Relevant degree or equivalent in law and at least 10 years of relevant experiences in PPP and IPP projects; Points 5 – Admitted attorney Points 3 – LLM degree or equivalent Point 1 – LLB, BA Law, BCom Law, B Proc or relevant degree or equivalent	5

Annexure A

Fees and Assumptions

FORM OF OFFER AND ACCEPTANCE (AGREEMENT)

FORM OF OFFER

THE CONSULTANT IS TO COMPLETE AND SIGN THE FORM OF OFFER

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract in respect of the following services:

RFP288/2021: APPOINTMENT OF A CONSULTANCY FIRM AS TRANSACTIONAL ADVISOR FOR THE PROCUREMENT OF A PRIVATE PARTNER AS CONCESSIONAIRE FOR THE FINANCE, DESIGN, MANAGEMENT, OPERATION AND MAINTENANCE OF THE ELECTRICITY DISTRIBUTION SYSTEM IN MIDVAAL LOCAL MUNICIPALITY, GAUTENG, SOUTH AFRICA.

The Tenderer, identified in the Offer signature block below, has examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the Tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance, the Tenderer offers to perform all of the obligations and liabilities of the consultant under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the Conditions of Contract identified in the Contract Data.

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS

.....

.....	(in words);	ZAR		(in figures),
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This offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document to the Tenderer before the end of the

period of validity stated in the Tender Data, whereupon the Tenderer becomes the party named as the consultant in the Conditions of Contract identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the
Tenderer**

(Name and address of organisation)

**Name and
signature of
witness**

Date

DECLARATION OF INTEREST

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

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

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

2.1 Full Name of bidder or his or her representative:

2.2 Identity Number:

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

2.4 Company Registration Number:

2.5 Tax Reference Number:

2.6 VAT Registration Number:

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

¹"State" means –

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

(e) Parliament.

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

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

2.7.1 If so, furnish the following particulars:

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

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

Position occupied in the state institution:

Any other particulars:

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

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

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

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

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

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

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

2.8.1 If so, furnish particulars:

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

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

the evaluation and or adjudication of this bid?
2.9.1 If so, furnish particulars.

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

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

2.10.1 If so, furnish particulars.

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

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

2.11.1 If so, furnish particulars:

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

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

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

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4. DECLARATION

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

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of bidder

Annexure C

SBD 6.1

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2017

1..1.7

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

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, 2017.

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

- a) The value of this bid is estimated **not exceed** R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable; or
- b) Either the 80/20 or 90/10 preference point system will be applicable to this tender

1.3 Points for this bid shall be awarded for:

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

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

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

1.5 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.

1.6 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) **“B-BBEE”** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (b) **“B-BBEE status level of contributor”** means the B-BBEE status of an entity in terms of a code of good practice on black economic empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;
- (c) **“bid”** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of goods or services, through price quotations, advertised competitive bidding processes or proposals;
- (d) **“Broad-Based Black Economic Empowerment Act”** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (e) **“EME”** means an Exempted Micro Enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (f) **“functionality”** means the ability of a tenderer to provide goods or services in accordance with specifications as set out in the tender documents.
- (g) **“prices”** includes all applicable taxes less all unconditional discounts;
- (h) **“proof of B-BBEE status level of contributor”** means:
 - 1) B-BBEE Status level certificate issued by an authorized body or person;
 - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
 - 3) Any other requirement prescribed in terms of the B-BBEE Act;
- (i) **“QSE”** means a qualifying small business enterprise in terms of a code of good practice on black economic empowerment issued in terms of section 9 (1) of the Broad-Based Black Economic Empowerment Act;
- (j) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;

3. POINTS AWARDED FOR PRICE

3.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

A maximum of 80 or 90 points is allocated for price on the following basis:

80/20	or	90/10
$P_s = 80 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$	or	$P_s = 90 \left(1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$

Where

P_s = Points scored for price of bid under consideration

Pt = Price of bid under consideration

Pmin = Price of lowest acceptable bid

4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTOR

- 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
1	20
2	18
3	14
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

5. BID DECLARATION

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

6. B-BBEE STATUS LEVEL OF CONTRIBUTOR CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 4.1

- 6.1 B-BBEE Status Level of Contributor:.. =(maximum of 10 or 20 points)
(Points claimed in respect of paragraph 7.1 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	☐	NO	☐
-----	--------------------------	----	--------------------------

- 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 least 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 propriety
☐ Close corporation
☐ Company
☐ (Pty) Limited
[TICK APPLICABLE BOX]

8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

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

8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, 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 contributor 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 paragraphs 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 the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis 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) 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
 - (e) forward the matter for criminal prosecution

WITNESSES

1.

2.

.....
SIGNATURE(S) OF BIDDERS(S)

DATE:.....

ADDRESS.....
.....
.....

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DECLARATION OF BIDDER'S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

- 1 This Standard Bidding Document must form part of all bids invited.
- 2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
- 3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
 - a. abused the institution's supply chain management system;
 - b. committed fraud or any other improper conduct in relation to such system; or
 - c. failed to perform on any previous contract.
- 4 **In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.**

Item	Question	Yes	No
4.1	Is the bidder or any of its directors listed on the National Treasury's Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <i>audi alteram partem</i> rule was applied). The Database of Restricted Suppliers now resides on the National Treasury's website(www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury's website (www.treasury.gov.za) by clicking on its link at the bottom of the home page.	Yes ☐	No ☐
4.2.1	If so, furnish particulars:		

4.3	Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years?	Yes ☐	No ☐
4.3.1	If so, furnish particulars:		
4.4	Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes ☐	No ☐
4.4.1	If so, furnish particulars:		

SBD 8

CERTIFICATION

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

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

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

.....
Signature

.....
Date

.....
Position

.....
Name of Bidder

.....
Position

.....
Name of Bidder

CERTIFICATE OF INDEPENDENT BID DETERMINATION

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

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

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

CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

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

I certify, on behalf of: _____ that:
 (Name of Bidder)

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

- (c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder

SBD 9

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

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

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

.....
SignatureDate

.....
Position Name of Bidder

Annexure F

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

Annexure G

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

Annexure H

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

Annexure I

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

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

Annexure J

[General Conditions of Contract]

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

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

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

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

Annexure K

Tax Compliant Status and CSD Registration Requirements

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

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

CSD Registration Number:



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

TollFree : 0800 20 49 33
Email : dbsa@whistleblowing.co.za
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