

***UPDATED FOR THE THIRD BID SUBMISSION DATE***

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**The Republic of South Africa**

**Department of Energy**

**REQUEST FOR QUALIFICATION AND PROPOSALS FOR NEW GENERATION  
CAPACITY UNDER THE IPP PROCUREMENT PROGRAMME  
*PART A: GENERAL REQUIREMENTS, RULES AND PROVISIONS***



**energy**

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Department:  
Energy  
**REPUBLIC OF SOUTH AFRICA**

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**PART A: GENERAL REQUIREMENTS, RULES AND PROVISIONS****1. Disclaimer**

- 1.1 While all reasonable care has been taken in preparing this document, the information contained in it does not purport to be comprehensive or to have been verified by the Department of Energy of the Government of the Republic of South Africa ("**the Department**") or any other department of the Government of the Republic of South Africa ("**the Government**"), any of its officers, employees, servants, agents, advisors or any other person. Accordingly, neither the Department nor any of its advisors accept any liability or responsibility for the adequacy, accuracy or completeness of any of the information or opinions stated herein.
- 1.2 Save where expressly stipulated otherwise, no representation or warranty (whether express or implied) is or will be given by the Department or any of its officers, employees, servants, agents, advisors or any other person with respect to the information or opinions contained in this RFP, or in relation to any Briefing Notes issued in relation to this RFP or the IPP Procurement Programme.
- 1.3 The Department reserves the right to amend, modify or withdraw this RFP or any part of it, or to terminate or amend any of the procedures, procurement processes or requirements detailed in this RFP during the conduct of the IPP Procurement Programme, at any time, without prior notice and without liability to compensate or reimburse any person pursuant to such amendment, modification, withdrawal or termination.
- 1.4 The Department reserves the right to terminate or amend the IPP Procurement Programme, at any time, without prior notice and without liability to compensate or reimburse any person pursuant to such termination or amendment.
- 1.5 The terms and conditions set out in this RFP are stipulated for the express benefit of the Department and, save as expressly stated to the contrary, may be waived at the Department's sole discretion at any time. The Department reserves the right to adopt any proposal made by any person responding to this RFP at any time and to include such proposal in any documents which may or may not be made available at any stage of the IPP Procurement Programme to any other persons responding to this RFP, without the obligation or liability to pay

any compensation or reimbursement of any nature to any person pursuant to such adoption.

- 1.6 This RFP is provided solely for the purpose set out in this document and is not intended to form any part or basis of any investment decisions by the Bidder, its Members or its Lenders. Each person to whom this RFP is made available must make its own independent assessment of the Project in respect of which it intends submitting a Bid Response, taking such professional advice as it deems necessary.
- 1.7 The Department has engaged consultants in respect of the IPP Procurement Programme and this RFP, who are acting solely as advisors to the Department to assist the Department in the IPP Procurement Programme and, accordingly, will not be responsible or owe a duty of care to any person other than the Department in respect of this RFP or the IPP Procurement Programme. The Transaction Advisors shall not nor shall any legal advisor, or advisor to the Department in relation to the IPP Procurement Programme or this RFP, provide any opinion to or for the benefit of any Bidder, Members, Contractors or any Lender, in their capacity as advisor to the Department.
- 1.8 No Bidder, its Members, Contractors or its Lenders shall have any claim against the Department, its officers, employees, servants, agents or Transaction Advisors arising out of any matter relating to the IPP Procurement Programme or this RFP of any nature whatsoever where such claim is based on any act or omission by the Department, or any of its officers, employees, servants, agents or Transactions Advisors of any nature whatsoever, under any circumstances whatsoever, or such claim is based on the content of, or any omission from, this document of any nature whatsoever.

## 2. Definitions and Interpretation

- 2.1 In this RFP, except as otherwise defined herein, and except where the context requires otherwise, words and expressions which are defined in the PPA or the Implementation Agreement shall have the same meanings when used in this RFP. In this RFP, the following terms shall have the following meanings:

- 2.1.1 **"Advisors"** - any advisors to any Bidders, Members, Lenders, Contractors or any other participants in any Bid Responses;

- 2.1.2            **"Appendix"**            -    any appendix attached to this RFP;
- 2.1.3            **"Bidder"**                -    any entity or consortium that submits a Bid Response, which must be either a Project Company or a consortium of legal entities, all of whom shall become Shareholders in a Project Company;
- 2.1.4            **"Bidders' Conference"**    the conferences detailed in clause 33 (*Bidders' Conference*) of this RFP;
- 2.1.5            **"Bid Guarantee"**        -    the guarantee to be provided by the Bidder to the Department on or by a Bid Submission Date in the form provided in Appendix E (*Form of Bid Guarantee*) of Volume 1, Part 2 (*Form of Bid and Returnable Schedules*);
- 2.1.6            **"Bid Registration Date"**    the date by which the Department must be notified that a Bidder intends submitting a Bid Response for a particular Bid Submission Date, which date is set out in clause 10 (*Timetable for IPP Procurement Programme*) for the Third Bid Submission Date and will be notified to potential Bidders by Briefing Note for subsequent Bid Submission Dates;
- 2.1.7            **"Bid Response"**        -    any bid submitted by a Bidder in response to the invitation contained in this RFP;
- 2.1.8            **"Bid Submission Date "**    the date identified as the bid submission date for a Bid Submission Phase in accordance with clauses 10 (*Timetable for IPP Procurement Programme*) and 35 (*Submission of Bid Response*) of this RFP or by Briefing Note for all Bid Submission Phases following the Third Bid Submission Phase;

- 2.1.9                    **"Bid Submission Phase"**    the period commencing on the relevant Bid Submission Date and continuing until the Effective Date (as defined in the Implementation Agreement) in respect of Projects that were the subject matter of Bid Responses submitted at the relevant Bid Submission Date;
- 2.1.10                  **"Bid Validity Period"** -    the period identified as the Bid Validity Period in clause 39 (*Bid Validity*) of this RFP;
- 2.1.11                  **"Black Enterprise"**    -    a legal entity with 50.1% or more of its equity owned by Black People and which is Controlled by Black People;
- 2.1.12                  **"Black People"**        -    refers to natural persons who are Africans, Coloureds and Indians, limited to those who are Citizens;
- 2.1.13                  **"Briefing Note"**        -    any document issued in writing by the Department that amends or supplements this RFP in any way. These notes shall be consecutively numbered in the order in which they are issued;
- 2.1.14                  **"Business Day"**        -    any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 2.1.15                  **"Buyer"**                    -    the legal entity designated by the Minister in the Determinations as the buyer of Energy from Sellers in terms of PPAs entered into pursuant to the IPP Procurement Programme;
- 2.1.16                  **"Change in Control"**    -    means any change whatsoever in Control (as defined in the Implementation Agreement) whether effected directly or indirectly;
- 2.1.17                  **"Citizens"**                means people who have obtained citizenship of the Republic of South Africa by birth,

- descent or naturalisation in terms of the South African Citizenship Act, 88 of 1995;
- 2.1.18            **"Companies Acts"**    -    the Companies Act, 61 of 1973 and, the Companies Act, 71 of 2008;
- 2.1.19            **"Company"**            -    a private company incorporated in the Republic of South Africa in terms of the Companies Acts;
- 2.1.20            **"Compliant Bid"**       -    a Bid Response that meets the requirements of Part B (*Qualification Criteria*) of this RFP and **"Compliant Bidder"** shall have a corresponding meaning;
- 2.1.21            **"Connection Agreements"**    -    the Transmission Agreement or Distribution Agreement, as the case may be, and the relevant Connection Direct Agreement (excluding the Municipal Distribution Agreement and the Municipal Direct Agreement);
- 2.1.22            **"Connection Direct Agreement"**    -    the direct agreement entered into (or to be entered into) between the Seller, the NTC or the Distributor, as the case may be, and the Lenders (or their agent) in relation to the Transmission Agreement or the Distribution Agreement, as the case may be, provided in Volume 2 (*Legal Requirements*);
- 2.1.23            **"Consents"**            -    means all consents, permits, clearances, authorisations, approvals, rulings, exemptions, registrations, filings, decisions, licences, required to be issued by or made with any Responsible Authority in connection with the performance of any of the

Construction, Operation and maintenance of the Facility by the Project Company;

- 2.1.24            **"Constitutional Documents"**            -    in respect of any person at any time, the then current and up-to-date constitutional documents of such person at such time (including, to the extent applicable, memorandum and articles of association, certificate of incorporation, certificate to commence business, certificate of change of name, memorandum of incorporation, notice of incorporation, registration certificate and notice of amendment);
- 2.1.25            **"Contributor Status Level"** - as the term is defined in Appendix S (*Economic Development Goals and Instructions to Bidders*) of Volume 5 (*Economic Development Requirements*) of this RFP;
- 2.1.26            **"Corporate Finance"**    -    debt funding raised on the basis of credit strength of the Bidder or its parent company's general (non project-specific) business and balance sheet;
- 2.1.27            **"DBSA"**                    -    the Development Bank of Southern Africa Limited, as governed by the Development Bank of South Africa Act, 13 of 1997;
- 2.1.28            **"Department"**            -    the Department of Energy of the Government of the Republic of South Africa or any successor department designated by the Government of the Republic of South Africa from time to time;
- 2.1.29            **"Determinations"**        -    the First Determination and the Second Determination made by the Minister, in consultation with NERSA, pursuant to section

- 34 of the Electricity Regulation Act, provided in Schedules 3A and 3B of Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP;
- 2.1.30            **"Development Fee"** - the fee payable by the Project Company of a Preferred Bidder to the Department in accordance with the provisions of clause 24.5 (*Development Fee*) of this Part A (*General Requirements, Rules and Provisions*);
- 2.1.31            **"Direct Agreement"** - the direct agreement entered into (or to be entered into) between the Buyer, the Seller, the Department and the Lenders (or their agent) in relation to the PPA and the Implementation Agreement, provided in Appendix L (*Direct Agreement*) of Volume 2 (*Legal Requirements*);
- 2.1.32            **"DPE"** - the Department of Public Enterprises of the Government of the Republic of South Africa or any successor department designated by the Government of the Republic of South Africa from time to time;
- 2.1.33            **"DTI"** - the Department of Trade and Industry of the Government of the Republic of South Africa or any successor department designated by the Government of the Republic of South Africa from time to time;
- 2.1.34            **"Economic Development"** the objectives of the Department in relation to Job Creation, Local Content, Ownership, Management Control, Preferential Procurement, Enterprise Development and Socio-Economic Development (as those terms are defined in Appendix S (*Economic Development Goals and Instructions to*



*Bidders) of Volume 5 (Economic Development Requirements);*

- 2.1.35            **"Economic Development Scorecard"**            -    means the Technology specific scorecards containing the targets of the Department in relation to Economic Development, which are annexed to Volume 1 Part 2 (*Form of Bid and Returnable Schedules*) as Appendix JB9 (*Economic Development Scorecard per Technology*) ;
- 2.1.36            **"Economic Development Information Sheet"**    -    means the information sheet to be completed by the Bidders to indicate their committed percentage and, where applicable, quantum levels in relation to Economic Development, in response to the Economic Development Scorecard, annexed to Volume 1 Part 2 (*Form of Bid and Returnable Schedules*) as Appendix JB8 (*Economic Development Information Sheet*);
- 2.1.37            **"Electricity Regulation Act"**            -    the Electricity Regulation Act, 4 of 2006;
- 2.1.38            **"Environmental Consents"**            -    any consents, licences, authorisations, permissions or approvals required from any organ of state in the local, provincial or national sphere of government or any regulatory agency required in terms of any environmental law or heritage law for the development, Construction or Operation of the Facility;

- 2.1.39            **"Equity Finance"**       -       funding to be provided to the Project Company by its Shareholders either by way of share capital or subordinated debt;
- 2.1.40            **"Eskom"**                       -       Eskom Holdings SOC Limited, with registration number 2002/015527/06, as incorporated pursuant to the Eskom Conversion Act, 13 of 2001;
- 2.1.41            **"Eskom Distribution System"**       -       Eskom's network infrastructure consisting of assets operated at a nominal voltage of 132 kV or less;
- 2.1.42            **"Evaluation Criteria"**       -       the evaluation criteria set out in Part C (*Evaluation Criteria*) of this RFP;
- 2.1.43            **"Financial Advisor"**       -       the firm or firms advising a Bidder on the raising of debt and Equity Finance in respect of its Bid Response and the Project;
- 2.1.44            **"Financial Close"**       -       the Effective Date of the Implementation Agreement;
- 2.1.45            **"Financial Model"**       -       the financial model(s) that meet the requirements of clause 2.5.5.1 of Part B (*Qualification Criteria*) of this RFP;
- 2.1.46            **"First Bid Submission Date"**       -       the date identified as the first Bid Submission Date in clause 10 (*Timetable for IPP Procurement Programme*) and clause 35 (*Submission of Bid Response*) of this RFP, namely 4 November 2011;
- 2.1.47            **"First Determination"**       -       the determination made by the Minister on 1 August 2011, in consultation with NERSA, pursuant to section 34 of the Electricity Regulation Act, provided in Schedule 3A of Volume 1, Part 1 (*Legal Notices, Government*

- Policies and Background Documents*) of this RFP, as amended by the Second Determination;
- 2.1.48            **"Government"**            -    the Government of the Republic of South Africa, and any of its departments, agencies or other entities that it manages or controls;
- 2.1.49            **"Grid Provider"**            -    a Distributor or NTC, as the case may be;
- 2.1.50            **"Implementation Agreement"**            -    the implementation agreement to be entered into between the Seller and the Department, provided in Appendix M (*Implementation Agreement*) in Volume 2 (*Legal Requirements*) of this RFP;
- 2.1.51            **"IPP Procurement Programme"**            -    the procurement programme being conducted in terms of this RFP;
- 2.1.52            **"IPP website"**            -    means [www.ipprenewables.co.za](http://www.ipprenewables.co.za);
- 2.1.53            **"IRP 2010"**            -    the Integrated Resource Plan 2010 issued by the Minister of Energy under Notice No 400 dated 6 May 2011 in Government Gazette 34263, pursuant to the Electricity Regulation Act attached to this RFP as Schedule 2 (*IRP 2010*) of Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*);
- 2.1.54            **"IRR"**            -    the real post tax rate of return which a holder of equity in the Project Company is forecast in the Financial Model(s) applicable at the relevant Bid Submission Date to achieve on its investment in equity over the term of the PPA;

- 2.1.55            **"Land Use Consents"** - any consents, authorisations, permissions or approvals required from any organ of state in the local, provincial or national sphere of government or any regulatory agency required in terms of any land use law for the development, Construction or Operation of the Facility;
- 2.1.56            **"Lead Member"** - a Member (which is a legal entity) of a Bidder that is a consortium, which has been appointed by the other Members to take the lead in the preparation of that Bidder's Bid Response, to submit the Bid Response on behalf of the Bidder and to bind the Bidder to the terms of the Bid Response;
- 2.1.57            **"Legal Advisor"** - the law firm or firms advising a Bidder in respect of its Bid Response and, if that Bidder becomes a Preferred Bidder, in respect of the negotiation of the Bidder's contractual arrangements and Project Documents with, *inter alia*, its Members, Contractors, equipment suppliers and Lenders (if any);
- 2.1.58            **"Lender"** - any financial institution that is party to a term sheet that is submitted by a Bidder as part of its Bid Response for the provision of external debt finance to a Project;
- 2.1.59            **"Local Community"** - local community, as the term is defined in Appendix S (*Economic Development Goals and Instructions to Bidders*) of this RFP;
- 2.1.60            **"Member"** - in relation to any Bidder, any legal entity and or natural person which will become a Shareholder (either itself or through an intermediary entity) once the Project Company is incorporated, and if the Project

- Company has already been incorporated, then any Shareholder;
- 2.1.61            **"Minister"**            -    the Minister of the Department, from time to time;
- 2.1.62            **"Municipal Direct Agreement"**            -    the pro-forma direct agreement entered into (or to be entered into) between the municipal Distributor, the Seller and the Lenders (or their agent) in relation to the Municipal Distribution Agreement in the form provided in Schedule 13 (*Pro-forma Municipal Direct Agreement*) of Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP;
- 2.1.63            **"Municipal Distribution Agreement"**            -    the pro-forma agreement to be entered into between the Project Company of a Preferred Bidder and the relevant municipality in respect of the physical connection of the Units of the Project Company's Facility to the relevant Municipal Distribution System in the form provided in Schedule 12 (*Pro-forma Municipal Distribution Agreement*) of Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP;
- 2.1.64            **"Municipal Distribution System"**            -    the municipality's network infrastructure consisting of assets operated at a nominal voltage of 132 kV or less;
- 2.1.65            **"National Transmission Company" or "NTC"**            -    the legal entity responsible for distributing electricity through a Transmission System;

- 2.1.66            **"National Treasury"**    -    has the meaning ascribed to it in the PFMA;
- 2.1.67            **"NEMA"**                                -    the National Environmental Management Act, 107 of 1998;
- 2.1.68            **"NERSA"**                                -    the National Energy Regulator of South Africa, established pursuant to Section 3 of the National Energy Regulator Act, 40 of 2004;
- 2.1.69            **"New Gen Regulations"**    the Electricity Regulations on New Generation Capacity published under GNR 399 in Government Gazette 34262 of 4 May 2011, in terms of section 35(4) of the Electricity Regulation Act;
- 2.1.70            **"PFMA"**                                -    the Public Finance Management Act, 1 of 1999;
- 2.1.71            **"PPA"**                                    -    the power purchase agreement to be entered into between a Project Company, as the Seller, and the Buyer pursuant to the IPP Procurement Programme, in the form attached in Volume 2 (*Legal Requirements*) of this RFP as Appendix K;
- 2.1.72            **"Preferential Procurement Policy Framework Act"**    -    the Preferential Procurement Policy Framework Act, 5 of 2000;
- 2.1.73            **"Preferred Bidder"**                -    any Bidder that is selected by the Department as such, and which upon acceptance of such appointment shall designate a Project Company with which the Buyer may possibly conclude a PPA pursuant to the IPP Procurement Programme;
- 2.1.74            **"Preferred Bidder Guarantee"**    -    the guarantee to be provided by a Preferred Bidder to the Department as defined in







- benefits of Shareholding (as defined in Appendix S of Volume 5 (*Economic Development Requirements*)) will accrue;
- 2.1.90            **"Technologies"**            -    has the meaning given to it in clause 5.1.1.1 of this Part A (*General Requirements, Rules and Provisions*);
- 2.1.91            **"Third Bid Submission Date"**            -    the date identified as the third possible Bid Submission Date in clause 10 (*Timetable for IPP Procurement Programme*) and clause 35 (*Submission of Bid Response*) of this RFP, namely 19 August 2013;
- 2.1.92            **"Tier 1 Lenders"**            -    those financial institutions which will lead the syndicate of Lenders, be responsible for undertaking due diligence and provide the syndication management strategy;
- 2.1.93            **"Tier 2 Lenders"**            -    those financial institutions which will provide additional lending capacity and be reliant on the due diligence work undertaken by the Tier 1 Lenders;
- 2.1.94            **"Transaction Advisors"**            -    the firms advising the Department in respect of this RFP and the IPP Procurement Programme, being Webber Wentzel, Bowman Gilfillan, Ledwaba Mazwai, Edward Nathan Sonnenbergs, Linklaters LLP, Novadays, PriceWaterhouse Coopers, Ernst and Young, Mott MacDonald, Ea Energieanalyse, Aecom South Africa, Tony Wheeler Consulting, G5 Specialised Finance (Pty) Ltd, SPP Project Solutions (Pty) Ltd and Blueprint Consult CC;
- 2.1.95            **"Treasury Regulations"**            the Treasury Regulations published under GN R225 in Government Gazette 27388 of

15 March 2005, as amended by GN R146 in Government Gazette 29644 of 20 February 2007, in terms of section 76(1) of the PFMA;

- 2.1.96            **"Value for Money"**    -    "value for money" as defined in the New Gen Regulations and as described in clause 5.1.5 of this Part A (*General Requirements, Rules and Provisions*); and
- 2.1.97            **"VAT"**                                -    value-added tax levied in terms of the Value-added Tax Act, 89 of 1991.
- 2.2                In this RFP:
- 2.2.1                references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 2.2.2                words importing the masculine gender include the feminine and neuter genders and vice versa;
- 2.2.3                the singular includes the plural and vice versa;
- 2.2.4                natural persons include artificial persons and vice versa;
- 2.2.5                references to a **"person"** include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.2.6                references to a **"subsidiary"** or a **"holding company"** shall be references to a subsidiary or holding company as defined in the Companies Acts;
- 2.2.7                if a definition imposes substantive rights and obligations on a person, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 2.2.8                any definition, wherever it appears in this RFP, shall bear the same meaning and apply throughout this RFP unless otherwise stated;

- 2.2.9 the use of any expression covering a process available under South African law (such as but not limited to a judicial management, business rescue or winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;
- 2.2.10 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 2.2.11 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "*including*" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and
- 2.2.12 unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa.
- 2.3 The expiration or termination of this RFP shall not affect such of the provisions of this RFP which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

### 3. Invitation

This RFP constitutes the formal invitation to Bidders to submit their detailed Bid Responses for the supply of Energy to the Buyer, generated from new Renewable Energy power generation Facilities, following the Determinations and any public notice or advert of the IPP Procurement Programme.

### 4. The New Generation Capacity Required and the Methods of Securing the sources of New Generation Capacity by the Government

- 4.1 The Minister indicated in the Determinations that new generation capacity is necessary to ensure the continued uninterrupted supply of electricity and the Minister initially determined in the First Determination that 3725 megawatts (MW), to be generated from Renewable Energy sources, is required. Subsequently, in

the Second Determination the Minister determined that a further 3200 MW, to be generated from Renewable Energy sources, is required. This is broadly in accordance with the capacity allocated to Renewable Energy generation in IRP 2010.

4.2 The Government has developed, or is intending to develop in the future different, separate procurement processes in order to procure the Renewable Energy target required by South Africa, namely this IPP Procurement Programme, the Small Projects IPP Procurement Programme and any other procurement programme as determined by the Minister from time to time:

#### 4.2.1 **IPP Procurement Programme**

4.2.1.1 This IPP Procurement Programme has been designed to procure the target of 6725<sup>1</sup> megawatts and to contribute towards socio-economic and environmentally sustainable growth, and to start and stimulate the Renewable Energy industry in South Africa.

4.2.1.2 During the course of 2009, NERSA published two documents relating to Renewable Energy Feed-In Tariffs ("**REFIT**").<sup>2</sup> The REFIT Guideline contains the REFIT Phase I Tariff, and the REFIT Decision contains the REFIT Phase II Tariff. In 2011 NERSA announced its intention to review these tariffs, through the Review of the Renewable Energy Feed In Tariffs Consultation Paper, March 2011 ("**REFIT Consultation Paper**"). The draft tariffs as published in the REFIT Consultation Paper were intended to apply in respect of a specific REFIT based procurement programme. This IPP Procurement Programme is not structured or intended to be a REFIT procurement programme as contemplated in the REFIT Consultation Paper.

4.2.1.3 In terms of this IPP Procurement Programme, the Bidders will be required to bid the Price which will be payable by the Buyer pursuant

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<sup>1</sup> Which is made up of 3625MW from the First Determination and a further 3100MW from the Second Determination.

<sup>2</sup> These two documents are (a) the Regulatory Guidelines for the South Africa Renewable Energy Feed-in Tariff (REFIT) dated 26 March 2009 which were published under General Notice No 382 in *Government Gazette* 32122 of 17 April 2009 and included the REFIT Phase I Tariff Schedule in Appendix 1 ("**REFIT Guidelines**"); and (b) the Decision and Reasons for the Decision on Renewable Energy Feed-In Tariffs Phase II dated 29 October 2009 ("**REFIT Decision**"), which document is available on NERSA's website but has not been published in the *Government Gazette*.

to the PPA to be entered into between the Buyer and the Project Company of a Preferred Bidder. The (fully-indexed) Price bid should not exceed the cap allocated for each Technology set out in the table under clause 5.1.4.3 of this Part A (*General Requirements, Rules and Provisions*). The Price will be included as an evaluation criterion to be taken into account in an evaluation pursuant to Part C (*Evaluation Criteria*) of this RFP.

#### 4.2.2 **Small Projects IPP Procurement Programme**

4.2.2.1 The Small Projects IPP Procurement Programme is intended to be introduced by the Department in the future, in order to procure Renewable Energy projects which have a maximum contracted Capacity of 5 MW.

4.2.2.2 Due to the fact that Projects under the IPP Procurement Programme must have a minimum Contracted Capacity of 1 MW, potential bidders may submit Bid Responses in respect of Projects which have minimum Contracted Capacity of 1 MW and a maximum Contracted Capacity of 5 MW under the IPP Procurement Programme, notwithstanding the fact that the Department intends to implement the Small Projects IPP Procurement Programme in the future.

4.2.2.3 Notwithstanding what is stated above, the Department is reconsidering the appropriateness of the IPP Procurement Programme for projects using Technologies such as Biomass, Biogas and Landfill Gas which, due (amongst other things) to the smaller size of projects using these Technologies, and the Technology specific requirements, may be more suited to an alternative procurement programme, such as the Small Projects IPP Procurement Programme, or one or more alternative focused procurement programme/s. Accordingly, the Department is considering excluding these Technologies from the IPP Procurement Programme, after the Third Bid Submission Date. The Department will communicate any decision regarding this to Bidders in the course of 2013 through a Briefing Note.

4.3 The Renewable Energy procurement programmes identified above and those additional procurement programmes determined by the Minister from time to time, will run independently of each other, and each programme will be subject to its own rules, criteria and conditions. Potential bidders may participate in all or any of the procurement programmes, for which their project qualifies, as and when they commence.

## 5. **IPP Procurement Programme Description**

### 5.1 **Key features of this IPP Procurement Programme**

In this section, several key features of this IPP Procurement Programme are introduced, all of which are described in more detail in relevant sections of this RFP. This section serves merely as an introduction to these features, and an explanation of the rationale for their inclusion in this IPP Procurement Programme.

#### 5.1.1 **Technologies and Allocation of Megawatts**

5.1.1.1 The Determinations require that the Department procure Energy Output from Renewable Energy technologies and the Department has designed the IPP Procurement Programme and published this RFP to procure this Energy Output. Pursuant to the Determinations, the following technologies shall be considered as qualifying technologies for selection under this IPP Procurement Programme:

- 5.1.1.1.1 onshore wind;
- 5.1.1.1.2 concentrated solar power;
- 5.1.1.1.3 solar photovoltaic,
- 5.1.1.1.4 biomass;
- 5.1.1.1.5 biogas;
- 5.1.1.1.6 landfill gas; and

5.1.1.1.7 small hydro ( $\leq 40$  MW) <sup>3</sup>

(together the "**Technologies**").

## 5.1.1.2

In the First Determination, the Minister allocated the below mentioned MW to each Technology, which the Department decided to procure pursuant to the IPP Procurement Programme and the Small Projects IPP Procurement Programme:

<b>Technology</b>	<b>MW</b>
Onshore wind	1850 MW
Concentrated solar power	200 MW
Solar photovoltaic	1450 MW
Biomass	12.5 MW
Biogas	12.5 MW
Landfill gas	25 MW
Small hydro ( $\leq 40$ MW) <sup>4</sup>	75 MW
Small projects utilising any of onshore wind, solar photovoltaic, biomass, biogas, landfill gas and small hydro Technologies which have a maximum capacity of 5 MW <sup>5</sup>	100 MW
<b>TOTAL</b>	<b>3725 MW</b>

<sup>3</sup> The limit in respect of Small Hydro was amended by the Minister in the Second Determination, the new limit of " $\leq 40$  MW" replaced the earlier limit of " $\leq 10$  MW".

<sup>4</sup> As is set out above, the limit in respect of Small Hydro initially set in the First Determination was amended by the Minister in the Second Determination, the new limit of " $\leq 40$  MW" replaced the earlier limit of " $\leq 10$  MW".

<sup>5</sup> The list of applicable technologies which can be used in any Small Projects Programme was amended by the Minister in the Second Determination, by the addition of landfill gas and small hydro.

## 5.1.1.3

In the Second Determination, the Minister allocated further MW to various Technologies as set out below, and the Department has decided to procure these MW pursuant to the IPP Procurement Programme and the Small Projects IPP Procurement Programme:

<b>Technology</b>	<b>MW</b>
Onshore wind	1470 MW
CSP	400 MW
Solar Photovoltaic	1075 MW
Small Hydro ( $\leq 40$ MW)	60 MW
Biomass	47.5 MW
Biogas	47.5 MW
Small Projects: utilising any of CSP, onshore wind, solar photovoltaic, biomass, biogas, landfill gas and small hydro Technologies which have a maximum capacity of 5 MW <sup>6</sup>	100 MW
<b>TOTAL</b>	<b>3200 MW</b>

## 5.1.1.4

As a result of concerns raised about the impact of the IPP Procurement Programme on the ZAR funding market, the Department decided to ensure that there would be a Third Bid Submission Phase through limiting the number of MW available to Bidders in the Second Bid Submission Phase. Following the Second Determination, there are additional MW available for allocation in subsequent Bid Submission Phases; however, the Department intends to follow a similar approach in subsequent Bid Submission Phases and is likely to limit the MW available to Bidders in each Bid Submission Phase.

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<sup>6</sup> The list of applicable technologies which can be used by Small Projects in terms of the First Determination was amended by the Minister in the Second Determination, by the addition of landfill gas and hydro.



5.1.1.5 The MW allocated to Bidders in respect of the Third Bid Submission Phase are indicated in the table below:

<b>Technology</b>	<b>Maximum MW to be allocated in the Third Bid Submission Phase</b>
Onshore Wind	653.6 MW
Solar Photovoltaic	401.3 MW
Concentrated solar power	200.00 MW
Biomass	60 MW
Biogas	12.50 MW
Landfill Gas	25.00 MW
Small Hydro ( $\leq 40$ MW)	120.7 MW
<b>Totals</b>	<b>1473.1MW</b>

5.1.1.6 At this stage, the Department foresees allocating the remaining MW available under the Second Determination (and any MW that become available from the First Determination) more or less equally between each anticipated Bid Submission Phase, but will advise Bidders of the MW available for each Bid Submission Phase at the appropriate time by Briefing Note.

5.1.1.7 The Department reserves the right to re-allocate the MW available amongst the various Technologies, in its sole discretion, at any stage of the IPP Procurement Programme.

5.1.1.8 Projects submitted in respect of the First Bid Submission Date and that utilise any Technology, except for concentrated solar power Technology, must be capable of beginning commercial operation before the end of June 2014. Projects submitted in respect of the

First Bid Submission Date and that utilise concentrated solar power Technology must be capable of beginning commercial operation before the end of June 2015. Projects submitted in respect of the Second Bid Submission Date and that utilise any of the Technologies must be capable of beginning commercial operation before the end of 2016.

- 5.1.1.9 Projects submitted for the Third Bid Submission Date that utilise concentrated solar power Technology must be capable of beginning commercial operation before the end of 2018. Projects submitted for the Third Bid Submission Date that utilise any other Technology must be capable of beginning commercial operation before the end of 2017. The last permissible commercial operation dates for subsequent Bid Submission Phases will be communicated at the appropriate times by Briefing Note, but Bidders should assume that the last permissible Commercial Operation Date for all Technologies will be approximately four years after the relevant Bid Submission Date, with the appropriate adjusted last Commercial Operation Date for Projects using concentrated solar power in each Bid Submission Phase.
- 5.1.1.10 Each Project must have a Contracted Capacity within the range specified for each Technology in clause 2.6 (*Technical Criteria and Evaluation*) of Part B (*Qualification Criteria*) of this RFP.
- 5.1.1.11 The Department of Water Affairs has declared South Africa a water scarce country<sup>7</sup> and, as such, the Government is mindful of the impact that this IPP Procurement Programme will have on the water resources of the country.
- 5.1.1.12 Accordingly, the Department intends to encourage, as far as possible, the use of water efficient technologies. In particular, proposed Projects located in areas of the country that are water stressed should employ solutions providing 'best available technology' solutions in order to promote the efficient use of water in such areas.

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<sup>7</sup> Department of Water Affairs, National Water Resource Strategy: Introduction, First Edition, September 2004, p2

The Department is closely monitoring technological advances in water efficiency within Technologies, particularly concentrated solar power, and may impose specific water efficiency Qualification Criteria in clause 2.6 (*Technical Criteria and Evaluation*) of Part B (*Qualification Criteria*) of this RFP for purposes of future Bid Submission Phases.

## 5.1.2 **Key Role Players in the IPP Procurement Programme**

### 5.1.2.1 **The Minister**

The Minister of Energy has issued the Determinations in accordance with section 34(1) of the Electricity Regulation Act, and the IPP Procurement Programme has been implemented based on the Determinations made by the Minister of Energy.

### 5.1.2.2 **National Treasury**

National Treasury will oversee the IPP Procurement Programme as the department of finance in Government, and in order to ensure compliance with the provisions of the PFMA.

### 5.1.2.3 **The Department**

The Department, as the custodian of the energy resources in the Republic of South Africa, is undertaking the IPP Procurement Programme, following the Determinations issued by the Minister. The Department will evaluate the Bid Responses and select Preferred Bidders and plays an ongoing role up to and beyond Financial Close in facilitating the conclusion of the Implementation Agreement, the PPA and the Direct Agreement by the relevant parties and monitoring compliance with these agreements.

### 5.1.2.4 **The Buyer**

The Buyer is the legal entity designated by the Minister in the Determinations to purchase the Energy Output from the Project Company of a Preferred Bidder pursuant to a PPA entered into pursuant to the IPP Procurement Programme.

**5.1.2.5 NERSA**

NERSA is established by section 3 of the National Energy Regulator Act, 40 of 2004. NERSA is the custodian and enforcer of the regulatory framework provided for in the Electricity Regulation Act. In order to carry out this function, the Electricity Regulation Act gives NERSA various powers. These include the power to consider applications for the licences required and issued under the Electricity Regulation Act.

**5.1.2.6 NTC**

NTC is the legal entity responsible for transmitting electricity through a Transmission System. A Bidder whose Facility is to be connected to the Transmission System will be required, in its capacity as a customer of the NTC, to conclude a Transmission Agreement with the NTC prior to or simultaneously with the conclusion of the PPA.

**5.1.2.7 The Distributor**

The Distributor is the legal entity responsible for distributing electricity through a Distribution System. A Bidder whose Facility is to be connected to the Distribution System will be required, in its capacity as a customer of a Distributor, to conclude a distribution agreement with a Distributor prior to or simultaneously with the conclusion of the PPA. A Bidder whose Facility is to be connected to the Eskom Distribution System will be required, in its capacity as a customer of Eskom, to conclude the Distribution Agreement attached to this RFP as Appendix O (*Distribution Agreement*) in Volume 2 (*Legal Requirements*). A Bidder whose Facility is to be connected to the Municipal Distribution System will be required, in its capacity as a customer of the relevant municipal Distributor, to conclude a Municipal Distribution Agreement in a form similar to the agreement attached in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) as Schedule 12 (*Pro-forma Municipal Distribution Agreement*).

### 5.1.3 **Phased Bid Submission**

5.1.3.1 In order to balance Government's objectives as regards to security of supply and Renewable Energy targets with the technical and commercial constraints faced by potential Bidders, and having regard to constitutional requirements of fairness, transparency, equitability, competitiveness and cost-effectiveness, this IPP Procurement Programme has been designed on the basis of Bid Submission Phases.

5.1.3.2 The phasing will work on the basis that the total allocation of Megawatts (MW) per Technology is made available during the First Bid Submission Phase, but if it is undersubscribed (having regard to all Compliant Bids submitted for that Technology), the remaining MW, subject to any MW allocation limitation which the Department may impose for any specific Bid Submission Phase, will be available to Bidders which submit Bid Responses at the next Bid Submission Date.

5.1.3.3 It is anticipated that there will be a maximum of six Bid Submission Phases in respect of this IPP Procurement Programme. Further detail in regard to the phasing process is provided at clause 9 (*Structure of the IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*).

### 5.1.4 **Electricity prices and tariffs**

5.1.4.1 The Electricity Regulation Act vests NERSA with the authority to regulate prices and tariffs.

5.1.4.2 As detailed in clause 4.2.1.2 above, this IPP Procurement Programme is not structured or intended to be a REFIT procurement programme as contemplated in the REFIT Consultation Paper. The Department's view is that, notwithstanding the publication of any REFIT, NERSA remains empowered, at the time of considering any licence application, to make a tariff determination taking into consideration all relevant factors, including the statutory tariff principles provided for in section 15 of the Electricity Regulation Act.

## 5.1.4.3

In this IPP Procurement Programme, the fully-indexed Price to be proposed by Bidders in their Bid Responses in respect of the First and Second Bid Submission Dates could not exceed the cap for each Technology set at that stage. Following the trends in the international market, as well as information received from the Bidders in the First and Second Bid Submission Phase, the Department has reduced the Price caps, which the Fully Indexed Price to be proposed by Bidders in their Bid Responses cannot exceed. The Price caps per Technology for the Third Bid Submission Phase are as follows:

<b>Technology</b>	<b>Unit</b>	<b>Commercial Energy Rate</b>
Onshore Wind	R/MWh	R1 000/MWh
Solar Photovoltaic	R/MWh	R1 400/MWh
Concentrated Solar Power	R/MWh	Base Price: R1 650/MWh
Biomass	R/MWh	R1 400/MWh
Biogas	R/MWh	R900/MWh
Landfill gas	R/MWh	R940/MWh
Small Hydro	R/MWh	R850/MWh

## 5.1.4.4

Amended Price caps for subsequent Bid Submission Phases, determined taking all relevant local and international factors into account, will be communicated by the Department to Bidders at the appropriate time in a Briefing Note.

## 5.1.4.5

Bidders will note that for concentrated solar power the Base Price shall be used for the purposes of evaluation, this is the Price payable for Energy Output delivered during Standard Time, as indicated in the table below. Concentrated solar power utilises energy from the sun and for this reason should compete with solar photovoltaic

Technology in respect of Price. However, concentrated solar power has also been identified as a Technology with storage capabilities which can assist in alleviating constraints on the national grid during peak times. For this reason, Bidders utilising concentrated solar power will be incentivised to deliver Energy to the grid during these times through a premium to be paid on the Base Price for this Energy. The following are the applicable time of day periods and the percentage of the Base Price that will be payable for Energy delivered during the applicable period:

	Time of day for Delivery of Energy Output	Percentage of Base Price payable
Standard Time:	Every day 5:00am to 4:59pm 9:00pm to 9:59pm	100% of the Base Price
Peak Time:	Every day 5:00pm to 8:59 pm	240% of the Base Price
Night Time:	Every day 10:00pm to 4:59am	0% of the Base Price

#### 5.1.4.6

As set out in more detail in clause 2 (*Price*) of Part C (*Evaluation Criteria*) of this RFP, Bidders are required to specify the Price to be paid by the Buyer for the supply of Energy Output pursuant to a PPA concluded in respect of the IPP Procurement Programme. For purposes of Part B (*Qualification Criteria*) of this RFP, it is a requirement for a Compliant Bid that a Bidder's offered fully-indexed Price does not exceed the applicable Price cap set out in the table under clause 5.1.4.3 above. For purposes of Part C (*Evaluation Criteria*) of this RFP, the Prices offered in Bid Responses relating to a particular Technology will be comparatively scored and ranked. For

more information on this aspect of the IPP Procurement Programme, see clause 2 (*Price*) of Part C (*Evaluation Criteria*) of this RFP.

- 5.1.4.7 The Price offered in the Bid Response will, once an election has been made by the Department as to a Preferred Bidder's fully-indexed or partially-indexed Price, be adjusted at Financial Close as a result of movement in the spot foreign exchange rates between those rates assumed in the Financial Model(s) and the equivalent rates at Financial Close, to the extent provided for in this RFP and in the manner set out in any information or documentation request, or any protocol for Financial Close for the relevant Bid Submission Phase:
- 5.1.4.7.1 For each Bid Submission Date the Department will communicate in a Briefing Note with Bidders regarding the foreign exchange rate assumptions to be used for the purposes of preparing their Financial Model(s).
- 5.1.4.7.2 Each Preferred Bidder's Financial Model(s) will be adjusted at Financial Close to take account of changes in Capital Expenditure (excluding contingencies) resulting from movements in the applicable foreign exchange spot rates from the Bid Submission Date to Financial Close, such that the Preferred Bidder's IRR is unchanged from that shown in that Financial Model prior to such adjustment. After Financial Close, there will be no further adjustment for exchange rates. For the avoidance of any doubt, no adjustment shall be made in respect of the impact (if any) of movements in foreign exchange spot rates on operating and other costs incurred after the Commercial Operation Date.
- 5.1.4.7.3 From the Second Bid Submission Phase, the Department decided to place a cap on the level of foreign currency exposure it would accept for the period between the Bid Submission Date and Financial Close.
- 5.1.4.7.4 The upper limit of foreign exchange exposure for the Third Bid Submission Phase is either 60% of the Capital Expenditure of the Project (excluding contingencies), or the actual foreign



exchange exposure, in respect of the Capital Expenditure (excluding contingencies) whichever is the lower.

5.1.4.7.5 Any changes for subsequent Bid Submission Phases will be communicated to Bidders by Briefing Note.

#### 5.1.5 **Value for Money**

5.1.5.1 The New Gen Regulations, in Regulation 9, provide that the Buyer cannot enter into a PPA unless that PPA presents "value for money". The term "value for money" in the New Gen Regulations is defined to mean that "the new generation capacity project results in a net benefit to the prospective buyer or to the Government having regard to cost, price, quality, quantity, risk, transfer, or a combination thereof, but also where applicable to the Government's policies in support of Renewable Energy".

5.1.5.2 Accordingly, the value for money concept requires an assessment that takes into account and considers a number of issues and considerations, no one of which is dominant or pre-eminent to another, as all issues and considerations are of importance in the assessment but might not necessarily bear equal weighting. This assessment is carried out as per clause 2.8 (*Value for Money*) of Part B (*Qualification Criteria*) of this RFP. The outcome of the consideration, as to whether or not a Project delivers Value for Money, is required to produce an assessment that the Project is in the best interests of and delivers an acceptable outcome to the Buyer and the Government (acting on behalf of and in the best interests of the people of South Africa, including electricity users).

5.1.5.3 In order for a Bidder to pass the Qualification Criterion contemplated in clause 2.8 of Part B (*Qualification Criteria*) of the RFP, its Bid Response must, in the opinion of the Department, demonstrate Value for Money to the Buyer and Government.

## 5.1.6 **Non-negotiability of PPA, Implementation Agreement, Direct Agreement and Connection Agreements**

5.1.6.1 The draft PPA, Implementation Agreement, Direct Agreement and the Connection Agreements issued with this RFP are not negotiable and may not be marked up by Bidders. The status of these draft agreements and the terms and conditions of this RFP relating thereto are discussed in more detail at clause 5.2.2 of this Part A (*General Requirements, Rules and Provisions*) and clause 2.2 (*Legal Criteria and Evaluation*) of Part B (*Qualification Criteria*).

5.1.6.2 The Department reserves the right to issue revised versions of the draft PPA, Implementation Agreement, Direct Agreement and the Connection Agreements during the course of the IPP Procurement Programme.

## 5.1.7 **Financial Requirements**

5.1.7.1 The Bidder is required to provide two Financial Models detailing each of its 'Sponsor' case and its 'Banking' case. Where possible, the Bidder may combine these two cases into one Financial Model, provided that both cases may be readily ascertainable.

5.1.7.2 The Bidder is required to offer two Prices, the first, based upon full CPI indexation of the Price (the "Fully Indexed Price"), and the second, based upon the Bidder's proposed indexation, at the CPI rate, of a portion of the Price (partial indexation in respect of CPI) (the "Partially Indexed Price"). The indexed portion shall be not less than 20 percent and not more than 50 percent of the Price. The base date for the CPI rate shall be April 2013 (or shall be as specified for a particular Bid Submission Phase through a Briefing Note) and adjusted annually thereafter on 1 April every year, reflecting any change in CPI in the immediately preceding year commencing 1 January and ending 31 December.

5.1.7.3 For Bid Evaluation purposes the Bidder should convert all non-Rand denominated funding, costs or other underlying cashflows into Rand using the spot rate that will be provided. For the purposes of the Implementation Agreement Bidders should take note of the footnote

to Clause 12.1.2 of the Implementation Agreement which regulates the Department's exposure to Debt that is denominated in a foreign currency.

## 5.1.8 Economic Development Requirements

5.1.8.1 The achievement of the Department's Economic Development objectives through the IPP Procurement Programme is a crucial indicator of success thereof. The Department has developed a detailed Economic Development Policy for purposes of this IPP Procurement Programme, based on which, the Economic Development objectives of this IPP Procurement Programme have been developed.

5.1.8.2 In designing this Economic Development Policy the Department had regard to the existing policy framework and legislation regarding Economic Development to design an appropriate approach to Economic Development for this IPP Procurement Programme. This existing policy framework and legislation includes:

<b>Legislation / Policy(ies)</b>	<b>Imperative(s)</b>
Constitution of the Republic of South Africa, 108 of 1996	<p>Section 217(2) of the Constitution provides that organs of state are not prevented by the requirements of open and competitive tender process from implementing procurement policies providing for categories of preference in the allocation of contracts and the protection or advancement of persons, or categories of persons disadvantaged by unfair discrimination.</p> <p>Section 217(3) of the Constitution further states that national legislation was to be enacted to prescribe a framework within which policies referred to in section 217(2) must be implemented.</p>
Broad-based Black Economic Empowerment	Section 10(1) states that every organ of state must take into account and, as far as is reasonably possible, apply any relevant code of good practice

<b>Legislation / Policy(ies)</b>	<b>Imperative(s)</b>
Act, 53 of 2003 ("BBBEE Act")	issued in terms of the BBBEE Act in developing criteria for entering into partnerships with the private sector.
BBBEE Codes of Good Practice published pursuant to the BBBEE Act, 2007 ("BBBEE Codes")	<p>These codes were applied in the IPP Procurement Programme, as far as reasonably possible and the following elements were taken into account:</p> <ul style="list-style-type: none"> <li>• ownership;</li> <li>• management control;</li> <li>• preferential procurement;</li> <li>• enterprise development; and</li> <li>• socio-economic development.</li> </ul>
White Paper on Renewable Energy, 2003 ("White Paper")	<p>There is a recognition in the White Paper that the emergence of the Renewable Energy industry provides potential for empowerment and job creation. The White Paper also states that the job creation potential of the Renewable Energy industry lies not so much in the operation and maintenance of such facilities but rather in the manufacture of such technologies, as renewable energy technologies are labour intensive.</p>
NERSA Application for an Electricity Generation Licence in terms of the Electricity Regulation Act, 2006	<p>In terms of section J to the Application for an Electricity Generation Licence, NERSA, in relation to BBBEE looks at the following:</p> <ul style="list-style-type: none"> <li>• black ownership;</li> <li>• black management, black female management and skilled Black People;</li> <li>• skills development and employment equity;</li> <li>• preferential procurement;</li> <li>• enterprise development; and</li> <li>• industry specific initiatives to facilitate the inclusion</li> </ul>

Legislation / Policy(ies)	Imperative(s)
	of Black People in the sector.
<p>New Growth Path published by the Department of Economic Development ("<b>NGP</b>")</p>	<p>The NGP makes calls for an intense focus on broad based elements of the BBBEE regulations - ownership by communities and workers, increased skills development and career pathing for all working people - and a new emphasis on procurement from local producers in order to support employment creation.</p> <p>The job drivers identified by the NGP include the following, which have a relevance in the IPP Procurement Programme:</p> <ul style="list-style-type: none"> <li>• substantial public investment in infrastructure both to create employment directly in construction, operation and maintenance;</li> <li>• targeting more labour-absorbing activities across the main economic sectors, which include manufacturing and services; and</li> <li>• taking advantage of new opportunities in the knowledge of green economies.</li> </ul> <p>The NGP states that creating more and better jobs must lie at the heart of the strategy to fight poverty, reduce inequalities and address rural underdevelopment.</p> <p>The NGP also states that basic and secondary education play a critical role in long-run equality, access to employment and competitiveness.</p>
<p>Accelerated Shared Growth Initiative of South Africa ("<b>ASGI-SA</b>")</p>	<p>ASGI-SA aims to create sustainable economic growth, where the wealth is shared.</p>
<p>National</p>	<p>The NIPF aims to provide strategic direction to the</p>

<b>Legislation / Policy(ies)</b>	<b>Imperative(s)</b>
Industrial Policy Framework ("NIPF")	<p>economy in respect of industrial development. This is to be done by providing greater clarity and certainty to the private sector and social partners about investment decisions leading up to 2014 and beyond, and by providing a reference point for substantial improvements in intra-governmental coordination of the numerous set of policies and projects that will form part of the NIPF.</p> <p>The objectives of the NIPF include the promotion of a broader-based industrialization path characterized by greater participation at all levels by historically disadvantaged citizens and marginalized regions in the mainstream of the industrial economy.</p>
Industrial Policy Action Plan 2011/12 – 2013/14 ("IPAP")	<p>The aim of IPAP is to identify existing economic growth constraints (within the existing legislative and policy framework) and provide solutions thereto, as well as opportunities that Government could capitalize upon.</p> <p>The objectives of IPAP include increased local manufacture, skills development and employment creation. IPAP also focuses on, <i>inter alia</i>, employment creation, the manufacturing aspects of the green economy and the localisation of manufacturing related to Renewable Energy.</p>

- 5.1.8.3 In developing the Economic Development objectives for the IPP Procurement Programme, some of the socio-economic challenges facing South Africa were also taken into account. These include, the:
- 5.1.8.3.1 high rate of unemployment in South Africa;
  - 5.1.8.3.2 lack of education of South Africans; and
  - 5.1.8.3.3 lack of skilled workers.

#### 5.1.8.4 Economic Development Elements

The following elements have been formulated to address the objectives of the Department for the IPP Procurement Programme:

- 5.1.8.4.1 job creation, which places emphasis on jobs for Citizens, Black People and Citizens from Local Communities;
  - 5.1.8.4.2 local content, which requires that a certain percentage of the total value of the Project to be spent in South Africa;
  - 5.1.8.4.3 ownership, which requires ownership by Black People and Local Communities in the Project Company, and ownership by Black People in the Contractor responsible for Construction and Operations Contractor;
  - 5.1.8.4.4 black management, which focuses on the involvement of Black People in top management;
  - 5.1.8.4.5 preferential procurement, which focuses on subcontracting to empowered enterprises, Black Enterprises and enterprises owned by women;
  - 5.1.8.4.6 enterprise development, which focuses on the development of emerging enterprises, and those emerging enterprises located in Local Communities; and
  - 5.1.8.4.7 socio-economic development, which attempts to address socio-economic needs including those of Local Communities.
- 5.1.8.5 The Department has obtained an exemption from the National Treasury relating to the application of the Preferential Procurement Policy Framework Act to the IPP Procurement Programme. A copy of such exemption is provided in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) as Schedule 7 (*Exemption from the Preferential Procurement Policy Framework Act*).

#### 5.1.8.6 Structure of Economic Development Requirements

The requirements for Economic Development are contained in different parts of the RFP, namely:

5.1.8.6.1 Clause 2.7 (*Economic Development Criteria and Evaluation*) of Part B (*Qualification Criteria*) – which requires a Bidder to:

5.1.8.6.1.1 have a South African Entity Participation of 40%;

5.1.8.6.1.2 have a weighted Contributor Status Level of 5 in respect of the South African Entity Participation; and

5.1.8.6.1.3 comply with the minimum thresholds as indicated in the Economic Development Scorecard (Appendix JB9);

5.1.8.6.2 Volume 5 (*Economic Development Requirements*) – which requires a Bidder to submit a detailed proposal on Economic Development Elements, which will be scored against the Economic Development Scorecard for the relevant Technology (contained in Appendix JB9); and

5.1.8.6.3 The Implementation Agreement, specifically Schedule 2 (*Economic Development Obligations*), which seeks to contractually commit a Bidder to the commitments made in the Economic Development proposal submitted as part of the Bid Response.

5.1.8.7 For purposes of Part B (*Qualification Criteria*) of this RFP, it is a requirement for a Compliant Bid that a Bidder's Economic Development proposal meets the threshold targets referred to in clause 2.7 (*Economic Development Criteria and Evaluation*) of Part B (*Qualification Criteria*) of this RFP. For purposes of Part C (*Evaluation Criteria*) of this RFP, the Economic Development proposals in Bid Responses relating to a particular Technology will be comparatively scored and ranked. The Economic Development commitments are evaluated in Part C (*Evaluation Criteria*) out of a maximum of 30 points using the Economic Development Scorecard (Appendix JB9) developed for the purposes of this IPP Procurement Programme.



## 5.1.9 **Qualification and Evaluation Criteria**

5.1.9.1 The evaluation of Bid Responses will, subject to the relevant provisions of clause 9 (*Structure of the IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*), be conducted in two stages.

5.1.9.2 In the first stage, using Part B of this RFP (*Qualification Criteria*), all Bid Responses will be assessed in order to determine whether they are Compliant Bids. A Compliant Bid is a complete Bid Response that is in the format set out in clause 53 (*Format of the Bid Responses*) of this Part A of the RFP and meets or exceeds the threshold requirement in respect of every applicable Qualification Criterion set out in Part B (*Qualification Criteria*), including in respect of sub-criteria which are set out under an umbrella category of Qualification Criteria. The Qualification Criteria are divided into the following umbrella categories in Part B (*Qualification Criteria*):

5.1.9.2.1 Structure of the Project (*clause 2.1 of Part B (Qualification Criteria)*);

5.1.9.2.2 Legal Criteria and Evaluation (*clause 2.2 of Part B (Qualification Criteria)*);

5.1.9.2.3 Land Acquisition and Land Use Criteria and Evaluation (*clause 2.3 of Part B (Qualification Criteria)*);

5.1.9.2.4 Environmental Consent Criteria and Evaluation (*clause 2.4 of Part B (Qualification Criteria)*)

5.1.9.2.5 Financial Criteria and Evaluation (*clause 2.5 of Part B (Qualification Criteria)*);

5.1.9.2.6 Technical Criteria and Evaluation (*clause 2.6 of Part B (Qualification Criteria)*);

- 5.1.9.2.7 Economic Development Criteria and Evaluation (*clause 2.7 of Part B (Qualification Criteria)*); and
- 5.1.9.2.8 Value for Money (*clause 2.8 of Part B (Qualification Criteria)*).
- 5.1.9.3 The threshold requirement in respect of each Qualification Criterion is described in the applicable provision of Part B (*Qualification Criteria*). Self-evidently, a Bid Response need not meet the Qualification Criteria that are Technology-specific and that relate to Technologies other than the one relevant to its Project. More detail on the Part B assessment can be found at clause 1 (*The Purpose of this Part B*) of Part B (*Qualification Criteria*).
- 5.1.9.4 In the second stage, using Part C (*Evaluation Criteria*) of this RFP, and subject to relevant provisions of clause 9 (*Structure of the IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*), Compliant Bids will be evaluated on a comparative basis, per Technology, in relation to Price and Economic Development only. More detail on the Part C evaluation can be found at clause 1 (*Purpose of this Part C*) of Part C (*Evaluation Criteria*).
- 5.1.9.5 NERSA published Rules on Selection Criteria for Renewable Energy Projects in February 2010. These criteria were only published for consultation purposes and were not published in the *Government Gazette*. The NERSA selection criteria have no legal force and are not binding on the Department. These non-binding selection criteria will not be used or relied upon by the Department in the application or the evaluation of the Qualification Criteria under Part B (*Qualification Criteria*) of this RFP or in the application or the evaluation of the Evaluation Criteria under Part C (*Evaluation Criteria*) of this RFP.

## 5.2 **Project structure and contracts**

- 5.2.1 Bidders are invited to submit proposals for the supply of Energy Output to the Buyer, generated from new Renewable Energy power generation Facilities adopting the Technologies, for the purpose of entering into an Implementation Agreement, a PPA, Direct Agreement (where applicable) and Connection Agreements with the relevant counterparties. The Project Company of a Bidder must be a special purpose Company established with

the sole purpose of undertaking the Bidder's Project, and subject to clause 20 (*Legal Personality of Bidder and its Members and Changes to Bid Responses*) of this Part A (*General Requirements, Rules and Provisions*) of the RFP, all Shareholders of a Project Company are required to be Members of the Bidder that designates that Project Company to be a Seller.

5.2.2 The Project Company of a Preferred Bidder:

5.2.2.1 will, if the Preferred Bidder complies with the terms and conditions of appointment and this RFP, enter into an Implementation Agreement with the Department pursuant to which the Department will grant the Project Company the right to undertake the Project on the terms and conditions of the Implementation Agreement and the PPA. The draft Implementation Agreement issued with this RFP may not be marked-up by Bidders or a Preferred Bidder and will not be subject to negotiation with the Department by the Preferred Bidder or its Project Company;

5.2.2.2 which enters into the Implementation Agreement, will enter into a PPA with the Buyer in respect of the Energy to be supplied by its Facility on the basis that the Buyer shall be obliged to purchase such Energy Output delivered to the Delivery Point. The draft PPA issued with this RFP may not be marked-up by Bidders or a Preferred Bidder and will not be subject to negotiation with the Department or the Buyer by the Preferred Bidder or its Project Company;

5.2.2.3 which enters into a PPA, will also enter into a Transmission Agreement with the NTC or a Distribution Agreement with Eskom, or into a Municipal Distribution Agreement with the relevant municipality, as the case may be, in respect of the connection of the relevant Facility to and the use of the Transmission System or a Distribution System, as the case may be. The draft Connection Agreements issued with this RFP may not be marked-up by Bidders or a Preferred Bidder, and will not be subject to negotiation with the NTC or Eskom by the Preferred Bidder or its Project Company. The pro-forma Municipal Distribution Agreement issued in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this

RFP as Schedule 12 (*Pro-forma Municipal Distribution Agreement*), has been provided for information purposes and contains the terms and conditions that could be included in the distribution agreement to be concluded by the Project Company and the relevant municipality; and

5.2.2.4 which enters into the aforesaid agreements, may enter into a :

5.2.2.4.1 Direct Agreement with its Lenders, the Department and the Buyer in respect of each of the Implementation Agreement and the PPA; and

5.2.2.4.2 Connection Direct Agreement with its Lenders and the NTC or Eskom, as the case may be, in respect of the Transmission Agreement or Distribution Agreement, as the case may be; or

5.2.2.4.3 Municipal Direct Agreement with its Lenders and the municipal Distributor in respect of the Municipal Distribution Agreement. The pro-forma Municipal Direct Agreement issued in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP as Schedule 13 (*Pro-forma Municipal Direct Agreement*), has been provided for information purposes only and contains the terms and conditions that could be included in the direct agreement to be concluded by the Seller, the Lenders and the relevant municipality.

## 6. The Department's Rights

6.1 The Department reserves the right to:

6.1.1 select or not to select any one or more Bidder/s as a Preferred Bidder;

6.1.2 award or not to award PPAs to any Preferred Bidders, to be entered into between the Project Companies of the relevant Preferred Bidders and the Buyer at a date to be specified by the Department, simultaneously with the entering into of the Implementation Agreement and the Direct Agreement by the parties thereto;

6.1.3 cancel or suspend procurement of any or all of the Projects pursuant to the IPP Procurement Programme;

- 6.1.4 cancel, suspend or change the IPP Procurement Programme contained in this RFP at any stage;
- 6.1.5 limit the IPP Procurement Programme to one Bid Submission Date or extend the IPP Procurement Programme to further Bid Submission Dates; and/or
- 6.1.6 amend the RFP, the Implementation Agreement, the PPA, the Direct Agreement and Connection Agreements at any time,

and the Department shall not be liable to any Bidder for any consequences, claims or costs arising from any of these actions.

## 7. Structure of the RFP

7.1 The structure of the RFP is as follows:

- 7.1.1 Part A (*General Requirements, Rules and Provisions*) provides the general information to the Bidder and includes, *inter alia*, the glossary of terms detailing the defined terms used within this RFP, the IPP Procurement Programme scope and structure, IPP Procurement Programme purpose, the terms and conditions in terms of which each Bidder submits its Bid Response, including detail regarding the format of each Bid Response and the explanation of and background to the procurement process;
- 7.1.2 Part B (*Qualification Criteria*) provides the Qualification Criteria that must be satisfied by the Bidder in order for a Bid Response to be considered by the Department as a Compliant Bid. This may, in the sole discretion of the Department, form the basis for the Bidder to be appointed as a Preferred Bidder, as set out in clause 9.11 of this Part A (*General Requirements, Rules and Provisions*). Alternatively, if necessary, the Compliant Bid will, in addition, be evaluated in accordance with Part C (*Evaluation Criteria*);
- 7.1.3 Part C (*Evaluation Criteria*) provides the evaluation procedure and the Evaluation Criteria to be used by the Department, if a Part C evaluation is necessary, in evaluating those Bid Responses that have fulfilled the Qualification Criteria in Part B (*Qualification Criteria*) and have progressed to Part C (*Evaluation Criteria*) (i.e. Compliant Bids). The purpose of Part C evaluation is to determine the relative rankings of Compliant Bids;

- 7.1.4 Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP contains relevant legal notices, government policies and background documents that have been included with this RFP in order to provide background information to the Bidders. Volume 1, Part 2 (*Form of Bid and Returnable Schedules*) of this RFP, contains the form of bid and the returnable schedules which must be submitted by the Bidders with the Bid Response including in Volume 1 Part 2 (*Form of Bid and Returnable Schedules*) Appendix JB (*Front Sheet Template for Financial Model, Technical Information and Economic Development Information*) which requires information in respect of a number of aspects of the Bid Response to be inputted into a single Bid Returnable;
- 7.1.5 Volume 2 (*Legal Requirements*) of this RFP contains copies of the legal agreements that will be required to be entered into by the Project Company of a Preferred Bidder, namely, an Implementation Agreement, a PPA, a Direct Agreement, a Transmission Agreement or a Distribution Agreement and a Connection Direct Agreement;
- 7.1.6 Volume 3 (*Technical Requirements*) of this RFP contains the appendices in respect of the Technical Qualification Criteria. The returnable schedules in Volume 3 (*Technical Requirements*) are templates that the Bidders are required to use when responding to this RFP and provide a standardised approach for presenting the requisite information required by the Department for each technical threshold criterion. If a template is provided in the RFP or on the IPP website for the submission of information in respect of a threshold criterion, Bidders should populate all aspects of the template and should not deviate from the template provided in the RFP or on the IPP website where downloadable excel spreadsheets are provided; nor should any fields be added or removed; nor amended in any other way;
- 7.1.7 Volume 4 (*Financial Requirements*) of this RFP contains the appendices in respect of the Financial Qualification Criteria. The appendices in Volume 4 (*Financial Requirements*) are templates that the Bidders are required to use when responding to this RFP and provide a standardised approach for presenting the requisite information required by the Department for the financial threshold criterion. If a template is provided in the RFP for the submission of information in respect of a threshold criterion, Bidders should

not deviate from the template provided in the RFP no fields should be added or removed; or amended in any other way; and

7.1.8 Volume 5 (*Economic Development Requirements*) of this RFP contains certain of the appendices in respect of the Economic Development Qualification Criteria, with the balance being in Volume 1 Part 2 (*Form of Bid and Returnable Schedules*) as Appendix JB8 (*Economic Development Information Sheet*) and Appendix JB9 (*Economic Development Scorecard*). These Volume 5 appendices contain the elements on which each Bidder's Economic Development proposal must be based, and the Economic Development Scorecard in terms of which proposals will also be scored in terms of the relevant Technology.

## 8. Purpose of RFP

8.1 The purpose of this RFP is:

8.1.1 to set out the rules of participation in the IPP Procurement Programme;

8.1.2 to provide further information about the IPP Procurement Programme to the Bidders so as to allow them to prepare comprehensive and competitive Bid Responses pursuant to the IPP Procurement Programme in respect of their Projects that they intend entering into the IPP Procurement Programme;

8.1.3 to give guidance to the Bidders in the preparation of their Bid Responses;

8.1.4 to enable the Department to consider those Bid Responses submitted by Bidders that:

8.1.4.1 are technically, financially and legally qualified to execute the Project and meet the criteria described in Part B (*Qualification Criteria*);

8.1.4.2 have sufficient experience, commitment and resources to meet the criteria of a Compliant Bid in respect of Part B (*Qualification Criteria*);

8.1.4.3 fulfil the competitive Evaluation Criteria and requirements as detailed in Part C (*Evaluation Criteria*);

8.1.4.4 are able to execute their Project and provide a Facility as envisaged by the Department;

8.1.5 to provide details of the remainder of the IPP Procurement Programme, including timeframes; and

8.1.6 to enable the Department to select Preferred Bidders.

## 9. Structure of the IPP Procurement Programme

9.1 The IPP Procurement Programme has been structured to consist of separate Bid Submission Dates and therefore, separate Bid Submission Phases. The First Bid Submission Date was 4 November 2011. The initial structure of the IPP Procurement Programme was that if, at the First Bid Submission Date, (as was the case) there were insufficient Compliant Bids to provide all of the MW allocated to a particular Technology or Technologies, the remaining available MW, initially allocated to each undersubscribed Technology, were to be made available for allocation to Bidders which submitted Bid Responses by the Second Bid Submission Date, subject to the provisions of clause 9.12 of this Part A (*General Requirements, Rules and Provisions*).

9.2 Following the First Bid Submission Date, the Department determined that there were compelling reasons for limiting the number of MW available for allocation in the Second Bid Submission Phase and accordingly limited the MW available. The Department is likely to continue this approach for all subsequent Bid Submission Phases.

9.3 Nevertheless, the overriding philosophy of the IPP Procurement Programme is that at each Bid Submission Phase, if there are insufficient Compliant Bids to provide all of the available MW allocated to each Technology for that Bid Submission Phase, the remaining available MW allocated to each undersubscribed Technology, together with any MW that become available following the disqualification for any reason of a Preferred Bidder in terms of clause 28 (*Disqualification*) of Part A of this RFP, the loss of Preferred Bidder status in terms of clause 29 (*Loss of Preferred Bidder status*) of Part A of this RFP or if a Preferred Bidder from any Bid Submission Phase fails to reach Financial Close, will be available for allocation to Bidders which submit Bid Responses on the next Bid Submission Date, subject to the provisions of clause 5.1.9 (*Qualification and Evaluation Criteria*) of this Part A (*General Requirements, Rules and Provisions*), and so on for each Bid Submission Phase.



- 9.4 The Department may by Briefing Note, within any Bid Submission Phase, create an alternative or amended timetable for one or more specific Technologies. This may involve setting an earlier or later Bid Submission Date for one or more specific Technologies, and amending the relevant timetable (as per clause 10 (*Timetable for IPP Procurement Programme*) of Part A of this RFP) for the specific technologies within the Bid Submission Phase.
- 9.5 The Bidders may submit a revised Bid Response in respect of the same Project, which was the subject matter of a previous unsuccessful Bid Response, on a subsequent Bid Submission Date, or may submit a new Bid Response in respect of a different Project, on a subsequent Bid Submission Date.
- 9.6 The Department will issue public statements on its official website and through Briefing Notes from time to time as to whether or not there will be a subsequent Bid Submission Date for a particular Technology, as well as the MW available for allocation to Bidders for such Technology. If there will be a subsequent Bid Submission Date for that particular Technology, and, if it is necessary to change the Bid Submission Date from the date specified in this RFP, the Department will notify the Bidders accordingly.
- 9.7 In order for the Department to prepare itself for the efficient evaluation of Bid Responses and to share relevant information as may be necessary with and to prepare relevant stakeholders, any entity intending to submit a Bid Response in respect of any Bid Submission Date is required to notify the Department in writing by the Bid Registration Date for the relevant Bid Submission Date of:
- 9.7.1 the Technology of the Project;
  - 9.7.2 the Contracted Capacity of the Project;
  - 9.7.3 the name and co-ordinates of the Project Site;
  - 9.7.4 whether the Bidder intends to connect its Project to the Transmission System, Eskom Distribution System or Municipal Distribution System;
  - 9.7.5 the co-ordinates of the substation where the Bidder intends to connect its Facility; and

- 9.7.6 the information on the identity of all participants in the Project and all Advisors to such participants, to enable a conflict of interest check to be undertaken, in accordance with the format to be provided in a Briefing Note.
- 9.8 A Bidder's Bid Response will not be considered by the Department if a Bidder fails to provide the Department with the information required by the Department under clause 9.7 of this Part A (*General Requirements, Rules and Provisions*) by the Bid Registration Date.
- 9.9 Subject to clause 9.8 of this Part A (*General Requirements, Rules and Provisions*), Bidders may only submit Bid Responses to the Department on the date and time that the Department notifies Bidders that the Bid Submission venue will be open to accept Bid Responses in respect of a Bid Submission Phase. The Bid Responses in respect of each Bid Submission Date will only be opened on the relevant Bid Submission Date/s.
- 9.10 The Department does not in any way undertake or guarantee that there will be any subsequent Bid Submission Date, and no person will have a claim of any nature whatsoever against the Department if it fails to submit its Bid Response by a certain Bid Submission Date on the basis of an expectation that it will have the opportunity to submit its Bid Response by a subsequent Bid Submission Date and the subsequent Bid Submission Date does not materialise.
- 9.11 In order for a Bid Response to be a Compliant Bid, it must satisfy all of the Qualification Criteria specified in Part B (*Qualification Criteria*) of this RFP. After each Bid Submission Date, an assessment of all submitted Bid Responses against the Qualification Criteria specified in Part B (*Qualification Criteria*) will be undertaken by the Department to determine whether or not each Bid Response is a Compliant Bid. If, as at the relevant Bid Submission Date, there are insufficient Compliant Bids to provide the maximum MW allocated per Technology for the Bid Submission Phase, all the Bidders that have submitted Compliant Bids may, in the Department's sole discretion, and on such terms and conditions as the Department may determine, be appointed as Preferred Bidders by the Department and might not be required to undergo a comparative evaluation of the Compliant Bids as provided for in Part C (*Evaluation Criteria*) of this RFP. The remaining available MW allocated to each Technology will, subject to the remaining provisions of this RFP, be available for allocation to Bidders on the next or any following Bid Submission Date/s.

- 9.12 If, at the relevant Bid Submission Date, there are Compliant Bids relating to a number of Projects all intending to connect to a common substation:
- 9.12.1 which Compliant Bids,
- 9.12.1.1 would fall to be considered for appointment as Preferred Bidders pursuant to clause 9.11 above; or
- 9.12.1.2 having undergone a comparative evaluation as provided for in Part C (*Evaluation Criteria*) of the RFP, would fall to be considered for appointment as Preferred Bidders, as contemplated in clauses 9.14 and 9.15 of this Part A (*General Requirements, Rules and Provisions*) of the RFP; and
- 9.12.2 where the available capacity of such substation, or the transmission or distribution lines associated with that substation, is insufficient to accommodate all of the affected Projects
- 9.12.3 then the Department, having consulted with the Eskom Grid Access Unit to confirm the non-availability of such capacity, may, in its sole discretion, comparatively evaluate the affected Compliant Bids which are competing for the limited capacity of the particular substation, or the grid-lines associated with that substation ("**Competing Compliant Bidders**"), in accordance with the methodology provided in the Evaluation Criteria specified in Part C (*Evaluation Criteria*) of this RFP in order to score and rank those Competing Compliant Bids relative to each other. Competing Compliant Bidder/s whose Compliant Bids rank the highest will be considered for appointment as Preferred Bidders up to the capacity available at the substation or on the grid-lines associated with the substation. The Department reserves the right to **not** appoint as Preferred Bidder those Competing Compliant Bidders whose Compliant Bids rank lower than those which take up the available substation or associated grid-line capacity.
- 9.13 If the points difference between two Competing Compliant Bids after the Part C evaluation undertaken in accordance with clause 9.12 of this Part A (*General Requirements, Rules and Provisions*) is less than two points, and only one of these Bidders could be a Preferred Bidder, the two Bidders in question may, in the Department's sole discretion, be invited to tender a best and final offer

("BAFO"). The Bidders will be under no obligation to revise their Bid Responses, and should neither Bidder choose to submit a BAFO, then the original results will stand. Any BAFO Bid Response will be evaluated in accordance with the Evaluation Criteria or such other criteria as may be determined by the Department, in its sole discretion, at the relevant time. The BAFO process will only be used to select the best Bid Response between the Bid Responses intending to connect to an oversubscribed substation, and will not affect the evaluation and selection of other Bidders.

- 9.14 If at the relevant Bid Submission Date, the Department receives more Compliant Bids than are required to provide the maximum MW allocated to any Technology, a comparative evaluation will be done in accordance with the Evaluation Criteria in Part C (*Evaluation Criteria*) in respect of each affected Technology in order to score and rank the Compliant Bids submitted in respect of each such Technology.
- 9.15 The Bidders whose Bid Responses rank the highest may in the Department's sole discretion be considered for appointment as Preferred Bidders on such terms and conditions as the Department may determine. The Department may appoint as many Preferred Bidders as are required to provide the maximum available allocation of MW for a Technology. However, the Department may elect either to appoint or not to appoint as a Preferred Bidder a Bidder whose Project is the last ranked Project within the maximum available allocation of MW for a Technology, if the Project size is such that it goes over the maximum available allocation of MW for a Technology.
- 9.16 Before appointing any Bidder as a Preferred Bidder the Department reserves the right to satisfy itself that for such Bidder, each provider of Corporate Finance and Equity Finance, would pass the net asset test or track record test (as appropriate, and each as contemplated and formulated in clause 2.5.3 of Part B (*Evaluation Criteria*) of this RFP if the total amount of Corporate and Equity Finance to be provided by it in respect of all potentially successful Bid Responses it participated in which are selected for appointment in accordance with clauses 9.11 to 9.15 of Part A (*General Requirements, Rules and Provisions*) of this RFP as applicable were to be considered.
- 9.17 If the maximum available MW allocation for a Technology is taken up by the Preferred Bidders or the Department considers that the MW available for

allocation are insufficient to allow for adequate competition, there will be no succeeding Bid Submission Date in respect of that Technology, unless additional MW are allocated to the relevant Technology by the Department, or through a new or amended determination in terms of section 34 of the Electricity Regulation Act.

- 9.18 Preferred Bidders will, at all times, be held to, and be required to comply with the Price and Economic Development proposals that they submit in their Bid Response, even if there is no Part C (*Evaluation Criteria*) evaluation. The Implementation Agreement and PPA will be entered into with a Preferred Bidder on the basis of the Price and Economic Development proposals made in the Bidder's Bid Response subject only to such adjustments as are explicitly provided for in this RFP or are approved by the Department in writing in accordance with the process set out in clauses 20.3 to 20.8 of Part A of this RFP.
- 9.19 The Department will notify Bidders of their appointment as Preferred Bidders per Technology, or otherwise, and of the terms and conditions of the appointment, as and when the Department selects Bidders as Preferred Bidders.

## 10. Timetable for IPP Procurement Programme

- 10.1 This section has been updated to remove references to Bid Submission Phases that have already been completed at the date of amendment of the RFP, and that have not commenced at the date of amendment of the RFP. As such, only the dates for the Second and Third Bid Submission Phases are set out below:

<b>Second Bid Submission Phase</b>	
Notification by the Department of Second Bid Submission Date	7 December 2011
Last date for Bidders to submit written questions in terms of clause 31 ( <i>Time for requests and clarifications</i> ) of this Part A	1 February 2012
Last date for Department to issue Briefing Notes in terms of clause 44 ( <i>Briefing Notes and Changes to Bid Process</i> ) of this Part A	8 February 2012
Second Bid Submission Date	5 March 2012

Evaluation of Bid Responses submitted in response to the Second Bid Submission Date	6 March 2012 – 10 May 2012
Announcement of Preferred Bidders in respect of the Second Bid Submission Date	21 May 2012
Application for a budget quotation from a Grid Provider and NERSA generation licence	Within two weeks of appointment of Preferred Bidder
Preferred Bidders to finalise their contractual arrangements, with, <i>inter alia</i> , their Members, Contractors, equipment suppliers, Lenders and Grid Provider in respect of the Second Bid Submission Date, and application by the Preferred Bidders for and obtain a budget quotation from a Grid Provider and a generation licence from NERSA	22 May 2012 – 8 May 2013
Signing and effective date of PPAs, Direct Agreements, Implementation Agreements and Connection Agreements and Financial Close not later than	9 May 2013 and the return date for the Financial Model(s) two weeks thereafter

<b>Third Bid Submission Phase</b>	
Bid Registration Date	19 July 2013
Second Bidders' Conference	16 August 2012
Last date for Bidders to submit written questions in terms of clause 31 ( <i>Time for requests and clarifications</i> ) of this Part A	22 July 2013
Last date for Department to issue Briefing Notes in terms of clause 44 ( <i>Briefing Notes and Changes to Bid Process</i> ) of this Part A	5 August 2013
Third Bid Submission Date	19 August 2013

Evaluation of Bid Responses submitted in response to the Third Bid Submission Date	20 August 2013 to 28 October 2013
Announcement of Preferred Bidders in respect of the Third Bid Submission Date	29 October 2013
Application for a budget quotation from a Grid Provider, and NERSA generation licence, and payment of budget quotation fee	Within two weeks of appointment of Preferred Bidder
Preferred Bidders to finalise their contractual arrangements, with, <i>inter alia</i> , their Members, Contractors, equipment suppliers, Lenders and Grid Provider in respect of the Third Bid Submission Date, and application by the Preferred Bidders and obtain of a budget quotation from a Grid Provider and a generation licence from NERSA	29 October 2013 – 29 July 2014
Signing and effective date of PPAs, Direct Agreements, Implementation Agreements and Connection Agreements and Financial Close not later than	30 July 2014 and the return date for the Financial Model(s) two weeks thereafter

- 10.2 From the Third Bid Submission Phase the Department anticipates running one Bid Submission Phase per year for this IPP Procurement Programme and anticipates that the schedule for any subsequent Bid Submission Phase will mirror the schedule for the Third Bid Submission Phase set out above, and so that the Bid Submission Date will potentially be in August for any subsequent Bid Submission Phase. The Department gives no guarantee that there will be any subsequent Bid Submission Phase after the Third Bid Submission Phase, nor that there will be a Bid Submission Phase in any particular year.
- 10.3 The Department will notify potential Bidders of any applicable dates for subsequent Bid Submission Phase in due course by Briefing Note. All references in the RFP to specific dates in respect of any Bid Submission Phase should be interpreted accordingly.

## 11. **Governing Law, Competition and other Statutory Requirements**

### 11.1 **Governing Law**

11.1.1 The primary enabling legislation for the IPP Procurement Programme is the Electricity Regulation Act, together with the New Gen Regulations, and the IRP 2010, which should be read with the PFMA and the Treasury Regulations. This enabling legislation creates the competency of the Department to procure and implement the IPP Procurement Programme, and regulates the manner in which it may conduct the IPP Procurement Programme.

11.1.2 The procurement of the Projects, responses, proposals, subsequent documents, the Implementation Agreement, the PPA, the Direct Agreement and the Connection Agreements, are and will be governed by and construed according to the laws of the Republic of South Africa.

11.1.3 Procurement of the Projects will be carried out in accordance with the following relevant legislation, which includes but is not limited to, the Constitution of the Republic of South Africa, 1996, the Broad-based Black Economic Empowerment Act, 53 of 2003, the Electricity Regulation Act, the National Energy Regulator Act, 40 of 2004, the New Gen Regulations, the PFMA, the Treasury Regulations, the Local Government: Municipal Finance Management Act, 56 of 2003 and the Local Government: Municipal Systems Act, 32 of 2000, each to the extent applicable and subject to any lawful exemptions from any provision thereof.

11.1.4 As is set out above, the Department has obtained an exemption from the National Treasury relating to the application of the Preferential Procurement Policy Framework Act to the IPP Procurement Programme.

### 11.2 **Competition Act, 89 of 1998**

Each Bidder must satisfy itself that its Project or any aspect of it is not a notifiable transaction as contemplated under the Competition Act, 89 of 1998 and, to the extent that it is a notifiable transaction, that all necessary requirements to comply with the provisions of the Competition Act, 89 of 1998 have been complied with or will be complied with by it prior to the signature of the PPA, Implementation Agreement, Direct Agreement and Connection Agreements. The Bidder



(including its Contractors and its Members), its Lenders (if any) and its Legal Advisors are required to satisfy themselves as to the compliance with all other statutory and legal requirements in relation to the Bidder's Project or any aspect thereof.

12. **[Blank – intentionally not used in the revised version of the RFP]**

13. **Environmental Consents and Land Use Consent Considerations**

13.1 The Qualification Criteria in respect of Land Use Consents, land acquisition and Environmental Consents are contained in clauses 2.3 (*Land Acquisition and Land Use Consents Criteria and Evaluation*) and 2.4 (*Environmental Consents Criteria and Evaluation*) of Part B (*Qualification Criteria*) of this RFP, respectively. Schedule 9 (*General Overview of Environmental and Land Use Consents*) in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*), provides information about the Environmental Consents and Land Use Consents which are likely to be required in respect of each type of Technology. It also provides an indication of the evidence that is likely to be regarded by the Department as acceptable evidence that the Bidder has the required Environmental Consent or Land Use Consent in place. Schedule 9A (*Procedure for obtaining non-binding confirmation by DWA of water availability on request from Bidders in the IPP Procurement programme*) in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*), provides information on how Bidders can approach DWA in regard to confirmation of water availability.

13.2 Please note, however, that each Bidder bears full responsibility for ascertaining the water availability in relation to its Project and for determining which Environmental and or Land Use Consents are required for its Project and cannot rely exclusively on the procedure set out in Schedule 9A (*Procedure for obtaining non-binding confirmation by DWA of water availability on request from bidders in the IPP Procurement programme*) or on the inclusion or absence of an Environmental and Land Use Consent from the relevant table in Schedule 9 (*General Overview of Environmental and Land Use Consents*) found in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) as indicative of whether or not a particular Environmental Consent and Land Use Consent is required for a particular Project or class of Projects.

- 13.3 The conflict between the potential of agricultural land for production purposes and food security, versus the pressure for land that can be used for Renewable Energy purposes, makes heavy demands on the availability of land. The Department of Agriculture, Forestry and Fisheries ("**DAFF**") has the mandate to protect and manage the natural agricultural resource base of the country through legislation, acts and policies. In accordance with its mandate, DAFF has established a National Policy on the Preservation of Agricultural Land which can be found at Schedule 10 (*National Policy on the Preservation of Agricultural Land*) in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) of this RFP. DAFF has also prepared draft Regulations for the evaluation and review of applications pertaining to wind farming on agricultural land, which can be found in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*) as Schedule 11 (*Regulations for the Evaluation and Review of Applications pertaining to Wind Farming on Agricultural Land*). These draft Regulations and the National Policy on the Preservation of Agricultural Land will assist Bidders in understanding the constraints imposed on the use of agricultural land as a Project Site and the steps that must be taken by Bidders in order to obtain Land Use Consents on agricultural land.
- 13.4 The Department of Water Affairs has advised the Department that it will only consider applications for water use licences made by Bidders once Bidders are appointed as Preferred Bidders by the Department. For this reason, a Preferred Bidder which, due to no fault, negligence or contributory negligence of its own, does not have a water use licence (if it is required for the Technology as a Qualification Criteria in terms of clause 2.4 in Part B (*Environmental Consent Criteria and Evaluation*)) at the date specified for signature of the PPA, Implementation Agreement, Direct Agreement and the Connection Agreements in terms of clause 10 (*Timetable of the IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*) or whose water use licence is, at that date, the subject of any appeal, review proceedings or other legal challenge, will, in the Department's sole discretion, be afforded an extension of time to obtain the water use licence prior to the signing of the PPA, Implementation Agreement, Direct Agreement and the Connection Agreements. Therefore to the extent necessary the period set out in clause 10 (*Timetable of the IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*), from appointment of the Bidder as Preferred Bidder to signature of the PPA, Implementation Agreement, Direct Agreement and the Connection

Agreements will be extended by the Department to a period that is reasonable in the circumstances.

#### 14. **Connection to, and use of, the Transmission System or Distribution System**

- 14.1 If the Bidder intends to connect to the Transmission System, the Grid Provider will be NTC.
- 14.2 If the Bidder intends to connect to a Distribution System, the Grid Provider will either be the “Distribution” business unit of Eskom, or a municipality, depending on the location of the point of connection.
- 14.3 The Preferred Bidder whose Facility is to be connected to the Transmission System will be required, in its capacity as a Customer of the NTC, to conclude a Transmission Agreement with the NTC prior to or simultaneously with the conclusion of the PPA. A copy of the draft Transmission Agreement to be entered into between the Project Company of the Preferred Bidder and the NTC is attached to this RFP in Volume 2 (*Legal Requirements*) as Appendix N (*Transmission Agreement*).
- 14.4 The Preferred Bidder whose Facility is to be connected to the Eskom Distribution System will be required, in its capacity as a Customer of Eskom, to conclude a Distribution Agreement with the Distributor prior to or simultaneously with the conclusion of the PPA. A copy of the draft Distribution Agreement to be entered into between the Project Company of the Preferred Bidder and the Distributor is attached to this RFP in Volume 2 (*Legal Requirements*) as Appendix O (*Distribution Agreement*).
- 14.5 The Preferred Bidder whose Facility is to be connected to the Municipal Distribution System will be required, in its capacity as a Customer of the relevant municipal Distributor, to conclude a municipal distribution agreement with the Distributor prior to or simultaneously with the conclusion of the PPA. A copy of a pro-forma Municipal Distribution Agreement for information purposes is attached to this RFP as Schedule 12 (*Pro-forma Municipal Distribution Agreement*) in Volume 1, Part 1 (*Legal Notices, Government Policies and Background Documents*).
- 14.6 Connection to the Transmission System and the Distribution System is also regulated by the Codes.

- 14.7 The connection works required for the connection of the Facility to the System will be split into the works for the dedicated customer connection of the Facility to the System (referred to as the “shallow connection”) and the connection works on shared assets (usually referred to as the “deep connection”).
- 14.8 There are three ways in which shallow connection works can be undertaken to connect the Bidder's Facility to the System.
- 14.9 In the first instance, the Grid Provider is responsible for and undertakes the connection works to connect each Unit physically to the relevant System, and the Bidder pays the Grid Provider for undertaking the connection in accordance with the cost estimate and budget quote provided by the Grid Provider. The Delivery Point will be on the Project Site, on the high voltage side of the generation transformer of the Facility.
- 14.10 In the second instance, the customer of the relevant Grid Provider is responsible for and undertakes the connection works to connect each Unit physically to the relevant System, and once completed the customer transfers the connection works to the relevant Grid Provider in terms of an agreement with the Grid Provider. This method of connection is commonly referred to as "self build". The Delivery Point will be on the Project Site, on the high voltage side of the generation transformer of the Facility.
- 14.11 In the third instance, the customer of the relevant Grid Provider is responsible for and undertakes the connection works to connect each Unit physically to the relevant System, and the customer retains ownership of the connection works once completed (commonly referred to as "own-build"). The Delivery Point may be on or off the Project Site, at the high voltage yard or substation where the Facility connects to the System. Bidders must be aware that in this instance, Bidders will be required to obtain a Transmission licence or Distribution licence in terms of the Electricity Regulation Act from the relevant Grid Provider in order to operate the shallow connection to the System.
- 14.12 It is important for Bidders to note that in terms of the second connection process explained in clause 14.10 of this Part A (*General Requirements, Rules and Provisions*), the NTC and Eskom have policies in respect of self build.
- 14.13 Bidders are encouraged to approach the relevant Grid Provider to obtain clarity and further information on the policies and requirements involved in connecting

the Facility to the System. The Department will consult with the Eskom Grid Access Unit in the course of evaluating the Bid Responses to confirm the availability of capacity at those substations and on the associated distribution and transmission lines which Bidders indicate will be used to connect their Facility to the System.

- 14.14 The Grid Provider will undertake a portion of the connection works in respect of all three processes for shallow connection detailed above, and therefore, Bidders will be required to include the time and cost estimate letter for the indicative time and cost for grid connection from the relevant Grid Provider in the Bid Response.
- 14.15 The relevant contact details, requirements for obtaining the time and cost estimate letter from Eskom, the application form and the process for applying for grid connection, can be obtained on Eskom's website ([www.eskom.co.za](http://www.eskom.co.za)).
- 14.16 The requirements for obtaining the time and cost estimate letter from a municipality, and the process for applying for grid connection, can be obtained from the municipality concerned.
- 14.17 Bidders must apply to the relevant Grid Provider in sufficient time for the grid connection time and cost estimate to be provided by the relevant Grid Provider. Bidders are required to contact the relevant Grid Provider to ascertain what the relevant deadlines and timeframes are in relation to their applications for the time and cost estimate letter.
- 14.18 In their interactions with NTC or the relevant Distributor for the purposes of obtaining the time and cost estimate letter and making a decision as to whether to proceed by way of Eskom build, self-build or own-build (as described above), Bidders should canvass fully those matters which could impact on a Bidder's ability to obtain, within six months of appointment as a Preferred Bidder, a budget quote which, if accepted, would allow NTC or the Distributor to proceed immediately with the construction of the works needed for the connection. Such matters could include the obtaining of rights of way or servitudes or Environmental Consents, the need for long lead time materials and upstream reinforcement costs.
- 14.19 Bidders are required to note that in terms of the PPA, during the Early Operating Period and the Operating Period, the Seller will sell all the Early Operating

Energy and Commercial Energy generated by a Unit or the Facility (as the case may be) to the Buyer at the Delivery Point, on a self-despatch basis.

## 15. DBSA funding

15.1 The Department wishes to optimise the involvement of Black People in the Projects and, in particular, ensure that capacity is built within Members which are owned or controlled by Black People or Local Communities (“**Eligible People**”), to enable them to participate in the energy sector. In support of the IPP Procurement Programme and the Economic Development objectives in particular, the DBSA may offer a funding package to Eligible People.

15.2 This facility is not mandatory and Projects will not be compelled to take up the DBSA offer. The terms and conditions of the DBSA finance facilities will be made available by the DBSA on a case-by-case basis. In this regard parties interested in accessing these facilities are requested to contact the DBSA directly through the contact details provided below.

### 15.3 DBSA Contact Details

Bidders interested in the DBSA BBBEE equity loan finance facility are requested to contact:

#### **The Divisional Executive**

Investment Banking Division – PPP & Public Enterprises Unit

The Development Bank of Southern Africa Limited

1258 Lever Road

Headway Hill, Midrand

South Africa

PO Box 1234

Halfway House

Midrand 1685

South Africa

**Contact Number: + 27 11 313 3277**

## 16. General Bid Rules

16.1 The RFP is open to the world wide public and is not restricted to Bidders comprised only Citizens and South African entities. However, all Sellers under the PPAs will be required to be Project Companies that have a sole purpose,

object and business of undertaking the Bidder's Project, including entering into and fulfilling the purposes of the PPA, the Implementation Agreement, the Direct Agreement and the Connection Agreements. Bidders are invited to submit Bid Responses to be appointed as a Preferred Bidder, for consideration by the Department.

16.2 Only Bid Responses that comply with the minimum requirements and criteria specified in both of Part B (*Qualification Criteria*) and Part C (*Evaluation Criteria*) of this RFP to the Department's satisfaction, in its sole discretion, will be considered by the Department for further participation in the IPP Procurement Programme. Each Bidder, in submitting a Bid Response, is deemed to do so on the basis that it accepts and acknowledges the terms of this RFP.

16.3 Those Bidders appointed as Preferred Bidders shall not be entitled to negotiate any of the provisions of the PPA, the Direct Agreement, the Implementation Agreement or the Connection Agreements issued with this RFP, with the relevant counterparties, but the Preferred Bidders shall be afforded a period of time, specified under clause 10 (*Timetable for IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*), to negotiate and finalise their other contractual arrangements and Project Documents with, *inter alia*, their Members, Contractors, equipment suppliers and Lenders and apply for and obtain their generation licence from NERSA and budget quotation from the Grid Provider in order to conclude the Implementation Agreement, the PPA, the Direct Agreement and the Connection Agreements with the relevant counterparties, by the date specified in the table under clause 10 (*Timetable for the IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*).

## 17. **Non-Eligible Persons**

17.1 Bid Responses will only be considered by the Department, in its sole discretion, if the Bidder submitting the relevant Bid Response has the necessary expertise, relevant experience and resources (including financial capacity and commitments) to carry out the Project that is the subject matter of the relevant Bid Response, and specifically if the Bidder satisfies the minimum requirements specified in Part B (*Qualification Criteria*) of this RFP.

- 17.2 Any firm, group, organisation or consortium or any Member of a Bidder which is not domiciled within the Republic of South Africa, or does not have an existing, formal association with a South African firm or organisation, shall indicate this fact clearly in its Bid Response.
- 17.3 Bidders are required to declare if any of their Advisors, Members or any individual who is a director, officer, employee or shareholder of any Member or the Project Company is or is Related to any employee of the Department or any other member of the working group comprised of the DPE, the DTI, the National Treasury, Eskom, NERSA, DAFF and the Department of Environmental Affairs, by completing and submitting Appendix J (*Declaration of Interest Form*) provided in Volume 1, Part 2 (*Form of Bid and Returnable Schedules*) of this RFP.
- 17.4 If any Bidder includes in their Bid Response the involvement of any person:
- 17.4.1 blacklisted by the office of National Treasury; or
  - 17.4.2 blacklisted by such person's professional body (if applicable); or
  - 17.4.3 who is or who is Related to any employee of the Department or any other member of the working group comprised of the DPE, the DTI, the National Treasury, Eskom NERSA, DAFF, and the Department of Environmental Affairs; or
  - 17.4.4 who is or who is Related to any other Government official or person directly involved presently or in the past in the IPP Procurement Programme, who may be involved or have been involved with the evaluation of the Bid Responses and, any person with the ability to influence or to have influenced the decision of the Department with respect to the appointment of Preferred Bidders; or
  - 17.4.5 who or which has been found guilty in a court of law of fraud or corruption related crimes,
- such Bidder may, in the sole discretion of the Department, be disqualified by the Department from participating in the relevant Bid Submission Phase and or from any part or all of the IPP Procurement Programme.
- 17.5 In respect of any person or Government Official who was involved in the past in the IPP Procurement Programme, in the manner set out in clause 17.4.4, a



Bidder should, to avoid the consequence set out in clause 17.4, before submitting a Bid Response which includes such person in any capacity set out in clause 17.3 above, obtain written permission from the Department for the involvement of such person. In considering any such request the Department shall have regard to (amongst other things) the nature of the person's involvement; the nature of the confidential information regarding the IPP Procurement Programme which the person has; and the time that has elapsed since they had this involvement.

- 17.6 The participation of not-for-profit entities in a Bid Response is in the discretion of a Bidder and shall be at its sole risk.
- 17.7 No national public entity, provincial public entity (each as defined in the PFMA), except for the DBSA and the IDC may participate as a Member (direct or indirect) of, or Contractor to any Bidder, unless:
- 17.7.1 the participation of that public entity in the IPP Procurement Programme has been specifically approved in advance in writing by the applicable Government department / executive authority (as defined in the PFMA) that has responsibility over such public entity, and by the Department;
- 17.7.2 the provision of services or participation as a Member, by such public entity, is made available to all Bidders (subject to Bidders meeting the public entity's criteria for service provision or participation as a Member); and
- 17.7.3 the provision of services or participation as a Member by such public entity is permitted by law.
- 17.8 A person, Contractor, Member, other participant in a Bid Response, Lender or Advisor may participate in, advise or be involved (either directly or indirectly) with more than one Bidder at any stage during the IPP Procurement Programme without the prior written consent of the Department. It shall be the responsibility of each of the Bidders that utilise the services of the same Contractor, Member, Lenders or Advisors as other Bidders, to manage the process and any conflicts of interest that may arise. The Bidders shall ensure that no anti-competitive or collusive behaviour is displayed or engaged in by any person, Contractor, Member, Lender or Advisor participating or involved with more than one Bidder. The Department shall, in its sole discretion, be entitled to disqualify, in terms of

clause 28 (*Disqualification*) of Part A of this RFP, any Bidders whose Bid Responses display any anti-competitive or collusive behaviour.

## 18. Use of Transaction Advisors by the Department and the Bidders

18.1 The Transaction Advisors are as follows:

Firm	Individuals	Role
Ernst & Young	Rob Winchester Dane Wilkins Brunhilde Barnard Dr Jim Fitzgerald Grant Brennan David Aggett Melissa Blackford Gayle Budlender James Chapman Priya Chiba Rajeev Devalall Suzanne Edwards Emmanuel Essien Benjamin Ford Anisa Govender Rob Hayward Azra Joosab Anel Jooste Rahel Koshy David Koudela Moses Machingere Cornelius Mdluli Jayne Parello Sarika Ramithlal Carla Rooseboom Kalveer Salh Shannon Sass Jed Shein Peter Waller Greg Weare Bronwen Sian Byton Ndiweni Lefa Mongaula Atul Dama Young Chara	Financial Transaction Advisors

Firm	Individuals	Role
	Jean Blanckaert Anell Venter Nontle Vika Pierre- Alexandre Griel Ross Botes	
PWC	Vimal Vallabh John Gibbs Giles Dixon Omkareshwar Pandey Kameswara Rao Reg Max Alwyn Naidoo  James Aryaija Alice Chang Ross Dunlop Elizabeth Ellis Rubin Essakow Kevin Green Gregory Haddock Ruth Hann Nishka Harase Harinath Prasad Tendayi Jena Rebecca Kang Raymond Ledwaba Paul Lerotholi Stuart Lunn Ampfarisaho Mulaudzi Chaleen Muller Deheshan Naidoo Deshan Padayachee Jean Roux Jonathan Scott-Webb Tlalagolo Sebesho Amy Smylie Thato Tsotetsi Morne Van Deventer Chetana Yalamanchili	Financial Transaction Advisors

<b>Firm</b>	<b>Individuals</b>	<b>Role</b>
	Thembakazi Sicwebu Eleanor Smith Nickson Kaputeni Monica Dowie Simon Venables Nick Renshaw Neil van Zyl Samrat Roy Fierdous Olivier Jeremy Dore Solomon Monama Wessel Boshoff	
G5 Specialised Finance (Pty) Ltd	Vishad Ramnund	Financial Transaction Advisors
Mott MacDonald	John Porter Christos Kolliatsas Iban Vendrell James Dodds Clare Rhodes-James Christian Bayer Robert Collins Mbuso Gwafila Lisa Haynes Robin Ingram Chrysoula Michailidou Ipeleng Mokgadinyane Kelvin Nkole Lekan Omuniwa Tryfon Papalexandrou Georgios Vantsiotsis Inaki Perez	Technical Transaction Advisors
SPP Project Solutions (Pty) Ltd	Mike Fitzpatrick Mark Engelbrecht Darron Johnson Jonathan Leeb Sandipha Maharaj Adrian Miric Paul Wroblecki Gerhard Johan	Technical and Project Management Advisors

<b>Firm</b>	<b>Individuals</b>	<b>Role</b>
	Tanya Fainstein Hloni Mrwebi Thembi Mrwebi Connie Ploger	
Tony Wheeler Consulting	Dr Tony Wheeler	Independent Technical Transaction Advisors
Bowman Gilfillan	Daryn Webb Claire Tucker Tammy Beira Yashveer Ram Ayanda Mubima Sha'ista Kazee Athi Jara Gaby Sher Simone Fourie Lerato Molefe Wandisile Mandlana Jacqui Balkin Bavesh Pillay Stormme Gibson Zanele Moloji	Legal Transaction Advisors
Edward Nathan Sonnenbergs	Pippa Reyburn Nicola Buchanan- Clarke Chris Ntuta Lloyd Christie Carlyn Frittelli Busani Dhladhla Georgina Robinson Ngwako Raboshakga Brian Jennings Lebusa Meso Maryke Sher-Lun Rethabile Mathabethe Juliette Thirsk Arthur Stephen Berrisford (subcontractor to ENS) Roy Gluckman	Legal Transaction Advisors

<b>Firm</b>	<b>Individuals</b>	<b>Role</b>
Ledwaba Mazwai	Metja Ledwaba Viola Ngwenya Innocent Khumalo Lee-Ann Botes Thandeka Dlulane Kelebogile Galeforolwe Mmotlana Kgoadi Sbusiso Maseko Lebogang Mathebula Kearebetswe Modingwana Naledi Mosikare Wezi Phiri Tiyani Sithole Mmbhulaheni Sikhavhakhavha	Legal, BBBEE and Socio-Economic Transaction Advisors
Webber Wentzel	Brigitte Baillie Glenn Penfold Robert Nel Alexandra Sourvas Madimetsa Mokoatlo Johan van der Vyver Desiree De Oliveira Samara Eidelman Kirsty Gilmour Mzukisi Kota Brenda Migwalla Simonne Morley Garyn Rapson Gerhard Johan Nick Veltman Zunaid Rawoot Kate Collier Warren Beech Kathryn Lloyd	Legal Transaction Advisors
Linklaters LLP	Andrew Jones John Pickett Tessa Lee Jack Coleman Jonathan Cook Andrew Reilly Tom Shingler	Independent Legal Transaction Advisors

Firm	Individuals	Role
	Dominic Toomey	
Aecom South Africa	Carel van der Merwe James Hayes Peter Teurlings Bharat Gordhan Bronwen Griffiths Michael Howard Nicola Liversage Naristi Neale Roslynde Saunders David de Waal	BBBEE and Socio-Economic and Environmental Transaction Advisors
Blueprint Consulting CC	Gerrit Clarke	Transaction Advisors

18.2 A professional firm that is a member of the Transaction Advisors may advise a Bidder, their Members, Lenders, Contractors or any other participant involved in any Bid Response or be a member of any Bidder without the prior written consent of the Department, provided that the Bidders and the relevant firms put comprehensive and proper ring fencing mechanisms and rules in place in order to manage the process and any conflicts of interest that may arise, and provided further that the same individual may not be a member of the Transaction Advisors team and also advise or be a member of a Bidder, Member, Lender or Contractor or any other participant involved in any Bid Response.

18.3 If a Bidder has any concerns in respect of or becomes aware of any events or circumstances that establish or imply that there has been a breach of any of the provisions of clause 18.2, it is required promptly to notify the Department of such concerns, events or circumstances in writing, giving the details of such concern, events or circumstances and evidence supporting such concerns or establishing such events or circumstances. In the absence of such written notification, a Bidder shall be deemed to have agreed to and be satisfied with the arrangements contemplated in clause 18.2.

## 19. Acknowledgment of the Law

19.1 The Bidder and each of its Members registered in South Africa are required to submit with the Bid Response a declaration stating, *inter alia*, that it is fully acquainted with the laws of South Africa (including without limitation all statutes

and regulations (on a national, provincial and municipal level)) in relation to procurement and the subject matter of the IPP Procurement Programme, and that it will comply with such laws. The declaration required in respect of the Lead Member / Project Company is included in Appendix B (*Declaration of Bidder*) of Volume 1, Part 2 (*Form of Bid and Returnable Schedules*) and the declaration required in respect of each Member is included in Appendix C (*Letter of Intent*) of Volume 1, Part 2 (*Form of Bid and Returnable Schedules*). The Bidder and each of its Members incorporated or registered outside of South Africa are required to submit, with the Bid Response, a declaration stating that they have engaged South African counsel, which is fully acquainted with the laws of South Africa to advise them in relation to the laws of South Africa (including without limitation all statutes and regulations (on a national, provincial and municipal level)) in relation to procurement and the subject matter of the IPP Procurement Programme. The declaration required in respect of the Lead Member is included in Appendix B (*Declaration of Bidder*) of Volume 1, Part 2 (*Form of Bid and Returnable Schedules*) and the declaration required in respect of each other Member is included in Appendix C (*Letter of Intent*) of Volume 1, Part 2 (*Form of Bid and Returnable Schedules*).

- 19.2 Each Project Company and each Bidder will be solely responsible for satisfying itself with respect to all the legal requirements for the Project and as to the legal requirements applicable to the Project and the Project Company as specified in this RFP, and shall have no claim against the Department or its Transaction Advisors for any loss or damage it may suffer or incur by reason of any flaw, or oversight or omission in relation thereto. This includes applying for, obtaining, maintaining, renewing and adhering to all relevant Consents, permits, licences, authorisations and exemptions required to implement that Bidder's Project. Failure to do so will be at the entire risk of the Project Company and each Bidder, and no relief will be given for errors, oversights or omissions of the Project Company, a Bidder or its Members or of the Department.
- 19.3 After being selected as Preferred Bidder, a Preferred Bidder will be required to obtain a generation licence in the name of its Project Company under the Electricity Regulation Act, from NERSA. Each Bidder will be solely responsible for satisfying itself with respect to all the legal requirements for the issue of a generation licence by NERSA in terms of the Electricity Regulation Act. Each Preferred Bidder is required to provide the Department with a copy of their



application, as submitted to NERSA, for this licence within 14 (fourteen) days of their appointment as a Preferred Bidder.

## 20. Legal Personality of Bidder and its Members and Changes to Bid Responses

- 20.1 For the purposes of submitting a Bid Response, a Bidder may be either a Project Company or a consortium. If the Bidder is a consortium, then the Project Company that is to be incorporated by the consortium to be the Seller shall have as its Shareholders, in the proportions stated in the Bid Response, the Members of the consortium, or if any such Member will hold its ownership interest in the Project Company through an intermediary entity which is still to be incorporated, such intermediary entity.
- 20.2 All Sellers under the PPAs will be required to be a Project Company that has a sole purpose, object and business of undertaking the Bidder's Project, including entering into and fulfilling the purposes of the PPA, the Implementation Agreement, the Direct Agreement and the Connection Agreements. A Preferred Bidder shall be required to provide the Department with certified copies of such Constitutional Documents of its Project Company as the Department may request within the time-period specified by the Department, following the establishment and incorporation of its Project Company.
- 20.3 No change is permitted by a Bidder to any aspect of a Bid Response after submission of a Bid Response in respect of a Bid Submission Phase. No change is permitted by a Preferred Bidder to any aspect of a Bid Response after submission of a Bid Response in respect of a Bid Submission Phase without the prior written approval of the Department.
- 20.4 Any Preferred Bidder wishing to change its Bid Response must submit to the Department a written request to do so. Such request must set out the facts and circumstances that have arisen since the relevant Bid Submission Date that necessitated the request, together with all documentation, information, data and responses required to fulfil, in respect of such change, the requirements in respect of the Qualification Criteria in the RFP.
- 20.5 The Department reserves the right to require the Preferred Bidder to supply such further information as the Department may, in its sole discretion, request with regard to such change so as to enable the Department to consider fully the impact of such change.

- 20.6 The Department may approve or decline to approve any request by a Preferred Bidder for a change to any aspect of a Bid Response in its sole discretion. In exercising such discretion, the Department shall have regard to all relevant factors, including whether the facts and circumstances necessitating the request were, or ought reasonably to have been, foreseen by the Preferred Bidder at the relevant Bid Submission Date, the nature and extent of the change and whether any such approval would be fair to other Bidders who submitted a Bid Response in respect of the relevant Bid Submission Phase.
- 20.7 Preferred Bidders are expected to adhere to the Timetable as set out in clause 10 (*Timetable for IPP Procurement Programme*) of Part A of this RFP and should avoid including an extension of time request in any change request submitted in terms of clause 20.6 above.
- 20.8 The provisions of clause 20.3 shall not apply in respect of a Change in Control of a listed public company.

## 21. **Authorisation of the Department and the Buyer**

- 21.1 The Bidder, its Members, Contractors and Lenders and its Advisors are required to satisfy themselves as to the authority of:
- 21.1.1 NERSA to issue a generation licence to each of the Project Companies of the Preferred Bidders in accordance with the provisions of the Electricity Regulation Act;
- 21.1.2 the Department to issue this RFP, undertake the IPP Procurement Programme of which the RFP forms part, and to undertake all other actions envisaged by this RFP; and
- 21.1.3 the Buyer and other relevant parties to enter into the PPA, the Implementation Agreement, the Direct Agreement and the Connection Agreements.
- 21.2 The Department shall not procure a legal opinion from any of its Transaction Advisors in favour of any Bidder, Preferred Bidder, Members, Contractors, Project Company or Lenders in relation to such authority or any other aspect of this RFP or the IPP Procurement Programme envisaged by it. In this regard, copies of the relevant documents authorising the Buyer to enter into the

agreements to which it is a party, will be made available to a Preferred Bidder upon written request by that Preferred Bidder.

## 22. **Separate Bid Response for each Project**

22.1 A Bidder shall be required to submit a separate Bid Response for each Project and only one PPA (if that Bidder is appointed a Preferred Bidder) will be entered into in respect of a Project and a Facility. In respect of Projects utilising landfill gas Technology, the Bidder may submit one Bid Response that relates to a Portfolio of Facilities and if appointed as a Preferred Bidder, that Bidder shall enter into one PPA covering the whole Portfolio.

22.2 A Bidder shall be entitled to submit more than one Bid Response and may submit different Bid Responses in respect of different and discrete Projects at each Bid Submission Date.

22.3 In order to demonstrate that two (2) projects are separate, the Department would expect to see at least the following:

22.3.1 separate Project Companies;

22.3.2 separate notarial leases;

22.3.3 each Project Company to comply with the PPA and Connection Agreements with respect to connection and metering.

22.4 Sharing of common infrastructure by small hydro projects between Projects is acceptable, provided that:

22.4.1 the common infrastructure is upstream of the turbine/s for the Project;

22.4.2 the common infrastructure is clearly defined;

22.4.3 each Project has clear and strong contractual rights to use the common infrastructure in a way that will not hamper their individual operation and that these rights cannot be withdrawn from any Project Company as long as the PPA is in place;

22.4.4 a clear contractual allocation, between the Project Companies, of responsibility for operating and maintaining the common infrastructure exists;

- 22.4.5 a clear contractual allocation, between the Project Companies, of responsibility for funding the operation and maintenance exists; and
- 22.4.6 in the case where one Project Company has become insolvent, the other Project Company must be able to retain access to the infrastructure and must be protected so that it is not adversely affected by the insolvency of the other Project Company.
- 22.5 However, sharing of common infrastructure downstream (namely export cable and bay at the substation) will not be acceptable.

## 23. Confidentiality

### 23.1 Confidentiality by the Bidders

- 23.1.1 This RFP contains confidential information regarding the IPP Procurement Programme and or the Department. By collecting this RFP, the Bidders agree that they:
- 23.1.1.1 will ensure that their Members, directors, officers, employees, agents, Advisors, Lenders, Contractors and representatives use this RFP only to evaluate the IPP Procurement Programme and prepare a Bid Response and for no other purpose; and
- 23.1.1.2 subject to the above clause, will not divulge or distribute any information in respect of this RFP or pass on any copies of this RFP without the prior written approval of the Department and will return this RFP together with all copies thereof to the Department promptly upon being requested to do so.
- 23.1.2 Each Bidder agrees to maintain the confidentiality of all information supplied to it in connection with the Project (whether in text, chart, picture, electronic or other form), and agrees to keep its own Bid Response confidential.
- 23.1.3 Bidders are required to provide the Department, together with their Bid Responses, with a copy of the Confidentiality Undertaking letter set out in Appendix D of Volume 1, Part 2 (*Form of Bid and Returnable Schedules*), signed by a duly authorised representative on behalf of the Bidder and each Member of the Bidder.

## 23.2 Confidentiality by the Department

- 23.2.1 The Department shall use its reasonable endeavours to keep all data and details submitted by Bidders strictly confidential, save to the extent that the Department is required to disclose such data and or details by applicable law or order of a court of competent jurisdiction or a recognised stock exchange or a Government department or agency. Should it be deemed necessary to discuss any matter relating to any submission of any Bidder with third parties (other than the Department's Transaction Advisors), the necessary permission will be obtained from the Bidder concerned.
- 23.2.2 Notwithstanding the provisions of clause 23.2.1:
- 23.2.2.1 the Department shall be entitled to disclose all data and details submitted by Bidders to the Transaction Advisors, National Treasury and their officers, employees, agents, advisors and representatives who are involved in the Project and the evaluation of the Bid Responses;
- 23.2.2.2 the Department shall be entitled to disclose all data and details submitted by Bidders to the DPE, the DTI, NERSA, Eskom and Parliament to the extent necessary;
- 23.2.2.3 the Department shall be entitled to disclose to any person and in any media, the name of any Bidder which has been designated as a Preferred Bidder, and in respect of such Preferred Bidder, the Fully Indexed and Partially Indexed Prices indicated in its Bid Response, the Equivalent Annual Tariff calculated in respect of each such Price, and the Preferred Bidder's Economic Development commitments, as provided in its Bid Response in relation to clause 2.7 (*Economic Development Criteria and Evaluation*) of Part B (*Qualification Criteria*) of the RFP, as well as its Economic Development and Price scores calculated pursuant to any evaluation in terms of Part C of the RFP, as well as that Preferred Bidder's ranking relative to other Preferred Bidders; and
- 23.2.2.4 the Department shall not be liable for any loss incurred or damage suffered as a result of any disclosure of any information (confidential or otherwise) of the Bidder. Accordingly, the Bidder, its Members,

Contractors, its Advisors and or its Lenders (if any) shall not have, and hereby waive, any claim against the Department, its officers, employees, servants, agents or advisors (including the Transaction Advisors) arising out of the disclosure of any information, confidential or otherwise.

## 24. Bid Security, Development Fee and Success Payments

### 24.1 Bid Guarantee

24.1.1 Each Bidder shall provide the Department with a single Bid Guarantee (in Rands) in an amount equal to R100 000 (one hundred thousand Rand) per MW of the Contracted Capacity of the proposed Facilities for the Project in respect of which that Bidder submits that Bid Response.

24.1.2 The Bid Guarantee shall be:

24.1.2.1 an original, unconditional and irrevocable guarantee in the form set out in Appendix E (*Form of Bid Guarantee*);

24.1.2.2 lodged with the Department with the Bidder's Bid Response on the relevant Bid Submission Date. If a Bidder fails to lodge such Bid Guarantee, the Department may, in its sole discretion, reject the Bid Response without further consideration;

24.1.2.3 issued by a bank which is licensed to conduct banking business in South Africa under the Banks Act, 94 of 1990 or a licensed short-term insurer as contemplated in the Short-Term Insurance Act, 53 of 1998 and which has a South African rating of BBB or better by Standard & Poor's or equivalent; and

24.1.2.4 be valid and effective for the period from the date of its issue until the earlier of the expiry of the relevant Bid Validity Period (as extended) and:

24.1.2.4.1 in the case of a Bidder other than a Preferred Bidder;

24.1.2.4.1.1 60 days after the Bidder is notified that it has submitted a Bid Response that is not a Compliant Bid; or

24.1.2.4.1.1.1 the date that such Bidder is notified that notwithstanding

the submission of a Bid Response that was a Compliant Bid, its Bid Response has not, on completion of the evaluation in terms of Part C (*Evaluation Criteria*) of the RFP, been successful; or

24.1.2.4.2 in the case of a Preferred Bidder, the date on which the Preferred Bidder Guarantee is duly issued as required in clause 24.2,

and shall remain valid during that period notwithstanding the insolvency, winding up, liquidation, judicial management, dissolution, business rescue or de-registration, whether provisionally or finally, of any Member of the Bidder or the Bidder itself (if it is a legal entity) or any other person.

24.1.3 If any Bidder does not supply the Bid Guarantee in compliance with all the requirements of clause 24.1.2, the Department may, in its sole discretion, if the Bid Response is not rejected outright from further consideration in terms of clause 24.1.2.2, disqualify (in terms of clause 28 (*Disqualification*) of Part A of this RFP) the Bidder and/or any Member of the Bidder from the relevant Bid Submission Phase and/or one or more subsequent Bid Submission Phase/s.

## 24.2 Preferred Bidder Guarantee

24.2.1 Subsequent to the receipt of Bid Responses and evaluation thereof, each Bidder which is provisionally informed of its Preferred Bidder status will be required to lodge a new guarantee (the "**Preferred Bidder Guarantee**") with the Department in an amount equal to R200 000 (two hundred thousand rand) per MW of the Contracted Capacity of the proposed Facilities for the Project in respect of which that Bidder has been appointed Preferred Bidder. A Bidder which has been provisionally informed of its Preferred Bidder status will be considered to have been appointed by the Department as a Preferred Bidder once the Preferred Bidder Guarantee has been submitted to the Department in accordance with this clause.

24.2.2 Each Preferred Bidder Guarantee shall be:

- 24.2.2.1 an original, unconditional and irrevocable bank guarantee in the form set out at Appendix H (*Form of Preferred Bidder Guarantee*);
- 24.2.2.2 lodged with the Department within 15 Business Days of a Bidder being notified of its Preferred Bidder status;
- 24.2.2.3 issued by a bank which is licensed to conduct banking business in South Africa under the Banks Act, 94 of 1990 or a licensed short-term insurer as contemplated in the Short-Term Insurance Act, 53 of 1998 and which has a South African rating of BBB or better by Standard & Poor's or equivalent; and
- 24.2.2.4 be valid and effective for the period from the date of issue of the Preferred Bidder Guarantee until the earlier of (a) the expiry of the Bid Validity Period (as extended from time to time) and (b) the later of the date of payment of the Development Fee in accordance with clause 2.1 of the Implementation Agreement, and the date on which the Preferred Bidder complies with the requirements of any documentation or information request or any protocol issued by the Department in relation to the submission to the Department of the computer model which is to be attached to the Implementation Agreement as Schedule 5 following Financial Close, provided that once Financial Close has been reached on a Project (a) no longer applies; and the Preferred Bidder Guarantee must remain valid until the later of the events set out in (b).

### 24.3 **Release of Guarantees**

Unless the Department has notified a Bidder or Preferred Bidder in terms of clause 24.4 that it intends calling on the Bid Guarantee or the Preferred Bidder Guarantee, the Department will return a Bid Guarantee or Preferred Bidder Guarantee, as applicable, within 15 Business Days of its expiry.

### 24.4 **Forfeiture of Guarantees**

- 24.4.1 Without prejudice to any rights that a Bidder (including a Preferred Bidder) may have in law, the Department may call on a Bid Guarantee more than once (provided that the aggregate amount payable thereunder shall not



exceed the maximum amount of the Bid Guarantee) without notice or legal process, if the Bidder:

- 24.4.1.1 is in breach of any law relating to the IPP Procurement Programme or is disqualified from any part of the IPP Procurement Programme as a result of its actions or omissions;
  - 24.4.1.2 fails to extend the term of its Bid Guarantee after agreeing to the Department's request to extend the expiry date of the Bid Guarantee (in which case the Department will hold it as security in lieu of such extended or renewed Bid Guarantee); or
  - 24.4.1.3 submits a Bid Response which is not a Compliant Bid.
- 24.4.2 Without prejudice to any rights that a Preferred Bidder may have in law, the Department may call on a Preferred Bidder Guarantee for a Facility more than once (provided that the aggregate amount payable there under shall not exceed the maximum amount of the Preferred Bidder Guarantee in question) without notice or legal process, if the Preferred Bidder in question:
- 24.4.2.1 is in breach of any law relating to the IPP Procurement Programme or is disqualified from any part of the IPP Procurement Programme as a result of its actions or omissions;
  - 24.4.2.2 fails to comply timeously with any conditions contained in the letter of appointment as a Preferred Bidder;
  - 24.4.2.3 fails to pay the budget quotation fee within the time period specified by the Department in this RFP or in the letter of appointment as Preferred Bidder;
  - 24.4.2.4 fails to sign the PPA, Implementation Agreement, Direct Agreement and the Connection Agreements within the time period specified in clause 10 (*Timetable of IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*) in respect of the relevant Bid Submission Phase, as such time period may be extended by the Department on written notice to the Preferred Bidder;

- 24.4.2.5 having signed the PPA, Implementation Agreement, Direct Agreement and the Connection Agreements, fails to pay the Development Fee in accordance with clause 24.5 or fails to comply with the requirements of any information or documentation request, or of any protocol issued by the Department including in relation to the submission to the Department of the computer model which is to be attached to the Implementation Agreement as Schedule 5 following Financial Close;
- 24.4.2.6 fails to extend the term of the Preferred Bidder Guarantee in question as required by the RFP; or
- 24.4.2.7 is notified by the Department that its status as Preferred Bidder has been revoked for any reason.

#### 24.5 **Development Fee**

The Project Companies of the Preferred Bidders will be required to pay a Development Fee of 1% of the Total Project Cost, to the Department within 10 Business Days of the date of signature of the Implementation Agreement. The Development Fee payable by the Project Companies of the Preferred Bidders must be paid to the Project Development Fund for Independent Power Producers Energy projects, and will be used by the Department to cover the costs incurred as well as the costs that may be incurred by the Department for the procurement of Energy from Independent Power Producers. The Project Development Fund is neither registered for income tax nor for VAT purposes and as such the Development Fee shall not attract VAT and an invoice cannot be issued to the Bidders. However, a notice of receipt will be issued to Bidders on payment of the Development Fee.

#### 24.6 **Success Payments**

- 24.6.1 As the Government of a developing country, the Department has the responsibility to provide access to fulfil basic needs such as affordable and sustainable energy to all South Africans, including, and most importantly, the poor. It is therefore of utmost importance for the Department and NERSA to understand the potential impact of this IPP Procurement Programme on the South African consumers and the economy.

- 24.6.2 The Bidder, is therefore, required to disclose and provide, at Bid Submission Date, a reconciliation of the Success Payments as defined in the Implementation Agreement. The reconciliation must include all the amounts constituting the Success Payments as well as what portion of the Success Payments will be re-invested in the Project, indicating exactly the point of participation (i.e. Equity, Debt or any other instrument), and what portion will be paid out as cash. It is important to indicate the net cash position and the net cash yield thereon.
- 24.6.3 The Development Fee and all Success Payments must be separately identifiable in the Financial Model(s). The Success Payments payable in respect of the Project may only be the Success Payments detailed in the Financial Model and declared in the Bid Response, and all Success Payments must be detailed in the Financial Model(s) and declared by the Bidder and each of its Members in the Bid Response. See Appendix JA in Volume 1, Part 2 (*Form of Bid and Returnable Schedules*) of this RFP, with its Schedule, in this regard.
- 24.6.4 If the Success Payments are considered by the Department to be disproportionately high, unjustifiable having regard to all relevant circumstances, or gratuitous relative to the Total Project Cost, the Bidder may fail the Value for Money assessment carried out in clause 2.8 (*Value for Money*) of Part B (*Qualification Criteria*) of this RFP.

## 25. **Corrupt Gifts and Payments**

- 25.1 The attention of Bidders is drawn to the Prevention and Combating of Corrupt Activities Act, 12 of 2004.
- 25.2 None of the Bidders, its Members, its Contractors, the Lenders, any other participant in a Bid Response or any of their agents or Advisors shall commit an offence in terms of the Prevention and Combating of Corrupt Activities Act, 12 of 2004, including directly or indirectly, offering or giving to any person in the employment of the Department or any other Government official, who is directly involved in the Project or the IPP Procurement Programme, or any of the Transaction Advisors, any gift or consideration of any kind as an inducement or reward for appointing any Bidder as a Preferred Bidder, or for showing or omitting

to show favour or disfavour to any Bidder, its Members, its Lenders or the Contractors in relation to the IPP Procurement Programme.

25.3 If any offence in terms of the Prevention and Combating of Corrupt Activities Act, 12 of 2004 is committed, the Department shall be entitled to disqualify (in terms of clause 28 (*Disqualification*) of Part A of this RFP) the Bidder or Preferred Bidder which committed or which is associated with any person who committed the offence, from the relevant Bid Submission Phase and/ or to prohibit such Bidder, Preferred Bidder its Members, its Contractors, Lenders, any other participant in the relevant Bid Response and their agents and Advisors from participating further in any part or Phase of the IPP Procurement Programme.

## 26. **No Contract**

This RFP does not constitute an offer to enter into a contractual relationship with any Bidder, but is merely a solicitation of Bid Responses to enable the Department to select the Preferred Bidders, in order to conclude an Implementation Agreement, a PPA, Direct Agreement and the Connection Agreements with the Buyer and the other relevant counterparties by the date specified in the table under clause 10 (*Timetable for IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*).

## 27. **No Collusion**

27.1 The attention of each of the Bidders, its Members, the Contractors as well as their advisors and agents is drawn to Section 4(1)(b)(iii) of the Competition Act, 89 of 1998, which prohibits collusive bidding.

27.2 In submitting a Bid Response, each of the Bidders, its Members, its Lenders, the Contractors and all other participants in any Bid Response certifies that:

27.2.1 its Bid Response has been prepared without consultation, communication or agreement for restricting competition with any other Bidder, Member of another Bidder or participant in another Bid Response, or any other competitor or potential competitor;

27.2.2 its Bid Response has not been disclosed, nor will it be disclosed to any other Bidder, Member of another Bidder or participant in another Bid Response, or any competitor or potential competitor;

- 27.2.3 no attempt has been made or will be made by it to induce any other person not to submit or participate in a Bid Response for the purpose of restricting competition; and
- 27.2.4 no attempt has been made or will be made by it to induce any other person to alter the form or contents of its participation in any Bid Response for the purpose of restricting competition.
- 27.3 If the Department becomes aware of or is of the opinion that any of the activities detailed in clause 27.2 have been undertaken by any Bidder or any of its Members, Lenders, Contractors or Advisors, the Department shall be entitled to disqualify (in terms of clause 28 (*Disqualification*) of Part A of this RFP) such Bidder, its Members, Lenders, Contractors or their Advisors and to bar any or all of them from participating further in the IPP Procurement Programme.

## 28. **Disqualification**

Any material failure on the part of a Bidder to comply with any of the terms of this RFP, read together with all Briefing Notes, may result in the Bidder, and other persons associated in any relevant way with the Bidder, being disqualified from participating in the relevant Bid Submission Phase and/or from any part or all of the IPP Procurement Programme.

## 29. **Loss of Preferred Bidder status**

- 29.1 If a Preferred Bidder:
- 29.1.1 fails to comply timeously with any conditions contained in the letter of appointment as a Preferred Bidder;
- 29.1.2 fails to pay the budget quotation fee within the time period specified by the Department in this RFP or in the letter of appointment as Preferred Bidder;
- 29.1.3 fails to sign the PPA, Implementation Agreement, Direct Agreement and the Connection Agreements within the time period specified in clause 10 (*Timetable of IPP Procurement Programme*) of this Part A (*General Requirements, Rules and Provisions*) in respect of the relevant Bid Submission Phase, specified in a Briefing Note or as such time period may be extended by the Department on written notice to the Preferred Bidder;

29.1.4 fails to extend the term of the Preferred Bidder Guarantee in question as required by the RFP; or

29.1.5 breaches any law applicable to any aspect of the IPP Procurement Programme;

the Department will be entitled to terminate such Preferred Bidder's status as Preferred Bidder.

### 30. **Contact Policy**

#### 30.1 **Contact Policy prior to appointment as a Preferred Bidder**

30.1.1 Each potential Bidder at the time of first contact with the Department in regard to the IPP Procurement Programme, and each Bidder in Appendix A (*Form of Bid*) of Volume 1 Part 2 (*Form of Bid and Returnable Schedules*), shall give the name and contact details, in writing, of the person or persons whom it appoints to undertake all contact with the Project Officer. Any change to any details of that contact person/s shall be notified to the Project Officer in writing. Any potential Bidder or Bidder may only communicate with the Department through such person/s and the Department shall be entitled, at its sole discretion, to disregard any communication from a potential Bidder or from a Bidder, that does not come from such contact person/s, and that does not go directly to the Project Officer in the manner identified below.

30.1.2 All queries and requests for clarification in respect of this RFP are to be addressed, in writing, to the Project Officer. The contact details of the Project Officer are the following:

Maduna Ngobeni

Telephone: 012 406 7452

E-mail: [query@ipp-renewables.co.za](mailto:query@ipp-renewables.co.za)

30.1.3 No information or clarification may be requested by a potential Bidder, Bidder, its Members, the Contractors nor any of its agents, Lenders or Advisors or any person participating in the relevant Bid Response from any member of the Transaction Advisors, Eskom (save in its capacity as the NTC or Distributor), the employees of the Department or any other

Government official who may be associated with the IPP Procurement Programme, without the prior written consent of the Project Officer.

30.1.4 If a potential Bidder, Bidder, its Members, the Contractors or any of its agents, Lenders, other person participating in the relevant Bid Response or Advisors makes any such prohibited contact, the Department reserves the right, in its sole discretion, to disqualify (in terms of clause 28 (*Disqualification*) of Part A of this RFP) the Bidder, its Members, Lenders, Contractors, other person participating in that Bid Response or Advisors, from any further participation in the relevant Bid Submission Phase and or from part or all of the IPP Procurement Programme.

30.1.5 A potential Bidder, Bidder, its Members, the Contractors or any of their Advisors, Lenders or agents shall not be entitled to rely on any statements, information or correspondence in respect of this RFP or the IPP Procurement Programme that is not contained in a Briefing Note or made, given or issued by the Project Officer in writing and addressed to the authorised representative of a Bidder or potential Bidder.

## 30.2 **Contact Policy following appointment as a Preferred Bidder**

30.2.1 Each Preferred Bidder will be given a dedicated "IPPID" e-mail address following appointment as a Preferred Bidder for all communication with the Department. Once the Preferred Bidder is provided with this dedicated IPPID e-mail address the Preferred Bidder must only correspond with the Department through this dedicated IPPID e-mail address and the Department shall be entitled, at its sole discretion, to disregard any communication from the Preferred Bidder that does not come to the dedicated IPPID e-mail address.

30.2.2 Prior to being provided with the dedicated IPPID e-mail address the Preferred Bidder should follow the contact policy outlined in clause 30.1 (*Contact Policy prior to appointment as a Preferred Bidder*) of Part A (*General Requirements, Rules and Provisions*) of this RFP above.

30.2.3 The Preferred Bidder must maintain such internal protocols as are necessary to ensure that only authorised representatives make use of and communicate with the Department through the dedicated IPPID e-mail address, the Department shall be entitled to treat all such communications

as coming from an authorised representative of the Preferred Bidder and shall be entitled to rely on such communications.

- 30.2.4 The Department shall communicate with Preferred Bidders from the “Project Office” e-mail address, a Preferred Bidder shall be entitled to rely only on communications from the Department from this e-mail address, subject to the reservation of all of the rights of the Department in respect of the IPP Procurement Programme, as set out in this RFP, including those rights set out in clause 6 (*The Department’s Rights*) of this Part A (*General Requirements, Rules and Provisions*) of the RFP.
- 30.2.5 No information or clarification may be requested by the Preferred Bidder, its Members, the Contractors or any of its agents, Lenders, other person participating in the relevant Bid Response or Advisors from any member of the Transaction Advisors, Eskom (save in its capacity as the NTC or Distributor), the employees of the Department or any other Government official who may be associated with the IPP Procurement Programme, other through the dedicated IPPID e-mail address and to the “Project Office” e-mail address.
- 30.2.6 If the Preferred Bidder, its Members, the Contractors or any of its agents, Lenders, other person participating in the relevant Bid Response or Advisors makes any such prohibited contact, the Department reserves the right, in its sole discretion, to disqualify (in terms of clause 28 (*Disqualification*) of Part A of this RFP) the Preferred Bidder, its Members, Lenders, Contractors, other person participating in that Bid Response or Advisors, from any further participation in the relevant Bid Submission Phase and or from part or all of the IPP Procurement Programme.

### 31. Time for requests and clarifications

The Bidder may request clarification on any item contained within this RFP by not later than 20 Business Days before the relevant Bid Submission Date.

### 32. Requests and responses to requests

- 32.1 All requests and queries from Bidders must be in writing sent to the Project Officer by way of email. Each Bidder will be permitted to send a maximum of 30 questions or clarifications in respect of the IPP Procurement Programme per



Project. Oral requests and queries will not be entertained and will not receive a response.

32.2 The Department and its Transaction Advisors will endeavour in good faith to respond to all reasonable written queries and requests for clarification raised by the Bidders by way of written Briefing Notes distributed to all Bidders simultaneously. In general, all such written queries and responses will be circulated to all Bidders. The Department reserves the right not to answer or respond to any particular question, query or request.

32.3 No response given to a question or request for clarification will have any status or impact on the RFP, save to the extent that such response is subsequently reflected in Briefing Notes to the RFP.

32.4 It is the responsibility of a Bidder to identify in its queries or requests for clarification which information it deems to be confidential to its Bid Response and which it does not wish to have communicated to other Bidders, the Bidder must give written grounds for requesting such information be treated as confidential. The Bidder's attention is drawn to the requirements of the Constitution of the Republic of South Africa, 1996; the PFMA; the Promotion of Access to Information Act, 2 of 2000 and the Promotion of Administrative Justice Act, 3 of 2000, all of which are relevant to the determination whether the Department shall be entitled to respect the Bidder's request for confidentiality.

### 33. **Bidders' Conference**

33.1 The Department held a conference with prospective Bidders prior to the First Bid Submission Date, and again, before the Third Bid Submission Date and may hold a further Bidders' Conference if this seems warranted. These conferences were held in the Republic of South Africa on the dates set out in the table under clause 10 (*Timetable for IPP Procurement Programme*) or as notified to prospective Bidders by Briefing Note. The Bidders' Conferences are voluntary. A prospective Bidder that has paid the required fee to access the RFP and, if applicable, has registered one or more Projects on the IPP website by the date for registration of interest in the Bidders' Conference which the Department stipulates by Briefing Note will be invited to attend the Bidders' Conference. At the Department's request before each Bidders' Conference, prospective Bidders

will be asked to confirm in writing to the Department, details of the number and identity of their attendees.

33.2 The Department reserves the right, in its sole discretion, to require prospective Bidders to attend any additional Bidders' Conferences.

34. **[Blank – intentionally not used in revised version of the RFP]**

35. **Submission of Bid Response**

35.1 Bid Responses in relation to the First Bid Submission Date had to be submitted by not later than 12h00 on 4 November 2011.

35.2 Bid Responses in relation to the Second Bid Submission Date had to be submitted on 5 March 2012 by not later than 18h00. The bid submission venue was open to receive Bid Responses on 2 March 2012 from 12h00 to 18h00, and then on 5 March 2012 from 8h00 to 18h00.

35.3 Bid Responses in relation to the Third Bid Submission Date are to be submitted on 19 August 2013 from 8h00 to 18h00, the venue for Bid Submission will be communicated to prospective Bidders by Briefing Note.

35.4 The Department shall notify all prospective Bidders of the Bid Submission Date and address for delivery of Bid Responses, and other delivery instructions, for each Bid Submission Date, at the appropriate time, by way of a Briefing Note.

36. **Extension of Bid Submission Date**

The Department may, in its sole discretion, extend one or more of the Bid Submission Dates by issuing a Briefing Note in accordance with clause 44 (*Briefing Notes and Changes to Bid Process*), in which case, all rights and obligations of the Department and the Bidder that were previously applicable to the original Bid Submission Date shall be applicable to the extended Bid Submission Date.

37. **Copies of Bid Response**

37.1 Each Bid Response is required to be delivered by way of:

37.1.1 a hard copy consisting of one master Bid Response and 6 (six) copies thereof; and

37.1.2 a soft copy consisting of one master disc and 6 (six) additional discs, and the documents (with the exception of the Financial Model(s)), contained therein to be in Microsoft Word format, version 98 or later, save where the document cannot be accessed by Microsoft Word, in which event the document must be provided in an Adobe Acrobat PDF format. The Financial Model(s) is to be in Microsoft Excel format, version 2007 or later;

each marked as either "master" or "copy", as the case may be.

37.2 The sections of the Bid Response that respond to each of Part B (*Qualification Criteria*) and Part C (*Evaluation Criteria*) of this RFP must be separate documents and must be separately bound. See further at paragraph 53 (*Format of the Bid Response*) of this Part A (*General Requirements, Rules and Provisions*) of the RFP for additional detail on the required format for compilation, labelling and packaging of the Bid Response.

#### 38. **Late Submissions**

Bid Responses reaching the Department later than the specified cut-off time on the original or extended Bid Submission Date (as the case may be) may, in the Department's sole discretion, be rejected without further consideration.

#### 39. **Bid Validity**

All Bid Responses constitute an irrevocable binding offer by the Bidder to the Department. Bid Responses must remain valid and binding for 365 (three hundred and sixty five) calendar days from the relevant Bid Submission Date ("**Bid Validity Period**").

#### 40. **Extension of Bid Validity Period**

If the Department requests the Bidder to extend the Bid Validity Period of its Bid Response for any reason, the Bidder must issue its response to the Department in writing within the time-period specified in the applicable letter of request from the Department. Should the extension be agreed to by the Bidder, the Bid Response may not be varied but an extension of the Bid Guarantee or the Preferred Bidder Guarantee contemplated under clause 24 (*Bid Security, Development Fee and Success Payments*) to match any such extension, may be required.

#### 41. **Declaration of Bidder and Letter of Intent**

The Lead Member of the Bidder or the authorised representative of a Bidder which is a Project Company is required to sign the declaration in the form provided in Appendix B (*Declaration of Bidder*) of Volume 1, Part 2 (*Form of Bid and Returnable Schedules*), and each additional Member (in the case of a Bidder consortium) or each Member (in the case of a Project Company Bidder) is required to sign the letter of intent in the form provided in Appendix C (*Letter of Intent*) of Volume 1, Part 2 (*Form of Bid and Returnable Schedules*) certifying that:

- 41.1 the Member has studied the terms and conditions of the RFP; and
- 41.2 the Member accepts that the terms and conditions of the RFP shall govern the IPP Procurement Programme.

#### 42. **Acceptance and Revision of the PPA, Implementation Agreement, Direct Agreement and Connection Agreements**

- 42.1 As part of the Bid Response, each Bidder, its Members and Contractors will be required to confirm that they accept the terms of the Implementation Agreement, the PPA, the Direct Agreement and the Connection Agreements, and the annexes to these agreements. Confirmation of the acceptability of the terms of the Implementation Agreement, the PPA, the Direct Agreement and the Connection Agreements and the annexes to these agreements must also be given by each of the Bidder's Lenders.
- 42.2 Copies of the PPA, the Direct Agreement, the Implementation Agreement and the Connection Agreements and various annexes to these agreements, which may not be marked-up by Bidders, are contained in Volume 2 (*Legal Requirements*) as Appendices K (*PPA for each Technology*), L (*Direct Agreement*), M (*Implementation Agreement*), N (*Transmission Agreement*), O (*Distribution Agreement*) and P (*Connection Direct Agreement*).

#### 43. **Change in Legal Requirements**

Bidders will note, from the PPA, that they are expected to inform themselves as to the current laws in force in South Africa, including the Codes, as well as the conditions of the NTC's transmission licence and the conditions of the distribution licence of the relevant Distributor. In addition, they are expected to review all bills and draft regulations and rules that have been published in the *Government Gazette* and are

required to assume that the substantive and procedural provisions of such bills and draft regulations will not materially differ from those enacted. If there is a change in any of the statutes, regulations, by-laws, orders or directives having the force of law or in the law applicable to a Project during the period commencing on the relevant Bid Submission Date and ending on the Effective Date of the Implementation Agreement which materially prevents, hinders or delays the relevant Project Company from undertaking that Project or in the performance of its obligations in relation to that Project or which results in a material change in that Project Company's anticipated costs and or revenues and which would constitute Unforeseeable Conduct in terms of the PPA, the Department, in its sole discretion, will be entitled to grant the relevant Project Company the opportunity to amend its Bid Response in order to deal specifically and only with the change in any law as set out above, provided that the Bidder may not mark-up the PPA, Implementation Agreement, Direct Agreement or Connection Agreements, and the Department may accept or reject such changes, in its sole discretion. If a Bidder elects not to amend its Bid Response, but to withdraw its Bid Response from the relevant Bid Submission Phase, it shall be entitled to do so and any guarantees provided by it in terms of clause 24 (*Bid Security, Development Fee and Success Payments*) of the RFP shall be returned to it without being called. The Bidder shall be entitled to submit a revised or new Bid Response at the next Bid Submission Date, should a subsequent Bid Submission Date occur.

#### 44. **Briefing Notes and Changes to Bid Process**

Up to 10 (ten) Business Days prior to the relevant Bid Submission Date, the Department may, for any reason, whether at its own initiative, or in response to a clarification requested by a Bidder, supplement, amend, vary or modify any part or aspect of this RFP by the issue of Briefing Notes.

##### 44.1 **Issue of Briefing Notes**

- 44.1.1 The Department may issue additional information regarding the RFP on an *ad hoc* basis, which information shall be provided in the form of Briefing Notes which are published on the IPP website.
- 44.1.2 Briefing Notes will be sequentially numbered and will indicate whether they supplement, vary or amend any portion of the RFP.
- 44.1.3 Bidders shall be obliged to accept any amendments specified in Briefing Notes. All Briefing Notes shall be deemed to be part of the RFP. A Bidder

must ensure that its Bid Response is prepared taking into account all Briefing Notes issued by the Department.

#### 45. **Cost of Bidding**

45.1 A Bidder shall bear all of its costs (of whatsoever nature) associated with the preparation of its Bid Response and the development of the Project.

45.2 No Bidder (including any Preferred Bidder) shall have any claim against the Department (including any claim for the costs of bidding) as a result of:

45.2.1 not being selected as a Preferred Bidder;

45.2.2 not entering into a PPA,

45.2.3 the Department re-allocating the MW between the various Technologies, in its sole discretion, at any stage of the IPP Procurement Programme; and  
or

45.2.4 the Department altering or abandoning any part or all of the IPP Procurement Programme.

#### 46. **Bidder's Due Diligence**

The Bidder must perform an appropriate due diligence on all technical, legal, financial, environmental, site planning, heritage and other matters relevant to the Project in respect of which it is submitting its Bid Response so as to enable the Bidder to submit a Bid Response that is based on verified and accurate information.

#### 47. **Inconsistencies**

47.1 If a Bidder identifies any errors or inconsistencies between the various portions of this RFP, the Bidder shall notify the Project Officer in writing prior to the date referred to in clause 31 (*Time for requests and clarifications*), and the Department will, if necessary, provide clarification to all Bidders by way of a Briefing Note.

47.2 To the extent that any inconsistency exists or shall exist between the terms of the PPA, the Implementation Agreement and the provisions of this RFP, the terms of the PPA and the Implementation Agreement shall prevail.

**48. Incorrect or misleading information**

The Department may:

- 48.1 disqualify, in terms of clause 28 (*Disqualification*) of Part A (*General Requirements, Rules and Provisions*) of this RFP, any Bidder who knowingly or unwittingly provides any incorrect or misleading information in response to this RFP or in response to any query or clarification question addressed to the Bidder by the Department, from further participation in the relevant Bid Submission Phase and or from further participation in part or all of the IPP Procurement Programme; and/or
- 48.2 terminate any decision in respect of the selection of a Preferred Bidder, in accordance with clause 29 (*Loss of Preferred Bidder status*) of Part A (*General Requirements, Rules and Provisions*) of this RFP, if such decision was based on any incorrect or misleading information which the Bidder or its Members, Contractors, Lenders or Advisors or any other participant in the relevant Bid Response and or agents knowingly or unwittingly provided in response to this RFP or in response to any query or clarification question addressed to the Bidder or Preferred Bidder by the Department.

**49. Opening of Bid Responses**

The Department will open the Bid Responses after the relevant Bid Submission Date following receipt of the Bid Responses.

**50. Bid Response Rejection**

The Department shall be entitled to accept or reject any Bid Response or to waive any failure to comply with the requirements set out in this RFP at any time.

**51. Disputes relating to Bid Process**

Each Bidder and each Member, Lender and Contractor or other person participating in a Bid Response or otherwise in the IPP Procurement Programme, waives the right to bring proceedings in any forum outside of the Republic of South Africa in relation to this IPP Procurement Programme. This IPP Procurement Programme shall be governed by the laws of South Africa and the Bidder and each of its Members, Lenders and Contractors and such other participants consents and submits to the North Gauteng High Court of Pretoria having exclusive jurisdiction in relation to it.

## 52. Selection of Preferred Bidders

The Department will send letters to the selected Preferred Bidders in relation to each Bid Submission Phase, notifying them provisionally of their status, and requesting the Preferred Bidders to submit Preferred Bidder Guarantees pursuant to clause 24.2 (*Preferred Bidder Guarantee*) and to, *inter alia*, enter into negotiations with their Members, Contractors, Lenders and equipment suppliers to finalise their contractual arrangements and Project Documents in order to conclude an Implementation Agreement, a PPA, a Direct Agreement and Connection Agreements with the relevant counterparties.

## 53. Format of the Bid Response

### 53.1 Contents of the Bid Response

53.1.1 The Bid Response must be complete, contain all the information required by this RFP and deal with each and every issue raised in this RFP.

53.1.2 All pages of each separately bound section of the Bid Response, for example, the response to the Legal Criteria and Evaluation section (clause 2.2 of Part B (*Qualification Criteria*) of the RFP), must be numbered consecutively from beginning to end and a detailed index to the entire Bid Response, must be included in the Bid Response.

53.1.3 The Bid Response must be submitted in 3 (three) parts, in the order set out below, to aid the evaluation process:

53.1.3.1 the documents set out in Volume 1, Part 2 (*Form of Bid and Returnable Schedules*), in the order set out in Volume 1, Part 2 (*Form of Bid and Returnable Schedules*), except for Appendix H, (*Form of Preferred Bidder Guarantee*) which is only required to be submitted within 15 Business Days of appointment of the Bidder as Preferred Bidder;

53.1.3.2 response to Part B (*Qualification Criteria*):

53.1.3.2.1 executive summary (not more than 20 pages);

53.1.3.2.2 responses to individual headings in the order in which the headings appear in Part B (*Qualification Criteria*) of this RFP



and in the form of the returnable schedules that relate to the headings, if applicable; and

53.1.3.3 response to Part C (*Evaluation Criteria*):

53.1.3.3.1 executive summary (not more than 20 pages);

53.1.3.3.2 Price response;

53.1.3.3.3 Economic Development response.

53.1.4 The 3 (three) parts to the Bid Response are those described above, namely, the response in respect of Volume 1, Part 2 (*Form of Bid and Returnable Schedules*), the response in respect of Part B (*Qualification Criteria*) and the response in respect of Part C (*Evaluation Criteria*). The documents comprising the response to Volume 1, Part 2 (Form of Bid and Returnable Schedules) must be bound together and do not have to be separate documents or separately bound. In respect of the response to Part B (*Qualification Criteria*), the executive summary must be separately bound from the documents comprising the responses to each category of Qualification Criteria. The documents submitted in response to each category of Qualification Criteria (for example, Legal Criteria and Evaluation (clause 2.2 of Part B (*Qualification Criteria*) of the RFP)) must be bound together. Therefore, each response in respect of a category of Qualification Criteria must be separately bound. In respect of the response to Part C (*Evaluation Criteria*), the executive summary must be separately bound from the documents comprising the responses to each category of Evaluation Criteria. The documents submitted in response to each category of Evaluation Criteria (for example, Price (clause 2 of Part C (*Evaluation Criteria*) of the RFP)) must be bound together. Therefore, each response in respect of a category of Evaluation Criteria must be separately bound.

## 53.2 **Language of the Bid**

The Bid Response and all documents forming part of the Bid Response shall be in English. Any printed literature submitted with a Bid Response may be in another language so long as it is accompanied by an English translation (made by an accredited translator) of the entire document. For the purpose of

interpretation of the Bid Response, the English translation provided shall govern. All correspondence and any other documentation and oral communication exchanged between the Bidder and the Department shall be in English. The provisions of this clause 53.2 of Part A (*General Requirements, Rules and Provisions*) of this RFP shall not apply in respect of the documentation referred to in clauses 2.3.1.1, 2.3.1.2 and 2.3.1.3 of Part B (*Qualification Criteria*) of this RFP.

### 53.3 **Currency of the Bid**

All monetary amounts referred to in a Bid Response shall be in Rand, save to the extent specifically permitted for in this RFP.

### 53.4 **Identification and Sealing of the Bid Response**

53.4.1 The Bidder shall write on the top right hand corner of the cover page of each bound section forming part of the Bid Response, the following information:

53.4.1.1 Tender reference number;

53.4.1.2 Name and Address of Bidder;

53.4.1.3 Bid Submission Date (namely, to which Bid Submission Phase the Bid Response relates);

53.4.1.4 Type of Technology to which the Bid Response relates;

53.4.1.5 Original or copy number; and

53.4.1.6 Category of document (namely, the heading of the Part and clause or volume of the RFP to which the document relates).

53.4.2 The Bidder shall wrap each Bid Response (comprising the master and all additional copies) separately, and mark the cover of the package with the following details:

53.4.2.1 the title of the IPP Procurement Programme as detailed on the cover page of the RFP;

53.4.2.2 Tender reference number;

53.4.2.3 Bid Submission Date (namely, to which Bid Submission Phase the Bid Response relates);

53.4.2.4 Name and Address of Bidder;

53.4.2.5 Type of Technology to which the Bid Response relates.

53.4.3 The master copy of the Bid Response in respect of each of the 3 (three) parts of the Bid Response must be separately packaged within the sealed bid parcel, and clearly marked as "master" and indicating the relevant part of the Bid Response, for example, "master - response to Volume 1, Part 2". The copies of the 3 (three) parts of the Bid Response must be separately packaged within the sealed bid parcel. The Bid Response should not include any loose paper. The complete Bid Response must be placed in a sealed parcel and marked in accordance with this clause.

#### 53.5 **Correction of Errors**

The complete Bid Response shall be without alterations, deletions or omissions, except those to accord with instructions issued by the Department, or as necessary to correct errors made by the Bidder in which case, such corrections shall be made in clearly legible handwriting and initialled in black ink by the person or persons signing the Bid Response. No corrections to the Bid Response shall be made with any kind of correction fluid.

#### 53.6 **Signing of Bid**

The Bid Response (in Appendix A (*Form of Bid*) to Volume 1 Part 2 (*Form of Bid and Returnable Schedules*)) is to be signed by an authorised representative of the Lead Member, or by the authorised representative of a Bidder which is a Project Company.

#### 53.7 **Further Information**

The Department reserves the right to seek additional information from any Bidder in respect of its Bid Response, as it may, in its sole discretion, determine, whether such information has been requested under this RFP or otherwise, and may require the Bidder to make oral presentations for clarification purposes or to present supplementary information, in respect of its Bid Response if so required by the Department. The Department reserves the right to hold one or more

briefing or information sessions in respect of any or all of the Bid Responses. The Bidder may be required to do a presentation of the salient features of its Bid Response to the Department. If required by the Department, the Project Officer will arrange a suitable date and venue with each affected Bidder.

### 53.8 **Information Verification**

53.8.1 Each Bidder (including its Members, Contractors, Lenders, Advisors and other participants), in submitting a Bid Response, is deemed to consent to and agree that the Department is entitled to:

53.8.1.1 perform a credit search in respect of such a Bidder, its Members, Contractors and participants by accessing any credit bureau's database; and

53.8.1.2 verify any information provided by a Bidder (including technical and financial information) with third parties (including banks).

53.8.2 The Department shall be entitled to use any information and data obtained from credit bureaux in respect of the evaluation of the Bidder's Bid Response.