

## REQUEST FOR PROPOSALS

<p><b>YOU ARE HEREBY INVITED TO SUBMIT A BID TO MEET THE REQUIREMENTS OF THE DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED</b></p>	
<p><b>BID NUMBER:</b></p>	<p><b>RFP062/2026</b></p>
<p><b>COMPULSORY BRIEFING SESSION DETAILS:</b></p>	<p><b>Tender briefing will be done online via Microsoft teams. Bidders are advised to use the link below to join the briefing session.</b></p> <p><b>Click on the link to join the meeting. Bidders must complete their details fully in order to have access to the briefing session. The link will only be accessible 15 minutes before the meeting.</b></p> <p><b><a href="#">Compulsory Briefing Session link - RFP062.2026</a></b></p> <p><b>Link: 05 May 2026 @11H00 AM (Johannesburg time)</b></p>
<p><b>CLOSING DATE:</b></p>	<p><b>18 May 2026</b></p>
<p><b>CLOSING TIME:</b></p>	<p>23H55 (Midnight)</p>
<p><b>PERIOD FOR WHICH BIDS ARE REQUIRED TO REMAIN OPEN FOR ACCEPTANCE:</b></p>	<p>120 days</p>
<p><b>DESCRIPTION OF BID:</b></p>	<p><b>Procurement of Legal Transaction Advisor to support the “Independent Power Producers’ Office” (IPP Office) for the assessment of a proposed conversion of the Peaker power plant facilities from diesel to gas and the extension of the term of the power purchase agreements.</b></p>
<p><b>BID DOCUMENTS ELECTRONIC SUBMISSION:</b></p>	<p><b>1. ELECTRONIC SUBMISSIONS</b></p> <p><b><u>INSTRUCTIONS:</u></b></p> <p>➤ Bidders are required to submit written requests for clarification via e-mail to <b><a href="mailto:vusiscm@dbsa.org">vusiscm@dbsa.org</a></b> <b>ONLY</b>, quoting the RFP Number</p>

	<p>on the subject of the e-mail. This must be done three (3) working days before submission day.</p> <ul style="list-style-type: none"> <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>14 May 2026 16:30</b> Johannesburg time. Requests received after this date may not be attended to.</li> <li>➤ Any requests after the stipulated date and time may be disregarded.</li> </ul> <p><b>NB: Electronic submission is encouraged for all bidders interested in this tender</b>  <b>Closing date of this 18/05/2026 is 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**

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

**BID NUMBER: RFP062/2026**

**DESCRIPTION: Procurement of Legal Transaction Advisor to support the “Independent Power Producers’ Office” (IPP Office) for the assessment of a proposed conversion of the Peaker power plant facilities from diesel to gas and the extension of the term of the power purchase agreements.**

**COMPULSORY BRIEFING: 05 May 2026** - Tender briefing will be done online via Microsoft teams.

**COMPULSORY BRIEFING LINK:**

**Time: 11H00 AM Johannesburg time (Microsoft Teams)**


**[Compulsory Briefing Session link - RFP062.2026](#)**

**Closing time for the OneDrive Link submissions - 23h55 on the 18 May 2026 (Telkom Time)**



**CLOSING DATE: 18 May 2026**

**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>	

<b>1..1.1 ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES/WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]			
<b>1..1.2 ARE YOU A FOREIGN BASED SUPPLIER FOR THE GOODS /SERVICES/WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ANSWER PART B:3 BELOW ]			
<b>1..1.3 SIGNATURE OF BIDDER</b>				
<b>1..1.4 DATE</b>				
<b>1..1.5 FULL NAME OF AUTHORISED REPRESENTATIVE</b>				
<b>1..1.6 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 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 26.3 of this Part C.

- 1.19 **Price and Preferential Points Assessment** means the process described in clause 26.5 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: [vusiscm@dbsa.org](mailto:vusiscm@dbsa.org)

No questions will be answered telephonically

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

COMPULSORY BRIEFING: **05<sup>th</sup> May 2026** - Tender briefing will be done online via Microsoft teams.

**Click on the link to join the meeting. Bidders must complete their details fully in order to have access to the briefing session. The link will only be accessible 15 minutes before the meeting.**

[Compulsory Briefing Session link - RFP062.2026](#)

Link: 05 May 2026 @11H00 AM (Johannesburg time) Time: 11H00 AM Johannesburg time (**Microsoft Teams**)

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

Link Request DATE By: **14 May 2026**

Link Request TIME By: 16H30

#### **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 [vusiscm@dbsa.org](mailto:vusiscm@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: Functionality and returnable submission separate from Folder 2: Pricing proposal submission	Pre-Qualifier	Y
2	Attendance of the compulsory briefing session	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.	48 hours	Y
2	Returnable documents completed and signed.	48 hours	Y
3	Submission of Registration with National Treasury Central Supplier Database (CSD) Summary Report: - Bidder must be registered to do business with the DBSA	48 hours	Y
4	A Tax Pin issued by SARS.	48 hours	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 evaluation criteria**

26.1.1 Only those Bidders that meet the minimum threshold of **70%** for functional evaluation criteria during 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 evaluation criteria (Second Stage) as set out in this RFP. Only those Bidders that meet the minimum threshold of **70%** for functional evaluation criteria will proceed to the Third Stage.

**26.1.2 Third Stage – price**

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**

### 26.3 First Stage: Pre-Qualifying Criteria

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

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

### 26.4 Second Stage: Functional Evaluation Criteria

Minimum score of **70 out of 100** in each of the evaluation criteria as well as overall is required to progress to next stage.

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

Eligibility Criteria	Evidence to be provided	WEIGHTING/SCORE
<p>1. Team Leader Capacity and experience</p> <p>The proposed Team Leader(s) must demonstrate proven experience in providing legal advisory services on:</p> <ul style="list-style-type: none"> <li>• gas-to-power and/or gas-fired power generation projects; and/or</li> <li>• amendments, restructuring, extensions, or renegotiation of existing power generation PPAs or long-term infrastructure agreements; and/or</li> <li>• large-scale energy or infrastructure projects with a minimum project value of R750 million, which have progressed through structured engagement and successfully reached either financial close or conclusion in respect to contractual amendment(s).</li> </ul>	<p>Provide:</p> <ul style="list-style-type: none"> <li>• Summary and details of at least three (3) relevant projects, including: <ul style="list-style-type: none"> <li>(i). period of involvement;</li> <li>(ii). responsibility; and</li> <li>(iii). scope of legal work undertaken</li> </ul> </li> </ul> <p>Completed project list template (<b>Annexure A</b>). <i>(2 or more Projects that form part of the same Bid Window in respect of the IPP Programmes on cannot be split to be reflected in Annexure A as separate Projects – each Bid Window constitutes a Project)</i></p> <ul style="list-style-type: none"> <li>• Detailed CVs of the Team Leader(s).</li> <li>• Copies of qualifications of Team Leader(s).</li> <li>• Copies of the relevant professional registration affiliations.</li> </ul>	<p><b>20%</b></p> <p>Minimum of at least 3 qualifying projects demonstrating experience in any of the following:</p> <ul style="list-style-type: none"> <li>(i). gas fired power generation projects and/or</li> <li>(ii). amendments, restructuring, extensions or renegotiation of PPAs or long term infrastructure agreements; and/or</li> <li>(iii). large-scale infrastructure projects with a value exceeding R750 million. <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>• 3 Projects = 10%</li> <li>• 4 Projects = 15%</li> <li>• 5 Projects = 20%</li> </ul> </li></ul>

<p>2. Team member Capacity and experience</p> <p>The proposed team members must demonstrate proven experience in gas-to-power and/or gas-fired power generation projects and/or large-scale energy or infrastructure projects with a minimum project value of R750 million,</p> <p>Proposed team members must be a minimum of 3</p>	<p>Provide:</p> <ul style="list-style-type: none"> <li>Summary and details of at least three (3) relevant projects, including: <ul style="list-style-type: none"> <li>(i). period of involvement;</li> <li>(ii). responsibility; and</li> <li>(iii). scope of legal work undertaken</li> </ul> </li> </ul> <p>Completed project list template (<b>Annexure A</b>). (2 or more Projects that form part of the same Bid Window in respect of the IPP Programmes on cannot be split to be reflected in Annexure A as separate Projects – each Bid Window constitutes a Project)</p> <ul style="list-style-type: none"> <li>Detailed CVs of the Team members.</li> <li>Copies of qualifications of Team members.</li> <li>Copies of the relevant professional registration affiliations</li> </ul>	<p><b>15%</b></p> <p>Minimum of at least 3 gas fired power generation projects and/or large-scale infrastructure projects with a value exceeding R750 million.</p> <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>3 Projects = 5%</li> <li>4 Projects = 10%</li> <li>5 Projects = 15%</li> </ul>
<p>3. Experience in Public Procurement, Constitutional and Regulatory Compliance</p> <p>Demonstrate proven experience in providing legal advice on:</p> <ul style="list-style-type: none"> <li>public procurement compliance under section 217 of the Constitution;</li> <li>PFMA, National Treasury Regulations and related public finance legislation; and</li> <li>the permissibility of amendments to existing public contracts, including risk of judicial review.</li> </ul>	<p>Provide:</p> <ul style="list-style-type: none"> <li>Details of at least three (3) projects where the Bidder provided procurement, constitutional or public law advice, including: <ul style="list-style-type: none"> <li>(i). nature of the advisory work undertaken;</li> <li>(ii). period of involvement; and</li> <li>(iii). responsibility.</li> </ul> </li> <li>Evidence that at least one proposed team member has relevant experience.</li> <li>Completed project list template by at least one of the team members (<b>Annexure A</b>). (2 or more Projects that form part of the same Bid Window in</li> </ul>	<p><b>15%</b></p> <p>Minimum of 3 projects</p> <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>3 Projects = 10%</li> <li>4 Projects = 12.5%</li> <li>5 Projects = 15%</li> </ul>

	<p><i>respect of the IPP Programmes on cannot be split to be reflected in Annexure A as separate Projects – each Bid Window constitutes a Project).</i></p> <ul style="list-style-type: none"> <li>• CVs and qualifications of relevant team members.</li> <li>• Proof of registration and good standing with the Legal Practice Council.</li> <li>• Fidelity Fund Certificate (where applicable).</li> </ul>	
<p>4. Experience in Drafting, Reviewing and Negotiating Bankable Project Agreements</p> <p>Demonstrate experience in drafting, reviewing, negotiating and amending bankable project agreements for large energy or infrastructure projects with a minimum project value of R750 million, including:</p> <ul style="list-style-type: none"> <li>• Power Purchase Agreements; and/or</li> <li>• Implementation Agreements; and/or</li> <li>• ancillary project agreements.</li> </ul>	<p>Provide:</p> <ul style="list-style-type: none"> <li>• Details of at least three (3) relevant projects, including: <ul style="list-style-type: none"> <li>(i). type of agreements involved;</li> <li>(ii). nature of amendments or negotiations undertaken;</li> </ul> </li> <li>• Evidence that at least one proposed team member has relevant project agreement experience.</li> <li>• Completed <b>Annexure A</b> project list by at least one of the team members. (2 or more Projects that form part of the same Bid Window in respect of the IPP Programmes on cannot be split to be reflected in Annexure A as separate Projects – each Bid Window constitutes a Project).</li> </ul>	<p><b>25%</b></p> <p>Minimum of 3 projects</p> <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>• 3 Project = 10%</li> <li>• 4 Projects = 15%</li> <li>• 5 Projects = 25%</li> </ul>
<p>5. Regulatory and Energy Sector Expertise</p> <p>Demonstrate a understanding of the South African electricity and energy regulatory framework relevant to the proposed conversion and PPA extension.</p>	<p>Provide:</p> <ul style="list-style-type: none"> <li>• Description of relevant regulatory advisory experience on at least three (3) energy sector projects.</li> <li>• CVs highlighting regulatory and sector-specific expertise of team members.</li> </ul>	<p><b>15%</b></p> <p>Minimum of 3 projects</p> <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>• 3 Project = 5%</li> <li>• 4 Projects = 10%</li> <li>• 5 Projects = 15%</li> </ul>

<p>6. Demonstrated Understanding of the Assignment and Proposed Legal Methodology</p> <p>Assessment of the bidder's demonstrated understanding of the TOR, scope, expected deliverables.</p> <p>Assessment of the quality, soundness, completeness, and feasibility of the proposed methodology to execute each component of the scope, including analytical approaches, stakeholder engagement, risk mitigation, and alignment to public-sector best practice.</p>	<p>The bidder must submit a technical proposal demonstrating a clear understanding of the assignment. Proposal must contain at minimum the following:</p> <p>Introduction of Company / Consortium and Relevant Experience</p> <p>Proposed Team Structure and Organogram</p> <p>Understanding of the Scope of Work  Demonstrated understanding of  a) the legislative and regulatory environment;  b) The IPPPP legal framework</p> <p>Proposed Approach and Methodology - Comprehensive and tailored approach addressing:  a) analytical approaches  b) stakeholder engagement considerations;  c) risk identification and mitigation measures, and  d) alignment with public-sector best practice</p> <p>Project Plan and Implementation Schedule</p>	<p><b>10%</b></p> <p>Provided = 2 points  Not provided = 0 points</p> <p>Provided = 2 points  Not provided = 0 points</p> <p>Addresses all both aspects = 2 points  Addresses one (1) or no aspects = 0 points</p> <p>Addresses all four (4) aspects = 2 points  Addresses one (1) to three (3) aspects = 1 points  Does not address any aspect = 0 points</p> <p>Project Plan outlines deliverables and milestones = 2 points  No Project Plan provided or does not indicate deliverables and milestones = 0 points</p>
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Only proposals that meet the threshold of 70% will proceed to the next part which is the evaluation on price and preference point basis.

## 26.5 Third Stage: Price

26.5.1 The Third Stage of evaluation of the Bids will be in respect of price and preference.

## 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:

- I. Any bidder that has a cumulative order book totalling 5 Awards with outstanding value, may be excluded from further evaluation.
- II. Where a bidder has 5 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 for further evaluation and/or recommendation for award.
- III. Where a bidder has 5 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 for further evaluation and/or recommendation for award.
- IV. 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

- i. The DBSA reserves the right to award the scope in full or part thereof, subject to budget availability.
- ii. 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).

## **TERMS OF REFERENCE (TOR)**

**Procurement of Legal Transaction Advisor to support the “Independent Power Producers’ Office” (IPP Office) for the assessment of a proposed conversion of the Peaker power plant facilities from diesel to gas and the extension of the term of the power purchase agreements.**

## **1. INTRODUCTION**

The IPP Office (IPPO) is mandated to undertake the procurement of energy on behalf of the Department of Electricity and Energy (the Department). As such, it is the IPP Office's responsibility to prepare procurement documentation and administer the procurement processes to ultimately select and appoint Preferred Bidders. These Bidders (Independent Power Producers' (IPP)) are responsible to design, finance, construct, commission, operate and maintain power generation facilities providing much needed power to the South African grid.

## **2. BACKGROUND**

- 2.1 The IPP Peaking Power Programme was initiated by the then Department of Minerals and Energy, now the Department of Electricity and Energy (the Department), pursuant to a Ministerial Determination issued in terms of section 34 of the Electricity Regulation Act, 2006 (Act No. 4 of 2006), as amended, in consultation with the National Energy Regulator of South Africa (NERSA). The Determination provided for the procurement of new peaking generation capacity to ensure continued and uninterrupted electricity supply to the national grid.
- 2.2 Following the procurement process, two projects, namely Avon Peaking Power (RF) (Pty) Ltd and Dedisa Peaking Power (RF) (Pty) Ltd (collectively, the Sellers), were appointed as Preferred Bidders under the IPP Peaking Power Generation Project. The projects comprise two open-cycle diesel-fired gas turbine peaking power plants with a combined contracted capacity of 1,005 MW.
- 2.3 On 03 June 2013, the Sellers concluded, inter alia, fifteen (15) year Power Purchase Agreements (PPAs) with Eskom Holdings SOC Ltd, now the National Transmission Company South Africa (NTCSA), as Buyer, as well as Implementation Agreements (IAs) with the Department. Dedisa Peaking Power achieved Commercial Operation in 2015 with a PPA end date of 2030, while Avon Peaking Power achieved Commercial Operation in 2016 with a PPA end date of 2031.
- 2.4 The PPAs and IAs expressly contemplate the potential conversion of the facilities to operate using an alternative fuel source, including natural gas, subject to consultation with relevant authorities and agreement between the parties. In particular, clause 18.22 of the PPAs and clause 6.1.10(c) of Schedule C to the IAs provide a basis for the consideration of future fuel

conversion and associated amendments to the project agreements.

- 2.5 The proposed conversion is aligned with the Integrated Resource Plan (IRP) 2025. The IRP 2025 identifies gas-to-power as a transitional and balancing energy source that will enhance system flexibility and support renewable energy integration. It commits an initial 6 000 MW (6 GW) of gas-to-power capacity to be developed by 2030 and a total allocation of approximately 10 000 MW (10 GW) of new gas-to-power capacity over the plan horizon to 2039.
- 2.6 The IPP Office has been mandated by the Department to engage with the Sellers and NTCSA on the proposed conversion and associated PPA extension. Given the legal, regulatory, contractual, and procurement complexities associated with the proposed amendments to the existing project agreements, as well as the potential implications under the Electricity Regulation Act, the Public Finance Management Act, 1999, and section 217 of the Constitution of the Republic of South Africa, it is necessary for the IPP Office to appoint an independent Legal Transaction Advisor to support these engagements and negotiations.
- 2.7 The purpose of the Terms of Reference is to appoint an experienced and independent Legal Transaction Advisor to provide legal advisory support to the IPP Office in relation to the proposed conversion of the Avon and Dedisa peaking power plants from diesel to natural gas, and the contemplated extension of the term of the existing Power Purchase Agreements.
- 2.8 The Legal Transaction Advisor will assist the IPP Office in assessing and advising on the legal, contractual, regulatory, and procurement implications of the proposed conversion and PPA extension, including but not limited to the interpretation of the existing PPAs and IAs, compliance with applicable legislation and policy, and the lawfulness of the proposed amendments within the existing procurement framework.
- 2.9 The Legal Transaction Advisor will further support the IPP Office during engagements and negotiations with the Sellers, NTCSA, the Department, NERSA, National Treasury (where required), and other relevant stakeholders, with a view to ensuring that the proposed conversion and contract amendments are legally sound and aligned with government policy and value for money principles.

### **3. SCOPE OF WORK**

The Legal Transaction Advisor appointed for the assessment of the proposed conversion of the Avon and Dedisa Peaking Power Plants from diesel to gas, and the extension of the term of the Power Purchase Agreements, will be responsible for providing legal advisory services to the IPP Office.

The Legal Transaction Advisor's deliverables will include, but not be limited to, the work set out below. The list is non-exhaustive, and the fee proposal must cover all tasks necessary to support the IPP Office in relation to the proposed conversion and PPA term extension, without exclusions, limitations, or assumptions regarding the scope of work.

To ensure comprehensive coverage of all workstreams associated with the proposal, the Department will appoint a team of multi-disciplinary, independent Transaction Advisors consisting of:

- Legal Advisor;
- Financial Advisor; and
- Technical Advisors.

The Legal Transaction Advisor will be required to work closely and cooperatively with the other appointed Transaction Advisors in the execution of the scope of work, and act as penholder in the preparation and or amendments of the project agreements, compilation of any submissions, memoranda or presentations to the Department.

#### **3.1 LEGAL ASSESSMENT AND EVALUATION/ DUE DILIGENCE OF THE PROPOSAL FROM THE SELLERS**

The Legal Transaction Advisor will be required to undertake a comprehensive evaluation/due diligence and assessment of the legal permissibility, commercial soundness, and completeness of the current proposal submitted by the Sellers for the conversion of the facilities from diesel to gas and the extension of the PPA term.

This shall include, but not be limited to:

- Reviewing the proposal against the existing contractual framework, including the PPAs, IAs, and all associated project documentation and undertaking the necessary due diligence.
- Assessing the legal permissibility of the proposed conversion contemplated under the existing agreements as well as the proposed extension of the contractual term.
- Identifying any actual and potential risks and dependencies associated with the conversion

and extension of the contractual term, including risks from a public procurement perspective to ensure that the principles contemplated under section 217 of the constitution and other public procurement legislation are upheld.

- Identifying any shortcomings with respect to the proposal submitted by the Sellers, including the legal advice which has been obtained.
- Engagement with the IPP Office, Department, Sellers, NTCSA, NERSA, National Treasury and other key stakeholders.
- Providing legal opinions on matters associated with the proposed conversion and extension of the term of the contracts.

The Legal Transaction Advisor will be required to prepare a comprehensive report setting out key legal findings, risks, and recommendations regarding additional information and or other considerations, approvals, or engagements required to advance the proposal.

As part of the assessment exercise, the Legal Transaction Advisor will be required to review and give due consideration to, inter alia:

- The Power Purchase Agreements, Implementation Agreements and other relevant project agreements.
- Generation licences and licence amendment or renewal requirements.
- The Electricity Regulation Act, 2006 (as amended).
- The Public Finance Management Act, 1999, and National Treasury Regulations.
- Ministerial Determinations issued in terms of section 34 of the Electricity Regulation Act.
- Applicable environmental, permitting, and land-use approvals to the extent that these have legal implications for implementation.

The Legal Transaction Advisor will be required to advise the IPP Office on any potential legal limitations associated with the conversion, approval requirements, and regulatory processes necessary to implement the proposed conversion and extension in a manner that is legally permissible.

### **3.2 DRAFTING THE AMENDMENTS TO THE PROJECT AGREEMENTS**

The appointed Legal Transaction Advisor will be required to review and advise on the legal framework governing the Projects and the proposed amendments arising from the conversion of the facilities from diesel to gas and the extension of the term of the Power Purchase Agreements. This will include amongst others:

- Reviewing the existing Project Agreements to assess the contractual implications of the proposed conversion and extension.
- Advising on the scope and permissibility of amendments required to implement the proposed conversion and extension of the term of the Project Agreements.
- Drafting, reviewing, and finalising amendments to the Project Agreements to ensure a set of robust, commercially viable, and legally sound set of agreements. The relevant Project Agreements shall include, amongst others:
  - the Power Purchase Agreements;
  - the Implementation Agreements; and
  - any other relevant project agreements and schedules associated with the Projects.

In undertaking this scope of work, the Legal Transaction Advisor shall ensure that the amended Project Agreements:

- are consistent with the existing contractual framework and applicable laws;
- appropriately reflect the agreed technical and financial positions arising from the conversion;
- appropriately allocate risk between the parties;
- remain bankable and enforceable; and
- are aligned with applicable policy, regulatory requirements, and approvals.

### **3.3 CONSIDERATION WITH RESPECT TO COMPLIANCE WITH PROCUREMENT PRESCRIPTS**

The Legal Transaction Advisor will be required to assess and advise on the procurement, constitutional, and other public law implications arising from the proposed conversion of the Avon and Dedisa Peaking Power Plants from diesel to gas and the extension of the term of the Power Purchase Agreements.

This shall include, but not be limited to:

- Assessing whether the proposed conversion and PPA extension constitute a permissible amendment to existing contracts or give rise to a new procurement process.
- Assessing compliance with section 217 of the Constitution of the Republic of South Africa, 1996, including the principles of fairness, equity, transparency, competitiveness, and cost-effectiveness.
- Advising on compliance with applicable public procurement legislation, including the Public Finance Management Act, 1999, and National Treasury Regulations.
- Reviewing any other relevant jurisprudence, policy positions, and National Treasury

Regulations/guidance applicable to amendments of long-term public contracts.

- Identifying any legal risks associated with deviation (if it is legally deemed as such) from competitive procurement processes and proposing mitigation measures.

The Legal Transaction Advisor shall prepare a legal opinion addressing the lawfulness and procurement permissibility of the proposed conversion and PPA extension, including any conditions or considerations required to mitigate procurement and constitutional related risk.

### **3.4 REGULATORY APPROVALS AND IMPLEMENTATION**

The Legal Transaction Advisor will be required to advise on the regulatory approvals required to implement the proposed conversion and extension. This shall include, but not be limited to:

- Identifying all statutory, regulatory, and policy approvals required to give effect to the proposed conversion and PPA extension.
- Advising on the interaction between contractual amendments and regulatory approvals, including whether certain approvals are required prior to, concurrently with, or subsequent to the execution of amended Project Agreements.
- Advising on any requirements for licence amendments and or renewals in terms of the Electricity Regulation Act, 2006 (as amended).
- Advising on whether a new or amended Ministerial Determination in terms of section 34 of the Electricity Regulation Act is required.
- Providing support in obtaining any of the necessary regulatory approvals.

In addition to the above, the Legal Transaction Advisor will also be required to support the IPP Office in ensuring that all decisions relating to the proposed conversion and PPA extension are taken in a lawful, rational, and procedurally sound manner. The support will extend to the preparation of submissions, memoranda, and briefing notes to the Department, as required, as well as the preparation of any required regulatory applications.

### **3.5 NEGOTIATION AND STAKEHOLDER ENGAGEMENTS**

The Legal Transaction Advisor will be required to support and participate in negotiations and stakeholder engagements required to assess and implement the proposed conversion of the Avon and Dedisa Peaking Power Plants from diesel to gas and the extension of the term of the PPA.

The Legal Transaction Advisor will be required to develop and implement a stakeholder engagement approach that identifies all relevant stakeholders, the legal objectives of each engagement, and the

key legal issues to be addressed in order to inform the IPP Office's assessment, negotiations, and decision-making process.

Without limiting the generality of the above, the Legal Transaction Advisor shall be required to engage with, or support engagements with, the following stakeholders:

(a). Department of Electricity and Energy

- Advise on the legal implications of the proposed conversion and PPA extension within the policy and legislative mandate of the Department.
- Support engagements relating to the interpretation of the existing contractual framework and the scope of amendments to be made under the PPAs and IAs, including amongst others matters relating to government support, reps and warranties and economic development obligations.
- Advise on the requisite approvals to be obtained including any governance processes to be adhered to.

4 (b). National Transmission Company South Africa

- Support engagements on the legal implications of the proposed conversion and extension from the perspective of the Buyer.
- Advise on amendments required to the PPAs and IAs, including if so required, any amendments to provisions relating to amongst others compensation mechanisms, dispatch obligations, performance standards, guarantees, indemnities and termination.
- Support negotiations on risk allocation.

(c). National Energy Regulator of South Africa

- Advise on regulatory approval requirements arising from the proposed conversion and PPA extension.
- Support engagements relating to licence amendments etc.

(d). National Treasury

- Support engagements relating to procurement compliance, fiscal risk, and contingent liabilities.
- Advise on the legal implications of termination provisions, government support mechanisms (if any), and the extension of the PPA term.

(e). The Sellers (Avon and Dedisa)

- Engage with the Sellers on legal aspects of the proposal, including contractual amendments and risk allocation.
- Review and respond to proposals, comments and draft amendments submitted by the Sellers.
- Support negotiations aimed at achieving legally robust outcomes.

(f). Other Stakeholders (as required)

- Engage with other competent authorities, including DFFE or other regulators, where legal input is required.
- Support engagements with government departments or entities involved in approvals of the proposed conversion and extension.

Following each engagement, the Legal Transaction Advisor shall prepare written legal summaries capturing:

- The stakeholder's legal position and key inputs.
- Legal risks and or concerns identified as an outcome of the engagement.
- Any conditions, approvals, or actions arising out of the engagement.

The Legal Transaction Advisor will be required to actively support and participate in negotiations across all legal, contractual and commercial aspects of the proposed transaction, including value for money considerations and Economic Development obligations. This shall include engagement with all relevant stakeholders, including the Department, the National Transmission Company South Africa, National Treasury and the Sellers, and ensuring that all negotiated positions are appropriately supported, documented and reflected in the Project Agreements.

### **3.6 LITIGATION AND JUDICIAL REVIEW**

The Legal Transaction Advisor will be required to assess and advise on potential litigation and judicial review risks arising from the proposed conversion and PPA extension. This shall include, but not be limited to:

- Identifying potential grounds on which the proposed conversion or extension may be challenged.
- Assessing the likelihood and impact of potential legal challenges by interested or affected parties.
- Advising on legal risk mitigation measures to reduce exposure to judicial review or other legal proceedings.

The Legal Transaction Advisor shall incorporate litigation risk considerations into the overall legal assessment and recommendations.

### **3.7 RECOMMENDATIONS AND CLOSE OUT REPORT**

The Legal Transaction Advisor shall be required to support the IPP Office through the close-out phase of the assessment, negotiation, approval, and implementation of the proposed conversion of the Avon and Dedisa Peaking Power Plants from diesel to gas and the extension of the term of the Power Purchase Agreements. Without limiting the generality of the above, the Legal Transaction Advisor's scope of work shall include the following:

- Prepare a comprehensive close out report consolidating all assessments, findings, and recommendations arising from:
  - the review of the Sellers' proposal;
  - stakeholder engagements;
  - procurement and constitutional law assessments;
  - regulatory and approval analysis; and
  - negotiation outcomes.
- The report shall clearly set out:
  - the legal basis for proceeding (or not proceeding) with the proposed conversion and PPA extension;
  - confirmation of compliance with applicable legislation, procurement principles, and regulatory requirements;
  - risks and proposed mitigation measures; and
  - any conditions precedent required to implement the agreed outcome.
- Work closely and cooperatively with the appointed Financial and Technical Advisors to ensure alignment between legal, financial, and technical positions agreed during negotiations.
- Draft, review, and finalise all Project Agreements required to give effect to the agreed outcome, including:
  - amended Power Purchase Agreements;
  - amended Implementation Agreements; and
  - any ancillary or supporting Project Agreements required to implement the conversion and extension
- Acting as penholder in the preparation and consolidation of all submissions, memoranda and supporting documentation required for governance and approval processes, including submissions to the Bid Adjudication Committee, the Department and National Treasury.
- Provide ongoing legal support through the project implementation phase, as required,

including during commercial and or financial close.

- Providing legal support in respect of presentations and briefings to the Department and other stakeholders.

### **3.8 VALUE FOR MONEY, ECONOMIC DEVELOPMENT AND AMENDMENTS TO THE AGREEMENTS**

The Legal Transaction Advisor will be required to support the IPP Office in the assessment, review, and negotiation of value for money considerations arising from the proposed conversion of the facilities and the extension of the term of the Power Purchase Agreements. This shall include, but not limited to:

- Advising on and supporting the renegotiation of Economic Development obligations and targets, taking into account the revised project parameters, extended term, and value for money considerations.
- Providing advisory support in respect of Legal and Economic Development matters.
- Reviewing and advising on value for money considerations.
- Reviewing and advising on all proposed variations to the Project Agreements, including but not limited to:
  - changes to project structure;
  - amendments to the Economic Development framework;
  - revisions to commercial and risk allocation provisions; and
  - any other contractual amendments required to give effect to the proposed conversion and extension.
- Drafting, reviewing and finalising all amendments and ancillary agreements required to give effect to the agreed outcomes.
- Advising on the legal permissibility of the proposed variations within the existing procurement framework, including compliance with applicable legislation, National Treasury requirements and section 217 of the Constitution.

## **4 THE TRANSACTION ADVISORY TEAM**

In view of the above, the team of appointed Transaction Advisors selected to undertake and support the IPP Office in the assessment, negotiation, approval, and implementation of the proposed conversion of the Avon and Dedisa Peaking Power Plants from diesel to gas and the extension of the term of the Power Purchase Agreements, consist of:

- Legal Advisors
- Financial Advisors; and

- Technical Advisors.

In managing potential conflict of interest Transactional Advisors will have to declare and indicate how they will manage potential conflict of interest.

In responding to this ToR, the Transaction Advisors are required to note that a separate or distinct fee proposal should be provided for each of the respective functions.

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

The Development Bank of Southern Africa (DBSA), with this Terms of Reference, is inviting Legal Transaction Advisors from open market, to provide their resources and pricing in terms of the aforementioned Scope of Work and the Service Level Agreement. The Legal Advisory Team must possess deep legal expertise and practical experience in the energy sector, and the capability to navigate complex legal, regulatory, financial, and contractual environments.

This Terms of Reference is being sent to open market.

The required competencies and experience the Legal Transaction Advisor are as follows:

- Knowledge of all relevant laws associated with the gas sector and it would be advantageous to have previously worked on drafting legal agreements for a gas generation power plant;
- Experience in drafting and negotiating complex project finance infrastructure agreements;
- Expertise in contract structuring to ensure adequate risk allocation and enforceability.
- Experience and/or ability to manage agreements between multiple government stakeholders;
- Regulatory and Compliance Knowledge:
  - Demonstrated expertise in electricity and gas market regulations, including comprehensive knowledge of gas licensing frameworks and compliance obligations.
- Knowledge and understanding of environmental, land-use, and permitting laws governing gas infrastructure projects.
- Understanding of project financing models, including lender requirements and bankability considerations
- Thorough knowledge and practical experience in the South African electrical generation or

supply and broader energy sector

- Thorough knowledge, experience and proven track record of Legal Transaction Advisory services completed in the gas sector, gas generation power plant and or large infrastructure projects.

Any firm of advisors advising the Department will be allowed to advise private sector and/or the lenders in the process, provided that the same individuals from firms advising the Department on the assessment, negotiation, approval, and implementation of the proposed conversion of the Avon and Dedisa Peaking Power Plants from diesel to gas and the extension of the term of the Power Purchase Agreements will not be used by such firms when advising private sector and/or the lenders. Therefore, a firm participating in this tender should provide the Department with its policy to manage potential conflict of interest that may arise from such firm of advisors that are advising both the Department and Sellers. This policy should include the measures that will be put in place and applied to manage such conflict of interest.

The appointed advisor will have to sign Declaration of Interest and Confidentiality Undertakings.

## **6 DELIVERABLES, TIMELINES, PAYMENT TERMS AND MILESTONES**

The duration of the appointment will therefore be at least 18 months. This is however an indicative timeline and the services shall continue until the full scope of work is completed.

**In responding to this Terms of Reference (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.**

**Please note the following guidelines in respect of the fee proposal:**

- The fee proposal should cover all sections outlined in this TOR.
- The fixed fee should be broken down in cost per deliverable/milestone. Refer to the table included for the payment milestones.
- 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.
- In addition to the fixed fee proposal as set out above, Service Providers are required to provide hourly charge out rates for each of the team members to cover additional work which may be required in addition to the scope set out in these Terms of Reference.

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. Service Providers are required to consider the time allocated for the assignment and ensure that sufficient and key staff is available for the whole period of the assignment.

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. The Department and IPP Office 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 IPP Office working plan, that will be agreed between the IPP Office and the Project.

- 6.1 Tenderers are required to submit a comprehensive fee proposal covering the full scope of work set out in Section 3 of this Terms of Reference. The fees must be fully inclusive with no exclusions, limitations, or assumptions. Tenderers must complete the table below and must ensure that the price covers all sub-tasks reasonably required to deliver the relevant output.
- 6.2 Tenderers are required to submit a fixed fee per deliverable/milestone as set out in this Terms of Reference. In addition, Tenderers must provide hourly charge-out rates for each proposed team member.
- 6.4 A contingency allowance equal to twenty percent (30%) of the total proposed contract value must be priced separately to cater for any additional or out-of-scope work not expressly provided for in this Terms of Reference. The contingency amount shall only be utilised with the prior written approval of the IPP Office, supported by a cost breakdown calculated at the approved hourly charge-out rates.
- 6.5 All travel and disbursement costs must be priced separately and shall be reimbursed on a cost basis, subject to the prior written approval of the IPP Office and supported by appropriate documentary evidence. No travel or disbursement costs shall be recoverable unless expressly approved in writing by the IPP Office.

<b>Scope of Work</b>	<b>Deliverables</b>	<b>Payment Milestones</b>  (contract ZAR value)
<b>ZAR million</b>		
<b>Legal Assessment and Evaluation of the Sellers' Proposal</b>	<b>Review of Sellers' proposal; assessment against existing contractual framework; legal permissibility of conversion and PPA extension; identification of legal risks; preparation of legal assessment report and various legal opinions</b>	
<b>Contractual, Legislative and Regulatory Review</b>	<b>Review of PPAs, IAs and related project agreements; review of applicable legislation and regulatory instruments; assessment of licence amendment requirements; advice on required approvals</b>	
<b>Amendments to Project Agreements</b>	<b>Advice on scope and permissibility of amendments; drafting, review and finalisation of amended PPAs, IAs and ancillary agreements</b>	
<b>Stakeholder Engagements</b>	<b>Legal support and participation in engagements with DEE, NTCSA, NERSA, National Treasury, Sellers and other stakeholders; support in negotiations relating to contractual, commercial, value for money and Economic Development matters; preparation of legal engagement summaries and follow-up action</b>	
<b>Value for Money and Economic Development</b>	<b>Assessment and legal advisory support on value for money considerations; support in the renegotiation of Economic Development obligations and targets</b>	
<b>Close-Out Report and Final Recommendation</b>	<b>Preparation of consolidated legal close-out report, which includes any potential litigious related matters; confirmation of legal basis to proceed or not proceed; final overall recommendations</b>	
<b>Governance, Approvals and BAC Submissions</b>	<b>Preparation and consolidation of inputs, memoranda and presentations to BAC and/or Department; acting as penholder for all submissions</b>	
<b>Implementation and post negotiation legal support</b>	<b>Legal support during implementation phase; ongoing advisory support, including during commercial and financial close if so required</b>	

**\*\*\*All travel will have to be approved in advance and will be reimbursed based on the approval granted. A budget amount for travel and accommodation should be provided as a separate cost item.**

## 7 MINIMUM PROPOSAL REQUIREMENTS

All proposals need to clearly state the following information:

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

## 8 FUNCTIONAL CRITERIA

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

Eligibility Criteria	Evidence to be provided	WEIGHTING/SCORE
<p>7. Team Leader Capacity and experience</p> <p>The proposed Team Leader(s) must demonstrate proven experience in providing legal advisory services on:</p> <ul style="list-style-type: none"> <li>• gas-to-power and/or gas-fired power generation projects; and/or</li> <li>• amendments, restructuring, extensions, or renegotiation of existing power generation PPAs or long-term infrastructure agreements; and/or</li> <li>• large-scale energy or infrastructure projects with a minimum project value of R750 million,</li> </ul>	<p>Provide:</p> <ul style="list-style-type: none"> <li>• Summary and details of at least three (3) relevant projects, including:               <ul style="list-style-type: none"> <li>(i). period of involvement;</li> <li>(ii). responsibility; and</li> <li>(iii). scope of legal work undertaken</li> </ul> </li> </ul> <p>Completed project list template <b>(Annexure A)</b>. <i>(2 or more Projects that form part of the same Bid Window in respect of the IPP Programmes on cannot be split to be reflected in Annexure A as separate Projects – each Bid Window constitutes a Project)</i></p>	<p><b>20%</b></p> <p>Minimum of at least 3 qualifying projects demonstrating experience in any of the following:</p> <ul style="list-style-type: none"> <li>(i). gas fired power generation projects and/or</li> <li>(ii). amendments, restructuring, extensions or renegotiation of PPAs or long term infrastructure agreements; and/or</li> <li>(iii). large-scale infrastructure projects with a</li> </ul>

<p>which have progressed through structured engagement and successfully reached either financial close or conclusion in respect to contractual amendment(s).</p>	<ul style="list-style-type: none"> <li>• Detailed CVs of the Team Leader(s).</li> <li>• Copies of qualifications of Team Leader(s).</li> <li>• Copies of the relevant professional registration affiliations.</li> </ul>	<p>value exceeding R750 million.</p> <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>• 3 Projects = 10%</li> <li>• 4 Projects = 15%</li> <li>• 5 Projects = 20%</li> </ul>
<p>8. Team member Capacity and experience</p> <p>The proposed team members must demonstrate proven experience in gas-to-power and/or gas-fired power generation projects and/or large-scale energy or infrastructure projects with a minimum project value of R750 million,</p> <p>Proposed team members must be a minimum of 3</p>	<p>Provide:</p> <ul style="list-style-type: none"> <li>• Summary and details of at least three (3) relevant projects, including: <ul style="list-style-type: none"> <li>(i). period of involvement;</li> <li>(ii). responsibility; and</li> <li>(iii). scope of legal work undertaken</li> </ul> </li> </ul> <p>Completed project list template (<b>Annexure A</b>). <i>(2 or more Projects that form part of the same Bid Window in respect of the IPP Programmes on cannot be split to be reflected in Annexure A as separate Projects – each Bid Window constitutes a Project)</i></p> <ul style="list-style-type: none"> <li>• Detailed CVs of the Team members.</li> <li>• Copies of qualifications of Team members.</li> <li>• Copies of the relevant professional registration affiliations</li> </ul>	<p><b>15%</b></p> <p>Minimum of at least 3 gas fired power generation projects and/or large-scale infrastructure projects with a value exceeding R750 million.</p> <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>• 3 Projects = 5%</li> <li>• 4 Projects = 10%</li> <li>• 5 Projects = 15%</li> </ul>

<p>9. Experience in Public Procurement, Constitutional and Regulatory Compliance</p> <p>Demonstrate proven experience in providing legal advice on:</p> <ul style="list-style-type: none"> <li>• public procurement compliance under section 217 of the Constitution;</li> <li>• PFMA, National Treasury Regulations and related public finance legislation; and</li> <li>• the permissibility of amendments to existing public contracts, including risk of judicial review.</li> </ul>	<p>Provide:</p> <ul style="list-style-type: none"> <li>• Details of at least three (3) projects where the Bidder provided procurement, constitutional or public law advice, including: <ul style="list-style-type: none"> <li>(i). nature of the advisory work undertaken;</li> <li>(ii). period of involvement; and</li> <li>(iii). responsibility.</li> </ul> </li> <li>• Evidence that at least one proposed team member has relevant experience.</li> <li>• Completed project list template by at least one of the team members (<b>Annexure A</b>). <i>(2 or more Projects that form part of the same Bid Window in respect of the IPP Programmes on cannot be split to be reflected in Annexure A as separate Projects – each Bid Window constitutes a Project).</i></li> <li>• CVs and qualifications of relevant team members.</li> <li>• Proof of registration and good standing with the Legal Practice Council.</li> <li>• Fidelity Fund Certificate (where applicable).</li> </ul>	<p><b>15%</b></p> <p>Minimum of 3 projects</p> <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>• 3 Projects = 10%</li> <li>• 4 Projects = 12.5%</li> <li>• 5 Projects = 15%</li> </ul>
<p>10. Experience in Drafting, Reviewing and Negotiating Bankable Project Agreements</p> <p>Demonstrate experience in drafting, reviewing, negotiating and amending bankable project agreements for large energy or infrastructure projects with a minimum project value of R750 million, including:</p>	<p>Provide:</p> <ul style="list-style-type: none"> <li>• Details of at least three (3) relevant projects, including: <ul style="list-style-type: none"> <li>(i). type of agreements involved;</li> <li>(ii). nature of amendments or negotiations undertaken;</li> </ul> </li> <li>• Evidence that at least one proposed team member has relevant project</li> </ul>	<p><b>25%</b></p> <p>Minimum of 3 projects</p> <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>• 3 Project = 10%</li> <li>• 4 Projects = 15%</li> <li>• 5 Projects = 25%</li> </ul>

<ul style="list-style-type: none"> <li>• Power Purchase Agreements; and/or</li> <li>• Implementation Agreements; and/or</li> <li>• ancillary project agreements.</li> </ul>	<p>agreement experience.</p> <ul style="list-style-type: none"> <li>• Completed <b>Annexure A</b> project list by at least one of the team members. (2 or more Projects that form part of the same Bid Window in respect of the IPP Programmes on cannot be split to be reflected in Annexure A as separate Projects – each Bid Window constitutes a Project).</li> </ul>	
<p>11. Regulatory and Energy Sector Expertise</p> <p>Demonstrate a understanding of the South African electricity and energy regulatory framework relevant to the proposed conversion and PPA extension.</p>	<p>Provide:</p> <ul style="list-style-type: none"> <li>• Description of relevant regulatory advisory experience on at least three (3) energy sector projects.</li> <li>• CVs highlighting regulatory and sector-specific expertise of team members.</li> </ul>	<p><b>15%</b></p> <p>Minimum of 3 projects</p> <p>Scoring scale:</p> <ul style="list-style-type: none"> <li>• 3 Project = 5%</li> <li>• 4 Projects = 10%</li> <li>• 5 Projects = 15%</li> </ul>
<p>12. Demonstrated Understanding of the Assignment and Proposed Legal Methodology</p> <p>Assessment of the bidder's demonstrated understanding of the TOR, scope, expected deliverables.</p> <p>Assessment of the quality, soundness, completeness, and feasibility of the proposed methodology to execute each component of the scope, including analytical approaches, stakeholder engagement, risk mitigation, and alignment to public-sector best practice.</p>	<p>The bidder must submit a technical proposal demonstrating a clear understanding of the assignment. Proposal must contain at minimum the following:</p> <p>Introduction of Company / Consortium and Relevant Experience</p> <p>Proposed Team Structure and Organogram</p> <p>Understanding of the Scope of Work  Demonstrated understanding of</p> <p>c) the legislative and regulatory environment;</p> <p>d) The IPPPP legal framework</p> <p>Proposed Approach and Methodology - Comprehensive and tailored approach</p>	<p><b>10%</b></p> <p>Provided = 2 points  Not provided = 0 points</p> <p>Provided = 2 points  Not provided = 0 points</p> <p>Addresses all both aspects = 2 points  Addresses one (1) or no aspects = 0 points</p> <p>Addresses all four (4) aspects = 2 points</p>

	<p>addressing:</p> <ul style="list-style-type: none"> <li>a) analytical approaches</li> <li>b) stakeholder engagement considerations;</li> <li>c) risk identification and mitigation measures, and</li> <li>d) alignment with public-sector best practice</li> </ul> <p>Project Plan and Implementation Schedule</p>	<p>Addresses one (1) to three (3) aspects = 1 points</p> <p>Does not address any aspect = 0 points</p> <p>Project Plan outlines deliverables and milestones = 2 points</p> <p>No Project Plan provided or does not indicate deliverables and milestones = 0 points</p>
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Only proposals that meet the threshold of 70% will proceed to the next part which is the evaluation on price and preference point basis.

## **Fees and Assumptions**

### **FORM OF OFFER AND ACCEPTANCE (AGREEMENT)**

#### **FORM OF OFFER**

##### **THE CONSULTANT IS TO COMPLETE AND SIGN THE FORM OF OFFER**

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

**RFP062/2026 Procurement of Legal Transaction Advisor to support the “Independent Power Producers’ Office” (IPP Office) for the assessment of a proposed conversion of the Peaker power plant facilities from diesel to gas and the extension of the term of the power purchase agreements.**

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**

\_\_\_\_\_

## Annexure A

### Price proposal

**(Note: This page must be separated from the pre-qualifying and functional proposal. Failure to separate this, will lead to disqualification of the bid)**

The duration of the appointment will therefore be at least 18 months. This is however and indicative timeline and the services shall continue until the full scope of work is completed.

**In responding to this Terms of Reference (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.**

**Please note the following guidelines in respect of the fee proposal:**

- The fee proposal should cover all sections outlined in this TOR.
- The fixed fee should be broken down in cost per deliverable/milestone. Refer to the table included for the payment milestones.
- 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.
- In addition to the fixed fee proposal as set out above, Service Providers are required to provide hourly charge out rates for each of the team members to cover additional work which may be required in addition to the scope set out in these Terms of Reference.

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. Service Providers are required to consider the time allocated for the assignment and ensure that sufficient and key staff is available for the whole period of the assignment.

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. The Department and IPP Office 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 IPP Office working plan, that will be agreed between the IPP Office and the Project.

6.1 Tenderers are required to submit a comprehensive fee proposal covering the full scope of work set

out in Section 3 of this Terms of Reference. The fees must be fully inclusive with no exclusions, limitations, or assumptions. Tenderers must complete the table below and must ensure that the price covers all sub-tasks reasonably required to deliver the relevant output.

- 6.2 Tenderers are required to submit a fixed fee per deliverable/milestone as set out in this Terms of Reference. In addition, Tenderers must provide hourly charge-out rates for each proposed team member.
- 6.4 A contingency allowance equal to twenty percent (30%) of the total proposed contract value must be priced separately to cater for any additional or out-of-scope work not expressly provided for in this Terms of Reference. The contingency amount shall only be utilised with the prior written approval of the IPP Office, supported by a cost breakdown calculated at the approved hourly charge-out rates.
- 6.5 All travel and disbursement costs must be priced separately and shall be reimbursed on a cost basis, subject to the prior written approval of the IPP Office and supported by appropriate documentary evidence. No travel or disbursement costs shall be recoverable unless expressly approved in writing by the IPP Office.

**\*\*\*All travel will have to be approved in advance and will be reimbursed based on the approval granted. A budget amount for travel and accommodation should be provided as a separate cost item.**

<b>Scope of Work</b>	<b>Deliverables</b>	<b>Payment Milestones</b>  (contract ZAR value)
<b>ZAR million</b>		
<b>Legal Assessment and Evaluation of the Sellers' Proposal</b>	<b>Review of Sellers' proposal; assessment against existing contractual framework; legal permissibility of conversion and PPA extension; identification of legal risks; preparation of legal assessment report and various legal opinions</b>	
<b>Contractual, Legislative and Regulatory Review</b>	<b>Review of PPAs, IAs and related project agreements; review of applicable legislation and regulatory instruments; assessment of licence amendment requirements; advice on required approvals</b>	
<b>Amendments to Project Agreements</b>	<b>Advice on scope and permissibility of amendments; drafting, review and finalisation of amended PPAs, IAs and ancillary agreements</b>	
<b>Stakeholder Engagements</b>	<b>Legal support and participation in engagements with DEE, NTCSA, NERSA, National Treasury, Sellers and other stakeholders; support in negotiations relating to contractual, commercial, value for money and Economic Development matters; preparation of legal engagement summaries and follow-up action</b>	
<b>Value for Money and Economic Development</b>	<b>Assessment and legal advisory support on value for money considerations; support in the renegotiation of Economic Development obligations and targets</b>	
<b>Close-Out Report and Final Recommendation</b>	<b>Preparation of consolidated legal close-out report, which includes any potential litigious related matters; confirmation of legal basis to proceed or not proceed; final overall recommendations</b>	
<b>Governance, Approvals and BAC Submissions</b>	<b>Preparation and consolidation of inputs, memoranda and presentations to BAC and/or Department; acting as penholder for all submissions</b>	
<b>Implementation and post negotiation legal support</b>	<b>Legal support during implementation phase; ongoing advisory support, including during commercial and financial close if so required</b>	

## 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

---

<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.
- 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

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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.

was not involved in the drafting of the specifications or terms of reference for this bid.

**SBD 4**

- 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 **80/20** preference point system.

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:

	<b>POINTS</b>
<b>PRICE</b>	<b>80</b>
<b>SPECIFIC GOALS (BBBEE)</b>	<b>20</b>
<b>Total points for Price and SPECIFIC GOALS</b>	<b>100</b>

- 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

#### 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:

$$Ps = 80 \left( 1 - \frac{Pt - Pmin}{Pmin} \right) \quad \text{or} \quad Ps = 90 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where

Ps = Points scored for price of tender under consideration

Pt = Price of tender under consideration

Pmin = 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

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

$$Ps = 80 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right) \text{ or } Ps = 90 \left( 1 + \frac{Pt - P_{max}}{P_{max}} \right)$$

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

**Annexure F**

**Certified copies of your CIPC company registration documents listing all members with percentages, in case of a lose corporation**

## **Annexure G**

**Certified copies of latest share certificates, in case of a company.**

## **Annexure H**

**(if applicable): A breakdown of how fees and work will be spread between members of the bidding consortium.**

## Annexure I

### Supporting documents to responses to Pre-Qualifying Criteria and Functional Evaluation Criteria.

Annexure J

[General 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 K

### Tax Compliant Status and CSD Registration Requirements

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

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

**CSD Registration Number:**



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

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