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| <b>Request for Proposal (RFP) reference number</b>   | CORP MWP1395CX  |
| <b>Issue date</b>  | 27 May 2022   |
| <b>Submission date and time</b>  | 13 June 2022 at 10:00am   |
| <b>RFP validity period</b>   | 18 months from the submission date and time   |
| <b>RFPs are to be delivered to the following address on the stipulated closing date and time</b> | <i>Tender Box situated at Eskom's Head Office:</i><br>Megawatt Park<br>2 Maxwell drive,<br>Sunninghill, Sandton<br>2157 |

Dear Sir/Madam

**REQUEST FOR PROPOSAL: INVITATION TO SUBMIT A PROPOSAL FOR THE APPOINTMENT OF LEGAL COUNSEL ON INTERNATIONAL BOND TRANSACTIONS.**

Please take note that this is a confidential request and all information, including this request for proposal ("RFP"), should be treated as such. You are therefore prohibited from discussing or divulging the existence or contents of this RFP or any other information relating to this RFP to any third party without our prior written consent.

## 1. DEFINITIONS

|   |   |
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| <b>"B-BBEE Act"</b>   | the Broad-Based Black Economic Empowerment Act No. 53 of 2003   |
| <b>"Tenderer"</b>   | any legal entity or consortium that submits responses to this RFP as per procurement procedures                                     |
| <b>"RFP Response"</b>   | any reply submitted by a Tenderer in response to the requirements of this invitation  |
| <b>" Submission Date"</b>   | the date identified as the RFP Response Submission Date   |
| <b>"Eskom"</b>  | Eskom Holdings SOC Limited, registration number 2002/015527/30, as incorporated pursuant to the Eskom Conversion Act No. 13 of 2001 |
| <b>"PFMA"</b>   | the Public Finance Management Act No. 1 of 1999   |
| <b>"Preferential Procurement Policy Framework Act" or "PPPFA"</b> | the Preferential Procurement Policy Framework Act No. 5 of 2000   |

## 2. OBJECTIVE

Eskom's borrowing plan seeks to diversify funding sources across various markets including international debt capital markets.

This is an open invitation to tender and the objective of this RFP is to appoint legal counsel who will assist Eskom with US dollar denominated bond transactions in the international debt capital markets.

### **3. ELIGIBLE TENDERERS**

Tenderers must be registered legal services institution offering legal services relating to international and domestic debt capital markets.

Tenderers are deemed **ineligible** to submit a proposal if they have the nationality of a country on any international sanctions list. A Tenderer shall be deemed to have the nationality of a country if it's a national or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country.

### **4. CONFLICT OF INTEREST**

A Tenderer shall not have a conflict of interest. All Tenderers found to have a conflict of interest shall be disqualified. Tenderers must submit a form, see Annexure B, stating that none of its personnel have any involvement or interest in Eskom and any of its subsidiaries and likewise no Eskom personnel have any involvement or interest in the Tenderer's business with the response to this document or influence the decisions of Eskom during the bidding process.

A Tenderer may also be considered to have a conflict of interest with one or more parties in this RFP process, if they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the proposal of another Tenderer.

Alternatively, the bidder must disclose **ALL** such information in its response submission containing sufficient disclosure regarding any interests that may result in an actual or potential conflict of interest. Where any potential or actual conflict of interest arises after the submission of the proposal or during the term of the potential mandate, the Tenderer shall be obliged to immediately notify Eskom thereof in writing. Note that Eskom reserves the right to disqualify a Tenderer or terminate the services as service provider if there is, in the opinion of Eskom, any actual or perceived conflict of interest.

### **5. COSTS OF TENDERING**

The Tenderer shall bear all costs related to the preparation and submission of their RFP responses. Eskom shall in no way be responsible or liable for any of these costs regardless of the conduct or outcome of the procurement process.

### **6. PARTNERSHIP**

Provisions of the Preferential Procurement Policy Framework Act (PPPFA) of 2011 and its regulations will apply in terms of awarding points. Tenderers are required to submit original

and valid B-BBEE Status Level Verification Certificates or certified copies thereof together with their proposals, to substantiate their B-BBEE rating claims. Tenderers who do not submit their B-BBEE status level verification certificates or are non-compliant contributors to B-BBEE will not qualify for preference points for B-BBEE.

In order to assist Eskom with its transformation and B-BBEE objectives, it is proposed that the Tenderer enhance their team with their choice of B-BBEE firms.

## **7. SCOPE OF WORK**

Eskom plans to borrow funds in the international DCM through a 144A/Reg S public issuance under our GMTN programme (which may include a Liability Management Exercise) or/and a standalone private placement.

### **Key assumptions for public issue:**

- Public issue of Euro bond under Eskom GMTN programme and guaranteed by government in line with the 144A window related to 31 March year end and 30 Sept interim financial results.
- Update of GMTN programme which will draw from recent update in November 2021.
- Format: 144A/Reg S
- Law: English law Ts&Cs and contractual docs

### **Key assumptions for private placement:**

- Standalone guaranteed bond
- Term sheet based (no prospectus)
- Contractual documentation should draw from GMTN terms.
- Format: Reg S only
- Law: English law Ts&Cs and contractual docs

The scope of work will be customary for a public issuance or a term sheet based private placement, including (but not limited to):

- Reviewing of contractual documentation prepared by lead arranger's/underwriter's counsel.
- Assistance with Government interactions on guarantee discussions.
- Delivery of customary International and South African legal opinion.

- Attendance at a telephonic due diligence session – questionnaire to be provided by lead arranger's/underwriter's counsel and based on the recently completed due diligence.
- Ensuring all relevant internal authorizations and external approvals are in place
- Assistance in preparation of the Information Memorandum for listing, in coordination with the Listing Agent

## 8. MANDATORY PROPOSAL RETURNABLES

The RFP response should cover all the criteria stipulated in the attached Annexure A and must be a maximum of 20 pages, Arial font size 11. The Tenderer must submit the following:

- one (1) original, and four (4) copies of the original response,
- signed integrity declaration form,
- original or certified copy of B-BBEE verification certificate,
- original or certified copy of B-BBEE Partner's verification certificate,

Failure to submit the original response, associated copies and integrity declaration form will disqualify your submission. Failure to submit B-BBEE verification certificates will not result in disqualification but will impact the scoring.

An electronic copy of your proposal must also be sent Liugi Van Der Merwe and Francois Venter by e-mail on [FreemaP@eskom.co.za](mailto:FreemaP@eskom.co.za) and [VenterFrJ@eskom.co.za](mailto:VenterFrJ@eskom.co.za) before 10:00am on **13 June 2022**. Please also note that **ONLY the hard copies** submitted in the Tender Box will qualify as a valid proposal on the closing date and NOT the e-mailed copy.

## 9. EVALUATION CRITERIA

Responses to cover the criteria in Annexure A will be scored out of 90. B-BBEE status will be scored out of 10 in accordance with PPPFA. Tenderers will be ranked by applying the preferential point scoring based on the 90/10 principle. RFP Proposals that do not meet the 70% threshold for the technical scoring will not qualify to be evaluated further and subsequently disqualified.

Following the scoring of the technical criteria the highest-ranking tenderer, after consideration for pricing, will be considered for contracting.

## 10. LODGING OF PROPOSALS

Your proposal titled **“TREASURY RFP - APPOINTMENT OF LEGAL COUNSEL ON INTERNATIONAL BOND TRANSACTIONS”** must be sealed in an envelope and posted in Eskom's Tender Box situated at Eskom's Head Office, Megawatt Park, **before 10:00am on 13 June 2022**.

Please take note that proposals may be submitted before the closing date. Late proposals will not be accepted and will be returned to the sender.

## **11. DISCUSSIONS**

Eskom reserves the right to call upon a prospective bank to discuss its proposal in more detail as and when deemed necessary. Eskom also reserves the right to consult and use as a reference the information contained in the RFP.

Short listed candidates should expect that on short notice, the core implementation team will be required to attend a one (1) hour meeting during which thirty (30) minutes will be dedicated to the presentation of the proposal followed by a thirty (30) minutes question and answer session.

## **12. QUERIES**

Should there be questions or queries regarding this RFP please contact at all times the following Eskom representatives. Please note that correspondence should only be in writing by email.

- Name: Francois Venter
- Email: [VenterFrJ@eskom.co.za](mailto:VenterFrJ@eskom.co.za)
- Name: Peter Freemantle
- Email: [FreemaP@eskom.co.za](mailto:FreemaP@eskom.co.za)

Questions will not be responded to two (2) business days before the Submission Date.

## **13. IMPORTANT NOTICES**

Even though Eskom has exercised all efforts in good faith to prepare the information contained in this document, neither it nor any of its directors, partners, employees, sub-contractors, intermediaries or agents, provide any assurances or guarantees, explicit or implicit, in relation to this RFP. No representation or warranty, expressed or implied, is given by Eskom, or any of its respective directors, partners, employees, sub-contractors, intermediaries or agents as to the accuracy or completeness of any of the contents of this RFP.

By issuing this RFP, Eskom does not undertake any obligation to provide any further information, or to correct any inaccuracies in this proposal, or to correct any omissions, which become known at any time. Any costs and expenses incurred by the persons who replied to

this RFP, or by their agents or advisers, will be the sole responsibility of such persons and Eskom does not undertake to cover such costs.

This enquiry may be cancelled by Eskom at any time prior to the conclusion of the process, if it is not deemed necessary to continue with the procurement process due to a substantial change in circumstances, or if public interest and welfare dictate such.

Eskom reserves the right to accept or reject any RFP Response, and to cancel the RFP and reject all replies prior to the announcement of the successful Tenderers.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R. Vaughan', is positioned above a horizontal line.

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Richard Vaughan

**GENERAL MANAGER, TREASURY**

Date: 26 May 2022

## ANNEXURE A

| Evaluation Criteria   |  | Weightings<br>- 100% |
|---|--|----------------------|
| <b>Firm Capability and Experience</b>   |  |                      |
| The firm must give details of RegS/144A Debt Capital Market transactions valued at a minimum of US\$ 200 million each over the past 36 months.                              |  | <b>35%</b>           |
| at least 5 projects   |  | 50%                  |
| 6 – 8 projects  |  | 75%                  |
| 9 and more projects   |  | 100%                 |
| At least one team member must have past experience of Government guaranteed financing structures in South Africa— Provide list of such transaction/s undertaken for clients |  | <b>20%</b>           |
| Nothing provided  |  | 50%                  |
| Provided  |  | 75%                  |
| The firm must clearly show that one lead team member has a minimum of 10 years' experience dealing with Rule144 A and Regulation S Debt Capital Markets transactions        |  | <b>25%</b>           |
| Nothing Provided  |  | 0%                   |
| Provided  |  | 100%                 |
| The firm must clearly show that one associate team member has a minimum of 3 years' experience dealing with Rule144 A and Regulation S Debt Capital Markets transactions    |  | <b>20%</b>           |
| Nothing Provided  |  | 0%                   |
| Provided  |  | 100%                 |

**Table 1: Indicative Fees**

| Fees   | Amount (ZAR / USD) |
|--|--------------------|
| Partner/Director (Hourly rate)   |                    |
| Senior Associate (Hourly rate)   |                    |
| USD fee cap for 144A/Reg S for international counsel                       |                    |
| ZAR fee cap for 144A/Reg S for local counsel                               |                    |
| USD fee cap for term sheet only private placement on international counsel |                    |
| ZAR fee cap for term sheet only private placement on local counsel         |                    |



## ANNEXURE B

### INTEGRITY DECLARATION FORM

*(Form to be completed and signed by tenderer as Invitation to RFP returnable)*

#### **1. DECLARATION OF INTEREST**

I/We understand that any natural/legal person, including employees of the State and/or those related to an Eskom employee/director (as per the definition of “related” set out hereunder), may tender to Eskom. However, in view of possible allegations of favouritism (the practice of showing favour to, or giving preference to some person/group, to the detriment of, or at the expense of another that is entitled to equal treatment or an equal opportunity), should the resulting tender, or part thereof, be awarded to such natural/legal person, as described herein, it is required that the *Tenderer/s* declare such interest/relationship where:-

- the *Tenderer/s* employees/directors are also employees/contractors/consultants/directors in the state or a state owned entity.
- the *Tenderer/s* employees/directors are also employees/contractors/consultants/directors of Eskom
- the *Tenderer/s* employees/directors are also employees/contractors/consultants or directors in another entity together with Eskom employees/consultants/contractors/directors
- the *legal person/s (including its employees/contractors/directors/members/shareholders)* on whose behalf the tender documents are signed, is in some other way “related” to an Eskom employee/contractor/consultant/director involved in the tender evaluation/tender adjudication/tender negotiation. “Related” meaning that:-
  - an individual is related to another individual if they are married, or live together in a relationship similar to marriage;
  - or are separated by no more than two degrees of natural or adopted consanguinity or affinity;
  - an individual is related to a juristic person if the individual directly or indirectly controls the juristic person, as determined in accordance with the definition of “control” (as per Companies Act section 2(1) ) ; and
- **a juristic person is “related” to another juristic person if :-**
  - (1) either of them directly/indirectly controls the other, or the business of the other, as determined in accordance with the definition of

“control”(as per Companies Act section 2(1) );

- (2) either is a subsidiary of the other; or
- (3) a person directly/indirectly controls each of them, or the business of each of them, as determined in accordance with the definition of “control”
- the *Tenderer/s* and one or more of the *Tenderers* in this tendering/RFP process have a controlling partner in common, or a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the tender/proposal of another Tenderer, or influence the decisions of Eskom regarding this bidding process;

To give effect to the provisions above, please complete the table hereunder with all required information.

| Full Name & Capacity/ Position within Tenderer (e.g. employee/Director/ member/ owner/shareholder) | Confirm and provide details (including employee number) if you are a State/State owned entity employee/contractor/ director | Full Names & Capacity/Position of Eskom employee/ director/ consultant and details of the relationship or interest(marital/ familial/personal/ financial etc.) | To your knowledge is this person involved in the evaluation/ adjudication/ negotiation of tenders |
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1. If any employee/director/member/shareholder/owner of Tenderer/s is also currently employed by Eskom, state whether this has been declared and whether there is authorisation(Y/N) to undertake remunerative work outside public sector employment, and attach proof to this declaration. \_\_\_\_\_
2. Do the Tenderer/s and other Tenderer in this tendering/RFP process share a controlling partner or have any relationship with each other, directly or through common third parties? (Y/N) If Yes, attach proof to this

declaration. \_\_\_\_\_

**I declare that I have read and understood the provisions of the Integrity declaration format, that all information furnished herein is correct, that it is understood that the Tenderer's proposal may be rejected, and that Eskom will act against the Tenderer should any aspect of this this declaration prove to be false.**

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| <b>Signature:</b>                                 |  |
| <b>Designation and capacity in which signing:</b> |  |
| <b>Date:</b>                                      |  |