

## REQUEST FOR PROPOSALS

<b>YOU ARE HEREBY INVITED TO SUBMIT A BID TO MEET THE REQUIREMENTS OF THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED</b>	
<b>BID NUMBER:</b>	<b>RFP252/2023</b>
<b>COMPULSORY ONLINE BRIEFING SESSION DETAILS:</b>	<p><b>13 OCTOBER 2023 @ 12H00</b></p> <p>Join on your computer, mobile app or room device  <a href="#">Click here to join the meeting</a>  Meeting ID: 361 576 817 176  Passcode: dJywUv  <a href="#">Download Teams</a>   <a href="#">Join on the web</a></p>
<b>CLOSING DATE:</b>	<b>24 OCTOBER 2023</b>
<b>CLOSING TIME:</b>	23H55 (Midnight)
<b>PERIOD FOR WHICH BIDS ARE REQUIRED TO REMAIN OPEN FOR ACCEPTANCE:</b>	120 days
<b>DESCRIPTION OF BID:</b>	Procurement of Legal Transaction Advisors for the Request For Proposals (RFP) design and drafting, Evaluation of Bids received, Appointment of Preferred Bidders and the Financial Close activities associated with the implementation of the Energy Storage IPP Procurement Programme.
<b>BID DOCUMENTS ELECTRONIC SUBMISSION:</b>	<p><b>1. ELECTRONIC SUBMISSIONS</b></p> <p><b><u>INSTRUCTIONS:</u></b></p> <ul style="list-style-type: none"> <li>➤ Bidders are required to submit written requests for clarification via e-mail to <a href="mailto:Rosinahscm@dbsa.org">Rosinahscm@dbsa.org</a> , quoting the RFP Number on the subject of the e-mail. This must be done three (3) working days before submission day.</li> <li>➤ Bidders will thereafter receive a OneDrive Link to upload their submission documents electronically.</li> <li>➤ Written requests for clarification will be considered up to and Including <b>20 OCTOBER 2023 16:00</b> Johannesburg time. Requests</li> </ul>

	<p>received after this date may not be attended to.</p> <p>➤ Any requests after the stipulated date and time may be disregarded.</p> <p><b>NB: Electronic submission is encouraged for all bidders interested in this tender</b></p> <p><b>Closing date of this RFP252/2023 is 24 OCTOBER 2023 before 23:55.</b></p> <p><b>No physical bids will be received or accepted at the DBSA offices</b></p>
<b>NAME OF BIDDER:</b>	
<b>CONTACT PERSON:</b>	
<b>EMAIL ADDRESS:</b>	
<b>TELEPHONE NUMBER:</b>	
<b>FAX NUMBER:</b>	
<b>BIDDER'S STAMP OR SIGNATURE</b>	



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](mailto:dbsa@whistleblowing.co.za)  
Free Post : Free Post KZN 665 | Musgrave | 4062  
SMS : 33490

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**PART A  
INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED ("DBSA")</b>
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**BID NUMBER: RFP252/2023**


**DESCRIPTION: Procurement of Legal Transaction Advisors for the Request For Proposals (RFP) design and drafting, Evaluation of Bids received, Appointment of Preferred Bidders and the Financial Close activities associated with the implementation of the Energy Storage IPP Procurement Programme.**

**COMPULSORY ONLINE BRIEFING: DATE & TIME: 13 OCTOBER 2023@12H00 (Johannesburg time)**


**CLOSING DATE: 24 OCTOBER 2023**


**CLOSING TIME: 23H55**

Name

 Bidder Name

Name

 Folder 1\_Financial Proposal

 Folder 2\_Technical Proposal

- a) It remains the bidder's responsibility to ensure that the bid submission is uploaded using the correct bidder document and tender link.
- b) Should a bidder encounter an issue with the system, the bidder must provide sufficient evidence as proof of attempting to upload their submission before the cut-off time and the error received.
- c) Faxed, emailed bids will not be accepted, only an electronic submission received via the link will be accepted.
- d) It is therefore the responsibility of the bidder to request for a link to participate.
- e) The DBSA assumes no responsibility if a Bidder's designated email address is not correct, or if there are technical challenges, including those with the Bidders computer, network, or internet service provider (ISP).

**BID SUBMISSION LINK REQUESTS:**

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.

<b>NAME OF BIDDER AND EACH ENTITY IN CONSORTIUM:</b>				
<b>POSTAL ADDRESS:</b>				
<b>STREET ADDRESS:</b>				
<b>CONTACT PERSON (FULL NAME):</b>				
<b>EMAIL ADDRESS:</b>				
<b>TELEPHONE NUMBER:</b>				
<b>FAX NUMBER:</b>				
<b>BIDDER REGISTRATION NUMBER OR REGISTRATION NUMBER OF EACH ENTITY IN CONSORTIUM</b>				
<b>BIDDER VAT REGISTRATION NUMBER OR VAT REGISTRATION NUMBER OF EACH ENTITY IN CONSORTIUM</b>				
<b>BBBEE STATUS LEVEL VERIFICATION CERTIFICATE /BBBEE STATUS LEVEL SWORN AFFIDAVIT SUBMITTED?</b> <b>[TICK APPLICABLE BOX]</b>	<b>YES</b>		<b>NO</b>	

1..1.1	ARE YOU THE ACCREDITED REPRESENTATIVE IN <b>SOUTH AFRICA FOR THE GOODS /SERVICES/WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]			
1..1.2	ARE YOU A FOREIGN BASED SUPPLIER FOR <b>THE GOODS /SERVICES/WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW ]			
1..1.3	<b>SIGNATURE OF BIDDER</b>				
1..1.4	<b>DATE</b>				
1..1.5	<b>FULL NAME OF AUTHORISED REPRESENTATIVE</b>				
1..1.6	<b>CAPACITY UNDER WHICH THIS BID IS SIGNED</b> (Attach proof of authority to sign this bid; e.g. resolution of directors, etc.)				
<b>IF YES, WHO ISSUED THE CERTIFICATE?</b>					
<b>REGISTERED WITH THE NATIONAL TREASURY CSD</b> <b>[TICK APPLICABLE BOX]</b>		<b>YES</b>		<b>NO</b>	
<b>CSD REGISTRATION NUMBER</b>					
<b>TAX COMPLIANCE STATUS PIN (TCS) NUMBER ISSUED BY SARS</b>					

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

**1. BID SUBMISSION:**

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

**2. TAX COMPLIANCE REQUIREMENTS**

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

**3. QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS**

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

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

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

**CHECKLIST OF COMPULSORY RETURNABLE SCHEDULES AND DOCUMENTS**

**Please adhere to the following instructions :**

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

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

**YES      NO**

<input type="checkbox"/>	<input type="checkbox"/>	One original Bid document in separate folders; Folder 1 - for Pre-Qualifying Criteria and Functional Evaluation and Folder 2 - Price / Financial Proposal – <b>Electronic submission</b>
<input type="checkbox"/>	<input type="checkbox"/>	<b>Part A:</b> Invitation to Bid
<input type="checkbox"/>	<input type="checkbox"/>	<b>Part B:</b> Terms and Conditions of Bidding
<input type="checkbox"/>	<input type="checkbox"/>	<b>Part C:</b> Checklist of Compulsory Returnable Schedules and Documents
<input type="checkbox"/>	<input type="checkbox"/>	<b>Part D:</b> Conditions of Tendering and Undertakings by Bidders
<input type="checkbox"/>	<input type="checkbox"/>	<b>Part E:</b> Specifications/Terms of Reference and Project Brief
<input type="checkbox"/>	<input type="checkbox"/>	<b>Annexure A:</b> Price Proposal Requirement
<input type="checkbox"/>	<input type="checkbox"/>	<b>Annexure B:</b> SBD4 Declaration of Interest
<input type="checkbox"/>	<input type="checkbox"/>	<b>Annexure C:</b> SBD6.1 and B-BBEE status level certificate
<input type="checkbox"/>	<input type="checkbox"/>	<b>Annexure F:</b> Certified copies of your CIPC company registration documents listing all members with percentages, in case of a lose corporation
<input type="checkbox"/>	<input type="checkbox"/>	<b>Annexure G:</b> Certified copies of latest share certificates, in case of a company.
<input type="checkbox"/>	<input type="checkbox"/>	<b>Annexure H: (if applicable):</b> A breakdown of how fees and work will be spread between members of the bidding consortium.
<input type="checkbox"/>	<input type="checkbox"/>	<b>Annexure I:</b> Supporting documents to responses to Pre-Qualifying Criteria and Functional Evaluation Criteria.
<input type="checkbox"/>	<input type="checkbox"/>	<b>Annexure J:</b> 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, 2022.
- 1.4 **Business Day** means a day which is not a Saturday, Sunday or public holiday in South Africa.
- 1.5 **Bid** means a written offer in the prescribed or stipulated form lodged by a Bidder in response to an invitation in this Request for Proposal, containing an offer to provide goods, works or services in accordance with the Specification as provided in this RFP.
- 1.6 **Bidder** means a person or legal entity, or an unincorporated group of persons or legal entities that submit a Bid.
- 1.7 **Companies Act** means the Companies Act, 2008.
- 1.8 **Compulsory Documents** means the list of compulsory schedules and documents set out in Part B.
- 1.9 **Closing Time** means the time, specified as such under the clause (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 26 (Evaluation Process) of this Part C, which includes the Qualifying Criteria, Functional Criteria and Price and Preferential Points Assessment (where applicable).
- 1.13 **Functional Criteria** means the criteria set out in clause 27 of this Part C.
- 1.14 **Intellectual Property Rights** includes copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.
- 1.15 **PFMA** means the Public Finance Management Act, 1999.
- 1.16 **PPPFA** means the Preferential Procurement Policy Framework Act, 2000.
- 1.17 **PPPFA Regulations** means the Preferential Procurement Regulations, 2022 published in terms of the PPPFA.

- 1.18 **Pre-Qualifying Criteria** means the criteria set out in clause **Error! Reference source not found.** of this Part C.
- 1.19 **Price and Preferential Points Assessment** means the process described in clause **Error! Reference source not found.** 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](http://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: [Rosinahscm@dbsa.org](mailto:Rosinahscm@dbsa.org) (No questions will be answered telephonically).

#### **4. SUBMISSION OF TENDERS**

COMPULSORY ONLINE BRIEFING: **Microsoft Teams meeting**

**DATE & TIME: 13 OCTOBER 2023@12H00 (Johannesburg time)**

**Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

Meeting ID: 361 576 817 176

Passcode: dJywUv

[Download Teams](#) | [Join on the web](#)

**TENDER SUBMISSION LINK REQUESTS:** Bidders are asked to nominate one dedicated contact person (name, email address and phone number).

**CLOSING DATE: 24 OCTOBER 2023**

**CLOSING TIME: 23H55**

#### **5. RULES GOVERNING THIS RFP AND THE TENDERING PROCESS**

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

#### **6. STATUS OF REQUEST FOR PROPOSAL**

- 6.1 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.

## **7. ACCURACY OF REQUEST FOR PROPOSAL**

- 7.1 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.
- 7.2 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).
- 7.3 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.

## **8. ADDITIONS AND AMENDMENTS TO THE RFP**

- 8.1 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.
- 8.2 If the DBSA exercises its right to change information in terms of clause 8.1, it may seek amended Tenders from all Bidders.

## **9. REPRESENTATIONS**

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

## **10. CONFIDENTIALITY**

- 10.1 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.

## **11. REQUESTS FOR CLARIFICATION OR FURTHER INFORMATION**

- 11.1 All communications relating to this RFP and the Tendering Process must be directed to the Tender Officer.
- 11.2 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 [Rosinahscm@dbsa.org](mailto:Rosinahscm@dbsa.org)
- 11.3 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).
- 11.4 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.
- 11.5 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.
- 11.6 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).
- 11.7 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.

## **12. UNAUTHORISED COMMUNICATIONS**

- 12.1 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 12 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.
- 12.2 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.

## **13. IMPROPER ASSISTANCE, FRAUD AND CORRUPTION**

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

#### **14. ANTI-COMPETITIVE CONDUCT**

- 14.1 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:
- 14.1.1 the preparation or lodgement of their Bid
  - 14.1.2 the evaluation and clarification of their Bid; and
  - 14.1.3 the conduct of negotiations with the DBSA.
- 14.2 For the purposes of this clause 14, 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.
- 14.3 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.

#### **15. COMPLAINTS ABOUT THE TENDERING PROCESS**

- 15.1 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](mailto:tenders@dbsa.org))
- 15.2 The written complaint must set out:
- 15.2.1 the basis for the complaint, specifying the issues involved;
  - 15.2.2 how the subject of the complaint affects the organisation or person making the complaint;
  - 15.2.3 any relevant background information; and
  - 15.2.4 the outcome desired by the person or organisation making the complaint.
- 15.3 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.

#### **16. CONFLICT OF INTEREST**

- 16.1 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.
- 16.2 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.

- 16.3 The DBSA may immediately disqualify a Bidder from the Tendering Process if the Bidder fails to notify the DBSA of the conflict as required.

## **17. LATE BIDS**

- 17.1 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.
- 17.2 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.
- 17.3 The determination of the DBSA as to the actual time that a Bid is lodged is final. Subject to clause 17.2, 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.

## **18. BIDDER'S RESPONSIBILITIES**

- 18.1 Bidders are responsible for:
- 18.1.1 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;
  - 18.1.2 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;
  - 18.1.3 ensuring that their Bids are accurate and complete;
  - 18.1.4 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;
  - 18.1.5 ensuring that they comply with all applicable laws in regard to the Tendering Process particularly as specified by National Treasury Regulations, Guidelines, Instruction Notes and Practice Notes and other relevant legislation as published from time to time in the Government Gazette; and
  - 18.1.6 submitting all Compulsory Documents.
- 18.2 South African bidders with annual total revenue of ZAR10 million or less qualify as Exempted Micro Enterprises (EMEs) in terms of the B-BBEE Act must submit a certificate issued by a registered, independent auditor (who or which is not the Bidder or a part of the Bidder) or an accredited verification agency.



- 18.3 South African bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy, or a sworn affidavit thereof, substantiating their B-BBEE status. The submission of such certificates must comply with the requirements of instructions and guidelines issued by National Treasury and be in accordance with the applicable notices published by the Department of Trade and Industry in the Government Gazette.
- 18.4 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.
- 18.5 Failure to provide the required information may result in disqualification of the Bidder.

## **19. PREPARATION OF BIDS**

- 19.1 Bidders must ensure that:
  - 19.1.1 their Bid is submitted in the required format as stipulated in this RFP; and
  - 19.1.2 all the required information fields in the Bid are completed in full and contain the information requested by the DBSA.
- 19.2 The DBSA may in its absolute discretion reject a Bid that does not include the information requested or is not in the format required.
- 19.3 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.
- 19.4 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.
- 19.5 An incomplete Bid may be disqualified or assessed solely on the information completed or received with the Bid.

## **20. ILLEGIBLE CONTENT, ALTERATION AND ERASURES**

- 20.1 Incomplete Bids may be disqualified or evaluated solely on information contained in the Bid.
- 20.2 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.
- 20.3 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.

## **21. 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.

## **22. RESPONSIBILITY FOR BIDDING COSTS**

22.1 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.

22.2 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:

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

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

## **23. DISCLOSURE OF BID CONTENTS AND BID INFORMATION**

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

23.1.1 as required by law;

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

23.1.3 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.

## **24. USE OF BIDS**

24.1 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.

24.2 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.

## **25. 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.

## 26. EVALUATION PROCESS

26.1 The Bids will be evaluated and adjudicated as follows:

### 26.1.1 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 - Prequalifying and Functionality proposal Separate from Folder 2 - Pricing and Preferential Assessment	Pre-Qualifier	Y
2	Attendance of the Compulsory Online Briefing Session attended by the Tenderer.	Pre-Qualifier	Y

**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.	1 week	Y
2	Returnable documents completed and signed.	1 week	Y
3	Submission of proof of registration with National Treasury Central Supplier Database (CSD) (provide summary report). Bidder/s must be registered and compliant with CSD in order to do business with the DBSA. Only applicable to SA-registered entities.	1 week	Y

Responsiveness Criteria		Clarification Time	Applicable to this Tender (Y/N)
4	A valid and active Tax Compliance Status Pin issued by SARS.	1 week	Y

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

#### 26.1.2 Second Stage – Functional criteria

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

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

#### 26.1.2 Third Stage – price and preference

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

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

26.2 **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. Risk Analysis and Objective Criteria

**(This must only be included in the tender document if it is applicable, ensure that the list is specific as to what your objective criteria are)**

The DBSA reserves the right to award the tender to the tenderer who scores the highest number of points overall in line with Section (2) (1) (f) of the PPPFA, unless there are **objective criteria** which will justify the award of the tender to another tenderer. The objective criteria that the DBSA may apply in this bid process includes:

1. Any bidder that has a **cumulative order book totaling 3 Awards with outstanding value**, will be excluded from the selection.
2. Where a bidder has 3 active Awards with an outstanding value and the outstanding value is 10% or less, indicating the project is nearing completion, the bidder may be included in the selection.
3. Where a bidder has 3 active Awards with an outstanding value and at least one of the projects has stalled for a period of 6 months or more, or the client has placed the project on hold indefinitely, the bidder may be included in the selection.
4. The DBSA has the discretion to apply an objective criterion.

## 28. Due Diligence

DBSA shall perform a due diligence exercise on the preferred bidder to determine its risk profile. The due diligence exercise may take the following factors into account inter alia.

### a. Judgements and criminal convictions

DBSA may consider previous civil judgements against the preferred bidder as part of its risk assessment. DBSA may also consider whether the preferred bidder or any of its directors have been convicted of a serious offence.

### b. Pending litigation/liquidation/business rescue (distinct from Working Capital)

DBSA may consider any pending litigation in a court of law or administrative tribunal as part of its risk assessment.

### c. Performance

DBSA will not consider the Service provider having a history of poor performance on any task orders/purchase orders or contracts, including poor performance in respect of compliance with policies or procedures regarding safety, health, quality control or environment, or having committed a serious and gross breach of contract.

### d. Reputational harm

If DBSA is likely to suffer substantial reputational harm because of doing business with the preferred service provider, it may take this into account as part of its risk assessment.

### e. Restricted/Blacklisted

Is not under restrictions, or has principals who are under restrictions, preventing participating in the employer's procurement.

### f. Vetting

The DBSA reserves the right to conduct vetting on the tenderer or any of its directors.

### g. PEP Checks for both Companies and Individual directors, as well as Procure Check and or any other systems that the DBSA may choose to utilize (which may be conducted by an authorized third party) that would be done to assess all risks, including but not limited to

- a. Financial stability of the bidder based on key ratio analysis ;
- b. Efficiency ;
- c. Profitability ;
- d. Financial Risk;
- e. Liquidity ;
- f. Acid Test ;
- g. Solvency; and
- h. Commercial relationship with a politically exposed and brand risk

5. The DBSA reserves the right to award the scope in full or part thereof, subject to budget availability.
6. The DBSA reserves the right to negotiate to ensure the value for money principle is not compromised.

**29.** Generally, suppliers have their own business standards and regulations. Although DBSA cannot control the actions of our suppliers, we will not tolerate any Illegal activities. These include, but are not limited to:

- Misrepresentation of any kind (e.g. origin of manufacture, specifications, intellectual property rights, etc);
- Collusion;
- Failure to disclose accurate information required during the sourcing activity (ownership, financial situation, BBBEE status, etc.);
- Corrupt activities listed above; and
- Harassment, intimidation or other aggressive actions towards DBSA's employees.

### **30. STATUS OF BID**

30.1 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.

30.2 A Bid must not be conditional on:

- 30.2.1 the Board approval of the Bidder or any related governing body of the Bidder being obtained.
- 30.2.2 the Bidder conducting due diligence or any other form of enquiry or investigation.
- 30.2.3 the Bidder (or any other party) obtaining any regulatory approval or consent.
- 30.2.4 the Bidder obtaining the consent or approval of any third party; or
- 30.2.5 the Bidder stating that it wishes to discuss or negotiate any commercial terms of the contract.

30.3 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).

30.4 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.

### **31. CLARIFICATION OF BIDS**

31.1 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 held 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.

31.2 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.

## **32. DISCUSSION WITH BIDDERS**

- 32.1 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.
- 32.2 Where applicable, the DBSA will invite Bidders to give a presentation to the DBSA in relation to their submissions.
- 32.3 The DBSA is under no obligation to undertake discussions with, and Bidders.
- 32.4 In addition to presentations and discussions, the DBSA may request some or all Bidders to:
  - 32.4.1 conduct a site visit, if applicable;
  - 32.4.2 provide references or additional information; and/or
  - 32.4.3 make themselves available for panel interviews.

## **33. SUCCESSFUL BIDS**

- 33.1 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.
- 33.2 The DBSA may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Bidder.
- 33.3 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.

## **34. NO OBLIGATION TO ENTER INTO CONTRACT**

- 34.1 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.
- 34.2 The DBSA may conduct a debriefing session for all Bidders (successful and unsuccessful). Attendance at such debriefing session is optional.

### **35. BIDDER WARRANTIES**

35.1 By submitting a Bid, a Bidder warrants that:

- 35.1.1 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;
- 35.1.2 it did not use the improper assistance of DBSA's employees or information unlawfully obtained from them in compiling its Bid;
- 35.1.3 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;
- 35.1.4 it accepts and will comply with the terms set out in this RFP; and
- 35.1.5 it will provide additional information in a timely manner as requested by the DBSA to clarify any matters contained in the Bid.

### **36. DBSA'S RIGHTS**

36.1 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:

- 36.1.1 cease to proceed with, or suspend the Tendering Process prior to the execution of a formal written contract;
- 36.1.2 alter the structure and/or the timing of this RFP or the Tendering Process;
- 36.1.3 vary or extend any time or date specified in this RFP
- 36.1.4 terminate the participation of any Bidder or any other person in the Tendering Process;
- 36.1.5 require additional information or clarification from any Bidder or any other person;
- 36.1.6 provide additional information or clarification;
- 36.1.7 negotiate with any one or more Bidder;
- 36.1.8 call for new Bid;
- 36.1.9 reject any Bid received after the Closing Time; or
- 36.1.10 reject any Bid that does not comply with the requirements of this RFP.

### **37. GOVERNING LAWS**

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

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

37.3 All Bids must be completed using the English language and all costing must be in South African Rand (ZAR).



## PART E

### TERMS OF REFERENCE & PROJECT BRIEF

#### 1. INTRODUCTION

The IPP Office is mandated to undertake the procurement of energy on behalf of the Department of Mineral Resources and Energy (**DMRE**). As such it is the IPP Office's responsibility to prepare procurement documentation and run the procurement processes to ultimately select and appoint successful bidders. These bidders (independent power producers [**IPP**]) are responsible to construct, operate and maintain independent power plants providing much needed power to the South African grid.

#### 2. BACKGROUND AND PURPOSE

According to Table 5 of the Integrated Resource Plan (IRP) 2019, there is a requirement to procure a total of 2088MW battery storage capacity by the year 2029, of which 513MW is being procured under the second Determination. A further 1231MW as per the third Determination, will be procured by no later than March 2024.

In order to meet the requirement to procure 513MW of capacity from Energy Storage within the tight timelines as set out in the second Determination, the IPP Office as mandated by the DMRE, released an Energy Storage Independent Power Producer Procurement Programme (**ESIPPPP**) Request for Proposal (**RFP**) for Storage Bid Window 1 in March 2023. This Bid Window is currently in the evaluation phase and Preferred Bidders should be announced before end of the year 2023.

In line with the third Determination the IPP Office as mandated by the DMRE, will release another ESIPPPP RFP for the remaining 1231MW by March 2024.

The premise for the RFP will be for the full amount of the 1231 MW, which could either be procured through one single Bid Window or alternatively split into a Bid Window 2 and a Bid Window 3; respectively procuring 631MW and 600MW. The target date for release of the first Bid Window (Bid Window 2) is December 2023. If split into two Bid Windows the next Bid Window (Bid Window 3) will be released by no later than March 2024.

**In view of the above, there is a requirement to appoint a team of TransactionAdvisers to:**

- a. Draft, the ESIPPPP RFP or RFPs as the case may be under the guidance and management of the IPP Office inclusive of all associated agreements such as the Power Purchase Agreement (**PPA**) entered into with the Buyer, the Implementation Agreement (**IA**) entered into with the Department as well as the Direct Agreements;
- b. Evaluate the Bids Submitted; and
- c. Implement all activities associated with Commercial and Financial close.

## **2.1 RFP Drafting Phase**

The key requirement of ESIPPPP will be to procure energy storage capacity from technology agnostic energy storage technologies with stated lead times. It will furthermore incorporate in the RFP and accompanying documentation, the latest economic and related policy developments, as well as, incorporate lessons learnt from previous IPPP Programme Bid Windows.

Taking into consideration the timeframe for a procurement process, together with the construction lead times, an RFP/s for with the next 1231MW will be released in the market to ensure first connection of by end of 2025. A team of suitably experienced and qualified transaction advisers is required to assist the IPP Office to draft and finalise the procurement documents.

The team of Transaction Advisers will consist of:

- Legal Advisers;
- Economic Advisers;
- Financial Advisers; and
- Technical Advisers.

The basic criteria for the formulation of the new RFP will be:

- To procure technology agnostic energy storage capacity (MW) approach in fulfilment of the required power system services requirements of the System Operator and the Power System Planners, in line with the requirement of the IRP;
- Achieve Commercial Operation Date(s) (COD) as stated in the promulgated Determination;
- To procure the capacity on a least cost basis at the most competitive and affordable price, and least regret basis in that projects should be aligned to the

IRP (2019) and should not worsen Eskom's Technical position or unduly increase government's contingent liability; and

- Facilitate investments in the energy sector, support economic growth, increase job opportunities and support local manufacturing opportunities.

## **2.2 Evaluation and Financial Close**

As in all previous IPP Programmes, the evaluation of bids will be undertaken by an external, independent team of experts representing all required disciplines with a governance expert overseeing and monitoring the evaluation process and procedures. As part of this TOR a team of multi-disciplinary, independent evaluators will be selected to design and undertake the Evaluation of Bids, appointment of Preferred Bidders and all Financial Close activities associated with the ESIPPPP in response to the RFP issued.

The team of appointed Transaction Advisers will also assist and support the IPPOffice in the Evaluation and Legal Close processes. The team of Transaction Advisers will consist of:

- Legal Advisers;
- Economic Advisers;
- Financial Advisers;
- Technical Advisers; and
- Governance experts.

The basis for the evaluation will be the RFP, the Evaluation Manual and accompanying Evaluation Templates as prepared by the Department.

## **2.3 Fee Proposals**

In responding to this ToR, the Transaction Advisors are required to note that a separate or distinct fee proposal should be provided for all of the respective functions. It should also be noted that a firm will be appointed for the Drafting of the RFP, Evaluation and Financial Close.

The Department retains the right to assign the role of coordinator and penholder to one of the teams to ensure the efficient coordination and delivery of the combined evaluation report from the advisory team.

Furthermore there will be a need for the team to work collaboratively, as is necessary on deliverables such as the final reports.

### 3. SCOPE OF WORK

In view of the above, there is a requirement to appoint a team of Legal Transaction Advisers to undertake the aforementioned functions. Below is a list of key aspects that amongst others will be required from the appointed Transaction Advisors.

#### 3.1 Drafting the Request for Proposals (RFP)

Drafting the RFP for the ESIPPPP will be based on the previous Storage Programme Bid Window 1 RFP documents and Project Agreements, following a similar document structure with similar categories of qualification and evaluation criteria.

And in view of the above, a team of Legal Transaction Advisers will undertake the drafting, review and finalization of the ESIPPPP RFPs inclusion of all relevant agreements under the guidance of the IPP Office. Below is a list of key aspects that amongst others will be required from the appointed Transaction Advisors. It should be noted that the list is not exhaustive.

**Legal Transaction Advisors deliverables will include the following, amongst others:**

- 3.1.1 Consideration and enhancing of the ESIPPPP Concept Note or Notes as approved by the DMRE and IPP Office with specific focus on the linkage to the importation and battery storage infrastructure to be established by the State or any other party within the State, and the potential supply of the battery storage to ensure that the Programme and the risk allocation is bankable and can be executed within the time frames of the IRP 2019.
- 3.1.2 Prepare for and if required participate in or facilitate Stakeholder engagements as part of getting final commitment and agreement to the Concept Note/Notes.
- 3.1.3 Take overall responsibility for drafting and finalising the ESIPPPP RFP/s including all Project Agreements and Returnable Schedules applicable thereto, to ensure a quality final end product.
- 3.1.2 The RFP documentation should be in line with the latest market developments, aligned with the range of services required by the System Operator; and guided by the detailed risk matrix.
- 3.1.3 Draft and finalise Project Agreements ensuring a set of robust, commercially viable Project Agreements. The relevant Project Agreements which will,

include amongst others, the:

- Power Purchase Agreement;
- Implementation Agreement;
- Direct Agreement; and
- Independent Engineer Agreement.

- 3.1.4 Review and align the Agreements related to the importation and Battery Storage infrastructure and Battery Storage supply agreement to the above-mentioned agreements.
- 3.1.5 Design and draft the legal commercial, legal land and legal environmental aspects of the RFP with the view of overall improvement and quality enhancement, implement new concepts and change requirements.
- 3.1.6 Incorporate and coordinate inputs from Technical, Financial and Economic Development Advisors to ensure a bankable programme and an RFP document of international standards, which also complies with applicable law.
- 3.1.7 Review and update the RFP schedules, project documentation and templates to ensure consistency, preventing duplication and ensure accuracy. Review of the RFP and associated project documents to ensure the procurement documentation will meet the desired procurement process outcomes and objectives.
- 3.1.8 Review the relevant Eskom Connection Agreements to ensure alignment with the project agreements.
- 3.1.9 Producing a final RFP and pro forma Project Agreements including related Schedules and Templates taking into consideration the inputs from Transactions Advisors, IPP Office comments, Bid Adjudication Committee ("BAC") outcome and any other comments as required.
- 3.1.10 With the lead of the IPP Office RFP team, interact and engage with Eskom on addressing and incorporating Eskom's position in the RFP and Project Agreements.
- 3.1.11 Review existing risk matrix and make amendments to the extent that there is a change in the existing risk profile as a consequence of amendments to the Project Agreements.
- 3.1.12 Advise on the legal and commercial aspects of the ESIPPPP as part of a broader multi-disciplinary Transaction Advisor team and in particular on the

incorporation of new approved concepts as formulated and recommended by other members of the multi-disciplinary advisory team.

- 3.1.13 Review and update the evaluation templates; incorporating the amendments following from the updated RFP.
- 3.1.14 Providing reports and presentations as and when required including the preparation and presentation of reports and presentations to management and key stakeholders such as the BAC as may be required.
- 3.1.15 Taking overall responsibility in the drafting and finalisation of the request reports and presentations for purposes of BAC submission.
- 3.1.16 Development of a Value for Money Framework and assume responsibility for the value for money report.
- 3.1.17 For the period from RFP promulgation to the date of Bid Submission, in response to clarification questions received from potential Bidders, prepare responses to be communicated in the form of Briefing Notes.

## **3.2 Evaluation of Bids**

- 3.2.1 Jointly assume the role of lead advisor and support the other Transaction Advisors (Financial, Technical and Economic Development) in respect of the evaluation of their specific sections in the RFP to the extent necessary.
- 3.2.2 Act as Penholder, this role will also cover the finalisation of any clarification questions to be sent to Bidders as part of the clarification process (**price separately as the role will be assigned by the IPP Office**).
- 3.2.3 Undertake the qualification and evaluation of all Bid Responses received according to the qualification and evaluation criteria stipulated in the RFP and applying the Evaluation Manual, Evaluation Templates and Evaluation Scorecard as approved by the Department.
- 3.2.4 Formulate and prepare clarification questions, evaluation responses received on the clarifications requested and prepare the explanations needed as input into Part B (*Functional and Qualification Criteria Requirements*) of the RFP failures.
- 3.2.5 Manage and co-ordinate the evaluation of all the legal aspects of all the Bid Responses received and ensure that the reports accurately reflect the

outcome of the evaluation and recommendations thereto.

- 3.2.6 Assist, if so required, with the benchmarking exercise led by the Financial and Technical Transaction Advisors.
- 3.2.7 Preparation of legal input on the outcome of the benchmarking exercise input into the Value for Money Report as set out in the RFP.
- 3.2.8 Prepare for and undertake the **BAFO** if required (please note that this requirement will only be actioned if needed as should be priced separately).
- 3.2.9 Compile a detailed legal report on the outcome of the evaluation as part of the legal Evaluation section of the report to the BAC.
- 3.2.10 Incorporate inputs from the other Transaction Advisors (Financial, Technical and Economic Development) into the report to the BAC.
- 3.2.11 Preparing responses to any questions from the BAC or from IPP Office.
- 3.2.12 Undertake all required engagements, consultations and joint-work with the Financial, Technical and Economic Development Advisors as may be required to finalise the outcome of the evaluation and in the preparation of reports and presentations as may be required.
- 3.2.13 Preparing detailed responses to any questions from the BAC or from IPP Office.
- 3.2.14 Any other reasonable outputs that may be required by the IPP Office.
- 3.2.15 Compile a detailed Close-Out report and presentations on the outcome of the discipline evaluation results including an Executive Summary, details per project, challenges identified and recommendations for future IPP Procurement Programmes, including for, but not limited to, the design of future qualification and evaluation criteria and requirements.

### **3.3 Financial Close**

Following the Evaluation of Bid Responses, the appointed Transaction Advisory Team will be required to prepare for and conclude all activities associated with achieving Financial Close for the respective allocated projects, including, but not limited to, the following:

- 3.3.1 Review, analyse and prepare responses to change requests for approval by IPP Office.
- 3.3.2 Support the IPP Office and Department in any negotiations pertaining to specific aspects if so required including value for money assessments.
- 3.3.3 Prepare for and conclude all activities associated with achieving Financial Close including but not limited to:
- 3.3.3.1 Preparation of the following project agreements:
- Implementation Agreement ;
  - Power Purchase Agreement;
  - Independent Engineer Agreement;
  - Direct Agreement;
  - The relevant Connection Agreements;
  - Connection Direct Agreement; and
  - Agreements in relation to the importation and Battery Storage infrastructure and supply of Battery Storage.
- 3.3.3.2 Legal due diligence into the competency and capacity of each of the parties to the Project Agreements including the Department, Eskom and the Preferred Bidder.
- 3.3.3.3 Confirmation that the Project Company of a Preferred Bidder is a special purpose Company established with the sole purpose of undertaking the Project and entering into the Project Agreements.
- 3.3.3.4 Checking all Bid Responses for consistency and incorporation of the specific Bid commitments into the Project Agreements.
- 3.3.3.5 Preparing and finalising the government support for the ESIPPPP in the Government Support Framework Agreement.
- 3.3.3.6 Compile a Close-Out Report including Eskom Close-Out Report on the outcome of the procurement process as well as Value for Money Report for Eskom and presentation on outcomes of ESIPPPP on the above as well as including an executive summary and details per Project.



#### **4. PROCUREMENT REQUIREMENTS**

The Development Bank of Southern Africa (**DBSA**), with this Terms of Reference, is inviting Transaction Advisers from an open tender, to provide their resources and pricing in terms of the aforementioned Scope of Work and the Service Level Agreement. And as a result, this Terms of Reference is being sent to open market.

Any firm of advisors advising the Bid Specification Committee (**BSC**) (DMRE) will be allowed to advise private sector and/or the lenders in the procurement process, provided that the same individuals from firms advising the BSC (DMRE) on the Programmes will not be used by such firms when advising private sector and/or the lenders.

In managing potential conflict of interest and also in lieu of a potential high number of bid responses, the Transactional Advisors will have to declare and indicate how they will manage potential conflict of interest. Therefore, a firm participating in this tender should provide the DMRE with its policy to manage potential conflict of interest that may arise from such firm of advisors that are advising both the DMRE and Bidders. This policy should include the measures that will be put in place and applied to manage such conflict of interest.

**The Evaluation Team will have to sign Declaration of Interest and Confidentiality Undertakings.**

#### **5. COMPETENCY AND EXPERTISE REQUIREMENTS OF RESOURCES**

The DBSA, with this Terms of Reference, is inviting Legal Advisors from open market, to provide their resources and pricing in terms of the aforementioned Scope of Work and the Service Level Agreement. Transaction Advisers will not be permitted to sub- contract this work.

It is expected that the Transaction Advisers will have the following experience and competencies:

- Thorough knowledge of South African procurement legislation;
- Knowledge, expertise and practical experience in designing qualification and evaluation criteria for government and/or private sector infrastructure investment programmes; and
- Thorough knowledge and practical work experience in the South African electrical generation or supply and broader energy sector.

## 6. KEY DELIVERABLES, TIMELINES AND PAYMENT MILESTONES

The anticipated timeline for the finalization of the Concept Note is last quarter of 2023 and for the RFP to be ready for approval and release to the market by early December 2023.

**In responding to this ToR, the Transaction Advisors are required to provide a separate or distinct fee proposal for each of the functions specified in the scope of work.**

- 6.1 Please note the following guidelines in respect of the fee proposal:
  - 6.1.1 The fee proposal should cover all three sections outlined in this TOR namely RFP drafting, Evaluation and Financial Close.
  - 6.1.2 For Each RFP drafting a separate pricing proposal should be submitted. The same for each Evaluation and Financial Close.
  - 6.1.3 For pricing of RFP 2 an assumption can be made that RFP 2 will be fundamentally similar to RFP 1.
  - 6.1.4 The pricing element of the Bid Response should be a fixed fee inclusive of VAT and disbursements.
  - 6.1.5 The fixed fee should be broken down in cost per deliverable/milestone. Refer to the table included for the payment milestones.
  - 6.1.6 **The deliverable on a possible BAFO should be priced separately as it will only be actioned if required. Value for money engagements should however be included in the milestone based work.**
  - 6.1.7 Ensure that the fee proposal cover all elements as detailed in the scope of work. The detailed scope should be summarized in the payment milestones referred to under previous bullet.
  - 6.1.8 For purposes of the fee calculations for the evaluation of bid responses:
    - 6.1.8.1 Assume a total of 50 Bid Responses for Evaluation and 15 Preferred Bidders for Financial Close.
    - 6.1.8.2 Provide a fixed fee per bid, as well as the sum total of the cost for all bids
  - 6.1.9 For purposes of Financial close fee calculations:
    - 6.1.9.1 Provide a fixed fee per preferred bidder as well as the sum total of the

cost for all preferred bidders.

## **6.2 Important considerations**

6.2.1 Work will commence as soon as the appointment is finalized and a purchase order is issued. No work is to be undertaken without a duly authorized purchase order issued by the IPP Office.

6.2.1 Service Providers are required to consider the time allocated for each section under this ToR and ensure that sufficient and key staff is available for the whole period of the assignment.

6.2.3 Please note that the Evaluation will take place in the secure evaluation center at the IPP Office building complex.

6.2.4 The Department and IPP Office reserve the right to either cancel or replace a deliverable with another as circumstances require or to move the timelines as may be required.

6.2.5 The Department and IPPO also reserve the right to make assessment and / or terminate the contract in the case where the Project failure to submit deliverables timeously as per the IPPO working plan, that will be agreed between the IPPO and the Project.

## **7 MINIMUM PROPOSAL REQUIREMENTS**

**All proposals need to clearly state the following information:**

- 7.1 Understanding of the scope of work;
- 7.2 Deliverables (including timelines and cost per deliverable);
- 7.3 Details of Team members involved, their experience, credentials, level of seniority and level of participation (hours) that will be dedicated to the project;
- 7.4 Confirmation of the capacity and resources necessary to undertake the scope of work indicated in the TOR.
- 7.5 Fixed fee per deliverable that rolls up in to one fixed fee per section of the TOR;
- 7.6 Proviso that the work can be terminated at any milestone and only that fee payable; and

- 7.7 Proviso to ask for a presentation or engagement after bid but before appointment of preferred TA.
- 7.8 Acknowledgement that the work can be terminated at any milestone and only task or work done fee is payable; and

## 8 ELIGIBILITY CRITERIA

Service Providers are required to indicate the lead resources responsible for the deliverables and link their experience to the functional criteria below:

The proposed eligibility criteria for the Legal Transaction advisor for the RFP drafting, evaluation and Financial Close are as follows:

Eligibility Criteria	Evidence to be provided	Weighting/Score
1. Experience on providing applicable advice and support to generation projects that have gone to market and have successfully reached financial close	Provide details of experience on all projects that have gone to market (RFP) and reached financial close as well as in what roles team members were involved.  <b><i>(Please complete project list template attached as Annexure A1.)</i></b>	15 %  Acceptable and appropriate detail provided.  2 projects = 10% 3 - 4 projects = 15%
2. Proven understanding and experience of	Provide details of projects including the names qualifications	25%
3. designing procurement documentation (RFPs) for large energy and/or infrastructure programmes of R50mill value or above including VAT.	and roles of the team members involved in developing procurement documentation for energy and/or infrastructure programmes.  <b><i>(Please complete project list template attached as Annexure A1.)</i></b>	Acceptable and appropriate detail provided.  1- project = 10% 2 projects = 17% 3 projects = 25%

Eligibility Criteria	Evidence to be provided	Weighting/Score		
4. Proven understanding and experience of designing bankable Project Agreements (including PPAs) for large energy and/or infrastructure programmes of R50mill value or above including VAT.	Details of to be provided including each of the relevant project agreements. Information provided should include but not limited to period of involvement, responsibility, scope of work, team members involved and their qualifications. References to also provided in support of this detailing the involvement of each of the team members.  <b><i>(Please complete project list template attached as Annexure A1.)</i></b>	25%  Acceptable and appropriatedetail provided.  1 project = 10% 2 projects = 17% 3 projects = 25%		
5. Availability for duration of the project.	The bidder/s must provide a detailed project management plan detailing: <ul style="list-style-type: none"><li>• milestones,</li><li>• resource,</li><li>• dates corresponding to the project time frames, etc.</li></ul>		<b>Response</b>	<b>Points</b>
			Unacceptable/not provided	0
			Covered some elements	5%
			Covered all elements	10%
6. Team leader to have 5 to 7 years of legal and project financing experience supported by an appropriately skilled and experienced team each having 3 to 5 years of similar experience. Provide Evidence.	<ul style="list-style-type: none"><li>• Provide CVs for team experts and team leader.</li></ul>	25%  Team Lead 5 years and team 3 years = 15%  Team Lead 7 years and team 5 years = 25%		
<b>Total</b>	Minimum score to go to the next level of evaluation is 70%.	<b>100%</b>		

**NOTE:** *A Large Project is defined as an infrastructure project with a value of more than R50 million (including Value Added Tax). The Large Project could either be one big project or a grouping of a number of related small initiatives (various mini-projects) managed in a coordinated way to obtain benefits and control not available from managing them individually.*

## ANNEXURE A FEES AND ASSUMPTIONS

The fee proposal for each section of this ToR should be structured as set out below:

- 6.3. Fee Proposal for Drafting of Request for Proposal (RFP), Evaluation of Bid Responses and Commercial/Financial Close

(Where work and costs will be shared between RFPs it should be clearly indicated.)

### 6.3.1 FEE PROPOSALS FOR REQUEST FOR PROPOSAL (RFP) ONE

#### 6.3.1.1 RFP ONE - DRAFTING OF RFP

Deliverables	Timeline	Payment Milestones (% allocation of contract ZAR value)
ZAR million	Days	%
Project plan (i.e. scope of work, detailed implementation plan and timing of deliverables) and kick off meeting	2 days	RFP concept = 10%  RFP to Eskom = 15% PPA to Eskom = 10% Final RFP AND PPA = 20%
RFP Conceptual Draft	1 week	
RFP First Draft and Project Agreements (PPA, IA and DA_) First Draft and PPA (to be shared with Eskom)	2 weeks	
RFP final draft (final RFP and final pro forma project agreements) taking into consideration all comments received	2 weeks	
Evaluation Templates	2 weeks	15%
BAC submission and reports	As required	5%
BAC approval and Release of RFP in market	As required	10%
Briefing notes	As required	15%

The anticipated timeline for the release of the RFP is around December 2023 with Bid Submission scheduled 4 months after the release of the RFP in the market. The tentative timelines for the release of the RFP up to Bid submission that will impact on the Scope of Work are as set out below and may require deliverables to be worked on in parallel.

- Finalization of RFP: October 2023
- BAC submission and BAC approvals: November 2023
- RFP release in market: early December 2023
- Bid Submission: May/June 2024

### 6.3.1.2 RFP ONE – EVALUATION FEES

Deliverables	Timeline	Cost per Bid	Total	Payment Milestones (% allocation of contract ZAR value including VAT)
ZAR' million	Days	Rands/bid	Rands	%
<b>EVALUATION PHASE</b>				
Penholder and Coordinator role if assigned			Provide a fixed fee	5%
Preparation for Evaluation and Evaluation of Bid Responses and Clarifications	2 – 3 weeks	Cost per bid	Total for 50 bids	30%
Finalisation of Part B and Part C Evaluation including Benchmarking report.	1 week	Cost per bid	Total for 50 bids	30%
Appointment and Non-Appointment letters	1 week	n/a	Provide a fixed fee	5%
BAC Report inputs	1 week	n/a	Provide a fixed fee	20%
Value for money assessments (if required)	2 weeks		Fixed fee	10%
<b>SUB TOTAL</b>				<b>100%</b>



Preparing and undertaking a <b>BAFO only if required</b>	3 weeks	Cost per bid	Total for 50 bids	<b>100%</b>
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### 6.3.1.3 RFP ONE – COMMERCIAL/FINANCIAL CLOSE FEES

<b>Deliverables</b>	<b>Timeline</b>	<b>Cost per Bid</b>	<b>Total</b>	<b>Payment Milestones (% allocation of contract ZAR value)</b>
ZAR' million	Days	Rands/bid	Rands	%
<b>LEGAL AND COMMERCIAL CLOSE PHASE</b>				
Preparation of the Project Agreements for each of the Projects including updating the PPA with all briefing notes	4 weeks	Cost per bid	Total for 15 bids	50%
Analysis and recommendation on Change Requests	3 months	Cost per bid	Total for 15 bids	35%
Actual support on Legal Close	3 Days		Fixed Fee	10%
Close Out Report	2 weeks	n/a	Provide a fixed fee	5%
<b>TOTAL</b>				<b>100%</b>

## 6.3.2 FEE PROPOSALS FOR REQUEST FOR PROPOSAL (RFP) TWO

### 6.3.2.1 RFP TWO – DRAFTING OF RFP

Deliverables	Timeline	Payment Milestones (% allocation of contract ZAR value)
ZAR million	Days	%
Project plan (i.e. scope of work, detailed implementation plan and timing of deliverables) and kick off meeting	2 days	RFP concept = 10%  RFP to Eskom = 15% PPA to Eskom = 10% FINAL RFP AND PPA = 20%
RFP Conceptual Draft	1 week	
RFP First Draft and Project Agreements(PPA, IA and DA_)	2 week	
First Draft and PPA (to be shared with Eskom)		
RFP final draft (final RFP and final pro forma project agreements) taking into consideration all comments received	2 weeks	
Evaluation Templates	2 weeks	15%
BAC submission and reports	As required	5%
BAC approval and Release of RFP in market	As required	10%
Briefing notes	As required	15%

It is anticipated that the only difference between RFP 1 and RFP 2 will be the allocated MW and the location of the grid connection. No substantial changes are envisaged between the two RFPs.

The anticipated timeline for the release of the RFP is around March 2024 with Bid Submission scheduled 4 months after the release of the RFP in the market. The tentative timelines for the release of the RFP up to Bid submission that will impact on the Scope of Work are as set out below and may require deliverables to be worked on in parallel.

- Finalization of RFP: March 2024
- BAC submission and BAC approvals: April 2024
- RFP release in market: April / May 2024
- Bid Submission: October / November 2024

### 6.3.2.2 RFP TWO – EVALUATION FEES

Deliverables	Timeline	Cost per Bid	Total	Payment Milestones (% allocation of contract ZAR value including VAT)
ZAR' million	Days	Rands/bid	Rands	%
<b>EVALUATION PHASE</b>				
Penholder and Coordinator role if assigned			Provide a fixed fee	5%
Preparation for Evaluation and Evaluation of Bid Responses and Clarifications	2 – 3 weeks	Cost per bid	Total for 50 bids	30%
Finalisation of Part B and Part C Evaluation including Benchmarking report.	1 week	Cost per bid	Total for 50 bids	30%
Appointment and Non-Appointment letters	1 week	n/a	Provide a fixed fee	5%
BAC Report inputs	1 week	n/a	Provide a fixed fee	20%
Value for money assessments (if required)	2 weeks		Fixed fee	10%
<b>SUB TOTAL</b>				<b>100%</b>
Preparing and undertaking a BAFO <b>only if required</b>	3 weeks	Cost per bid	Total for 50 bids	<b>100%</b>

### 6.3.3.3 RFP TWO – COMMERCIAL/FINANCIAL CLOSE FEES

<b>Deliverables</b>	<b>Timeline</b>	<b>Cost per Bid</b>	<b>Total</b>	<b>Payment Milestones (% allocation of contract ZAR value)</b>
ZAR' million	Days	Rands/bid	Rands	%
<b>LEGAL AND COMMERCIAL CLOSE PHASE</b>				
Preparation of the Project Agreements for each of the Projects including updating the PPA with all briefing notes	4 weeks	Cost per bid	Total for 15 bids	50%
Analysis and recommendation on ChangeRequests	3 months	Cost per bid	Total for 15 bids	35%
Actual support on Legal Close	3 Days		Fixed Fee	10%
Close Out Report	2 weeks	n/a	Provide a fixed fee	5%
<b>TOTAL</b>				100%

## Annexure A

### FORM OF OFFER AND ACCEPTANCE (AGREEMENT)

#### 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:

**RFP252/2023: Procurement of Legal Transaction Advisors for the Request For Proposals (RFP) design and drafting, Evaluation of Bids received, Appointment of Preferred Bidders and the Financial Close activities associated with the implementation of the Energy Storage IPP Procurement Programme.**

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 ALL TAXES IS

.....  
..... (in words);      ZAR      ..... (in figures),  
.....

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** \_\_\_\_\_

## BIDDER'S DISCLOSURE

### 1. PURPOSE OF THE FORM

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

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

### 2. Bidder's declaration

2.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state? **YES/NO**

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

Full Name	Identity Number	Name of State institution

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

2.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution? **YES/NO**

2.2.1 If so, furnish particulars:

.....  
 .....

2.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any

interest in any other related enterprise whether or not they are bidding for this contract?**YES/NO**

2.3.1 If so, furnish particulars:

.....  
 .....

### 3 DECLARATION

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

- 3.1 I have read and I understand the contents of this disclosure;
- 3.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;
- 3.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>2</sup> will not be construed as collusive bidding.
- 3.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 3.4 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.

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<sup>2</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.



- 3.5 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 3.6 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 1, 2 and 3 ABOVE IS CORRECT.

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

.....  
Signature Date

.....  
Position Name of bidder

## PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2022

This preference form must form part of all tenders invited. It contains general information and serves as a claim form for preference points for specific goals.

**NB: BEFORE COMPLETING THIS FORM, TENDERERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF THE TENDER AND PREFERENTIAL PROCUREMENT REGULATIONS, 2022**

### 1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to invitations to tender:

- 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 To be completed by the organ of state

*(delete whichever is not applicable for this tender).*

- a) The applicable preference point system for this tender is the **90/10** preference point system.
- b) The applicable preference point system for this tender is the **80/20** preference point system.
- c) Either the **90/10 or 80/20 preference point system** will be applicable in this tender. The lowest/ highest acceptable tender will be used to determine the accurate system once tenders are received.

1.3 Points for this tender (even in the case of a tender for income-generating contracts) shall be awarded for:

- (a) Price; and
- (b) Specific Goals (namely, BBBEE status level of contributor).

### 1.4 To be completed by the organ of state:

The maximum points for this tender are allocated as follows:

	POINTS
PRICE	
SPECIFIC GOALS	

- 1.5 Failure on the part of a tenderer to submit proof or documentation required in terms of this tender to claim points for specific goals with the tender, will be interpreted to mean that preference points for specific goals are not claimed.
- 1.6 The organ of state reserves the right to require of a tenderer, either before a tender is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the organ of state.

## 2. DEFINITIONS

- (a) **“tender”** means a written offer in the form determined by an organ of state in response to an invitation to provide goods or services through price quotations, competitive tendering process or any other method envisaged in legislation;
- (b) **“price”** means an amount of money tendered for goods or services, and includes all applicable taxes less all unconditional discounts;
- (c) **“rand value”** means the total estimated value of a contract in Rand, calculated at the time of bid invitation, and includes all applicable taxes;
- (d) **“tender for income-generating contracts”** means a written offer in the form determined by an organ of state in response to an invitation for the origination of income-generating contracts through any method envisaged in legislation that will result in a legal agreement between the organ of state and a third party that produces revenue for the organ of state, and includes, but is not limited to, leasing and disposal of assets and concession contracts, excluding direct sales and disposal of assets through public auctions; and
- (e) **“the Act”** means the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000).

## 3. FORMULAE FOR PROCUREMENT OF GOODS AND SERVICES

### 3.1. POINTS AWARDED FOR PRICE AND PREFERENCE

#### 3.1.1 THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS

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

$$P_s = 80 \left( 1 - \frac{P_t - P_{min}}{P_{min}} \right) \quad \text{or} \quad P_s = 90 \left( 1 - \frac{P_t - P_{min}}{P_{min}} \right)$$

Where

$P_s$  = Points scored for price of tender under consideration

$P_t$  = Price of tender under consideration

$P_{min}$  = Price of lowest acceptable tender

### 3.2. FORMULAE FOR DISPOSAL OR LEASING OF STATE ASSETS AND INCOME GENERATING PROCUREMENT

#### 3.2.1. POINTS AWARDED FOR PRICE AND PREFERENCE

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

$$\begin{array}{ccc} \mathbf{80/20} & \mathbf{or} & \mathbf{90/10} \\ \\ \mathbf{Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)} & \mathbf{or} & \mathbf{Ps = 90 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)} \end{array}$$

Where

- Ps = Points scored for price of tender under consideration  
Pt = Price of tender under consideration  
Pmax = Price of highest acceptable tender

### 4. POINTS AWARDED FOR SPECIFIC GOALS

- 4.1. In terms of Regulation 4(2); 5(2); 6(2) and 7(2) of the Preferential Procurement Regulations, preference points must be awarded for specific goals stated in the tender. For the purposes of this tender the tenderer will be allocated points based on the goals stated in table 1 below as may be supported by proof/ documentation stated in the conditions of this tender:
- 4.2. In cases where organs of state intend to use Regulation 3(2) of the Regulations, which states that, if it is unclear whether the 80/20 or 90/10 preference point system applies, an organ of state must, in the tender documents, stipulate in the case of—
- (a) an invitation for tender for income-generating contracts, that either the 80/20 or 90/10 preference point system will apply and that the highest acceptable tender will be used to determine the applicable preference point system; or
  - (b) any other invitation for tender, that either the 80/20 or 90/10 preference point system will apply and that the lowest acceptable tender will be used to determine the applicable preference point system,

then the organ of state must indicate the points allocated for specific goals for both the 90/10 and 80/20 preference point system.

**Table 1: Specific goals for the tender and points claimed are indicated per the table below.**

***(Note to organs of state: Where either the 90/10 or 80/20 preference point system is applicable, corresponding points must also be indicated as such.)***

***Note to tenderers: The tenderer must indicate how they claim points for each preference point system.)***

The specific goals allocated points in terms of this tender	Number of points allocated (90/10 system) (To be completed by the organ of state)	Number of points allocated (80/20 system) (To be completed by the organ of state)	Number of points claimed (90/10 system) (To be completed by the tenderer)	Number of points claimed (80/20 system) (To be completed by the tenderer)
1	10	20		
2	9	18		
3	6	14		
4	5	12		
5	4	8		
6	3	6		
7	2	4		
8	1	2		
Non-compliant contributor	0	0		

**(Note: Bidders are required to submit their BBBEE certificates or sworn affidavits (in the case of EMEs/QSEs) in order to be eligible to claim points)**

#### **DECLARATION WITH REGARD TO COMPANY/FIRM**

4.3. Name of company/firm.....

4.4. Company registration number:  
.....

4.5. TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One-person business/sole propriety
- ☐ Close corporation
- ☐ Public Company
- ☐ Personal Liability Company

- ☐ (Pty) Limited
  - ☐ Non-Profit Company
  - ☐ State Owned Company
- [TICK APPLICABLE BOX]

4.6. I, the undersigned, who is duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the specific goals as advised in the tender, qualifies the company/ firm for the preference(s) shown and I 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 4.2, the contractor may be required to furnish documentary proof to the satisfaction of the organ of state that the claims are correct;
- iv) If the specific goals have been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the organ of state may, in addition to any other remedy it may have –
  - (a) disqualify the person from the tendering 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 tenderer or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted 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, if deemed necessary.

.....  
**SIGNATURE(S) OF TENDERER(S)**

**SURNAME AND NAME:** .....

**DATE:**.....

**ADDRESS:**.....

.....

.....

.....

## RESTRICTED SUPPLIERS

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

Item	Question	Yes	No
4.1	<p><b>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?</b>            (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).</p> <p><b>The Database of Restricted Suppliers now resides on the National Treasury's website(<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) and can be accessed by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.1.1	If so, furnish particulars:		
4.2	<p>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)?</p> <p><b>The Register for Tender Defaulters can be accessed on the National Treasury's website (<a href="http://www.treasury.gov.za">www.treasury.gov.za</a>) by clicking on its link at the bottom of the home page.</b></p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.2.1	If so, furnish particulars:		
4.3	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.3.1	If so, furnish particulars:		
4.4	<p>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?</p>	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4.4.1	If so, furnish particulars:		

## **Annexure D**

**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 E**

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

## **Annexure F**

**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 G**

**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 H

### [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 ACQUAINTED 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 I

### 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](mailto:dbsa@whistleblowing.co.za)

Free Post : Free Post KZN 665 | Musgrave | 4062

SMS : 33490